

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.95/93

Thursday, this the 20th day of January, 1994.

SHRI N DHARMADAN, MEMBER(J)
SHRI S KASIPANDIAN, MEMBER(A)

G Gangadharan,
Goods Driver,
Southern Railway, Ernakulam South. - Applicant

By Advocate Shri P Sivan Pillai

Vs.

1. Union of India through,
General Manager,
Southern Railway, Park Town PO,
Madras-3.
2. The Senior Divisional Mechanical Engineer,
Southern Railway, Trivandrum-14.
3. The Divisional Railway Manager,
Southern Railway, Trivandrum-14.
4. The Divisional Personnel Officer,
Southern Railway, Trivandrum-14. - Respondents

By Advocate Smt Sumathi Dandapani

O R D E R

S KASIPANDIAN, MEMBER(A)

The applicant while working as a Shunter was issued with the penalty of withholding of his next annual increment due on 1.6.1992 for a period of 36 months and penalty order was passed on 25.10.1991. He appealed against the penalty order to the third respondent on 28.1.1992. When the appeal was pending, the applicant was considered for promotion to the higher grade of Goods Driver and his promotion order as in Annexure-A3 was issued on 8.7.1992. On 29.2.1992 the respondents issued another order as in Annexure-A4 reverting the applicant to his original post of Shunter with immediate effect as he was found to be undergoing the penalty of withholding of annual increment from 1.6.1992 as per Annexure-A3 order. Thereafter, on 31.12.1992 the third respondent who is the appellate authority passed an order as in Annexure-R1 confirming the penalty imposed on the applicant as in Annexure-A3.

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2. The learned counsel for the applicant argued that the respondents considered the case of applicant for promotion fully well knowing that there was a penalty order against the applicant which had been appealed against and which appeal was pending before respondent-3. Pending consideration of the appeal, the respondents had also allowed the applicant to draw his increment which fell due on 1.6.1992. The case of the applicant therefore is that since the promotion has been ordered after imposition of the penalty of withholding of increment and prior to its operation the order of penalty has to be given effect to only in the promoted grade to the extent of the monetary loss contemplated in the original penalty.

3. The learned counsel for the respondents argued that the applicant is continuing in his present post of Goods Driver under a stay order issued ^{the} by this Tribunal by suppressing the fact that /appeal preferred by him against the penalty order has been dismissed by the third respondent and therefore the penalty order has come into force. The learned counsel for the respondents pointed out that as per the notes to Rule 3.9 of the Railway Servants Discipline and Appeal Rule 1968:

"If a person becomes due for promotion after the finalisation of the disciplinary proceedings and the penalty imposed is one of the following, he should be promoted only after the expiry of the penalty.

- (i) withholding of promotion:
- (ii) withholding of increment:
- (iii) reduction to lower stage in time scale; and
- (iv) reduction to a lower time scale, grade or post."

Thus, the penalty of withholding of increment is also listed under this category which debars promotion during the penalty period. Hence, it is against the rules that they have given promotion to the applicant as in Annexure-A3. This was done, according to them, because of a mistake. All the same, since Annexure-A3 clearly mentions that the promotions are ordered subject to the condition that the employee is not undergoing any penalty debarring him from promotion and that no DAR/vigilance cases are pending against him, the applicant cannot claim any legal right for promotion.



4. Having heard the learned counsel on both sides, it is obvious to us that the penalty of withholding of increment is definitely a bar to the promotion of the applicant to a higher post when the penalty is under currency. But the respondents have failed to explain how they overlooked Annexure-A1 penalty order when they decided to promote the applicant as in Annexure-A3. If it was an over-sight as claimed by them, it is not explained why did they keep quiet for more than 4 months from 8.7.1992 to 29.12.1992 to find out the mistake and rectify the same. The condition mentioned in Annexure-A3 that the promotion is subject to the applicant not undergoing any penalty debarring him for promotion casts a responsibility on the respondents to verify the facts before transferring him to the promoted post. This was obviously not xxxx done. Secondly, when the applicant had filed his appeal against the penalty order as early as in January 1992 the appellate authority took nearly one year to dispose of the appeal and that too when the applicant has got a promotion in the meantime. The respondents have also not explained whether the penalty order was kept in abeyance pending consideration of the appeal by the third respondent. By their behaviour in allowing the applicant to draw his increment on 1.6.1992 they have practically violated the stipulation in Annexure-A1, the penalty order and for all intents and purposes, it has been frozen.

5. The appellate authority has failed to take into account what happened in the interregnum between the date of filing of the appeal on 28.1.1992 to the date of passing of the order in the appeal on 31.12.1992 namely;

- i) the fact that the applicant was allowed to draw his increment on 1.6.1992 contrary to the penalty order;
- ii) the fact that the applicant was promoted on 8.7.1992 ignoring the penalty order, and
- iii) the fact that he was reverted to the lower grade on 29.12.1992 without following any procedure of reversion, even before the penalty order was confirmed in the appeal.

By simply passing an order in the appeal confirming the order of the disciplinary authority ignoring the facts above mentioned, the appellate authority has passed a sketchy and superficial order which is very difficult to sustain. We therefore quash the order of the appellate authority passed on 31.12.1992. It is also true that the applicant has suppressed the fact that his appeal was disposed of on 31.12.1992 when he filed the OA before this Tribunal on 15.1.1993.

6. In the facts and circumstances of the case, it would meet the ends of justice if the applicant is asked to file a fresh appeal before the appellate authority listing out the history of the case and asking for specific remedies within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the appellate authority shall consider the appeal in all its aspects and pass a speaking order in accordance with law within a period of two months from the date of receipt thereof. While considering the appeal afresh, he need not necessarily be influenced by the stand taken by the respondents in the reply statement. Till the final order is passed in the appeal, the status quo will be maintained.

7. The OA is disposed of with the above directions. There is no order as to costs.

S-Kasipandian
(S KASIPANDIAN)
MEMBER(A)

N Dharmadan
20.1.94.
(N DHARMADAN)
MEMBER(J)