

(31)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.577/90.

Date of Judgment 25th Nov/1991.

Syed Ghouse

.. Applicant

Vs.

The General Manager,
India Government Mint,
Hyderabad.

.. Respondent

Counsel for the Applicant : Shri V.Venkateswara Rao

Counsel for the Respondent : Shri N.Bhaskara Rao, Addl. CGSC

CORAM:

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

This application has been filed by Shri Syed Ghouse under section 19 of the Administrative Tribunals Act, 1985 against the General Manager, India Government Mint, Hyderabad praying that all arrears of pay and allowances with all other attendant benefits for the period from 18.4.84 to 30.5.90 attached to the post of Assistant Class-I by way of arrears c
be paid
pay and allowances/to the applicant consequent on his promotion to the post of Assistant Class-I w.e.f. 18.4.84.

2. The applicant who was working as Assistant Class-II was expecting promotion to the next higher grade as Assistant Class-I since he was eligible for such promotion. He was not promoted but his immediate junior Shri D.Yadagiri was promoted as Assistant Class-I w.e.f. 14.6.84. Apart from Shri D.Yadagiri, another junior to him Shri A.Ramachander who was in fact in a lower category was also promoted. The applicant approached the High Court by a Writ Petition No.10823/1985 and by its order dated 30.9.85 the High Court directed the Department to consider the case of the applicant.

eventhough enquiry proceedings were pending against him. It was further observed that if the result of the enquiry goes against the applicant, appropriate action might be taken on the basis of such a report. It was averred that the Department did not comply with this order and the applicant preferred an appeal to the Govt. of India, Department of Economic Affairs and the same was rejected by their memo dated 9.7.86. Later, he filed O.A.No.2/1987 challenging the memo dated 9.7.86 by which the penalty of warning was confirmed. By its order dated 9.11.89, the Tribunal set aside the order of punishment. Consequently, by Diary Order No.16 dated 30.5.90 the applicant was promoted as Assistant Class-I w.e.f. 18.4.84. In that order it was stated that this promotion would be considered as notional from 18.4.84 and that he would not be entitled to any arrears but that his pay would be fixed notionally in accordance with these orders. His seniority vis-a-vis Shri D.Yadagiri was also protected. The applicant is aggrieved that he has not been paid arrears for the period 1984-90. Hence this application with the prayer to direct the respondents to pay all arrears of pay and allowances with all other attendant benefits for the period from 18.4.84 to 30.5.90 attached to the post of Assistant Class-I.

3. The respondents have filed a counter affidavit and oppose the application. It is contended that they have not violated any order of the High Court of Andhra Pradesh and that the enquiry proceedings had already been completed before the receipt of the orders of the High Court in Writ Petition No.10823/1985. The punishment they inflicted pursuant to that was eventually set aside by the judgment of this Tribunal in O.A.No.2/1987. It is their case that there is no specific direction to them by the Tribunal in their order in O.A.No.2/1987 to pay him the backwages. It is, therefore, their case that when they promoted him

with retrospective effect from 18.4.84 they need not give him the backwages.

4. I have examined the case and heard the learned counsels for the applicant and the respondents. The applicant has won all the legal rounds and has finally been promoted from the date his junior was promoted with all benefits except the arrears for the period 1984-90. The question to be decided is whether he is entitled to this or not. The learned counsel for the applicant relied on the judgments of the Hon'ble Supreme Court AIR 1991 (SC) 2010 and 1991(2) SCALE 742. Against this, the learned counsel for the respondents relied on the judgment of the Hon'ble Supreme Court AIR 1991 (SC) 958. I have seen all the three judgments. The learned counsel for the applicant has quoted the judgment of the Hon'ble Supreme Court to support his claim for the backwages for the period 1984-90. In the judgment 1991(2) SCALE 742 of the Hon'ble Supreme Court there is nothing that supports the claim of the applicant that ^{arrears shall be paid when} persons ~~when~~ fully exonerated or acquitted of the charges ^{are promoted after retrospectively.}

In this case the promotion has been given with retrospective effect. Regarding the judgment AIR 1991 (SC) 958 relied upon by the respondents, it is stated therein that when a person does not actually discharge the duties he is not entitled to the wages attached to that post. It is remarked therein that when they have not worked in the said post on the principle of "No work, no pay" they will not be entitled to the higher salary for that period. However, by a later and a larger bench, the Hon'ble Supreme Court vide judgment AIR 1991 (SC) 2010 had observed that the normal rule of "No work, no pay" is not applicable to cases where the employee although he is willing to work is kept away from work.

by the authorities for no fault of his. The Hon'ble Supreme Court further observed that when an employee is completely exonerated meaning thereby that he is not blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. In this case, from the Diary Order No.16 dated 30.5.90 it is seen that the case of the applicant was considered for promotion in 1984 and that the findings of the D.P.C. had been kept in a sealed cover. When he was finally exonerated fully he was promoted w.e.f. 18.4.84. It is thus clear that were it not for the disciplinary proceedings out of which the applicant has come out clean he would have been promoted in 1984 itself. The observations of the Hon'ble Supreme Court in judgment AIR 1991 (SC) 2010 would, therefore, apply to this case. Therefore, the applicant is entitled to consideration for payment of arrears for the higher post eventhough he had not actually worked in that post due to the disciplinary proceedings pending against him. The Hon'ble Supreme Court observed:

"-----However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated from disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests.*-----

*However, whether the officer concerned will be entitled to any arrears of pay for the period of notional

promotion preceding the date of actual promotion, and if so to what extent will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."

5. The learned counsel for the applicant produced a copy of the order dated 24.12.90 of this Tribunal in O.A.No.579/90 in the case of Mohd. Muneeruddin Vs. Works Manager, I.G.Mint, Khairatabad & another. I do not find that this case is fully applicable to the case before me. Hence, following the observations of the Hon'ble Supreme Court, I direct the respondents to consider the case of payment of arrears to the applicant for the period from 18.4.84 to 30.5.90. If the arrears are denied in full or part, then the concerned authority will record its reasons for doing so.

6. With the above directions the application is disposed of with no order as to costs.

R. Balasubramanian
(R. Balasubramanian)
Member(A).

Dated 25th November, 1991.

A 8/12/91
Dy. Registrar.

Copy to:-

1. The General Manager,
India Government Mint,
Khairatabad,
Hyderabad.
2. One copy to Shri. V. Venkateswara Rao, 1-1-287/27,
Chikkadapalli, Hyderabad-500 020.
3. One copy to Shri. N. Bhaskar Rao, Addl. CGSC CAT Hyd.
4. One spare copy.

Rsm/-

AM 4/10/91 O.A-577/90.

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. R. BALASUBRAMANIAN: M(A) ✓

AND

THE HON'BLE MR.

M(J)

DATED: 25/11/1991 ✓

ORDER/JUDGMENT: _____

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

in

O.A.No.

577/90 ✓

T.A.No. _____

(W.P.No. _____)

Admitted and Interim directions
Issued.

Allowed.

Disposed of with directions

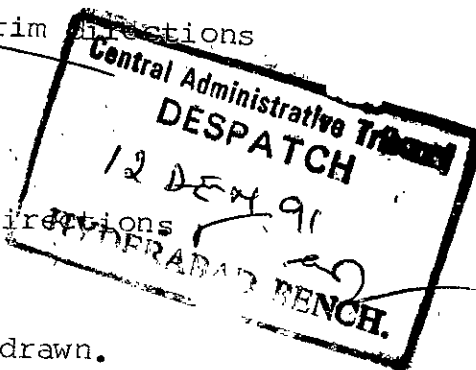
Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

M.A. Ordered/Rejected

✓ In order as to costs. ✓



pvm

Q 5 3/12/91