

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 394/89
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~~188~~

DATE OF DECISION 30.8.90

K. Parameswaran Nair Applicant (s)

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M/s M.K.Damodaran, C.T. Advocate for the Applicant (s)
Ravikumar & K.S. Saira
Versus

Union of India rep. by Respondent (s)
Secretary, Ministry of
Communications and ~~others~~ ^{on other}

Mr. C.Kochunni Nair, ASC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

The Hon'ble Mr. A.V. Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Ym*
2. To be referred to the Reporter or not? *Ym*
3. Whether their Lordships wish to see the fair copy of the Judgement? *M*
4. To be circulated to all Benches of the Tribunal? *M*

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 18th June, 1989 filed under Section 19 of the Administrative Tribunals Act, the applicant who has been working as Lower Selection Grade Sorting Assistant, Head Record Office, Trivandrum under the Chief Post Master General, Kerala Circle has prayed that the impugned order dated 14.3.89 at Annexure-III rejecting his prayer that the series of penalties of withholding of increments be order^{ed} to run ^{con-}currently should be set aside and it should be declared ⁶ that these punishments should run concurrently. The brief

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facts of the case are as follows.

2. Between 1983 and 1985 the following penalties of withholding of increments were awarded to the applicant:

- (a) By the order passed on 1.3.83, one increment due next for the petitioner was postponed for a period of six months.
- (b) By order dated 26.4.83 next increment was withheld for a period of three years.
- (c) By order dated 13.7.83, next increment of the applicant was withheld for a period of three years.
- (d) By order dated 21.1.85 the next increment of the applicant was withheld for a period of two years.

The applicant in this application is not challenging the validity of the orders of punishments but prays that by the imposition of these penalties consecutively the applicant would not be eligible to get promotion or increments till 1992. ⁶ If however, in accordance with the DG P&T's letter of 30.7.81 the penalties are allowed to run concurrently they would have expired on 1st November, 1988. He has argued that in accordance with D.G P&T's letter of 1981, since no specific mention had been made in the punishment orders that they would run consecutively, the punishment should be allowed to run concurrently.

3. The respondents have argued that in accordance with D.G's letter of 3.5.76 (Annexure-R.1) where disciplinary authority imposes penalty of stoppage of increments

one after another in separate cases, the effect of the first mentioned order will continue ^{for} the period specified in the punishment order. Thereafter the pay of the Government servant will be raised by giving him increments which, but for the imposition of the penalties would have been admissible to him and only then the second order of stoppage of increment will be made effective. Since all the penalties in the applicant's case are of stoppage of increments they have to run consecutively. The respondents have appended a copy of the order dated 30.7.81 at Annexure R.2 and have argued that this instruction applies when the first penalty imposed ~~is~~ ^{is} of ^a lower grade and the second penalty is of higher grade. The penalties referred to in this letter ~~are those~~ of reduction to a lower stage and reduction to the lower grade which do ^{not} not apply to this case, ^{which} is governed by DG P&T's letter of 3.5.76 at Ann.R.1 4. In the rejoinder, the applicant has argued that the instructions of 3rd May, 1976 at Exbt.R.1 stands superseded by the later instructions of 30.7.81 at Annexure R.2. Since the disciplinary authority had omitted to specifically mention ^{whether} the punishment should run concurrently or successively, they have to run concurrently. He has also argued that Annexure R.2 makes a distinction between 'higher grade' penalties and 'lower grade' penalties and not between major penalties and minor penalties. The applicant has

further argued that the punishment of withholding of next increment for a number of years is of a higher grade than a punishment of withholding of one increment as has been clarified in D.G. P&T's letter No.20/41/66-DISC dated 14.4.67, as extracted in the rejoinder.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The main question in this case is whether the ^{four} penalties of stoppages of increments imposed on the applicant by ^{orders} dated 1.3.83, 26.4.83, 13.7.83 and 21.1.85 should run concurrently or consecutively. While the respondents have argued that the relevant order of DG P&T is that of 3rd May, 1976 at Annexure.R.1 which pertains only to punishments of stoppages of increments, the applicant's case is that his case should be governed by DG P&T's letter of 30.7.81, copy of which is placed at Annexure.R.2. This later order relates to the implementation of the second penalty of higher grade during the currency of the first penalty of a lower grade. While the order of 1976 (Ex.R.1) on which the respondents have relied states that the punishment of stoppage of increment passed on different occasions should run one after another i.e., consecutively, the order of 1981 (Exbt.R.2) lays down that where the ^{second} penalty is of higher grade and is imposed during the currency of the

first penalty of lower grade and the disciplinary authority ^{not} has indicated whether the two penalties should run concurrently or consecutively, in that case the two punishments should run concurrently, and the higher penalty even ^{though ordered} later should be implemented immediately and after the expiry of its period if the currency of the period of earlier lower punishment still continues, then the same should be implemented for the balance period only. The applicant's contention is that in accordance with the order of D.G. P&T of 14.4.87 withholding of next increment is a penalty of higher grade than the penalty of withholding of one increment which is of lower grade and therefore out of the four penalties imposed on him the penalties of withholding of 'next' increment should run concurrently with the preceding penalties of withholding of 'one' increment.

6. Unfortunately for us the copies of the various punishment orders had not been produced by either of the two parties. We are saying so because in the text of the main application ^{while} the applicant has referred to four orders of punishment as effecting postponement of 'next increment', in his petition dated 30.11.88 copied at Annexure-2 he had described the punishment orders in a different manner. The order of first punishment dated 1.3.83 had been cited as 'next increment' of the petitioner ^{to be} postponed for a period of six months. The second order of punishment dated 26.4.83

had been cited as 'one increment' of the petitioner was ^{to be} with-
held for a period of three years. The next two ^{orders} dated
13.7.83 and 21.1.85 have been cited as postponing "the next
increment" of the petitioner for periods of 3 years and 2 years
respectively. Since much will depend upon whether the post-
ponement was of 'next increment' or 'one increment' it ^{would have}
^{been} useful to refer to the original text of these four punish-
ment orders.

7. The instructions of D.G. P&T dated 3.5.76 (Exbt.R.1)
relied upon by the respondents reads as follows:

"Sub:- Punishment of stoppage of increments awarded
by the disciplinary authority on the Government
servant on different occasions and their imple-
mentation - clarification.

Sir,

I am directed to say that cases where a series
of penalties of stoppage of increment are imposed on
a Government servant, were being referred to this office
from time to time for clarification as to how these
orders will be implemented in actual practice. Such
cases were under consideration of the Directorate for
some time past and it has now been decided that where
the disciplinary authority imposes penalties of stop-
page of increment one after the other in separate cases
on the Government servant, the effect of the first
punishment order of stoppage of increment will con-
tinue for the period specified in the punishment order.
Thereafter, the pay of the Government servant will be
raised by giving him increments which, but for the
imposition of the penalty, would have been admissible to
him and only then the second order of stoppage of
increment will be made effective which will continue
for the period specified in the second punishment order
for stoppage of increment and so on."

It is true that the aforesaid instruction relates only to
punishments of withholding of increments and nothing else.

However, before this order was issued, the D.G. P&T had

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issued instructions on 14.4.67 as cited by the applicant in the rejoinder. These instructions clarified that an order withholding 'next' increment has graver consequences than an order withholding 'one' increment. DG P&T's clarification dated 14.4.67ⁱⁿ given as Govt. of India's instruction No.24 below Rule 11 of CCS (CCA) Rules (Page 28 & 29 of Swamy's Compilation of CCA Rules-7th Edition)^{and} reads as follows:^R

"It is further clarified that where an order of penalty purports to withhold the 'next' increment for a specified period, it implies that all the increments falling due during that period would be withheld, because without getting the next increment, an officer cannot get increments falling after the 'next increment'. All disciplinary authorities should, therefore, ensure that orders of penalty are correctly worded in accordance with their intention. Thus, if it is intended that only one increment should be withheld over a specified period it should not be stated in the order that the 'next increment' be withheld for a specified period. The proper course of action in such a case would be to specifically order that 'one increment' be withheld for a specified period. Such an order will have the effect of withholding one increment only over a specified period and the official concerned will be able to draw the subsequent increments falling during the period, of course, depressed by the one increment which is withheld." (emphasis added)

Thus withholding of 'next increment' for a period beyond the date when the ^{to the next} 'next increment' is normally due, has to be considered to be a punishment of higher grade than withholding of ^{one} 'one' increment'.

8. In the above context the D.G. P&T's instruction dated 30.7.81 (Exbt.R.2) cannot be summarily excluded by stating that withholding of increments in any manner does not admit of having categories of 'lower' punishment and 'higher' punishment. The 1981 instructions (Exbt.R.2) on which the

applicant has relied reads as follows:

"Subject:- Method of implementation of the second penalty when imposed during the period of currency of the first penalty.

Sir,

A question has been raised as to how the penalties imposed on a Government servant are to be implemented when the punishment awarded to him against the earlier proceedings is already current. In other words when the first penalty imposed against the Government Servant is of a lower grade and the second penalty of higher grade is imposed against him during the currency of the first penalty, the normal procedure should be that when any disciplinary case crops up during the currency of an earlier penalty, the disciplinary authority should clearly indicate in the punishment order whether the two penalties should run concurrently or the subsequently penalty should be implemented only after the expiry of the first penalty. It has been decided that where, however, such a specific mention has not been made, the two punishments should run concurrently and the higher penalty even though ordered later should be implemented immediately and after the expiry of its period, if the currency of the period of earlier punishment i.e. lower punishment still continues then the same may be implemented for the balance period. In this context an example may bring the point home. Supposing an official was punished vide order dated 1st December, 1977 with the reduction to the minimum of the stage of Rs. 425/- in the scale of Rs. 425/640 for a period of 4 years with effect from 1st January, 1978. Another punishment order against him was issued on 28th June, 1978 inflicting the penalty of reduction from LSG scale (Rs. 425-640) to Time-Scale (Rs. 260-480) at the stage of Rs. 396/- for a period of 3 years with effect from 1st July, 1978. In this case, it would be observed that the currency of the first penalty is from 1-1-78 to 31-12-81 and that of the second penalty (higher one) from 1-7-78 to 30 June, 1981. With the imposition of higher penalty during the currency of the first punishment the second punishment i.e. higher one would become effective from 1-7-78 and would last upto 30th June, 1981. For the balance period i.e. from 1st July, 1981 to 31st December, 1981 the first penalty which is deemed to be running concurrently would be implemented. These instructions may be brought to the notice of all concerned for information and guidance."

The respondents have argued that since the examples quoted in ^{the aforesaid} order are with reference to punishments of reduction to a lower stage or reduction to a lower ^{grade} ~~stage~~, punishments of withholding of increments as such are not covered by this

order. ^{Further,} they have argued that these instructions have been cited below F.R. 29 which refers to reduction of pay or grade and not to withholding of increments. We are not impressed by this argument because the intention of the instructions flows and are determined by the text of the instructions and not by the illustrations or by the rule under which the instructions have been compiled. A plain reading of the instructions of 1981 clearly indicates that it refers to implementation of a second penalty imposed during the currency of the first penalty where the second penalty is of a higher grade i.e., graver consequences than the first penalty. There is nothing in that order to show that the lower grade penalties are ^{to be} the minor penalties and higher grade penalties are ^{to be} major penalties contemplated under the C.C.S(CCA) Rules. In ^{Swamy's} Compilation of CCS(CCA) Rules (17th Edition), major and minor penalties as listed in Rule 11 of those rules, are followed by Govt. of India's instructions. All the three orders i.e., of 14.4.67, 3.5.76 and 30.7.81 have been quoted as Govt. of India instructions No.24, 26 and 27 below Rule 11 in that compilation. Thus it cannot be stated that the order of 30.7.81 cannot be invoked in this case where only minor penalties ^{is} of withholding of increments are involved and that ^{the} order of 30.7.81 applies only to major penalties.

9. We are convinced that the differentiation between

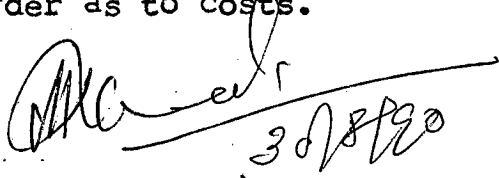
punishments of higher grade and lower grade contemplated in the order of 30.7.81 is also applicable between punishment of withholding of 'one' increment and the punishment of withholding of 'next' increment and to that extent the applicant can invoke the benefit of the order dated 30.7.81 to his case. Since the order of 3.5.1976 is not in supersession or modification of the clarificatory order of 14.4.67 and does not specifically abolish the distinction between withholding of 'next' increment and withholding of 'one' increment, we feel that the instructions of 1981 cannot be overlooked in the applicant's case.

10. In the facts and circumstances, we allow the application to the extent of setting aside the impugned order dated 14.3.89 (Annexure-III) and direct respondent 2 to dispose of the petition dated 27.12.88 filed by the applicant afresh, on the following lines:

- (a) The text of the four punishment orders should be closely studied to ascertain whether the increments withheld or postponed are qualified as 'next' or 'one'.
- (b) Withholding of next increment should be held to be a penalty of higher grade than the penalty of withholding of one increment as contemplated in the D.G. P&T's instructions of 1981.
- (c) If both the second punishment dated 26.4.83 and the third punishment dated 13.7.83 are of the same nature i.e., withholding of 'next' increment or both are withholding of 'one' increment, the order

of 1981 will not apply and they should run consecutively. If however, the second punishment is of withholding of 'one' increment and the third punishment of 13.7.83 is of 'next' increment, then they should run concurrently in accordance with the 1981 instructions of DG P&T.

- (d) The principle indicated in (c) above should also apply to implementation of the 4th penalty order dated 21.1.85 depending upon whether the 4th punishment is of withholding 'next' increment or 'one' increment of the applicant for a period of two years.
- (e) The final order on the petition should be passed within a period of one month from the date of communication of this order. There will be no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

30.8.90

Ksn.