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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH : AT HYDERABAD

DA 468/90.

Dt. of Order: 31-12-93.

1. K. Badri Pershad (Died)

Applicant.

2. Smt. K. Nirmala Devi (Wife)

3. K. Saideep Kumar (Son)

(LRs brought on record)

as per Court order dt. 1.10.91.

Vs.

...Applicants

MA 1113/91.

1. The General Manager,
India Government Mint,
Hyderabad.

...Respondent

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Counsel for the applicant : Shri V. Venkateshwar Rao

Counsel for the Respondents : Shri N.V. Ramana, Addl. CGSC

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CORAM:

THE HON'BLE SHRI A.B. GORTHY : MEMBER (A)

THE HON'BLE SHRI T. CHANDRASEKHAR REDDY : MEMBER (J)

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....2.

18/10/94
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OA.468/90

Judgement

(AS per Hon. Mr. A.B. Gorthi, Member (Administration))

Heard Sri V. Venkateswara Rao, learned counsel for the applicant and Sri N.V. Ramana, learned counsel for the respondents.

2. The applicant who joined the India Government Mint on 18-6-1962 as Mazdoor was promoted as Assistant Class-V on 1-11-1972. His next promotion as Assistant Class-IV was given with effect from 1-1-1982. Thereafter with effect from 1-1-1983, he was further promoted as Assistant Class-III. His further promotions as Assistant Class-II and Class-I were denied to him on the ground that he was a habitual absentee and absented for long periods during various years. Aggrieved by the same he has filed this application praying for a direction to the respondents to promote him to the post of Assistant Class-II and Class-I with effect from 1-5-1984 and 1-10-1985 respectively, the dates on which his immediate junior Mr. N. Ram Mohan Rao, (T.452) was promoted.

3. The respondents in their reply have asserted that they justifiably denied the applicant's promotions to the post of the ~~Assistant Class-II~~ and Class-I on account of the fact that he remained absent for longer periods at the relevant times when he was to be considered for such promotions.

4. Under the rules for promotion of industrial workers, at India Government Mint, promotions of Assistants are governed by the principles of seniority subject to rejection of the unfit. Rule 7(E) clearly lays down that all promotions from Class V to Class I will be on the basis of seniority in each group subject to the rejection of unfit. Rule ~~XII~~¹²(A) which is relied upon by the respondents is reproduced below :

Rule 12(a)

A workman should be considered unfit for promotion if, during the preceding period of 12 months, his attendance was not satisfactory (i.e. below 75% of the average attendance of workmen) or he had received a warning for his misconduct or for refusal to learn the work of the next higher category. Workmen who are unfit for promotion would be eliminated and the senior most amongst the remaining workmen would be recommended for promotion.

5. The respondents have ^{deleted} ~~deleted~~ the periods of absence of the applicant from which it would be apparent that he was absent for the periods as shown below :

<u>Years</u>	<u>Days of absence</u>
1983	42
1984	69
1985	20
1986	95
1989	15
1990	02
1991	43.

6. The legal validity of Rule 12(a) came up for examination in Writ Petition No.2399/81. The writ petition was allowed with a declaration that Rule 12(a) was violative of Article 14 & 16 of the Constitution of India. The judgement in WP.2399/81 was subjected to writ appeal (610/83) Delivering the judgement in the writ appeal, Jeevan Reddy, J (His Lordship then was) upheld the validity of Rule 12(a) and observed as follows :

"In other words, Rule 12(a) should normally mean an unauthorised absence in which case alone it would be a proper and relevant ground in the matter of promotion. After all, Rule 12(a) is concerned with and defines what unfitness for promotion means. It sets out circumstances

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in which a person would be eliminated altogether from consideration for promotion. Evidently such a rule must be consistent with Articles 16 and 14, which inter alia means that it should be reasonable. The interpretation we have placed upon the rule would make it reasonable and consistent with the mandate of Articles 16 and 14. A literal construction of the rule is bound to result in discriminatory and arbitrary results, rendering the rule bad. At the same time, treating unauthorised absence as a ground of unfitness for promotion cannot be held to be unreasonable or irrelevant."

7. From the above, it can be stated that it is now well settled that if an employee remains unauthorisedly absent for more than 25% of the working days, he would be ineligible for promotion. As regards significance of Rule 12(a) specifying the requirements of a minimum of 75% attendance, the same was clarified in the judgement in WP.2399/81. Accordingly, qualifying attendance of a workman has to be worked out as follows :

Average working days of a year	365
less sundays	52
holidays	18
Total number of working days	295
Attendance required	$= \frac{295 \times 75}{100} = 221 \text{ days.}$

8. In other words, an employee who does not put in 221 days of attendance would not be eligible for promotion. The respondents in their reply affidavit merely stated that the applicant was absent for 69 days in 1984 and 20 days in 1985. Both the periods of absence are less than 74 days in each year. It cannot, therefore, be stated that the applicant remained unauthorisedly absent for more than 25% of the total working days in a year. We, therefore, find no justification in denying the applicant promotion to the post of Assistant

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Class-II and Class-I in 1984 and 1985 respectively. The various spells of his absence commencing from 1962 to 1983 need not come in the way of his promotions because of the fact that with effect from 1-1-1983, he was promoted as Assistant Class-III.

9. During the pendency of this OA, the applicant (Sri K. Badriprasad) expired and his widow and son were brought on record as legal representatives.

10. Having heard learned counsel for both the parties and having carefully perused the material before us we are of the considered view that the applicant was wrongly denied the promotions to the post of Assistant Class-II in 1984 and Assistant Class-I in 1985, when his junior was so promoted.

11. There was some delay on the part of the applicant in approaching the Tribunal. In this context, the learned counsel for the applicant stated that after the judgement in Writ Appeal (610/83), an SLP was filed which was dismissed on 10-11-1989. Thereafter, the applicant made a representation on 19-11-1989 followed with a legal notice dated 29-12-1989, both of which remained unanswered by the respondents.

12. In view of the circumstances the delay in filing the application is hereby condoned.

13. For the aforesaid reasons this application is allowed with the following directions :

- a) The applicant shall be deemed to have been promoted to the post of Assistant Class-II and Class-I on dates when his junior was promoted to the said posts;
- b) The promotion shall be accorded on a notional basis and his pay and allowances shall also be fixed notionally.
- c) Based on the revised pay of the applicant, entitlements of family pension shall be recalculated and given to the

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legal representatives. Arrears arising on account of the same (from the date of death of the applicant) shall also be paid.

13. Respondents shall comply with the above direction within a period of four months from the date of communication of this judgement. No order as to costs.

T. Chandrasekhara
(T. Chandrasekhara Reddy)
Member(Judl.)

(A.B. Gorthi)
Member(Admn.)

Dated : December 31, 93
Dictated in the Open Court

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Deputy Registrar(Judl.)

Copy to:-

1. The General Manager, India Government Mint, Hyderabad.
2. One copy to Sri. V.Venkateshwar Rao, advocate, CAT, Hyd.
3. One copy to Sri. N.V.Ramana, Addl. CGSC, CAT, Hyd.
4. One copy to ~~Deputy Registrar~~ Library, CAT, Hyd.
5. One spare copy.

Rsm/-

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE-CHAIRMAN

AND

THE HON'BLE MR. A. B. GORTHI : MEMBER (A)

AND

THE HON'BLE MR. T. GHANDRASEKHAR REDDY
MEMBER (J)

AND

THE HON'BLE MR. R. RANGARAJAN : MEMBER (A)

Dated: 31/12/1993

ORDER/JUDGMENT:

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

O.A. No.

in
468790

~~T.A. No.~~

(W.P.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

Rejected/Ordered.

No order as to costs.

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