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**Central Administrative Tribunal
Principal Bench**

CP No.578/2010
OA No.1226/2004
MA No.2148/2010

New Delhi this the 27th day of August, 2010.

**Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Dr. (Mrs.) Veena Chhotray, Member (A)**

Vijay Kumar son of Sh. Sardari Lal, Parcel Supervisor,
Northern Railway Delhi, resident of H.No.50, Chaman Garden
Extension, Railway Road, Karnal.

-Applicant

(In person)

-Versus-

Shri S.K. Budhlakoti, General Manager, Northern Railway
Headquarter, Baroda House, New Delhi.

-Respondent

(By Advocates Shri Jagjit Singh and Shri Shailender Tiwary)

O R D E R

Hon'ble Mr. Shanker Raju, Member (J):

CP-518/2008 has been filed in OA No.1226/2004.

Applicant, who appeared in person, stated that by an order passed on 13.8.2010 an observation of the Tribunal that under the guise of implementing the direction pertaining to OA-999/2005 filed by the applicant decided on 4.10.2005 by a coordinate Bench of the Tribunal the effect of direction in the present OA has almost been wiped out. Presence of General Manager, Northern Railway was called.



2. MA-2148/2010 has been filed by the respondent, seeking exemption of personal presence of General Manager on the ground that the General Manager not being the appointing authority of the applicant and it is only the Senior Divisional Commercial Manager, the presence of General Manager may be exempted.

3. In OA, after hearing the respondent, a direction was issued to accord financial upgradation to the applicant on having passed the test on verification if a letter dated 7.6.1993 has been issued with a direction to take a final decision in this regard, consequential benefits were also being made admissible without being affected on conduct of the disciplinary proceedings. This order of the Tribunal was stayed in Writ Petition (Civil) No.4427-28 of 2005, as such CP-75/2005 was kept in abeyance on 13.04.2005. However, on 23.10.2007 order passed by the Tribunal was upheld by the High Court, which resulted in hearing of the CP-81/2008, which was closed, taking necessary justification of the respondent into consideration. MA to revive CP was filed, which was dismissed on 26.5.2010 for pursuing the remedy in accordance with law.

4. Meanwhile, respondent in compliance of directions of the Tribunal in OA-999/2005 promoted applicant notionally as Parcel Supervisor grade with effect from 27.6.1995.

Applicant, who appeared in person, stated that when on 27.6.1995 there was no impediment of any penalty etc. upon him inflicted by the respondent for grant of promotion, following the same norms benefit of ACP cannot be denied, which amounts to approbating and reprobating simultaneously by the respondent. It is also stated that the penalty inflicted upon applicant and as the final order had not been served upon applicant he is taken aback. He has demonstrated that he has been getting salary from November, 1999 till 2004 without any reduction. As such, the penalty was not given effect to.

5. On the other hand, learned counsel of respondent vehemently opposed the contentions. It is stated that the applicant was due for ACP after 12 years assuming to be reckoned from 1987 w.e.f. 1.8.1999 but was inflicted a penalty for three years w.e.f. 1.7.1999 and immediately thereafter without a break withholding of one increment for one year was continued on two consecutive occasions till 30.6.2004 and on 30.11.2009 a penalty was inflicted for reduction in the grade for a period of five years and this enquiry was initiated in 2001. It is stated that following the same norms, as the applicant was undergoing currency of punishment and was further facing an enquiry, he was not legally entitled for grant of ACP.



6. On careful consideration of the rival contentions of the parties, we are of the considered view, after perusing the record produced by the respondent that penalty has been inflicted upon applicant from 1.7.1999 on four occasions, which unless set aside, consequences would not automatically flow from it, including ACP. Moreover, with effect from 1.8.1999 as applicant was under currency of penalty, he is not entitled for grant of ACP and to this a final decision taken by the respondent to deny, if any grievance subsists, it would lead to a contentious issue, which cannot be gone into in a contempt matter, for which we accord liberty to him in accordance with law. The fresh CP filed by the applicant is not maintainable and is accordingly dismissed with aforesaid liberty. MA for exemption is allowed. Notices issued to the respondent are discharged.

Chhotray
 (Dr. Veena Chhotray)
 Member (A)

S. Raju
 (Shanker Raju)
 Member (J)

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