

28

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD

CA No.817/90₂

Dt.of order:21.8.1995

Between

M.L.Sharma

.. Applicant

and

1. Chief Mining Adviser (Loco Coal)
Railway Board, Dhanbad
2. Deputy Chief Mining Adviser
Railway Board, Central Railway
Ajni, Nagpur
3. Senior Inspecting Officer,
Rly Board, SCRly, Bellampalli

.. Respondents

Counsel for the applicant :: Mr G.V.Subba Rao

Counsel for the respondents :: Mr NR Devraj, Sr.CGSC

CORAM:

HON'BLE SHRI JUSTICE V. NEELADRI RAO, VICE-CHAIRMAN

HON'BLE SHRI R. RANGARAJAN, MEMBER (ADMN)

...2

-2-

ORDER

As per Hon'ble Shri Justice V.Neeladri Rao, Vice-Chairman

Heard learned counsel for both the parties.

2. This OA was filed praying for quashing the impugned proceedings of R1 dated 7.10.91 and 4.11.91, by declaring the same as illegal and arbitrary and for a consequential direction to the respondents to promote him to the post of Senior Sampling Supervisor and Junior Inspecting Officer on the date on which his Juniors Sri B.N.Singh and Sri S.Krishna were promoted and for consequential benefits of fixation of pay and arrears of pay and allowances.

3. This is an unfortunate case of the applicant who was suspended in 1964, after he was appointed as Junior Sampling Supervisor in 1962, and ~~he~~ was removed from service in the year 1975 after ~~an~~ inquiry. The same was challenged in WP No.1550/75 on the file of the Delhi High Court which after being transferred to the Principal Bench of the Central Administrative Tribunal, was registered as *And the same was allowed.* TA 226/85. Thereafter, the applicant was reinstated with backwages in the year 1987.

4. Even though the TA was ordered with all consequential benefits including the consideration for his promotion, the applicant was not considered for promotion to the ^{re-structured} post of Supervisor while his juniors were promoted with effect from 1.1.1984. Thereupon the applicant filed OA 80/91 praying for ^a direction to the respondents to reverse remarks in the ACRs for 1987-88 and re-structured his case for promotion to the ^{re-structured} post of Supervisor. The said OA was disposed by

an order dated 16.9.94 and para 8 therein is relevant and it reads as under:

"8. In view of what is stated above, we allow this OA. to the limited extent of directing the respondents to consider the case of the applicant, if it was not already done at the relevant time, for his promotion to the upgraded post of Senior Sampling Supervisor out of the cadre restructuring scheme that came in to effect from 1.1.1984. This shall be done in accordance with the ^{extant} instructions if his junior was so considered, and if the applicant is found suitable, he shall be given the benefit of the same on a notional basis. Consequential revision of his pension taking into consideration the notionally revised pay and allowances, shall be carried out and the applicant will be paid the actual monetary benefits with effect from the date of his retirement. Respondents shall complete the aforesaid exercise including payment of arrears, if any, within four months from the date of receipt of this order."

5. As the respondents had already complied with the directions of considering the case of the applicant for promotion to the post of Senior Sampling Supervisor with effect from 1.1.1984 with consequential benefits, there is no need again to give a similar direction to the respondents in regard to the same.

6. But, during the course of arguments in this OA, it was submitted for the respondents that as the applicant was not found suitable for promotion to the post of Senior Sampling Supervisor, no order was passed promoting him to the said post. The reasons given for not finding the applicant

suitable for promotion are said to be that

- i) the ACRs of the applicant for 1962-64 are below average;
- ii) even the ACRs for the years 1987-89 are below average; and,
- iii) the applicant failed in the examination conducted in 1991 for consideration for promotion to the post of senior sampling supervisor.

7. The ACRs of only three years prior to 1.1.1984 have to be ^{looked into} ~~considered~~ for consideration for promotion ^{re-structured} ~~to~~ of the applicant to the post, of Senior Sampling Supervisor. Hence, the ACRs of 1962-64 and 1987-89 are not relevant. ~~If~~ ^{the} ~~the~~ failure in the examination that was conducted in 1991 should not be taken into consideration, ^{but} the candidates should not be directed to appear for examination for consideration for promotion to the restructured post with effect from 1.1.1984. Hence, the materials that were taken into consideration for finding the applicant not suitable for promotion are irrelevant under extant rules.

8. As already observed, the applicant was not in service from 1964 till he was re-instated in the year 1987. As the order of removing him from service was set aside, The applicant cannot be faulted when he could not attend to duties between the period 1964-1987, and he should ^{not} be prejudiced if ACRs could not be written for the period ^{of} three years prior to 1.1.1984, when the non-writing of ACRs is on the ground that the applicant was not in service. The applicant has already retired from service. // Hence, in the circumstances of the case, the only direction that has to be given is that the applicant has to be promoted to the post of Senior Sampling Supervisor with effect from 1.1.1984 as there is no possibility of judging now whether he could be suitable for the said post as on that date or not.

To

1. The Chief Mining Adviser (Loco Coal)
Railway Board, Dhanbad.
2. The Deputy Chief Mining Adviser,
Railway Board, Central Railway, Ajni,
Nagpur.
3. The Senior Inspecting Officer,
Railway Board, S.C.Rly, Bellampalli.
4. One copy to Mr.G.V.Subba Rao, Advocate, CAT.Hyd.
5. One copy to Mr.N.R.Devraj, SC for Rlys, CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

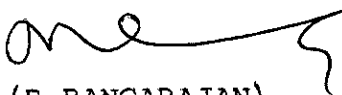
pvm.

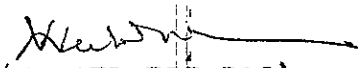
9. In view of the orders in OA 80/91, the applicant has to be given notional promotion to the post of Senior Sampling Supervisor as on 1.1.1984 and the monetary benefit\$ has to be given from the date of his retirement.

10. The promotion to the post of Junior Inspecting Officer is by way of selection and there is no possibility of subjecting the applicant to the selection for the said post, ^{Hence} the OA in regard to the relief of the applicant for consideration for promotion to the post of Junior Inspecting Officer has to be dismissed.

11. In the result, the respondents are directed to promote the applicant to the post of Senior Sampling Supervisor with effect from 1.1.1984 and his pay in the said promotional post as on that date has to be notionally fixed. On that basis the pension and other ~~retiral~~ benefits of the applicant ^{have} ~~had~~ to be refixed. The monetary benefits that accrue to the applicant (as a result of re-fixation of his pay) ^{have} towards pension and retiral benefits ~~has~~ to be paid to the applicant by 29.12.1995, failing which, the same will ~~be exitted~~ carry interest at the rate of 12% per annum.

12. OA ~~is~~ ordered accordingly. No costs.//


(R. RANGARAJAN)
Member (Admn)

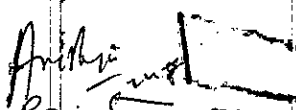

(V. NEELADRI RAO)
Vice-Chairman

Dated: 21st August, 1995

Dictated in the open court

mvl

Deputy


Registrar (S) CC

THPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

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

A N D

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

DATED 21/8 1995.

ORDER/JUDGMENT:

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

OA.No. in 817 h2
TA.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.

No Spare Copy

