

(29)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

O.A. No. 1389 of 1993

Between:

S.R. Naidu .. Applicant

A N D

1. Area Superintendent
~~South~~ Central Railway
PUNE
and 2 Others .. Respondents

REJOINDER TO THE COUNTER FILED BY THE RESPONDENTS

I, S.R.Naidu, S/o C.R.V.Raju, Aged 42 years,
Working as Senior Clerk, in the Office of the Chief Claims
Officer, South Central Railway, Secunderabad, do hereby
solemnly affirm and state as under:-

1. I am the applicant in OA No. 1389/93 and well
acquainted with the facts of the case.

2. It is submitted that the Deputy Chief Personnel
Officer, Secunderabad filed the Counter in the above O.A.
whereas the Area Superintendent, Central Railway, Pune
who is the concerned Officer to state the facts has not
filed ~~the~~ ^{Counter against} the various contentions in my OA. The Counter
filed by Dy.Chief Personnel Officer is very vague and not
specific to the contentions in my OA. He has stated in
para No.3, 4 of the Counter that there are no comments as they
are matter of the record. The averments made therein are
to be treated as admitted in respect of the facts that are
mentioned in OA.

Contd...2

: 2 :

3. It is respectfully submitted that I was promoted as a Senior Clark on regular basis after having been declared to ~~XXXXXX~~ to have passed in the suitability test conducted on 14.3.1987 and 23.5.1987 vide Headquarters Personnel Branch's Letter No. HPB/629/R/C/ST dated 10.7.1987. In the said letter which is annexed at material papers 11 to 13 to the OA wherein my name is shown at Sl.No. 17.

4. In the said letter it is clearly mentioned that the promotion is to take immediate effect and it has to be understood that I have been promoted w.e.f. 10.7.1987 itself and I am entitled to the pay of Senior Clark in grade Rs. 1200 - 2040/- along with several of the junior clarks who were promoted as Senior Clarks w.e.f. that ~~the~~ date.

5. It is also mentioned that I was transferred to CCO's Office, Bombay(VT) as Senior Clark in grade 1200-2040/-

6. The Area Superintendent vide his letter dated 10.3.1988 addressed to the CCO, Bombay requested to transfer one post of Senior Clark to Pune, since the Head Clark retired from Service and also requested that I may be retained at Pune as Senior Clark as he found that my work was considerably improved etc.

7. It is also further submitted that, ^{Asia Gupta in his} in letter No. AS/PA dated _____ March, 1990 addressed CCO, Bombay ^{that} that I was promoted as Senior Clark on 10.7.1987 ^{and posted to} in CCO's Office, Pune ^{1 exigencies} " however Shri Naidu was not relieved due to ~~exigencies~~ of service on the plea that he will be relieved only when his reliever reports. However, the CPO's Office Order promoting Shri Naidu was clear that shri Naidu should be relieved to CCO office to effect his promotion as Senior Clark. " It is also mentioned therein that Shri Naidu was promoted as Senior Clark vide order dated 10.7.1987 but was not relieved to effect the promotion. Therefore it is to be decided ^{whether the employee} at Pune ~~transferring~~ ^{is to be promoted at Pune transferring Senior Clarks from Pune}

: 3 :

The C/o Bombay issued a letter on 29.8.90 transferring the post to Pune. ~~the Senior Clarks posts to Pune.~~

8. It is respectfully submitted that the Dy.CPO has deliberately suppressed the fact and made averments which are contrary to statutory rules and against well laid principles of law.

9. I was chargesheeted for alleaged unauthorised absence ~~and~~ on 29.10.1987 and penalty of withholding my annual increment w.e.f. 1.8.1988 for two years was arbitrarily imposed vide Area Superintendent's letter dated 29.6.1988. It is clear that as on the date of my promotion on 10.7.1987 no disciplinary proceedings were initiated as such. The subsequent issue of charge-sheet and the penalty imposed on me have no relevance to the facts at issue. The order promoting me as Senior Clark dated 10.7.1987 with immediate effect has no connection with the subsequent events that followed. My juniors as well as seniors who were promoted on the said date ~~and~~ are drawing more pay than myself. I ought to have been promoted to the grade of Senior Clark w.e.f. 10.7.1987. The area Superintendent has categorically admitted that I could not be relieved in the exigencies of service. Such being the position I can not be penalised and discriminated in the matter of promotion which clearly attracts the provisions of articles 14 and 16 of the Constitution. In this connection it is pertinent to point out ^{that} several of my juniors working on the Central Railway were given the pay of Senior Clark from 10.7.1987 itself and they have also been promoted to the grade of Head Clarks at Bombay. Even after restoration to my original grade in Pay I am not being paid the salary on a par with my immediate junior who was drawing higher pay than myself as on the date of request transfer ^{to} South Central Railway.

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10 In paras 8. It is admitted that I was promoted

on 10.12.1987 but could not be relieved for want of reliever.

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The Area Superintendent in his letter admitted that the

Head Clerk at Pune retired and he wanted the post to be trans-

ferred to him. The applicant was utilized in place of the

Between:

Head Clerk and as such he is deemed to have been xxxxx promoted

S.R.Naidu

Applicant

to the post of Senior Clerk. The Government made therein is

absolutely incorrect. The Administration has failed to implement

the order in my case with a malafide intention and whereas in the

1. Area Superintendent

Central Railway

Pune and 2 Others

Respondents

have admitted that I could not be relieved in the exercise of

service and on that account I should not be penalised. It is

an established principle of law that the disciplinary proceedings

commenced with the issued of the Charge sheet and not earlier.

The punishment of withholding of increment was come into effect

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BY THE RESPONDENTS

from a later date than the date of promotion.

The denial of promotion is therefore, illegal, arbitrary and

unconstitutional judged by the rules in force. Even according to

the Railway Board's instructions when an employee is due for

promotion and the withholding of increment is operative as from

a future date he should be promoted to the higher grade in his

turn and the withholding of increment effected in higher grade

taking into consideration the effect of monetary loss. This was

Filed On:

also not done with a malafide intention. It is therefore prayed

that this Hon'ble Tribunal may please to allow the OA as prayed

for with all consequential benefits.

Filed By:

M/s G.V. Subba Rao &

N. Ethirajulu

Advocates

affirmed on this

1st day of August, 1994

at Hyderabad,

COUNSEL FOR THE APPLICANT

Before me,

10 In para No.8 it is admitted that I was promoted on 10.7.1987 but could not be relieved for want of reliever.

The Area Superintendent in his letter admitted that the Head Clark at Pune retired and he wanted the post to be transferred to Pune. The applicant was utilised in place of the Head Clark and as such he is deemed to have been promoted to the post of Senior Clark. The averment made therein is absolutely incorrect. The Administration has failed to implement the order in my case with a malafide intention and whereas in the case of others it was effected immediately. and respondents have admitted that I could not be relieved in the exigencies of service and on that account I should not be penalised. It is an established principle of law that the Disciplinary proceedings commenced with the issued of the Charge Sheet and not earlier.

The punishment of withholding of increment was to come into effect from 1.8.1988 which is from a later date than the date of promotion.

The denial of promotion is therefore, illegal, arbitrary and unconstitutional judged by the rules in formce. Even according to the Railway Board's instructions when an employee is due for promotion and the withholding of increment is operative at from a future date he should be promoted to the higher grade in his turn and the withholding of increment effected in higher grade taking into consideration the effect of monetary loss. This was also not done with a malafide intention. It is therefore prayed that this Hon'ble Tribunal may pleased to allow the OA as prayed for with all consequential benefits.

Solemnly signed and affirmed on this

1st Day of August, 1994

at Hyderabad,

DEPONENT

Before me,

ADVOCATE

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CENTRAL RAILWAY

Office of the
Area Superintendent
PUNE

No.. AS/PA/

Dt: -3-1990

C.C.O. BBVT

Sub.: Representation from Shri S.R.Naidu
for promotion to Sr.Clerk

* * *

The above named came on transfer to Pune Sub.Claims office as Jr.Clerk on 1.1.87. Shri Naidu was promoted as Sr.Clerk vide CPO's Office order No. HPB/629/R/C/ST dated 10.7.1987 and posted in CCO Office. However Shri Naidu was not relieved due to exigencies of service on the plea that he will be relieved only when his reliever reports. However, the CPO's officer order promoting Shri Naidu was clear that Shri Naidu should be relieved to CCO Office to effect his promotion as Sr.Clerk.

In the meanwhile Shri Naidu remained unauthorised absent from duty for 53 days 17.8.87 to 8.10.87 and he was issued SF 5 punishment of withholding increment for 2 years was imposed on him. His appeal against these orders to the appellate authority was sent to your office with detailed remarks vide this office letter No. AS/PA/Staff/SRN/88 dated 10/8/88, Dy.CCO being the appellate authority. However, nothing has been heard in this connection from your office.

It is therefore requested that his case with regard to the following two points may please be decided and the decision taken in the matter communicated to this office:-

- (i) Appeal against the orders of imposing penalty of withholding increment submitted to Dy.CCO for his decision is pending. This may please be decided and decision communicated.
- (ii) Shri Naidu was promoted as Sr.Clerk vide order dated 10/7/87 but was not relieved to effect the promotion. Therefore it is to be decided whether the employee is to be promoted at Pune transferring a Sr.Clerk post to Pune.

Sd/-
(P.G.MANGRULKAR)
AREA SUPDTT. PUNE.

Copy to: SPO(C) BB - He is requested to kindly intimate decision on the above aspects to this office.

// TRUE COPY //

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CAT/HYB

O.A. 1389/93

S.R. Nadee - Applo
Ve.

Rao Pooja

REJOINDER



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G.V. Subba Rao

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S. K. K. K.

May be Filed
on
1/9/94