

(14)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

REVIEW APPLICATION NO. 10/95 in
ORIGINAL APPLICATION NO. 80/91

DATE OF ORDER : 25-10-1996.

Between :-

M.L.Sarma

... Applicant

And

1. Chief Mining Advisor (Loco Coal),
Railway Board, BHANBAD.
2. Dy.Chief Mining Advisor,
Railway Board, Central Railway,
Ajni, Nagpur-44 00 03.
3. Sr.Inspecting Officer,
Railway Board, Ajni,
Nagpur - 44 00 03.
4. Jr.Inspecting Officer,
(SNG), Railway Board,
S.C.Rlys, Bellampally,

... Respondents

--- --- ---

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

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

--- --- ---

CORAM:

THE HON'BLE JUSTICE SHRI M.G.CHAUDHARI : VICE-CHAIRMAN *bell*

THE HON'BLE SHRI H.RAJENDRA PRASAD : MEMBER (A)

--- --- ---

... 2.

- 2 -

(Orders per Hon'ble Justice Shri M.G.Chaudhari, Vice-Chairman).

-- -- --

Delay condoned. MA 952/95 allowed. Review to be numbered.

Heard Review Application. The applicant seeks review of the order dt.16-9-94 passed in OA 80/91. By that order limited relief was granted to the applicant by directing the respondents to consider

his case for promotion to the upgraded post of Sr.Sampling

Supervisor out of the cadre restructuring scheme that came into

effect from 1.1.84 in accordance with the extant instructions

subject to he being found suitable. Such relief was to be granted

- ✓ on a notional basis. However, his ~~application~~ ^{pension} was to be revised
- ✓ taking into consideration the nationally revised pay and allowances ^{but} and
- ✓ the ~~said~~ actual monetory benefit was to be given with effect from date of his retirement.

2. By the review application the applicant seeks an order

to be passed by reviewing the original order directing the res-

pondents to give him actual monetory benefit from 1-4-84 on the

ground that the entire period of his suspension from 1-4-84 followed

by removal from service was treated to be on duty for all purposes.

According to the applicant unless such a further direction is

given, he will be put to serious financial loss and irreparable

loss in getting his retiral and other pensionary benefits.

3. The ground on which relief is sought travels beyond

the scope of the original O.A. Although one may sympathise with

the applicant for the financial loss to some extent, it is however

not possible to grant that relief by reviewing the original order

and that doesnot amount to a ground for review.

hml

4. The applicant has complicated the matter by his own conduct

✓ which we cannot ~~see~~ ^{said to be} necessary fair and just towards the court.

✓ He filed ^{the} OA (80/91) on 23-10-91. The relief prayed was "to direct the respondents to produce the records pertaining to the impugned orders and quash them by declaring that they are arbitrary, illegal and unconstitutional and without basis and direct the respondents to consider him for promotion treating the confidential reports as expunged". The impugned orders were mentioned as two confidential reports made by the Sr. Inspecting Officer, Nagpur, dt. 12-9-89 and 23-9-89. These reports were relating to adverse entries made in the CR of the applicant for the year ending March, 1988 and March, 1989 respectively.

✓ 5. In the ^{Ansidi OA} petition it was contended that the respondents

were not prepared to consider him for promotion with reference

to the vacancies on which they arose and the juniors were promoted.

The promotion appears to have been relating to the post of Sr. Sampling Supervisor. There was no prayer for directing the res-

✓ ponents to promote him with ^{reference to} any particular date or to grant him consequential benefits including monetary benefits on such promo-

tion being given. The Tribunal therefore was not called upon to

to examine or decide that question. The Tribunal was inclined to

grant limited relief as already indicated above. It must there-

fore be presumed that while directing consideration of the case

of the applicant for promotion under the restructuring scheme which

came into effect from 1.1.84, the Tribunal had advisedly not

granted actual monetary benefit from a date from which the appli-

cant were to be promoted after his case was considered. The

✓ Tribunal had intended ^{only} ~~was~~ to grant limited relief and had clearly

made it on national basis and it was intended in the event of applicant being granted promotion, the benefit of that promotion notionally shall ensure only for his pension and will not entitle him to get actual backwages. It cannot be held that the Tribunal committed an error manifest on record in not considering the question of actual monetary benefit to be given. Any such relief was not at all stated in the OA itself and it was in its own consideration of the matter that the Tribunal had taken the view to grant only limited relief. The submission of the learned counsel Shri G.V.Subba Rao in substance would mean that the original ^{prayer} be modified by adding that in the event of promotion being granted to the applicant in pursuance of 1984 restructuring scheme the respondents should be directed to pay him actual monetary benefit for that period. This can only amount to seeking amendment of the original O.A. Hence as no error apparent is seen to have arisen in the order in the O.A., there is no ground for review of the same.

6. The grievances on merits are relating to the nature of relief granted which is to the limited extent, can be a matter which can be looked into ^{only} by the Appellate Court and that cannot ^{be} done by us in review as that is ^{the} view taken on merits by the earlier bench.

7. The matter does not rest there. The applicant filed OA 817/92 on 16-9-92 which was filed subsequent to the OA 80/91. In that OA the applicant did not disclose the fact that earlier OA i.e. OA 80/91 was pending in this Tribunal. In para-10 of the OA he declared that the matter regarding which the application was filed was not pending in any court of Law or any other authority or any Bench of this Tribunal. The relief sought in that OA was for direction to the

respondents to promote him to the post of Sr. Sampling Supervisor and Jr. Inspecting Supervisor on par with Shri B.N.Singh/Shri S.Krishna who were retrospectively promoted and consequently fix his pay and pay arrears of salary and allowances etc.,. The impugned orders were stated to be two letters of the Chief Mining Advisor dt.7-10-91 and 4-11-91. By letter dt.7-10-91 the applicant was directed to appear at a written test on 28-10-91 and by letter dt.4-11-91 he was informed that he had failed to appear in the written test for the formation of panel of Zonal Inspectors/Sr. Sampling Inspectors scheduled to be held on 20-10-91. Apart from the fact as to how these letters constitute a cause of action, the relief sought by the applicant in essence was none other than he had prayed in OA 80/91. Shri G.V.Subba Rao, learned counsel submitted that the grounds urged in the two OAs were different and therefore it cannot be said that the two OAs ^{could} ~~cannot~~ be independently ~~perused~~. We do not agree, what is to be seen ^{is} as the substantive relief prayed which was relating to promotion to the Sr. Sampling Inspector and although the grievance could be made on different grounds surely the applicant could not ^{raise} ~~arise~~ such different grounds by different applications. All the grounds relating to the grievance which were in existence at the material time have to be raised in one proceeding which is the fundamental rule of Law. The learned Division Bench who decided the said OA by order dt.21-8-95 ~~but~~ however ^{take} ~~not~~ notice of the order passed in OA 80/91 on 16-9-94. It was held that in the circumstances of the case the only direction that is to be given is that the applicant has to be promoted to the post of Sr. Sampling Supervisor w.e.f. 1.1.84 as there is no possibility of judging now whether he be suitable for that post as

on that date or not. It was observed that in view of the order in
OA 80/91 the applicant has to be given notional promotion to the
post of Sr. Sampling Supervisor as on 1.1.84 and the monetary benefit
is to be given from the date of his retirement. The operative
order passed was almost identical as passed in the order on OA 80/91.
Believing that the order in OA 817/92 was restricted in view of the
order in OA 80/91 the applicant is stated to have filed review
application in OA 817/92. That review application was disposed of
by the then division bench by order dt. 8-12-95 holding that it was
premature and liberty was given to the applicant to file a review
application in the event of his succeeding in the RA filed in
OA 80/91. That is how the instant RA is connected with both the OAs.
We are of the view that even assuming that the Tribunal were to take
the view that applicant should be given actual monetary benefit of
his promotion while deciding OA 817/92 but in view of the earlier
order in OA 80/91 it was confined to notional benefit, since for
the reasons already indicated as we do not find any error apparent
on the face of the record in the order in OA 80/91 this exercise of
filing of review application in OA 817/92 that had been undertaken
by the applicant is of no avail to him.

8. In the circumstances this is also not a case which would
shock the courts' conscience is because firstly the order in OA 817/92
mentions that the respondents had considered the case of the applicant
for promotion but he was not found suitable for promotion. The Respondents
had thus complied with the order passed in OA 80/91. The proceedings
in that OA therefore stood exhausted and cannot be re-opened by a review application. Now despite the fact that in pursuance of the order of the Tribunal the applicant was not promoted

as he was not found suitable since the direction was only to consider his case, by the order in the subsequent OA viz., OA 817/92, the applicant got almost re issuance of the original order in a modified form of a direction to the respondents to give him promotion w.e.f.

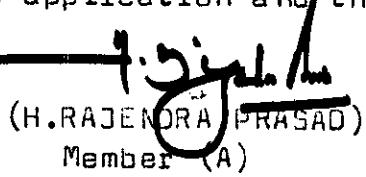
1.1.84 irrespective of his suitability or otherwise only limitation being of making it notional. We are unable to understand as to how ✓ the second order could be passed almost ~~abolishing~~ ^{abolishing} setting aside the original ↵ order ~~in its~~ ^{in its} ~~consequences~~ ^{impose}. If that course was adopted it was open to the Bench to hold whether the promotion should be notional or coupled with actual monetary benefits. For whatever reason it may be since it was inclined to direct it to be notional that cannot help the applicant to seek a review of that order by seeking review of the order in OA 80/91, which does not exist in the eye of Law having been complied with by the respondents. In the application the applicant has stated that in pursuance of order dt.27-3-87 in TA No.226/85 the principal Bench had ordered that he was entitled to be retained in service and also to the balance of pay and allowances due to him from the date of his suspension up to the date of the order of removal from service and for the subsequent period in accordance with the rules. It cannot therefore be said that save and except the additional benefit of difference of pay between junior sampling supervisor and Sr.Sampling Supervisor he has been deprived totally of monetary benefits to which he may have been found entitled to receive.

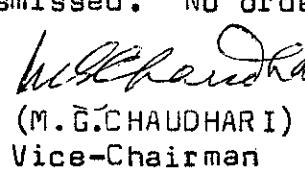
9. Shri G.V.Subba Rao drew our attention to the review application that was filed in OA 817/92. We find from that application that it was averred that his counsel had represented to the Tribunal

that limiting the promotional benefits from the date of retirement only and directing pay fixation to be done on notional basis would be wrong but that the Tribunal had orally observed that since the judgement in OA 80/91 was limited to the extent of monetary benefit from the date of retirement they were bound by the said judgement and advised that a review petition may be filed seeking a review of the said judgment with a condonation delay petition. We are ~~afraid~~ afraid we cannot act on such a submission tried to be advanced by the applicant unsupported by the record.

10. The proceedings reveal that the applicant is not a novice to judicial proceedings as there is reference to OAs he had filed from time to time. It can therefore be assumed that he had advisedly filed second OA i.e. OA 817/92. Yet he had forgotten to mention about the pending OA pertaining substantially to same relief and did not ~~try~~ ^{try} to correctly formulate his case. The applicant also derived advantage from the order in OA 817/92 with the direction that the retirement benefits, pension benefits to be fixed on notional basis shall carry interest at the rate of 12% per annum. Since the order passed was in substance the same as in the earlier OA and when no interest was awarded in the earlier OA, the applicant could not have got such a relief by bringing about an alteration in the order in OA 80/91 particularly when the order had become final. However as the respondents are bound by the same, that ensures to the benefit of the applicant.

10. For the reasons discussed above we find no merit in the review application and the same is dismissed. No order as to costs.


(H. RAJENDRA PRASAD)
Member (A)


(M.G. CHAUDHARI)
Vice-Chairman

av1/ Dt. 25th October 1996. (Dictated in open court) D.R.C.C. (21/96)

RA.101/95.

O.A.80/91.

To

1. The Chief Mining Advisor (Loco Coal)
Railway Board, Bhanbad.
2. The Deputy Chief Mining Advisor,
Railway Board, Central Railway,
Ajni, Nagpur-3.
3. The Senior Inspecting Officer,
Railway Board, Ajni, Nagpur-3.
4. The Junior Inspecting Officer, (SNG)
Railway Board, SC Rlys, Bellampally.
5. One copy to Mr.G.V.Subba Rao, Advocate, CAT.Hyd.
6. One copy to Mr.N.K.Devraj, SC for Rlys, CAT.Hyd.
7. One copy to Library, CAT.Hyd.
8. One spare copy.

pvm.

9/27/1998 (23)
I COURT

TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE M.G.CHAUDHARI
VICE-CHAIRMAN

AND

THE HON'BLE MR.H.RAJENDRA PRASAD:M(A)

Dated: 25-10-1996

~~ORDER~~ / JUDGMENT

M.A/R.A./C.A. No. 101/95

in

O.A.No. 80/91

T.A.No. (w.p.)

Admitted and Interim Directions

Issued.

Allowed.

Disposed of with directions

Dismissed

Dismissed as withdrawn.

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

pvm

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal

DESPATCH

27 NOV 1996

HYDERABAD BENCH