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Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 230/89.

T.A. No.

Date of Decision : 16.8.1991.

P.V.G.Krishna Murthy

Petitioner.

Shri G.V.Subba Rao

Advocate for the
petitioner (s)

Versus

Divl. Rly. Manager, S.C.Rly.,

Respondent.

Vijaywada Division, Vijaywada & 3 others

Shri N.R.Devaraj,
SC for Railways

Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. J.Narasimha Murthy : Member(Jud1)

THE HON'BLE MR. R.Balasubramanian : Member(Admn)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ? *Yes*
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A. No. 230/89.

Date of Judgment 16.8.1991.

P.V.G.Krishna Murthy .. Applicant

Vs.

1. Divl. Rly. Manager,
S.C.Rly.,
Vijaywada Division,
Vijaywada.
2. Sr. Divisional
Personnel Officer,
S.C.Rly.,
Vijaywada Division,
Vijaywada.
3. Sr. Divisional
Commercial Superintendent,
S.C.Rly.,
Vijaywada Division,
Vijaywada.
4. General Manager,
S.C.Rly.,
Rail Nilayam,
Secunderabad.

.. Respondents

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

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 application has been filed by Shri P.V.G.Krishna Murthy under section 19 of the Administrative Tribunals Act, 1985 against the Divl. Rly. Manager, S.C.Rly., Vijaywada Division, Vijaywada and 3 others.

2. The applicant who was functioning as Head Tranship Clerk, Vijaywada Repacking Shed was served with a major penalty charge-sheet ^{ending in} and the punishment of reduction in the grade for a period of 30 months (Non-recurring). On appeal, the appellate authority modified the punishment of reduction to lower grade from 30 months to 20 months (Non-recurring).

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On completion of the punishment the respondents posted him as Head Tranship Clerk, Vijaywada and restored him to the original grade w.e.f. 25.3.87. The next avenue of promotion is to the grade of Rs.1600-2660 and the still higher grade is Rs.2000-3200. It is the case of the applicant ^{that} once he is restored he should also be eligible for promotion w.e.f. that date. He made several representations with no result. While matters stood thus, the respondents also compulsorily retired him in March, 1986. The applicant filed O.A.No.211/86 which was admitted on 20.6.86 and the order of compulsory retirement was suspended by this Tribunal. During the pendency of the O.A. the applicant had attained the age of super-annuation and finally retired from service on 30.4.88. After the applicant had retired from service he received a communication from the Sr. Divisional Personnel Officer wherein he was asked to express his willingness to appear for selection for formation of a panel for the post of Commercial Supervisor/Inspector in the scale of Rs.1600-2660 for the test to be held on 22.5.88. It is the case of the applicant that several of his juniors were promoted to officiate in the grade of Rs.1600-2660 on ad-hoc basis. He has prayed that the respondents be directed to grant proforma promotions to the applicant as due to him had he been promoted to the respective higher grades alongwith his juniors on respective dates on which they were promoted and accordingly fix his salary etc.

3. The application is opposed by the respondents. It is stated that on restoration to his original grade his case was put up for further promotion to the scale of Rs.1600-2660 but his case was not considered for further promotion to that scale on account of the premature retirement case pending with this Tribunal. However, again in April, 1988 his case came up for consideration for selection. Since Shri Krishna Murthy was in service at that time, his name was also included in the alert panel but within 4 days thereafter

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he retired from service on normal superannuation.

4. We have examined the case and heard the learned counsel for the applicant and the respondents. There are two main questions:

- (a) Whether the applicant should have been promoted immediately on restoration to the grade w.e.f. 25.3.87, and
- (b) Whether the compulsory retirement order of the respondents had come in the way.

5. It is an admitted fact that the applicant was undergoing punishment during the period from 25.7.85 to 25.3.87. The applicant has stated that during ^{this} the period several of his juniors had been promoted on ad hoc basis. Against this, the learned counsel for the respondents Shri N.R.Devaraj contended that none of his juniors had been promoted on a regular basis and that the first selection in the scale of Rs.1600-2660 in accordance with the Fourth Pay Commission was proposed to be held only in April, 1988 wherein the applicant's name was also included for the test. The learned counsel for the applicant could not give any instance of any of his juniors having been promoted regularly during the punishment period. Hence, there can be no grievance on the part of the applicant on this score. His name was finally included in the April, 1988 list but almost immediately thereafter he had superannuated in the normal course on 30.4.87.

6. Regarding the compulsory retirement episode, it is stated by the applicant that the compulsory retirement order was suspended. The learned counsel for the respondents stated that eventually it was disposed of on 29.8.89 as 'infructuous since in the meantime the applicant had retired from service on superannuation. The learned counsel for the respondents had categorically stated that after 25.7.85 the first selection to the scale of Rs.1600-2660 was held only in May, 1988 by which time the applicant had retired from service. Hence, no injury had been caused to the applicant. Even assuming that juniors had been ^{regularly} promoted during this period

the applicant will still not have a chance in view of the compulsory retirement ordered by the respondents. The order of compulsory retirement has not been successfully challenged by the applicant. Between March, 1986 and April, 1988 he had continued in service by virtue of the Tribunal's order. The learned counsel for the applicant cited two cases - ATR 1988(1) 186 and ATLT 1989(2) 170. We had seen both the judgments. It is stated in the latter case that:

"when an employee continues to work beyond the date of his retirement on the basis of the date of birth as claimed by him on the strength of an order of the court (without any reference or consent of the employer) then he should be deemed to be in continuous service and if that is so, then he will get all advantages so far as his retiral benefits are concerned".

It is thus seen that by virtue of the Tribunal's order while the applicant would be entitled to retiral benefits for the period from March, 1986 to April, 1988 he would not be entitled to any promotional prospects. Thus, from all angles the applicant has no case for promotion from 25.3.87 and we, therefore, dismiss the case with no order as to costs.

MS
(J.Narasimha Murthy)
Member(Judl).

R.Balasubramanian
(R.Balasubramanian)
Member(Admn).

Dated

16th August 91

SP/AB/91-
Registrar

To

1. The Divisional Railway Manager, S.C.Railwqy, Vijayawada Division, Vijayawada.
2. The Sr.Divisional Personnel Officer, S.C.Rly. Vijayawada Division Vijayawada.
3. The Sr.Divisional Commercial Superintendent, S.C.Rly Vijayawada Division, Vijayawada.
4. The General Manager S.C.Rly, Railnilayam, Secunderabad.
5. One copy to Mr.G.v.Subba Rao, Advocate 1-1-287/27, Chikkadpally, Hyderabad.
6. One copy to Mr.N.R.Devraj, SC for Rlys CAT.Hyd.
7. One copy to Hon'ble Mr.J.Narasimha Murty, Member(M)CAT.Hyd.
8. One spare copy.

9) Copies to All Benchers & Reporters as per the standard list of CAT Benchers.

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W.D.D. 19/8/91

(W) PBR
19/9/91

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COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR

V.C.

AND

THE HON'BLE MR.

M(J)

AND

THE HON'BLE MR. J. NARASIMHA MULTY: M(J)

AND

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

DATED: 6 - 9 - 1991

ORDER/ JUDGMENT

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

in

D.A. No. 230/89

T.A. No.

(W.P. NO.

Admitted and Interim directions issued.

Allowed.

Disposed of with direction.

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

M.A. Ordered/Rejected.

No order as to costs.

19/9/91