

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/1535/2014

HYDERABAD, this the 3rd day of February, 2021



**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**

S. Ramachander,
S/o. Late Pullaiah,
Aged about 49 years,
MES-144432,
Maz working at GE Golconda,
Hyderabad.

...Applicant

(By Advocate : Sri G. Surapu Naidu)

Vs.

1. The Chief Engineer, GE, Golconda,
Hyderabad – 500 008.
2. The Commander Works Engineers,
Mudfort, Secunderabad – 500 003.
3. The Garrison Engineer Golconda,
Langar House, Hyderabad -08.
4. Union of India rep. by its
Secretary, Ministry of Defence,
#104, South Block, Sena Bhavan,
New Delhi – 110 001.

...Respondents

(By Advocate : Smt K. Rajitha, Sr. CGSC)

ORAL ORDER

(Hon'ble Mr. B.V. Sudhakar, Admn. Member)

Through Video Conferencing:

2. The OA is filed aggrieved by the order of recovery dt. 24.11.2014.

3. Brief facts of the case are that applicant working as a regular Mazdhoor in the respondents organisation was issued Rule 14 charge sheet and dismissed from service on 30.6.1997. On approaching the Tribunal, order of dismissal was set aside and directed to file an appeal. On appeal, penalty was modified on 6.6.2000 to that of reduction to the lower stage by 3 increments for 2 years from Rs.2780 to Rs.2605 with cumulative effect and no earning of increments during the penalty period as well as reduction will postpone future increments. Applicant was reinstated on 19.6.2000. Thereafter, applicant represented on 27.3.2008 to restore the pay to Rs.2780 after the date of expiry of the penalty. The Chief Engineer concerned restored the pay on 4.2.2012 and arrears were also paid. Later, R-2 passed the impugned order cancelling the 3 increments. Aggrieved the OA is filed.

4. The contentions of the applicant are that the cancellation of 3 increments was done without notice and by not following the Principles of Natural Justice.

5. Respondents in the reply statement state that the restoration of the increments was done by mistake by the 3rd respondent assuming that the recommendation of the 1st respondent as sanction and hence, the cancellation by the impugned order after careful review, which is lawful.

6. None for the applicant. As seen from the record, there was no representation for applicant on several occasions. In view of the same and as the matter pertains to 2014, we thought it fit to proceed with the matter. Accordingly, we heard the counsel for respondents and perused the pleadings on record.



7 (I) The dispute is about restoration of 3 increments of the applicant after the currency of penalty imposed on 6.6.2000 was over. To resolve the dispute, the penalty in question is extracted hereunder:

"Reduction of pay to lower stage of pay by three increments for two years from Rs.2780 to 2605 in the pay scale of Rs.2550-55-2660-6322 with cumulative effect with further directions that he will not earn increments during the currency of penalty and reduction will have the effect of postponing his future increments. The period of absence from duty w.e.f. 01.07.1997 to till date 3 of reinstatement including the period of suspension shall be treated as Non-duty and not entitled for any pay and allowances during the said period."

II. As seen from the penalty, the reduction by 3 increments is with cumulative with additional clauses of no earning of increments during the currency of the penalty plus reduction will postpone future increments. Hence, it is lucid that the 3 increments are reduced forever as per the penalty order.

III. The respondents explained that R-1 only recommended the case for restoration and by mistake, R-3 construed it to be a sanction and therefore, restored the 3 increments. It is a bonafide mistake by the respondents and cannot be find fault with as observed by the Hon'ble Supreme Court in **VSNL v. Ajit Kumar Kar,(2008) 11 SCC 591**, as under:

46. It is well settled that a bona fide mistake does not confer any right on any party and it can be corrected.

IV. Further, the applicant states that notice was not issued before cancellation of the increments and therefore, Principles of Natural Justice have been infringed. Even if the notice were to be given, the outcome would not have changed, since the penalty imposed is clear and that the applicant was not eligible for the restoration of the increments. Therefore, issuing a notice would be an empty formality and in such cases it would not be required to adhere to the Principles of Natural Justice, as observed by the Hon'ble Apex Court in **Haryana Financial Corp. v. Kailash Chandra Ahuja**, (2008) 9 SCC 31, as under:

40. In Aligarh Muslim University v. Mansoor Ali Khan (2000) 7 SCC 529 the relevant rule provided automatic termination of service of an employee on unauthorized absence for certain period. M remained absent for more than five years and, hence, the post was deemed to have been vacated by him. M challenged the order being violative of natural justice as no opportunity of hearing was afforded before taking the action. Though the Court held that the rules of natural justice were violated, it refused to set aside the order on the ground that no prejudice was caused to M. Referring to several cases, considering the theory of "useless" or "empty" formality and noting "admitted or undisputed" facts, the Court held that the only conclusion which could be drawn was that had M been given a notice, it "would not have made any difference" and, hence, no prejudice had been caused to M.

Thus, there is no violation of Principles of Natural Justice in view of the above legal principle enunciated by the Hon'ble Apex Court.

V. Further, by allowing increments for which the applicant was not entitled would go against the Principle of unjust enrichment as laid

down by the Hon'ble Apex Court in *Mahabir Kishore & Ors vs State Of Madhya Pradesh* on 31 July, 1989 - 1990 AIR 313, 1989 SCR (3) 596.

VI. Hence in view of the above, viewed from any angle, there is no merit in the OA and hence, is dismissed with no order as to costs. The interim order passed on –01.01.2015 stands vacated.



(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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