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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 1023/91.

Dt. of Decision : 17.10.94.

S.A. Rehman Sharif

.. Applicant.

Vs

1. Union of India rep. by
the General Manager,
SC Rly, Rail Nilayam,
Secunderabad.
2. Divl. Railway Manager,
SC Rly, Vijayawada Division,
Vijayawada.
3. Sr. Divisional Personnel Officer,
SC Rly, Vijayawada Division,
Vijayawada.

.. Respondents.

Counsel for the Applicant : Mr. G. Ramachandra Rao

Counsel for the Respondents : Mr. N.V. Ramana, SC for Rlys.

CORAM:

THE HON'BLE SHRI JUSTICE V.NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

O.A.No.1023/91.

Date:17.10.1994.

J U D G M E N T

[as per Hon'ble Sri Justice V.Neeladri Rao, Vice Chairman]

This OA was filed praying for a declaration that the applicant is deemed to have been promoted or fitted in the grade of Rs.455-700(RS) with effect from 1.8.1983 with proforma fixation from 1.8.1982 and in the grade of Rs.550-750(RS) from 21.5.1986 when the juniors to the applicant were promoted or fitted in the said grade with all consequential benefits including fixation of pay into the next higher grades and arrears of pay after setting aside the impugned proceedings No.B/P.535/VI/1/2/Vol.II dt. 26.11.1990/10.12.1990.

2. The facts which give rise to this OA are as under:-

The Ministry of Railways decided to restructure certain categories of Group 'C' & 'D' posts vide their letter No.PC/III/80/UPG/19 dated 29.7.1983. The following conditions are stipulated by the said letter for giving promotion to the grade of Rs.455-700(RS) against the restructured posts:-

- "(i) The staff who will be placed in the revised grades in terms of these orders will be eligible to draw pay in the higher grade from 1.8.83 with the benefit of proforma fixation with effect from 1.8.1982,
- (ii) The benefit of proforma fixation will be admissible only to those staff who are placed in the vacancies arising directly as a result of these restructuring orders.
- (iii) The modified selection procedure has been decided upon by the Ministry of Railways as one time exception by way of special dispensation in view of the number involved."

By the date of the above letter of Ministry of Railways, the applicant was working as Asst. Station Master in the pay scale

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of Rs.425-640(RS). In pursuance of the above letter dt. 29.7.1983 the case of the applicant was considered for promotion as Station Master in the scale of Rs.455-700(RS) to one of the restructured posts of Station Master and he was also empanelled.

3. The applicant was undergoing the punishment of withholding of an increment for a period of 33 months from 1.4.1983. While he was undergoing the said punishment, a charge-memo dt. 3.4.1984 was issued for imposition of major penalty and ultimately an order was passed withholding ~~an~~ increment of the applicant for a period of 33 months from 1.4.1987, the due date of the annual increment. The applicant was again issued with charge memo dt. 27.11.1985 for imposition of major penalty and ultimately by ~~an~~ order dt. 18.1.1988 minor penalty was imposed. The revised pay-scales had come into effect from 1.1.1986. Then the earlier scales of Rs.425-640 and Rs.455-700 were merged into a single scale of Rs.1400-2300(RSRP). As the latest charge memo dt. 27.11.1985 issued to the applicant ended in a minor penalty by order dt. 18.1.1988 by withholding two sets of privilege passes, the applicant was given promotion as Station Master in the scale of Rs.1600-2660(RSRP) with effect from 18.1.1988 on the basis of his empanelment as against the vacancy in the restructured post of S.M. by order dt. 23.2.1988 and Memo dt. 19.5.1988.

4. The contention for the applicant is that as he was not undergoing any penalty by 1.8.1982 the date from which the notional benefit of promotion in the restructured vacancy was given as per Ministry of Railways letter dt. 29.7.1983, he should be given notional promotion in the grade of Station Master in the scale of Rs.1660-2660

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with effect from 1.8.1982 and the monetary benefit had to be given with effect from 1.8.1983 and the penalty of withholding increments should be operated in the scale applicable to the promoted post of Station Master.

5. But the respondents are relying upon a Circular (Annexure R1) bearing No.P(R)227/VIII dt. 26.7.1985 to contend that as the monetary benefit was given with effect from 1.1.1983 the crucial date for consideration for the purpose of the above circular is 1.8.1983 but not 1.8.1982.

6. For appreciation of the respective contentions of the parties it will be convenient to read the following paragraphs of the above referred circular:-

"1. Doubts have been raised regarding implementation of restructuring orders in the case of staff who are involved in D&A cases i.e. whose conduct is either under investigation or DAR action has been initiated or where penalty has been imposed. In this office letter of even no. dt. 26.11.84 it has already been laid down that the guiding factor for reckoning the crucial date for consideration of D&A clearance should be the date of effect of restructuring viz. 1.1.1984. It has also been mentioned in this office letter of even no. dt. 2.5.1985 that the crucial date for the restructuring orders effective from 1.8.83 will be 1.8.83. Based on this principle, and the principles enunciated in paras 4.1 and 4.2 on pages 8 to 16 of the brochure of D&A rules 1968, the following clarifications are issued:-

2.(A) Minor penalty:

(i) Cases in which on the crucial date, the case is under investigation or it has been contemplated to impose a minor penalty or action has been initiated to impose a minor penalty or the minor penalty has been imposed but has not become effective:-

In all the above cases, the employees who are eligible to be considered for promotion under the restructuring scheme with the modified selection procedure should be subjected to the relevant selection procedure and declared as suitable or unsuitable for the promotion. All those who are considered suitable for promotion should be given promotion from the crucial date (1.1.84 or 1.8.83 as the case may be). If they had been imposed any minor penalty at a later date, the same should be given effect to in the grade in which they have been promoted, with suitable modification so as not to result in greater monetary loss.

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- (ii) The cases in which minor penalty has been imposed and has become effective on the crucial date i.e. the employee is actually undergoing minor penalty on the crucial date.

In the above cases also the employees who come up for consideration for promotion under the restructuring scheme should be subjected to the modified selection procedure, and, if considered suitable, should be empanelled.

However, the actual promotion to them should be given from the date the minor penalty imposed expires. In case the Divisions have not subjected them to the modified selection procedure, they should be subjected to the modified selection procedure now for promoting them for the vacancies that have occurred after the crucial date since they could not have been promoted against the vacancies which occurred on the crucial date. However, it should be borne in mind that in these cases they will not lose any seniority.

(B) Major Penalty:

Cases in which on the crucial date investigations are going on or it has been contemplated to impose a major penalty or a major penalty charge-sheet has been issued:-

In these cases also the employees who become eligible for consideration for promotion under the restructuring scheme should be subjected to the modified selection procedure. In case they are considered suitable for promotion and since the actual selection is being finalised at a much later date under the restructuring orders, their names should be included in the panel provided they have not been imposed any major penalty on the basis of D&A proceedings or have been imposed only a minor penalty. However, in cases where the minor penalty has been imposed and has become effective, the same procedure as in para (2)(A)(ii) above should be followed.

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7. In para-1 of the above circular, letter dt. 26.11.84 of the Ministry of Railways is referred. But in the case of restructuring as per the said letter the actual benefit of promotion was given with effect from 1.1.1984. It is not a case where notional promotion was given from a date earlier to 1.1.1984 and the monetary benefit was being given from 1.1.1984. Hence, the only date that could be referred to as a crucial date for fixing the pay in the promotion post was 1.1.1984.

8. It is evident from Railway Ministry letter dt. 29.7.1983 that the strength as on 1.8.1983 had to be taken as basis for fixing the vacancies in regard to each cadre on the basis of restructured posts and probably for that reason the monetary benefit was being allowed from 1.8.1983. But, it makes it clear that the benefit of proforma fixation had to be given with effect from 1.8.1982. It follows that an employee who was promoted in the vacancy arising out of restructuring had to get his pay fixed in the promotion post as on 1.8.1982. It means that actual benefit of promotion was given with effect from 1.8.1982 even though the arrears were not intended to be given for the period prior to 1.8.1983. It means that by 1.8.1983 the concerned employee gets one increment in the promotion post. Thus, in the circumstances, it is just and proper to treat 1.8.1982, the date on which the pay of the concerned employee had to be fixed in the promotion post as the crucial date, but not later date by which he had got already one increment.

9. So, in the circumstances, we feel that the crucial date for consideration of Circular dt. 26.7.1985 (Annexure-R1) should be taken as 1.8.1982 but not as 1.8.1983.

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10. It is evident from the facts narrated, that the applicant was not undergoing any minor penalty by 1.8.1982, the crucial date. Para-2(A), sub-para(i) of Annexure R-1 dt. 26.7.1985, ^{lays down that} an employee who was promoted in the vacancy arising out of restructuring had to be given the promotion if by the crucial date no minor penalty was ^{in force} imposed or no major penalty proceedings ^{were} were pending. The minor penalty if any given later had to be given effect to in the grade in which the employee had been promoted, with suitable modification so as not to result in great monetary loss.

11. As admittedly there was no major penalty proceedings ~~were~~ pending against the applicant by 1.8.1982 and even minor penalty was not effective by 1.8.1982. the crucial date, we have to accept the contention for the applicant that he should be given the notional promotion in the post of Station Master in the scale of Rs.455-700 (RS) with effect from 1.8.1982.

12. The learned counsel for the applicant submitted that the question as to whether the respondents intended to give the monetary benefit from 26.9.1986 may be left open and hence ^{we have to make it} ~~it may be made~~ clear that this order does not debar the respondents from giving such monetary benefit from 26.9.1986.

13. As only minor penalties were imposed after enquiries in regard to various charge memos issued to the applicant, he was given due seniority on the basis of his original empanelment in the post of Station Master, and on the basis of the said seniority the applicant was promoted as Station Superintendent in the scale of Rs.2000-3200(RSR) vide proceedings No.B/P.535/VI/I/1/Vol.2 dt. 24.3.1990.

14. In the result, the respondents are directed to fix the pay of the applicant in the post of Station Master in the scale of Rs.455-700(RS) as on 1.8.1982. The monetary benefits

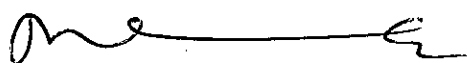
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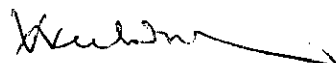
have to be given to the applicant from 1.11.1990 as this
(This Bench is awarding monetary benefit from only one year prior to filing of C.A. in such cases)
OA was filed on 1.11.1991. We will make it clear that this

order does not debar from considering about giving the
monetary benefits with effect from 26.9.1986, as it was
stated in para-8 of the counter affidavit that they were
considering about giving proforma fixation benefit from
26.9.1986 as the penalties of withholding of increments were
over by then.

15. The OA is ordered accordingly. No costs./




(R. Rangarajan)
Member (Admn.)



(V. Neeladri Rao)
Vice Chairman

Dated 17th October, 1994.
Dictated in the open court.

Grh.



Dy. Registrar (Judl).

Copy to:-

1. The General Manager, South Central Railways,
Rail Nilayam, Secunderabad.
2. Divisional Railway Manager, South Central
Railway, Vijayawada Division, Vijayawada.
3. Senior Divisional Personnel Officer, South
Central Railways, Vijayawada Division,
Vijayawada.
4. One copy to Mr. G. Ramachandra Rao, Advocate, CAT, Hyd.
5. One copy to Mr. N. V. Ramana, S.C. for Railways, CAT, Hyd.
5. One copy to Library, CAT, Hyderabad.
7. One spare.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE V.NEELADRI RAO
VICE-CHAIRMAN

AND

THE HON'BLE MR.R.RANGARAJAN : M(ADM)

DATED: 17-10-1994

ORDER/JUDGEMTN:

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

in

O.A.No. 1023/91

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.

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