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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.174/89.

Date of Judgment 12-7-90

C.G.Sastry

.. Applicant

Versus

The Divisional
Railway Manager,
South Central Railway,
Vijaywada
& 3 others

.. Respondents

Counsel for the Applicant : Shri G.V.Subba Rao,
Advocate.

Counsel for the Respondents : Shri N.R.Devaraj,
SC for Railways.

CORAM:

Hon'ble Shri J.Narasimha Murthy : Member(Jud1).

Hon'ble Shri R.Balasubramanian : Member(Admn).

I Judgment as per Hon'ble Shri R.Balasubramanian,
Member(Admn) I.

This is an application filed by Shri C.G.Sastry
under section 19 of the Administrative Tribunals Act
against the Divisional Railway Manager, South Central
Railway, Vijaywada and 3 others.

2. The applicant while working as Travelling Ticket
Examiner at Vijaywada was transferred in April, 1982
on administrative grounds from Vijaywada Division
to Hubli Division along with the post. Subsequently
he was served a major penalty charge-sheet in February,
1983. The applicant submitted his defence and after an
ex parte enquiry the disciplinary authority removed him

from service with effect from 26.5.84. The applicant preferred an appeal to the appellate authority/confirmed the order. The applicant submitted a review application and the reviewing authority viz: the Chief Commercial Superintendent modified the punishment order to one of reversion from the grade of Rs.330-560 to Rs.260-400. The applicant accordingly joined duty on 20.4.85. Later, realising that no specific period had been mentioned for the reduction the competent authority modified the order further stating that the reduction would be operative till such time as he was found fit by the competent authority.

3. In the meantime, the applicant had appeared for a selection conducted by Vijaywada Division for promotion from Rs.330-560 scale to Rs.425-640 scale. He was selected but promotion order was not issued because of the disciplinary case pending against him. Subsequently, based on his performance, the reversion punishment was brought to a close and with effect from 3.2.87 he was restored to the original scale of Rs.330-560. In July/August, 1987 he was called upon by his parent Division viz: Vijaywada, to appear for promotion for the next higher stage of Rs.700-900. He was considered fit. He was successful in the selection and in fact promotion orders were issued by Vijaywada Division on 13.10.87 which were not implemented. On a series of representations the applicant was informed by Hubli Division on 11.1.89 stating that based on a communication received from the Divisional Railway Manager, Vijaywada on 29.10.87

~~the~~ promotion of the applicant was held in abeyance.

4. The applicant has prayed that the promotion ordered on 13.10.87 should be given to him and his salary and allowances fixed on par with his junior who was promoted ~~has~~ to that scale. He also prayed that his seniority and pay be fixed in the grade of Rs.425-640, Rs.550-750 and the latest grade of Rs.700-900 with retrospective effect and that all arrears of pay etc., be paid to him.

5. RL namely Divisional Railway Manager, Vijaywada has filed a counter affidavit. It is their case that they were not in the know of the fact that the applicant had a disciplinary case and was undergoing punishment and in this background of ignorance they have called him for selection. After they issued the promotion order in the Rs.700-900 scale they came to know about the penalty imposed on the petitioner with consequential effects of loss of seniority etc., and they advised Hubli Division immediately to hold the promotion order in abeyance. They wanted to delete the name from the select list and because ~~the~~ O.A. was pending they had not done so.

6. They have also stated that on a reference made by Hubli Division the Chief Personnel Officer had decided that the applicant should continue in Hubli Division and his name interpolated in the seniority list of Hubli Division. This decision read with Railway Board's Order No.E(NG)I-80/TR/28 dated 19.2.86 would, according to the mean that his lien in Vijaywada Division had been

cancelled and that he had become a part of Hubli Division.

7. R2 namely Divisional Railway Manager, Hubli had also filed a counter affidavit. This is more or less a repetition of the counter affidavit of Divisional Railway Manager, Vijaywada.

8. We have examined the case and heard the learned counsels both for the applicant and the respondents. The main question is whether in the light of the modified punishment the respondents are right in denying the promotions for which the applicant was considered fit.

9. The respondents had taken the plea of ignorance of what is happening in the other Division. Vijaywada Division states that he had wrongly been called for selection not once but twice because they did not know that the applicant was undergoing punishment in Hubli Division. ~~While~~ The plea of ignorance is not acceptable. We wonder how Vijaywada Division could be ignorant of the involvement of the applicant in the disciplinary case. It was at the instance of Vijaywada Division that the applicant was administratively transferred to Hubli Division. Normally these are Divisional cadres and are not transferable. If the applicant was transferred it was only because of some stigma and Vijaywada Division was the one which initiated this case. It is ~~also~~ difficult to believe that whenever the applicant was called for selection in Vijaywada Division the applications from the applicant had all gone ^{without comments} through Hubli Division which had inflicted the punishment on the applicant. How Hubli

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Division failed to make a mention of it while forwarding his case to Vijaywada Division defeats imagination. Going one step further, even if Vijaywada Division had fully known about this case they have the procedure to follow. The applicant was undergoing punishment/modified punishment during the period 26.5.84 to 3.2.87. The selection for the promotion to Rs.425-640 scale was conducted in December, 1983 when the disciplinary proceedings were in progress but it had not been concluded. The respondents should have considered his case and adopted the sealed cover procedure. Instead, they announced the results but did not implement the promotion. It is clear that when he is undergoing punishment the applicant cannot be given promotion. But in the case of promotion from Rs.700-900 scale when the selection was conducted the punishment period was over. The selection was conducted 5 to 6 months after the punishment was over in February, 1987. There is no reason why the applicant who was considered fit should not be given the promotion. It is curious that Vijaywada Division which issued the promotion order on 13.10.87 retracts on 29.10.87 and communicates it to Hubli Division. But it was only as late as ^{1/2}January, 1989 that Hubli Division informs the applicant that his promotion has been held in abeyance. This delay of 15 months is also hard to explain.

10. Another question that the respondents had raised is that the applicant after transfer belonged to Hubli

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Division and not Vijaywada Division. We are surprised at this statement. In reply to a certain representation of the official, the Divisional Railway Manager, Hubli vide his letter dated 18.10.82 categorically stated that his lien and seniority would be maintained in Vijaywada Division only and that he was not eligible for any promotion in Hubli Division. It is also the plea of the respondents that the Chief Personnel Officer's decision to retain him at Hubli Division itself read in the light of Railway Board's order of 19.2.86 means that he has been permanently transferred to Hubli Division. We have seen the letter of 19.2.86 of the Railway Board and are unable to draw any such inference. It only states that they may not be brought back to the parent Division.

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 If it were the intention of the Railway Board to ~~sustain~~ ^{suspend} or cancel the lien in the parent Division, it should have said so clearly. The Railway authorities should have either suspended or cancelled his lien in Vijaywada Division and ordered a permanent transfer to Hubli Division. This had not been done. Next, if Hubli Division considered the applicant as belonging to that Division what have they done for his ^{Career} prospects? All the time they had been acting on the advice of Vijaywada Division only and even in the case of the latest communication all that they had done ~~is only transmissi~~ ^{was to convey} of the latest decision of Vijaywada Division to hold his promotion to Rs.700-900 scale in abeyance. At one stage they included him in the gradation list of Hubli

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Division but hurriedly cancelled it implying thereby that he belonged to Vijaywada Division. Considering all these aspects ^{This contention} ~~the action~~ of the respondents cannot be ^{accepted} ~~sustained~~.

11. We will now take up stage by stage promotion.

(a) Promotion to Rs.425-640 scale:- Though the applicant was selected in December, 1983 he cannot get his promotion during the currency of the punishment. The earliest he can get his promotion is with effect from 3.2.87 when on termination of the punishment he was restored to Rs.330-560 scale. The applicant should be treated as promoted to Rs.425-640 scale with effect from 3.2.87. While this date should be adopted for purpose of seniority and pay fixation, the applicant need not be given any arrears because he did not actually work in this capacity. It is a notional promotion.

(b) Promotion to Rs.550-750 scale:- It is not clear whether this is by selection or by seniority. If it is by seniority then the applicant should be treated as promoted to this scale either from 3.2.87 or from the date when his junior was promoted to this scale whichever is later. If, however, this promotion is by selection, he need not be given this scale because he did not face selection. This promotion also will be notional.

(c) Promotion to Rs.700-900 scale:- He was duly selected and even promotion orders were issued. The selection and the promotion orders were issued long after the punishment period was over. We find from the promotion

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order of 13.10.87 that the applicant even ~~for~~ ^{after} promotions would continue to work at Hubli Division. The promotion order was also subject to the condition that there are no DAR/SPE/Vigilance cases pending and that the promotees were not undergoing any punishment debarring them from promotion. The competent authority had not only modified the order from removal to reversion to a lower scale but also had given it a definiteness in that the reversion should be undone when he was found fit. The punishment period was over on 3.2.87. The selection and the issue of the promotion orders are much later in October, 1987. Such being the case, the action of the respondents in holding it in abeyance is blatantly illegal. The applicant should therefore be treated as having been promoted to the scale of Rs.700-900 with effect from 13.10.87. In this case, this date will count not only for purposes of seniority and pay fixation but also for arrears from that date viz: 13.10.87 because of the illegal denial of the promotion to the applicant.

12. In the course of the hearing the respondents said that according to the Railway rules an official should have the required minimum service in each grade before he is promoted to the next grade. If the applicant does not fulfil this condition it is only on account of the wrong action of the respondents and the applicant should not be put to any disadvantage on this score.

To

- 1.. The Divisional Railway Manager(P)
S.C.Railway, vijayawada Division, vijayawada.
2. The Divisional Railway Manager(P)
S.C.Railway, Hubli Division, Hubli.
3. The Chief Commercial Superintendent
S.C.Railway, Railnilayam, Secunderabad - 371.
4. The General Manager, S.C.Railway
Railnilayam, Secunderabad - 371.
5. One copy to Mr.G.v.Subbarao, Advocate
1-1-230/33, Chikkadapally, Hyderabad.
6. One copy to Mr.N.R.Devraj, SC for Rlys, CAT, Hyd.Bench.
7. One copy to Mr.J.Narasimha Murty, Member(Judg) CAT, Hyd.Bench
8. One copy to Mr. R.Balasubramanian, Member(Admn) CAT, Hyd.Bench.
9. One copy to Deputy Registrar(Judg) CAT, Hyd.Bench.
10. One copy to Library Section, CAT, Hyd.Bench.

11. Sri Sanjeev Malhotra, Managing Editor, All India Services Law Journal, 22, Tagore Park, New Model Town, New Delhi-9.
12. The Editor, Kerala Law Times, High Court Road, Ernakulam, Cochin-602031.
13. M/s. Eastern Book Company, 34, Lalbagh, Lucknow.
14. M/s. Delhi Law Times, 5355, Jawaharnagar, Kolhapur Road, Delhi-7.
15. Sri Hasin Ahmad, Spl. Representative Reporter, A.I.R.Ltd, No.21-1-1964&1965, Gandhi Bazar, Opp. High Court Bar Association, Hyderabad.
16. The Administrative Tribunal Reporter, Bhagat Singh Market, 90, New Delhi-11, 110001.
17. Sri KBS Sarma, General Secretary, All India Equal Rights Association, C-58, HUDA Residential Complex, Vanasthalipuram, Hyderabad.

(10).... Spare copies.

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13. All the arrears in the manner indicated in para 11(c) above should be paid to the applicant within three months of the date of this judgment.

14. In the result the application succeeds with the directions given in para 11 above. There ~~will~~ ^{is} be no order as to costs.

MS'

R.Balasubramanian

(J.Narasimha Murthy)
Member(Judl).

(R.Balasubramanian)
Member(Admn).

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Date

12th July 90

Subramanian
for Deputy Registrar(Judl)

CHECKED BY

APPROVED BY

TYPED BY f

COMPARED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR.B.N.JAYASIMHA:V.C.

AND

THE HON'BLE MR.D.SURYA RAO:MEMBER(JUDL.)

AND

THE HON'BLE MR.J.NARASIMHAMURTHY:M(J)

AND

THE HON'BLE MR.R.BALASUBRAMANIAN:M(A)

DATE : 18-7-90

ORDER / JUDGMENT

M.A./R.A./C.A./No. in

T.A. No.

W.P. No.

O.A. No. 174/89

Admitted and Interim directions Issued.

Allowed.

Dismissed for default.

Dismissed as withdrawn.

Dismissed.

Disposed of with direction.

M.A. ordered/Rejected.

No order as to costs.

