

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT HYDERABAD.

D.A.No. 978/89.

DATE OF DECISION:-

17/7/90.

~~T.A.No.~~

Between:-

G.Mallikarjuna Rao

Petitioner(s)

Shri S. Surya Prakash Rao,
Advocate

Advocate for the
petitioner(s)

Versus

The Commissioner of Railway Safety,
South Central Circle, - Secunderabad
& another

Respondent.

Shri-N.R.Devaraj,
SC for Railways

Advocate for the
Respondent(s)

CORAM:

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

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

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
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 Tribunals ?
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)

HJNM
M(J)

HRBS
M(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.978/89.

Date of Judgment: 17.7.90

G.Mallikarjuna Rao

.. Applicant

Versus

The Commissioner of
Railway Safety,
South Central Circle,
Secunderabad
& another

.. Respondents

Counsel for the Applicant : Shri S.Surya Prakash Rao,
Advocate.

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

CORAM:

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

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

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

This is an application filed by Shri G.Mallikarjuna Rao under section 19 of the Administrative Tribunals Act against the Commissioner of Railway Safety, South Central Circle, Secunderabad and another.

2. The applicant joined the Railways as Clerk on 1.5.58 and is currently working as Sr. Stenographer in the Personnel Branch of General Manager's Office, South Central Railway, Secunderabad.

3. In response to a circular dated 14.10.87 inviting applications for appointment to the post of

Stenographer (Personal Assistant) in the scale of pay of Rs.1400-40-1800-EB-50-2300 in the newly created Circle Office of the Commissioner of Railway Safety, Secunderabad the respondent volunteered. He was selected and was transferred on deputation to the Office of Commissioner of Railway Safety, Secunderabad vide Chief Personnel Officer letter dated 24.11.87. By a letter dated 25.11.87 of the Commissioner of Railway Safety, Secunderabad he was appointed as Personal Assistant by transfer on deputation on probation initially for two years. The applicant states that he had been discharging his duties satisfactorily and was promoted to the scale of pay of Rs.2000-3200 w.e.f. 1.3.88. However, by an order dated 2.3.89 he was all of a sudden reverted from the scale of pay of Rs.2000-3200 to his erstwhile scale of pay of Rs.1400-2300 even though the post continued. The applicant represented against this. In the meantime, even before completion of two years he was repatriated back to the South Central Railway and he had filed another O.A.No.656/89 against this.

4. In this application it is prayed that the Tribunal declare the order of R1 dated 2.3.89 by which the applicant was reverted as illegal and also to direct the respondent to reinstate him in the scale of pay of Rs.2000-3200 and continue him for the full tenure.

5. The respondents have opposed the prayer. It is their case that the applicant while on deputation was erroneously promoted and when the Chief Commissioner of

Railway Safety, Lucknow pointed out the mistake they rectified it immediately by reverting him to the old scale of pay of Rs.1400-2300. They also point out that the promotion was only temporary and since the applicant was only continuing on probation ~~with him~~ they have reverted him and later repatriated him also.

6. We have seen the case and heard the learned counsel for both the applicant and the respondents. The main question is whether the action of the respondents in earlier promoting him erroneously while on deputation and ~~the later reversion~~^{ting} is illegal. We find from the letter No.2/SC/6 dated 1.3.88 issued by the Commissioner of Railway Safety, Secunderabad that the applicant was temporarily promoted to the scale of pay of Rs.2000-3200. This was followed subsequently by a notification dated 12.7.88 by the Ministry of Civil Aviation (to which ~~Ministry~~ the Railway Safety Organisation belongs) notifying that the applicant has been promoted. After promoting, the Commissioner of Railway Safety received a clarification from the Chief Commissioner of Railway Safety stating that deputationists cannot be promoted in the borrowing departments. According to the instructions on the subject by the Ministry of Personnel ~~when an employee on deputation~~ when an employee on deputation is to be promoted by the borrowing authority it could be done only with the specific concurrence of the lending authority. In this case, the concurrence of the lending authority viz: the South Central Railway was not obtained

before promoting the applicant. It can be easily understood that it is the parent department that is the custodian of all ^{Career} ~~carried~~ interests of any official, ^{like} ~~be it~~ promotion, confirmation etc. There is no doubt that the promotion effected by the Commissioner of Railway Safety without the concurrence of the South Central Railway is an administrative mistake and they have proceeded to correct the mistake by reverting him to the old scale of pay of Rs.1400-2300 vide their letter dated 2.3.89.

7. In the course of the hearing the learned counsel for the applicant produced a copy of the letter O.M.No.18011/2/88-Estt(D) dated 9.8.88 of the Department of Personnel & Training which is in the form of a correction to para 2 of the Ministry of Home Affairs O.M. dated 21.3.68 appended to rule F.R.31-A. F.R.31-A states that notwithstanding the provisions contained in these rules, the pay of a Government servant whose promotion or appointment to a post is found to be or to have been erroneous, shall be regulated in accordance with any general or special orders issued by the President in this behalf. In the Govt. of India orders that are shown below F.R.31-A on re-fixation of pay on de-confirmation para 2 states that the order or notification of promotion or appointment of a Government servant should be cancelled as soon as it is brought to the notice of the appointing authority that such a promotion or appointment has resulted from a factual error and the Government servant concerned should,

To

1. The Commissioner of Railway Safety,
South Central Circle, Secunderabad
2. The General Manager(Personnel),
S.C.Railway, Railnilayam, Secunderabad - 371.
3. One copy to Mr.S.Surya Prakasa Rao, Advocate,
1-9-485/15/B, Lalitanagar Lecturer's Colony,
vidyanagar, Hyderabad - 44.
4. One copy to Mr.N.R.Devraj, SC for Rlys-CAT,Hyd.Bench.
5. One copy to Mr.J.Narasimha Murty, Member(J) CAT.Hyd.Bench.
6. One spare copy.

pvm

6/11/59
18/1/59

71

immediately on such cancellation, be brought to the position which he would have held but for the incorrect order or promotion or appointment. Where, however, the Government servant ~~who~~ has been erroneously promoted and appointed in a substantive capacity, then the procedure outlined in the Ministry of Home Affairs letter dated 21.3.68 has to be followed and the letter dated 9.8.88 of the Department of Personnel & Training produced by the learned counsel for the applicant ^{Would be applicable.} ~~is a further addition to the Ministry of Home Affairs memo dated 21.3.68.~~

22
23
In the instant case the promotion of the applicant to the scale of pay of Rs.2000-3200 was only temporary and is not on a permanent basis. The provisions of the Ministry of Home Affairs O.M. dated 21.3.68 ^{and} are the clarifications contained in the Department of Personnel & Training's letter dated 9.8.88 are therefore not attracted.

8. We find from the foregoing that the action of the respondents in correcting the erroneous promotion of the applicant is not illegal. ^{Therefore,} ~~In view of the foregoing~~ the application fails with no order as to costs.

24
[Signature]
(J.Narasimha Murthy)
Member(Judl).

[Signature]
(R.Balasubramanian)
Member(Admn).

25
Dated

17th July 90

[Signature]
18/7/90
DEPUTY REGISTRAR(JUDL)

ABR 1875 (6)
CHECKED BY SD

APPROVED BY 18/7/90

TYPED BY 18/7/90

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 : 17/7/90

~~ORDER~~ / JUDGMENT

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

in

T.A. No.

W.P. No?

O.A. No. 978/89

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.

