

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.223/93

New Delhi, this the 26th day of October, 1998.

Hon'ble Mr. N. Sahu, Member(Admnv)
Hon'ble Dr.A.Vedavalli, Member(J)

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S.S. Tyagi

...Applicant

(By Advocate Shri H.L. Srivastava)


Versus

Union of India & Others

...Respondents

(By Advocate Shri N.S. Mehta)

1. To be referred to the Reporter or not? YES
2. To be circulated to other Benches of the Tribunal
or not? NO


(Dr.A. Vedavalli)
Member(J)

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S.S. Tyagi,
R/o Village and Post Office Morta,
District Ghaziabad (UP). ...Applicant

(By Advocate Shri H.L. Srivastava)

Versus

1. Union of India,
through the Secretary,
Ministry of Commerce,
Department of Supply,
Nirman Bhawan,
New Delhi-110 011.
2. The Chief Controller of Accounts,
Department of Supply,
Akbar Road Hutments,
New Delhi-110 011.
3. The Controller of Accounts,
Deptt. of Supply 16 Akbar Road Hutments,
New Delhi-110 011.
4. Pay and Accounts Officer,
Shri Prem Prakash,
Principal Accounts Office,
Deptt. of Supply,
16, Akbar Road Hutments,
New Delhi-110 011. ...Respondents

(By Advocate Shri N.S. Mehta)

ORDER

By Hon'ble Dr. A. Vedavalli, Member (J):

The applicant Shri S.S. Tyagi while working as a Junior Accountant in the Department of Supply was reduced to the rank of Clerk/Typist until he is found fit after a period of two years with immediate effect by way of penalty as a result of disciplinary proceedings initiated against him under Rule 14 of the C.C.S. (CCA) Rules, 1965 by an order dated 2.2.88 passed by respondent No.3 under Rule 15 (4) of the said Rules (Annexure A-1).

2. The applicant was promoted to the post of Accountant in an officiating capacity w.e.f. 1.7.92 in the time scale of Rs.1200-30-1560-EB-2040 by an order dated 1.7.92 issued by respondent No.4 (Annexure A-2) stating, inter alia, that the applicant will be on probation/trial for two years from the said date which would be his new date of appointment as Accountant.

3. Thereafter the applicant submitted a representation dated 6.11.92 to respondent No.2 praying for the setting aside of the aforesaid impugned orders and restoration of his original seniority with consequential benefits etc. (Annexure A-3). It appears that he submitted another representation dated 29.7.92 also (copy not filed). His pay as an Accountant was fixed at Rs.1530/- w.e.f. 1.7.92 (F/N) in the aforesaid scale of Accountant by an order dated 9.11.92 (Annexure A-4). However, the aforesaid representations were disposed of by an order issued by respondent No.4 dated 21.12.92 (Annexure A-5).

4. The applicant impugned the aforesaid orders dated 2.2.88 (Annexure A-1), order dated 1.7.92 (Annexure A-2) and the order dated 21.12.92 (Annexure A-5) in the OA initially before this Tribunal and sought the reliefs mentioned in para 8 of the OA. However, at the admission stage it was held by this Tribunal by its order dated 21.9.93, inter alia, that the challenge to the order dated 2.2.88 (Annexure A-1) and the prayer for quashing the

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same is barred by limitation. The learned counsel for the applicant, it appears, did not press for the said prayer. The O.A. was admitted for the other reliefs prayed for and the applicant was directed to carry out the necessary amendments etc. Therefore, we are concerned with the challenge to the impugned order dated 1.7.92 (Annexure A-2) and the order dated 21.12.92 (Annexure A-5) and the reliefs sought relating to the said two orders only while disposing of the present amended OA.

5. The reliefs sought by the applicant in the amended OA in a nutshell is for the quashing of the impugned orders dated 1.7.92 (Annexure A-2) and the order dated 21.12.95 (Annexure A-5) and to direct the respondents to count his past service rendered on the post of Junior Accountant prior to his reduction to the post of Clerk/Typist for the purpose of seniority, pay fixation etc. and for payment of the entire amount of arrears in the event of his prayer being granted.

6. The O.A. is contested by the respondents who have filed their counter reply.

7. We have heard the learned counsel for both the parties, pleadings, material papers and documents placed on record have been perused. The matter has been considered carefully.



8. The operative portion of the penalty order dated 2.2.88 passed by the disciplinary authority (Annexure A-1) is as under:

"NOW THEREFORE the undersigned in exercise of the powers conferred by rule 15 (4) of the CCS (CCA) Rules, 1965 hereby order, that Shri S.S. Tyagi Jr. Acctt. be reduced to the post of C/T, until he is found fit after a period of two years with immediate effect.

sd/-
(D.K. KAPUR)
CONTROLLER OF ACCOUNTS"

The first impugned order dated 1.7.92 (Annexure A-2) is extracted below:

" PRINCIPAL ACCOUNTS OFFICE
DEPARTMENT OF SUPPLY : AKBAR ROAD HUTMENTS

NEW DELHI : 110 011.

Dated: 1.7.92

O.O. No. Admn. I/52

OFFICE ORDER

Controller of Accounts, Department of Supply has been pleased to promote Shri S.S. Tyagi, Clerk/Typist as Accountant in an officiating capacity with effect from the forenoon of 1.7.92 in the time scale of Rs.1200-30-1560-EB-40-2040 plus usual allowances as in force from time to time.

Shri S.S. Tyagi, will be on probation/trial for two years from the date of appointment as Accountant.

The period of deputation can be extended beyond stipulated period as deemed fit by the Appointing Authority.

The above date of his promotion viz. 1.7.92 (FN) will be his new date of appointment as Accountant.

Authority:- Notes at page 68-69/N and orders of C.A. dated 25.6.92 in file No.A-32016/3/20/91-92/Admn.

sd/-
(PREM PRAKASH)
PAY AND ACCOUNTS OFFICER


No.A-32016/3(20)/91-92/Admn./1031-36

Dated: 1.7.92"

9. The aforesaid impugned order dated 1.7.92 is challenged by the applicant on the ground that the same was passed after more than four years and five months instead of being passed after the expiry of two years from the date of the penalty order dated 2.2.88. Moreover, he has been treated as a new entrant in the said higher post from 1.7.92 with an ulterior motive to deprive him of the past service rendered in the post of Junior Accountant prior to his reduction to the post of Clerk/Typist. The impugned order is totally silent in regard to seniority, continuity of service and the increments under the law to which he is entitled after his restoration/repromotion to the higher post in the light of the penalty order dated 2.2.88 (Annexure A-1).

10. The learned counsel for the applicant argued that the said order is illegal and void, as it is violative of the relevant Government of India's instructions No.17 and 18 below Rule 11 of the CCS (CCA) Rules, 1965 and the same should be quashed and set aside.

11. The learned counsel for the respondents submitted that the penalty order by the disciplinary authority dated 2.2.88 (Annexure A-1) was for an unspecified period with the added condition that his fitness for repromotion would be considered only



after a period of two years from the date of the penalty. It was also argued that the applicant's interpretation of the order dated 2.2.88 (Annexure A-1) is erroneous. When an order of reduction in rank is for unspecified period a Government servant on repromotion loses the benefit of seniority in the repromoted post which he enjoyed prior to imposition of the said penalty as per rules. It was also submitted that the applicant preferred an appeal against the said penalty order to the appellate authority which was rejected by an order dated 15.11.88 (copy not filed). The applicant was later found fit for promotion to the post of Accountant (formerly Junior Accountant) and was promoted to the said post by the impugned order dated 1.7.92 (Annexure A-2) w.e.f. the said date. It was contended by the learned counsel for the respondents that the impugned order is, therefore, perfectly valid and legal and the OA deserves to be dismissed.

12. The applicant in his rejoinder has only denied the aforesaid submissions and contentions of the respondents regarding the impugned order dated 1.7.92 and reiterated the averments made in the OA. He has not denied the factum of the rejection of his appeal and the revision petition against the penalty order by the concerned authorities. He has not bothered to file copies of the appeal to the appellate authority and the revision petition to the revisional authority against the said order of penalty by the disciplinary authority dated 2.2.88 (Annexure A-1).

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13. The disciplinary authority's order obviously has become final since the same is confirmed in appeal and revision by the appellate and revisional authorities respectively and the said appellate and revisional orders have not been challenged before a competent judicial forum. Challenge to the penalty order dated 2.2.88 has been held to be time barred by this Tribunal, as already noted supra. The respondents apparently have only implemented the said penalty order and the applicant has not been able to establish satisfactorily with adequate proof and supporting material as to how the said implementation by way of the impugned order dated 1.7.92 (Annexure A-2) is not in accordance with or is ultra vires the penalty order passed by the disciplinary authority which has become final, as has been held supra. In these facts and circumstances we find that the plea of the applicant against the tenability of the first impugned order dated 1.7.92 is devoid of any merit. It is, therefore, rejected.

14. The second impugned order dated 21.12.92 (Annexure A-5) runs thus:

"ADMINISTRATION-I

No.C-14013(128)87/Admn.I/2607

Dated:21.12.92

M E M O

With reference to Shri S.S. Tyagi's representation dated 29.7.92, he is hereby informed that his representation has been examined in consultation with D.O.S. The

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undersigned has come to the conclusion that past service rendered by Sh. Tyagi in the post of Accountant will neither count for seniority purpose nor for pay fixation.

This also disposes of his representation dated 6.11.92 addressed to CCS (S) and copy enclosed to Secretary, DOS.

sd/-
(PREM PRAKSH)
PAY AND ACCOUNTS OFFICER"

15. The applicant has not filed a copy of his representation dated 29.7.92 referred to in the aforesaid order. He has only filed a copy of the representation dated 6.11.92 (Annexure A-3). He has challenged the said impugned order on the ground that though the said representations were by way of appeal/review and were addressed to the appellate authority they were not considered at all by him and the said order passed by the Pay and Accounts Officer, who is lower in rank to even the disciplinary authority. The learned counsel for the applicant contended that the said order is, therefore, illegal and unconstitutional as it was passed by an authority who is not competent to do so and is without jurisdiction.

16. The learned counsel for the respondents in reply submitted that the appeal of the applicant dated 16.3.88 to the appellate authority and the revision petition dated 29.12.89 were duly considered and disposed of by the said authorities, as already stated. He contended that the representations dated 29.7.92 and 6.11.92 submitted by the applicant were duly considered and replied by the aforesaid impugned order dated 21.12.92 (Annexure A-5) and it is not

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correct to state that the said representations were by way of appeal and review against the penalty order and that the impugned order is, therefore, perfectly valid and legal.

17. It is seen that the statutory remedies of appeal and revision have already been availed of by the applicant and the same were rejected by the concerned authorities. The appellate order and the revisional order have become final for the reasons stated supra. There is not even a whisper about the said appeal, revisional order in the representation of the applicant dated 6.11.92 (Annexure A-3) and there is nothing in the said representation which can make it capable of being treated as a statutory review application under the CCS (CCA) Rules, 1965. Copy of the other representations dated 29.7.92 referred to in the impugned order has not even been filed by the applicant, as noted earlier.

18. In view of the above position the submissions and contentions of the applicant as to the validity and tenability of the second impugned order are also not sustainable in the eye of law and the same are, therefore, rejected.

19. In the facts and circumstances of this case and in view of the foregoing discussion, we are

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of the opinion that there is no justification for interfering with the impugned orders. The O.A. is, therefore, rejected. No costs.

A. Vedaraj
26/10/98

(Dr. A. Vedavalli)
Member (J)

N. Sahu

(N. Sahu)
Member (Admin)

'Sanju'