

(32)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.741/91

DATE OF JUDGEMENT: 9/6 APRIL, 1992

BETWEEN

Sri M. Venkataswamy .. Applicant

A N D

1. The General Manager,
South Central Railway
Secunderabad.
2. Divisional Railway Manager(P)B.G
South Central Railway
Railnilayam, Secunderabad
3. Sr.Divisional Personnel Officer
B.G., South Central Railway
Railnilayam, Secunderabad
4. Divisional Mechanical Engineer(C&W)
B.G., South Central Railway
Railnilayam, Secunderabad .. Respondents

Sri Phani Raj for
Counsel for the Applicant : Sri V.Venkateswara Rao

Counsel for the Respondents:Sri V.Bhimanna,SC For Rlys

CORAM:

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

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41/9, (35)

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

This is an application filed under Section 19 of the Administrative Tribunals Act, to declare that the applicant is entitled to have the pay fixed at Rs.1440/- w.e.f. 1.8.1989 in the pay scale of Rs.1320-2040 with all consequential benefits such as arrears of pay and allowances and pass ~~such other~~ orders as may deem fit and proper in the circumstances of the case.

The fact giving ~~rise~~ to this OA in brief may be stated as follows:

1. The applicant was drawing a basic pay of Rs.1440/- in the year 1987 in the scale of pay of Rs.1320-2040/- as H.S. Gr.-I Fitter. At that time, Sr.Divisional Mechanical Engineer (C&W), .G.,S.C., as per his letter No.CM.226/C&W/staff/Misc, (A-1) dated 18.8.87 imposed the punishment of reduction to a lower grade on the applicant in the scale of Rs.1200-1800/- at ~~the~~ stage of Rs.1320/- with cumulative effect for a period of two years. The said punishment came in to effect from 1.8.1987 and the punishment period ended by 1.8.1989. Therefore the applicant was brought into his original scale w.e.f. 1320-2040 w.e.f. 1.8.89 after completion of ~~penalty for the period of two years~~ with cumulative effect by the 2nd respondent vide his proceedings No.SOC/160/C&W/89, dated 27.12.89. It is the case of the applicant that after the completion of the said two years of ~~penalty~~ the applicant is entitled to have fixed his pay ~~at~~ at Rs.1440/- in the grade of

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Rs1320-2040 w.e.f. 1.1.1989. A representation was made by the applicant to the concerned authorities for fixation of his pay accordingly, but as the said representation was not decided, the present application is filed by the applicant for the relief as already indicated above.

2. Counter is filed by the respondents opposing the OA.

3. In the counter filed by the respondents, it is maintained that on 1.4.1986, the basic pay of the applicant was Rs.1380/- and during December, 1986, the penalty of reduction to lower grade in the scale of Rs.1200-1800 at the stage of Rs.1320/- without cumulative effect for a period of two years was imposed on the applicant and the said ~~penalty~~ punishment came into effect on 2.1.1987. However, the Appellate Authority, while considering the appeal dated 22.6.1987, submitted by the applicant, enhanced the penalty by making it with cumulative effect vide Memorandum dated 10/13.8.1987, and thus, the modified punishment imposed by the Appellate Authority became effective on 13.8.1987.

4. It is the case of the ~~xxx~~ respondents that on completion of the punishment, his pay should have been restored to Rs.1410/- from 13.8.1989 in the normal course. It is contended by the respondents in the counter that the pay of the applicant was erroneously drawn at Rs.1440/- from 1.4.87 to 31.7.87 which resulted in overpayment and on noticing the mistake, the amount of overpayment was recovered in 4 instalments from September, 1990. It is

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contended that on completion of the penalty period, the applicant was brought into his original scale of Rs.1320-2040/- with effect from 1.8.1989 and his basic pay was fixed at Rs.1410/- which was his basic pay prior to his reduction of the pay to Rs.1320/- and that his basic pay rose to Rs.1440/- on 1.4.1990. Hence, it is maintained that the application of the applicant is liable to be dismissed.

5. In the Revised Pay scales as on 1.1.1986, the pay of the applicant had been fixed at Rs.1350/- in the scale of Rs.1320-2040/-, in the existing grade that is HSG Gr.I Fitter. The applicant earned an increment of Rs.30/- on 1.4.1986 and so, the basic pay was raised to Rs.1380/- from 1350 as on 1.4.1986. The applicant on completion of one year period earned ~~one~~ one more increment thereby his pay was raised from Rs.1380 to Rs.1410/- with effect from 1.4.1987. Admittedly, the applicant had undergone and penalty/in view of the penalty imposed on him, [there was] reduction of his pay to a lower grade in the scale of Rs.1200-1800 at the stage of Rs. 1320/- with cumulative effect for a period of two years. The said penalty admittedly came into effect from 1.8.1987 and ended by 1.8.1989. So, after the penalty period came to an end by 1.8.1989, by 2.8.89 the applicant became entitled to get his pay fixed as on 1.8.89 i.e. prior to the day, the said penalty commenced. So, as already pointed out by 1.4.1987, the pay of the applicant was Rs.1410/- and by 1.4.1988, the basic pay of the applicant continued to be Rs.1410/-. So, by 1.8.1989, the applicant was entitled only to a basic pay of Rs.1410/- as that was his basic pay which he was drawing prior to the period of

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commencement of penalty. So, the next increment that fell due to the applicant was on 1.4.1990 and by 1.4.1990, the ~~xxx~~ applicant's pay naturally rose to Rs.1440/- . So, in view of this position, we are unable to understand how the applicant is entitled to have his pay fixed at Rs.1440/- w.e.f 1.8.1989. Obviously, a mistake had been committed by the Department in fixing the pay of the applicant at Rs.1440/- and drawing his pay as Rs.1440/- from 1.4.1987 to 31.7.1987 that had resulted in excess payment. From the said mistake, the applicant, seems to be very eager to capitalise. The mistake had rightly been corrected by the respondents as could be seen from the recoveries effected from the applicant from November, 1990 onwards towards excess payment. It is not open to the applicant to take advantage of the mistake committed by the Department in ~~making~~ excess payment of his salary. Hence, as already pointed out, the pay of the applicant as on 1.8.1989 could only be Rs.1410/- and not as Rs.1440/- as claimed by the applicant.

6. The learned counsel appearing for the applicant . vehemently contended that without issuing a ~~showcause~~ notice to the applicant that the applicant's pay had been reduced to Rs.1410/- w.e.f. 1.8.1989 and this very much violated the principles of natural justice. When a Government servant complains that there is violation of the principles of natural justice, the Government servant must be able to establish his right and the breach of the said right in violation of the Principles of natural justice. As already pointed out, the applicant had no right at all after the penalty period was over to have his pay fixed at Rs.1440/-.

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As already pointed out by us, the mistake committed by the Department had been corrected in the matter of excess payment of salary to the Applicant. So, it is rather difficult to accept the contention of the learned counsel for the applicant that there is violation of principles of natural justice in this case. Hence, we see no merits in this OA and this OA is liable to be dismissed and is accordingly dismissed. In the circumstances of the case, we make no order as to costs.

T. C. —————

(T.CHANDRASEKHARA REDDY)
Member(Judl.)

Dated: 9 April, 1992

28/4/92
By. Registrar (J)

To

1. The General Manager, S.C.Rly, Secunderabad.
2. The Divisional Railway Manager(P) B.G. S.C.Railway, Railnilayam, Secunderabad.
3. The Sr.Divisional Personnel Officer, B.G.S.C.Railway, Railnilayam, Secunderabad.
4. The Divisional Mechanical Engineer (C&W) B.G.S.C.Rly, Railnilayam, Secunderabad.
5. One copy to Mr.V.Venkateswar Rao, Advocate, CAT.Hyd.
6. One copy to Mr.Bhimanna, V. SC for Rlys, CAT.Hyd.
7. One spare copy.

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TYPED BY

COMPARED BY

CHECKED BY *AS*

APPROVED BY

THE HON'BLE MR.

V.C.

AND

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

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY :
MEMBER (JUDL)

AND

THE HON'BLE MR. C.J. ROY : MEMBER (JUDL)

Dated: 9 - 4 - 1992.

~~ORDER~~ JUDGMENT

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

in
O.A. No. 741/91

T.A. No.

(W.P. No.)

Admitted and interim directions
issued

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for Default.

M.A. Ordered/Rejected.

No order as to costs

pvm.

