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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.563/90.

Date of Judgment 19.7.1991.

P.M.Jagannathan

.. Applicant

Vs.

1. Union of India
per General Manager,
South Central Railway,
Secunderabad.

2. Chief Personnel Officer,
South Central Railway,
Secunderabad. .. Respondents

Counsel for the Applicant : Shri G.Ramachandra Rao

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 application has been filed by Shri P.M.Jagannathan
under section 19 of the Administrative Tribunals Act, 1985
against the Union of India per General Manager, South Central
Railway, Secunderabad and another.

2. The applicant is working as Asst. Personnel Officer(W&M)
in Group-B. His juniors were promoted to the next grade in the
Senior Scale in Group-A service on adhoc basis as early as
in 1987. Again, on 31.5.90 a few more of his juniors were
promoted on adhoc basis to the Senior Scale. When his name

was not included in the promotion list the applicant felt aggrieved and made a representation. In reply, the impugned order dated 6.7.90 (A1) was issued by the General Manager stating that the applicant could not be empanelled as disciplinary action initiated against him by the Railway Board under Rule 25 of the Railway Servants (Discipline and Appeal) Rules, 1968 was pending finalisation. It is prayed that the Tribunal direct the respondents to treat him as having been promoted to the post in the Senior Scale w.e.f. 31.5.90 when his juniors were promoted on adhoc basis.

3. The application is contested by the respondents. It is their case that the applicant was also considered alongwith his juniors in 1987 but since a charge-sheet was pending he could not be promoted. Though the initial charge-sheet was for a major penalty eventually a minor penalty was inflicted on the applicant which was operative for a period of one month from 1.1.89 to 31.1.89. However, on 19.6.89 a notice was issued by the competent authority viz: the Railway Board as to why the penalty should not be enhanced. This notice was issued under Rule 25 of the Railway Servants (Discipline and Appeal) Rules, 1968. The applicant replied to this on 5.7.89. It is, therefore, their case that when the subject of enhancement of penalty was still under consideration of the Railway Board the adhoc promotion could not be effected.

4. The respondents have also raised the question of maintainability of the application. According to them, the cause of action arose in June, 1987 when persons junior to the applicant

were promoted. It is their contention that he cannot come to the Tribunal at this late stage.

5. We have examined the case and heard the learned counsel for the applicant and the respondents. We do not agree with the respondents that the application is not maintainable. May be, that the applicant did not stake his claim in 1987 but as and when a supercession by a junior takes place the cause of action arises. It was when such an occasion arose in May, 1990 that the applicant decided to file an application which we consider is maintainable.

6. After completing the punishment for a period of one month from 1.1.89 to 31.1.89 the higher authority viz: the Railway Board decided to take action under Rule 25 of the Railway Servants (Discipline and Appeal) Rules, 1968 to enhance the penalty. Accordingly a notice was issued on 19.6.89. When the case for the next stage of adhoc promotion came up on 31.5.90 the applicant was still under notice since no decision had been taken by the Railway Board at that time. The learned counsel for the applicant cited two cases - 1989(6) SLR 307 and 1989(6) SLR 682. He argued that the earlier disciplinary case had come to a close when the punishment period was over. A notice again by another authority should be treated as a fresh case initiated and being just a notice should not come in the way of adhoc promotion. We find that both the cases cited are not applicable in this case because they are related either due to long pendency of charge-sheet or due to pendency of a vigilance enquiry or pendency of an enquiry. In this case it is a continuation

of the process. The disciplinary case was still continuing in that the competent authority had decided to enhance the penalty under Rule 25 of the Railway Servants (Discipline and Appeal) Rules, 1968. We, therefore, hold that in May, 1990 the disciplinary case was continuing. This fact cannot be overlooked while considering even adhoc promotion.

7. The learned counsel for the applicant had raised some additional grounds in M.A.No.846/91 to this O.A. The learned counsel for the respondents Shri N.R.Devaraj objected to this on the ground that the paper was received in the Registry of this Tribunal only on 16.7.91 just 15 minutes prior to the hearing of the case. But we find that the application was made as early as ^{on} 26.7.90 and there is an indication that the paper was available with the Registry of this Tribunal on 26.7.90. In this M.A. the learned counsel for the applicant draws a parallel with the case of one Shri P.Parthasarathi. Shri P.Parthasarathi was also charge-sheeted and awarded a minor penalty in just the same manner as the applicant. Shri P.Parthasarathi was also issued a notice under Rule 25 of the Railway Servants (Discipline and Appeal) Rules, 1968 in just the same manner as the applicant. It was argued that while Shri P.Parthasarathi, who was on an identical footing as the applicant, was continuing in the Senior Scale on adhoc basis there is no bar as to why the applicant should be denied the opportunity. The learned counsel for the respondents argued that the case of Shri P.Parthasarathi was different in that he was already promoted on adhoc basis in February, 1989 itself after he had completed the punishment. He was then under notice by the Railway Board under Rule 25 of the

To

1. The General Manager, Union of India, S.C.Railway, Secunderabad.
2. The Chief Personnel Officer, S.C.Railway, Secunderabad.
3. One copy to Mr.G.Ramachandra Rao, Advocate, 3-4-498, Barkatpura Chamzan, Hyderabad.
4. One copy to Mr.N.R.Devraj, SC for Rlys, CAT.Hyd.
5. One copy to Hon'ble Mr.J.Narasimha Murty, Member(J)CAT.Hyd.
6. One spare copy.

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Railway Servants (Discipline and Appeal) Rules, 1968 which was issued only in June, 1989. We gave our careful consideration to this case. It is seen from the averments of the respondents that adhoc promotion was being effected on a point system prior to 1.3.90 and that the system was changed after 1.3.90. Shri P.Parthasarathi was already promoted in February, 1989 itself under the old procedure at which point of time there was nothing against him, he having completed the punishment and still to receive the notice under Rule 25 of the Railway Servants (Discipline and Appeal) Rules, 1968 four months later. Against this, when the case of the applicant came up for consideration in May, 1990 he was already under notice under Rule 25 of the Railway Servants (Discipline and Appeal) Rules, 1968 and the method of promotion had been changed. It was, therefore, not possible for the respondents to promote the applicant unlike Shri P.Parthasarathi. It is next argued by the learned counsel for the applicant that eventually when on 7.9.90 the punishment was enhanced in both cases, if Shri P.Parthasarathi ~~can~~^{was} still be allowed to continue in the higher post without being reverted, ~~he~~ argued, then there is no bar to the promotion of the applicant. We do not accept this. What is a bar to promotion is not necessarily a bar to continuation in adhoc arrangement. If Shri P.Parthasarathi is reverted it will amount to double punishment. We do not see any illegality in the stand of the respondents.

8. In the result, we dismiss the application, however, with no order as to costs.

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

Dated 19.7.1991.

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

Dep't of Legal Affairs

R/S
(9/219)

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TYPED BY

COMPARED BY

CHECKED 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 M^{TY}:M(J)

AND

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

DATED: 19 - 7 - 1991 ✓

ORDER/ JUDGMENT

M.A./R.A./C.A. NO.

in

R.A. NO. 563/90 ✓

T.A. NO.

(W.P. No.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with direction.

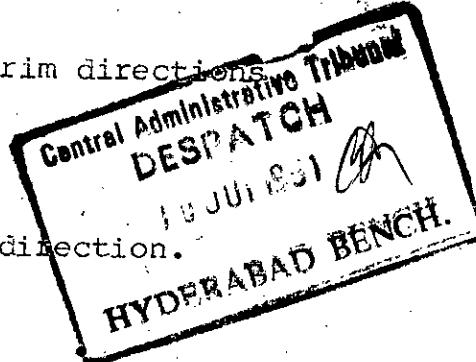
Dismissed.

Dismissed as withdrawn.

Dismissed for default.

M.A. Ordered/Rejected.

No order as to costs.



21/3/91