

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.294/92.

Date of Judgement 31.3.1993

M.Jaya Kumar

.. Applicant

Vs.

1. The Secretary,
Dept. of Posts,
Min. of Communications,
Dak Bhavan, New Delhi.
2. The Director-General,
Dept. of Posts,
Min. of Communications,
Dak Bhavan, New Delhi.
3. The Chief Postmaster-General,
Andhra Pradesh Circle,
Hyderabad. .. Respondents

Counsel for the Applicant :: Shri S.Rama Krishna Rao

Counsel for the Respondents:: Shri N.V.Ramana, Addl. CGSC

CORAM:

Hon'ble Shri Justice V.Neeladri Rao : Vice-Chairman

Hon'ble Shri R.Balasubramanian : Member(A)

X Judgement as per Hon'ble Shri Justice V.Neeladri Rao,
Vice-Chairman X

The applicant is now working as Senior Postmaster, Head Post Office, Secunderabad. The applicant while working as Asst. Supdt. of Post Offices, Guntur was approved for promotion to P.S.S. Group-B cadre vide Memo No.9-18/87-SPG dt. 9.5.88 of the 2nd respondent. After the applicant had undergone the required training, he was posted as Supdt. of Post Offices, Ladakh Division, but the applicant declined the same. Subsequently, pursuant to the orders of the 2nd respondent in Memo No.9-18/87-SPG dt. 15.12.88, the Postmaster-General, Gujarat Circle, Ahmedabad posted the applicant as Supdt. of Post Offices BK Division, Palampur as per his memo dt. 6.2.89. Before the applicant could be relieved, the Sr. Supdt. of Post Offices, Prakasam Division initiated minor penalty proceedings on 18.2.89

As such, the applicant was not relieved. Then, the latter filed O.A.No.924/89 praying for a direction to the respondents therein to relieve him so as to enable him to join at Palampur in pursuance of the orders issued in memo dt. 6.2.89. The said O.A. was disposed of by an order dt. 7.2.90 and the relevant portion therein is as under:

"Accordingly the respondents are directed to implement the orders issued in Director-General, New Delhi's letter dt. 15.12.88 allotting the applicant to Gujarat Circle and the order posting him as Supdt. of Post Offices, RK Division, Palampur, in Gujarat Circle, vide Memo dt. 6.2.89. It is made clear that this order is not a bar to the respondents from continuing the disciplinary proceedings or to impose the penalty after the conclusion of the disciplinary proceedings on the applicant in the promoted post."

When in view of the said judgement the applicant was not relieved, the latter filed C.P.No.37/90 and it was ordered on 6.3.91 directing the respondents to implement the orders in O.A.No.924/89 within one month therefrom by observing that the mere admission of the S.L.P. is not a ground for stayal of implementation of the orders. In pursuance of the same the proceedings dt. 22.4.91 of the Chief Postmaster-General, A.P.Circle, Hyderabad were issued. It is stated that the applicant joined the present post on 1.5.91.

2. This O.A. was filed praying for a direction to the respondents to pay the arrears from 6.2.89 the date on which notional promotion was given, till 30.4.91. By way of amended prayer the applicant has challenged para 5 of the proceedings dt. 22.4.91 which is as follows:

"As per the said judgement of CAT, the punishment of stoppage of increment awarded to the official in Memo No.AC/LTC/MJR dt. 27.3.89 of the SSPOs, Prakasam Dn. will be operated in the promoted post."

3. The learned counsel for the respondents has drawn our attention to the stand taken by them as per para 5 of the counter which reads as follows:

"It is further submitted that the applicant did not actually work in the promoted post from 6.2.89 to 30.4.91 he cannot be granted arrears of pay. As per Rule F.R.17(1) subject to any exception specifically made in the rules and to the provisions of Sub-rule(2), an official shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of the post. However, as per the instructions regarding sealed cover cases(para 3) of O.M.No.22011/2/86-Estt(^A) dt. 12.1.88 forwarded vide No.25-19/88-SPG dt. 4.5.88, the Govt. servants, whose cases, after exoneration may be promoted notionally but are not allowed any arrears of pay for the period preceeding the date of actual promotion. In the present case, the applicant got promotion as a result of the judgement of this Hon'ble Tribunal and not because the applicant was exonerated in the disciplinary case. So the applicant is not entitled to any arrears of pay. The Hon'ble Tribunal's judgement dt. 7.2.90 was implemented in full keeping in view his entitlement. The decided cases cited in the application are not applicable to the facts of this case. Moreover, an S.L.P. filed by the Department is still pending as stated above. The O.A. is also barred by resjudicata as the Hon'ble Tribunal had already decided the issue."

It is seen from the operative portion of the order in O.A.No.924/89 that the applicant should be deemed to be in the promotional post from 6.2.89. Even the respondents understood the same to that effect and accordingly in para 3 of the proceedings dt. 22.4.91 it is stated that with effect from 6.2.89, his pay in the scale of pay of Rs.2000-3500 will be fixed. Rule F.R.17(1) states that subject to any exception specifically made in the rules and to the provisions of Sub-rule(2), an official shall begin to draw the pay and

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allowances attached to the post with effect from the date when he assumes the duties of the post. It is clear from the judgement in O.A.No.924/89 that the applicant could not join the promotional post as he was not relieved. It was of course under the mistaken impression that as disciplinary proceedings were initiated before the applicant was to be relieved, the concerned authority felt that the order of promotion that was already given had to be postponed. That contention was evidently ~~indicated~~ ^{neglected} in O.A.No.924/89.

4. The learned counsel for the respondents had also relied upon the O.M.No.22011/2/86-Estt(A) dt. 12.1.88 of the Ministry of Personnel, Public Grievances & Pensions, Dept. of Personnel & Training. That memo is applicable only in cases of consideration of promotion during pendency of the disciplinary proceedings but in this case the applicant was promoted and he had also undergone training long before initiation of the disciplinary proceedings. It is ~~now~~ ^{not} the case of the respondents that disciplinary proceedings were contemplated by the time the applicant's case was taken up for promotion.

5. The applicant could not join in the promotional post somehow as he was not relieved. There were no laches on the part of the applicant when he could not join the promotional post till 1.5.91. Hence, it is just and proper to direct the respondents to pay the arrears from 6.2.89 till 30.4.91.

6. The concerned authority directed vide memo dt. 22.4.91 that the punishment of stoppage of increment awarded to the applicant in memo dt. 27.3.89 will be operated in the promotional post. The said direction is given in pursuance of the judgement dt. 9.4.89. That portion of the judgement had become final, as the applicant had not preferred any appeal against the same. It is only the respondents who preferred an S.L.P. against that portion of the order ^{which is in favour of applicant} in O.A.No.924/89. It is stated that the said S.L.P. is

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suspending
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still pending and no interim order is passed to sustain the portion of the order which is against him. Hence, para 5 in memo dt. 22.4.91 viz: the punishment of stoppage of increment awarded to the applicant in memo dt. 27.3.89 which the Bench directed to be operated in the promotional. ~~to be held as illegal~~ post cannot be relaxed. On the other hand, it is in conformity with the judgement in O.A.No.924/89. The O.A. ~~in regard to relief of arrears~~ is allowed and is dismissed with regard to the prayer relating to para 5 in memo dt. 22.4.91. The time for payment of the arrears as per this order is three months from the date of this order.

VR
(V. Neeladri Rao)
Vice-Chairman.

R. Balasubramanian
(R. Balasubramanian)
Member (A).

(Dictated in Open Court).

Dated: 31st March
April, 1993.

DR
Deputy Registrar (J)

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To

1. The Secretary, Dept. of Posts,
Min. of Communications, Dak Bhavan, New Delhi.
2. The Director-General, Dept. of Posts,
Min. of Communications, Dak Bhavan, New Delhi.
3. The Chief Postmaster General, A.P. Circle, Hyderabad.
4. One copy to Mr. S. Ramakrishna Rao, Advocate, CAT.Hyd.
5. One copy to Mr. N. V. Ramana, Addl. CGSC. CAT.Hyd.
6. One spare copy.
7. One copy to librarian, C.P.T. Hyderabad
p.v.m.

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2/4/93*

TYPED BY (5) COMPARED BY
CHECKED BY APPROVED BY

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.BALASUBRAMANIAN :
MEMBER(ADMN)

AND

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

DATED: 31 - 3 - 1993

ORDER/JUDGMENT

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

in

O.A.No. 294/92

T.A.No. (W.P.No)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions

Dismissed as withdrawn.

Dismissed

Dismissed for default.

Ordered/Rejected.

No order as to costs.

pvm

