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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.222/91.

DATE OF JUDGEMENT: 24th NOVEMBER 1992

BETWEEN

K.Sundara

... Applicant

and

1.Chief Personnel Officer
South Central Railway
Rail Nilayam
Secunderabad.

2.Divisional Railway Manager(Personnel)
South Central Railway
VIJAYAWADA

3.Deputy Chief Mechanical Engineer
Wagon Workshop
Guntupalli

... Respondents

Counsel for the Applicant

:Sri GV Subbarao

Counsel for the Respondents

:Sri D.Gopal Rao,SC for RI

CORAM:

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER(JUDL.)

T. Chandrasekhara Reddy

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JUDGEMENT OF THE SINGLE MEMBER BENCH DELIVERED BY
HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

This is an application filed under Section 19 of the Administrative Tribunals Act, to give a direction to the respondents to fix the pay of the applicant on par with his immediate juniors working as Office Superintendent with all consequential benefits and pass such other orders as may deem fit and proper in the circumstances of the case.

The facts giving rise to this OA in brief are as follows:

The applicant was appointed as Junior Clerk in Southern Railway under Vijayawada Division. He was promoted as Senior Clerk on 11.5.78 and posted in the office of the Deputy CME/Wagon Workshop, Guntupalli. The applicant earned certain promotions and on 9.12.81, he was selected for the post of Chief Clerk in the scale of Rs.550-750/-, and was retained in the same office after empanelment. On 3.5.85, the Chief Personnel Officer issued orders for promotion of the applicant as Office Superintendent which is a non-selection cadre post based on seniority cum suitability, posting the applicant ~~xx~~ at the same place. But the said order promoting the applicant as Office Superintendent was not given effect as a charge-sheet w for major penalty was under contemplation as against the applicant. On 6.6.85, a charge sheet for major penalty was issued by Dy CME/Wagon Workshop, Guntupalli against the applicant. On 14.12.85, the Disciplinary Authority imposed penalty of with holding of increment for a period of six months non-recurring without loss of seniority in the grade of Chief clerk. The applicant preferred an appeal to the Additional Chief Personnel Officer, South Central Railway, Secunderabad on 24.1.1986 for consideration of the major penalty imposed on the applicant. ~~xxxxxx~~ On 24.6.86, the first appellate authority enhanced the punishment of the applicant by reducing him to that of a lower grade as Head Clerk

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of two years from 1.7.86 with loss of seniority. On 9.7.86 the applicant appealed to Chief Personnel Officer, South Central Railway, Secunderabad, who is the next appellate authority. On 23.12.86, ~~the said Appellate Authority~~ after consideration, revised ~~the penalty~~ to that of reduction to lower grade for 6 months without loss of seniority. The applicant was promoted as Office Superintendent on 13.3.87 and posted to Hubli Division and the applicant joined the said post on promotion. On 3.4.87, the applicant appealed for giving effect to the promotion from 8.5.85 in pursuance of the order of the Chief Personnel Officer, South Central Railway, dated 8.5.85. On 13.11.90, the applicant put a representation to the competent authority for seniority and fixation of pay as office superintendent on par with his juniors, with effect from the date, the immediate junior to the applicant was promoted as Office Superintendent. The representation of the applicant was rejected by the Competent Authority and the applicant was informed that he was not eligible for fixation of his pay on par with his juniors, in view of the penalty that was imposed on the applicant and which had become final. Aggrieved by the said orders dated 10.1.91, the applicant has preferred this OA before this Tribunal for the relief as already indicated above.

Counter is filed by the respondents opposing this OA.

The grievance of the applicant is that he had a right to be promoted as Office Superintendent from the post of Chief Clerk as per the orders of the Chief Personnel Officer dated 8.5.85 and he had been denied promotion and so, it is the case of the applicant that his pay is liable to be fixed on par with his juniors with effect from the date, junior to the applicant was promoted as Office Superintendent in the year 1985. It is also the case of the applicant that even though disciplinary proceedings might have been contemplated, that it was not a bar to the promotion of the applicant to the post

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of Office Superintendent from Chief Clerk. So, as could be seen the grievance of the applicant relates to the mid of the year 1985. This OA is filed by the applicant on 4.3.1991. So, there is roughly six years delay for the applicant in approaching this Tribunal. Even taking into account for arguments sake, that the applicant had a right to be promoted in the year 1985 as Office Superintendent from the post of Chief Clerk, we are unable to understand as to why the applicant did not approach the Tribunal within a reasonable period, from the date, his right was denied with regard to the said promotion. So, as the applicant has not approached the Tribunal at least within 1 and 1/2 years from the date of denial of his right for the said promotion, in the year 1985, we do not have the slightest doubt to come to the conclusion that the remedy of the applicant is time barred in view of the provisions of Section 21 of the Administrative Tribunals Act and so the application is liable to be dismissed as time barred.

Even on merits, the applicant does not have a case. As already pointed out, the grievance of the applicant is that he had a right to be promoted to the post of Office Superintendent as no charge sheet had been issued ~~xx~~ as against the applicant by 8.5.85 which is the date of the order of promotion. The charge sheet in this case had been issued on 6.6.85, and so it is the contention of the applicant that his pay is liable to be fixed on par with his juniors in the post of Office Superintendent from the date his immediate junior was promoted to the said post in the year 1985. The immediate junior to the applicant was not facing any departmental enquiry nor any departmental enquiry was contemplated as against him. So, the immediate junior to the applicant had a right to be promoted and accordingly had been promoted. Admittedly, the applicant had undergone a penalty of reduction to lower grade for a period of six

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months without loss of seniority. The aim of the applicant appears to be to nullify the effect of the punishment that had been imposed on him and the penalty also which he had undergone, by filing this OA. It is so because when ~~then~~ the applicant is given the benefit of fixation of his pay with effect from the date his junior was promoted to the grade of Office Superintendent, the effect of it would be to nullify the punishment order that had been imposed on the applicant and the ~~xxx~~ penalty of the applicant had suffered. As the ~~xxx~~ punishment order has become final and the applicant had also undergone the said penalty, it is not open for this Tribunal to pass any order that would disturb the said order of penalty that had been imposed on the applicant, that had also reached a finality. It may be pointed out here that a

Govt. employee has got a right to be considered for promotion, but he does not have a right to be promoted. So, in view of the penalty that had been imposed on the applicant and which the applicant had already undergone, it is not open for the applicant to contend that he had a right to be promoted in the year 1985 and as a consequence, that his pay was liable to be stepped up equal to that of his junior in the year 1985 in the post of Office Superintendent.

The learned counsel appearing for the applicant relied on the following decisions.

1. ATR 1987(17) Page 547 - K.Ch.Venkata Reddy Vs. Union of India, CAT/HYD-Full Bench decision
2. ATLT 1988(1) Page 341 RD Madam Vs Union of India Page 347 Para 10 of CAT/Delhi decision
3. ATR 1989(1) - Page 191 Durga Singh Vs Union of India CAT/ALLAHABAD decision
4. ATLT 1989(2) Page 613 C. Mahendran Vs Commissioner and Others
5. ATLT 1989(2) Page 402 & Jagadish Chand Vs Union of India
6. AIR 1991 (SC) 2010 KV Janakiraman Vs Union of India Supreme Court decision

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we have gone through the said decisions. None of the cited decisions are applicable to the facts of this case. The learned counsel for the applicant also relied on Railway Board's letter No.E(D&A) 71 RG 6-23 of 1.6.91 and 22.11.71. The instructions contained in the said letter deal with the punishment of with-holding increment whereas, the case on hand is regarding reduction to lower grade for a period of six months. Hence, we are unable to understand how the instructions in the above said letter are applicable to the facts of this case and how the applicant can seek promotion with retrospective effect wherein the applicant had been ^{from the post of Chief Clerk and} reverted to a lower cadre before his assumption of office ⁱⁿ the promotional grade ~~before his reversion as office superintendent.~~ We see no merits in this OA and this OA is liable to be dismissed and is accordingly dismissed leaving the parties to bear their own costs.

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

Dated: 24 November, 1992.

830/11/92
Dy.Registrar(J)

mvl/sd

Copy to:-

1. Chief Personnel Officer, South Central Railway, Railnilaya Secunderabad.
2. Divisional Railway Manager(Personnel) S.C.Railway,Vijayawa
3. Deputy Chief Mechanical Engineer, Wagon Workshop, Guntupal
4. One copy to Sri. G.V.Subbarao, advocate, CAT, Hyd.
5. One copy to Sri. D.Gopal Rao, SC for Railways, CAT, Hyd.
6. One spare copy.

Rsm/-

Pb of copy
30/11/92

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In the C.A.T, Hyderabad
at Hyderabad

Hon. Mr. T. Chandra Sekhara Reddy, J.M.

dated. 24/11/92

Judgement

in

O.A-222/91.

Dismissed.

No orders as to costs.

