

O.A._1145_1992

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CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

O.A.NO. 1145/91

Date of Order: 20-9-95.

Between:

G.B.Krupanandam.

.. Applicant

and

1. Director of Postal Services,
Vijayawada Region,
Vijayawada.
2. Senior Superintendent of Post Offices,
Nellore Division, Nellore.

Respondents.

For the Applicant :- Mr. S.Ramakrishna Rao, Advocate

For the Respondents: Mr. N.V.Raghava Reddy,
xx./Add.CGSC

CORAM:

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

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

J U D G M E N T

[as per Hon'ble Sri R.Rangarajan, Member(Administrative)]

Heard Sri S.RamakrishnaRao, learned counsel for the applicant and Sri N.V.Raghava Reddy, learned Standing Counsel for the respondents.

2. The applicant, who is an LSG/Postal Assistant was on leave on medical grounds from 13.2.1991 to 18.4.1991. He again extended EXOL/MC for 30 days from 19.4.1991. The medical certificate recommending 30 days leave to the applicant was issued by Dr.V.L.Narasimham, Kavali stating that he was suffering from hypertension. R-2 vide letter dt. 30.4.1991 directed the applicant to the Medical Supdt., DSR Hospital (Govt.) Nellore for second medical opinion. The applicant appeared before the medical Supdt. on 6.5.1991 and 7.5.1991 and the Medical Supdt. in his letter No.L/Disc./467/GL/91 dt. 9.5.1991 intimated that the applicant was having uncomplicated hypertension and however fit to rejoin duty. The applicant once again submitted another private M.C. in which it was stated that the applicant was suffering from hypertension and required 15 days rest. The applicant was addressed by R-2 to intimate the reason for his failure to rejoin duty when the medical authorities found him fit on 7.5.91 vide letters dt. 18.5.91 and 6.6.91. The explanation given by him was that he was suffering from B.P. when he approached his private medical practitioner on 18.5.91 and that granting him EXOL was not causing any loss to the department. This explanation was not found satisfactory. Hence, R-2 issued the charge-sheet under rule 16 of CCS(Conduct) Rules, 1965 for violation of Rule 63 of P&T Manual Vol.III and failure to maintain

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devotion to duty in terms of Rule 3(1)(ii) of CCS (Conduct) Rules, 1964 vide Memo No. BO.BI/31/V dt. 3.7.1991 and awarded the punishment of withholding his one increment for a period of 6 months without cumulative effect vide proceedings dt. 30.7.1991. He appealed against the same to R-1 and this appeal was rejected.

3. The cases of officials who have completed 26 years of service have been taken up for promotion to HSG.II under BCR Scheme as per the orders of the Directorate. The case of the applicant was also considered by the DPC. Vide Office Memo No. BI/II/IV/ dt. 27.1.1992 (Annex. IX) some of his juniors were promoted to next higher grade under biennial cadre review in the scale of Rs.1600-2660 with effect from 1.10.1991, superceding him. His representation against the above to R-2 on 24.2.1992 elicited no response.

4. Aggrieved by the above this OA is filed to quash the punishment order dt. 30.7.1991 imposed by R-2 and to direct the respondent to consider his case for promotion to the second time-bound promotion to the cadre of HSG.II with retrospective effect from 1.10.1991 i.e. from the date his juniors were promoted with all consequential benefits notwithstanding the currency of stoppage of increment for 6 months without cumulative effect.


5. The applicant was promoted to the cadre of HSG II under the BCR scheme with effect from 1.7.1992 vide Memo No. ST/5-2/BCR-II/7-92 dt. 4/5.11.92 by CPMG, Hyderabad, after the expiry of the punishment imposed on him and after reconsidering his case.

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6. The main contention of the applicant is that he is a chronic B.P. patient which is known to everybody. Hence, the private medical certificate issued by his private doctor has to be treated as authentic and his leave as asked for from 7.5.1991 to 31.5.91 should have been granted. There is no need to refer him for 2nd medical opinion. He attended the Govt. Hospital, Nellore for check-up as directed by R-2 on 6.5.91 and 7.5.91. The Medical Supdt., Govt. Hospital Nellore did not inform him in regard to his joining duty after the medical examination. Only when he received the medical report on 19.5.1991, he came to know that he was certified fit for joining duty by Medical Supdt., Govt. Hospital, Nellore and in the meantime on 18.5.1991, when he approached his private medical practitioner, he was given a medical certificate to take complete rest due to his hypertension upon & 31.5.1991. In view of this, he cannot be taken up for unauthorised absence.

7. Though he is a B.P. patient, he cannot get leave automatically without proper sanction from the competent official who is empowered to grant him leave. When R-2 referred him to the Govt. Hospital for second medical check-up, the applicant has to act according to the recommendations of the Doctor attached to the Govt. Hospital. R-2 has got full authority to send the applicant for a second medical opinion as per the leave rules and the applicant cannot take any exception when he was referred to the Govt. hospital for second medical check-up. In case, the applicant was not informed of the result of the medical examination he should have then and there

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found out the result and taken suitable further steps as per the recommendation of the Doctor attached to the Government Hospital. Even when he came to know that he was certified fit to join duty by the Medical Supdt., Govt. Hospital, Nellore he chose to ignore the advice and remained on unauthorised leave stating that he was put on sick-list by his Private medical practitioner. He could have atleast approached R-2 when he was informed that he is fit to join duty and explained his case for granting him leave, which course of action he did not resort to. Further, he also replied in the explanation for his charge-memo that granting him EXOL did not cause any loss to the department. This callous attitude but cannot/be ^{an} only act of indiscipline on his part. The above attitude of the applicant also means that he is not interested to join duty but was interest~~d~~ only to continue to be on leave without proper authority in disregard of rules of discipline. Hence, his contention that he cannot be taken up for unauthorised absence for the period from 7.5.91 to 31.5.92 is not tenable.

8. The applicant alleges that as he refused to pay some money demanded by the Govt. Hospital staff of Nellore, Medical Supdt., Nellore recommended for his joining duty inspite of the fact that he is suffering from B.P. This allegation is not substantiated and the Medical Supdt., Nellore is also not impledded as a party in this OA. Hence, this unsubstantiated allegation cannot be taken cognizance and hence needs no consideration.

9. The second contention is that as he had completed 26 years of service, he is eligible for promotion inspite

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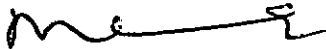
of the punishment to HSG.II in the scale of Rs.1600-2660 with effect from 1.10.1991 as this promotion is to be effected on seniority-cum-fitness basis and not promoting him due to his undergoing the punishment of stoppage of increment would result in double jeopardy.

10. The applicant imposed the punishment of stoppage of increment for 6 months with effect from 30.7.1991. The abovementioned punishment was upheld by R-1, the appellate authority. In the meanwhile, his juniors were promoted to the cadre of HSG.II under BCR scheme with effect from 1.10.1991 when that scheme was introduced from that date. The next review is to be done thereafter every year on 1st of January and 1st of July of that year. The punishment of stoppage of increment for 6 months imposed on him expired on 30.1.1992. Thus on 1.1.1991 when his juniors were promoted under the BCR scheme he was undergoing punishment and hence he was not eligible for consideration for promotion. Similarly on 1.1.1992 also he was still undergoing punishment and hence there is nothing wrong if his name is not considered for promotion. As he is undergoing punishment the question of keeping his name in the sealed cover also does not arise.

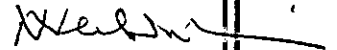
11. However, he was considered by CPMG, Hyderabad, for promotion with effect from 1.7.1992 and he was promoted with effect from that date in terms of Memo No.ST/5-2/BCR-II/7-92 dt. 4/5.11.1992. This fact that he was promoted to HSG.II under BCR scheme was not disputed by the applicant's counsel. The contention that not promoting him to the higher grade with effect from 1.10.1991 due to his undergoing punishment during that period would mean double punishment is not tenable

as held by Supreme Court reported in 1995(2) SCALE 310 -
State of Tamil Nadu Vs. Thiru K.S.Murugesan and Ors. 1

12. In the result, we find no merit in this O.A.
and hence, it is liable only to be dismissed. Accord-
ingly, it is dismissed. No costs. //



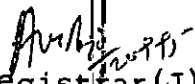
(R. Rangarajan)
Member (Admn.)



(V. Neeladri Rao)
Vice-Chairman

Dated ^{6th} 20 Sep., 1995.

Grh.


Deputy Registrar (J) CC

To

1. The Director of Postal Services,
Vijayawada Region, Vijayawada.
2. The Senior Superintendent of Post Offices,
Nellore Division, Nellore.
3. One copy to Mr. S. Ramakrishna Rao, Advocate, CAT. Hyd.
4. One copy to Mr. N. V. Raghava Reddy, Addl. CGSC. CAT. Hyd.
5. One copy to Library, CAT. Hyd.
6. One spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

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

and

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

DATED:- 20-9-1995.

ORDER/JUDGMENT.

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

in

O.A.No.

1145/92

P.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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No Spare Copy

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NSY