

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO. 41/93

DATE OF JUDGEMENT: 27-10-1993 1993

Between

Syed Ghouse

.. Applicant

and

The General Manager,
India Government Mint,
Hyderabad

.. Respondent

Counsel for the Applicant

:: Mr V.Venkateshwar Rao

Counsel for the Respondents

:: Mr NR Devraj, Sr.CGSC

CORAM:

HON'BLE SHRI A.B. GORTHI, MEMBER(ADMN)

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER(JUDL.)

JUDGEMENT

[(As per Hon'ble Shri T.Chandrasekhara Reddy, Member(Judl.))]

This is an application filed under Section 19 of the Central Administrative Tribunals Act, to direct the respondents to pay the applicant arrears of pay and allowances for the period from 18.4.1984 to 30.5.1990 with consequential benefits in the post of ~~2~~ Assistant Class I and pass such other orders as may deem fit and proper in the circumstances of the case.

2. Facts so far necessary to adjudicate this OA in brief, may be stated as follows:

3. While the applicant was working as Assistant Class II in the office of the respondents, certain disciplinary proceedings were initiated against him. Due to the pendency of the disciplinary proceedings as against the applicant, the applicant was not given promotion as

Assistant Class I. But his juniors were promoted as Assistant Class I with effect from 14.6.1984. But for the disciplinary proceedings pending against him, the applicant would have got promotion from the post of Assistant Class II to Assistant Class I with effect from 14.6.1984. Finally, the said disciplinary proceeding pending as against the applicant ended in imposing the punishment of warning on the applicant on 2.11.1985. As against the ~~xx~~ punishment of warning that was imposed on the applicant, the applicant preferred an appeal to the appellate authority but the same was rejected and the punishment imposed on the applicant was confirmed by the appellate authority as per its order dated 9.7.86. So, the applicant approached this Tribunal by filing OA 2/87, questioning the punishment of warning dated 2.11.85 as confirmed by the appellate authority as per its order dated 9.7.86 passed against the applicant in the departmental proceeding.

4. In OA 2/87, the applicant had made the following prayer in para 8.

"Direction or order directing the respondent herein to consider the claims of the petitioner herein for promotion to the post of Assistant Class-I in the office of the Respondent with effect from the date on which his immediate junior was so promoted with reference to the penalty of warning inflicted on the applicant by the Disciplinary authority and affirmation of the same by the appellate authority through Memo I-244/86/I/Admn 2165 dated 9.7.86 by holding that the award of penalty of warning is illegal, arbitrary, unconstitutional without jurisdiction and void ab-initio; and consequently set aside the same, or alternatively, hold that the said penalty of warning cannot be made

the penalty order was imposed on 2-11-1985.

8. From the aforesaid it would be evident that not much progress could be made in the enquiry for want of DA. It was only when the new Defence Assistant took over on 2-8-85, he prepared the defence brief and submitted it on 24-9-85. In the circumstances, it will be difficult to apportion blame to the applicant for causing any undue or unavoidable delay. It was mainly on account of the non-availability of the Defence Assistants sought by him, or the unwillingness of the DA to proceed/ defend the applicant, the enquiry which commenced on 19-9-93 could be concluded only after a period of two years. Consequently, the impugned order dated 18-9-92 blaming the applicant for the delay cannot be sustained. The same is hereby set aside and consequently the respondent is hereby directed to give the benefit of pay and allowances to the applicant for the period from 18-4-84 to 30-5-90.

9. The application is allowed in the above terms without any order as to costs.

CERTIFIED TO BE TRUE COPY
Date..... 4/1/24.....
Court Officer
Central Administrative Tribunal
Hyderabad Bench
Hyderabad

by us. As the order which was issued by the respondent on 18-9-92 is the final order by which ^{the} applicant is aggrieved, this application filed on 4-1-93 cannot be said to be barred by limitation laid down in Section 21 of the Administrative Tribunal Act.

7. Coming to the merits of the case, the manner in which the disciplinary proceedings progressed may be stated. As the applicant did not fulfil the formalities with regard to purchase of the motor cycle for which he received advance of Rs.3,000/- on 2-12-1982, he was directed on 17-5-83 to refund the advance amount. A charge memo was served on the applicant on 4-7-83. He gave his representation on 8-7-83 followed by another letter dated 21-7-83. As both the statements were found to be contradictory the competent authority appointed an enquiry officer on 19-9-83 and preliminary hearing was held on 24-10-83. The applicant nominated Sri G.B.Bhaskara Sarma as Defence Assistant (DA) on 12-12-83. The said DA could not be made available and consequently on 17-5-84 the applicant nominated another DA, Sri Krishna Babu. The latter expressed his unwillingness to attend the enquiry and consequently the applicant on 26-6-84 nominated Mr. Mohana Sarma as his DA. The said DA attended the enquiry on 16-8-84. When the enquiry was to be held on the 10-9-94 and 26-9-84, it could not be held on account of the Curfew. Later, the DA himself did not attend the enquiry between 19-10-84 to 8-2-85 when the applicant submitted that the DA was no longer willing to assist him. All the prosecution documents were shown to the new DA on 2-8-85. As there were no witnesses from either side to be examined, the defence submitted its brief on 24-9-85. The enquiry concluded on 4-10-85 and

respondents to consider the applicant's request for payment of arrears for the period 18-4-84 to 30-5-90 keeping in view the judgement of the Supreme Court in AIR 1991 SC 2010.

(h) The respondent considered the case of the applicant, but rejected it vide order dt. 18-9-92 on the ground that the applicant himself was responsible for the delay in the finalisation of the disciplinary proceedings. The said order dt. 18-9-92 is under challenge in the OA before us.

3. The law related to the principle of res judicata is well explained by my learned brother in his judgement. The short question is whether the circumstances of the present case attract the principle of res judicata. In the very first OA (2/87) filed by the applicant, he claimed "promotion to the post of Assistant Class-I w.e.f. the date when his junior was promoted". Claim for promotion cannot be understood as claim for notional promotion sans monetary benefit. Implicit in the claim for promotion is the claim for monetary benefits attached to such promotion. What is clearly implied need not always be specified. Nevertheless, in the body of the application (page 11), the applicant had specifically pleaded that he would be entitled for all consequential benefits in the event of the order of warning being set aside. It will, therefore, be rather difficult to come to the conclusion that the applicant had earlier made no claim for pay and allowances which appertained to his promotion and that he ^{is} therefore barred, on the principle of constructive res judicata, to raise such a claim in this O.A.

4. As OA 2/87 was "allowed" in favour of the applicant, he was rightly given promotion by the respondents from the date when his junior was promoted. In the order of promotion

which was issued on 30-5-90, the respondents directed that the promotion for the period from 18-4-84 to 30-5-90 would be notional. They have not stated the reasons which prompted ^{them} to come to that decision. The applicant being aggrieved by the said order, filed OA 577/90 in time.

5. The Tribunal disposed of OA 577/90 with a direction to the respondent to consider the case of payment of arrears to the applicant, in the light of the observations made by the Hon'ble Supreme Court in AIR 1991 SC 2010. The Respondent, having considered the case of the applicant rejected his request for arrears of pay and allowances for the following reasons:

- i) The promotions could have been considered in the normal course but for the applicants flouting the rules after taking a Motor Cycle Advance on 02.12.1982 which was the root cause for the subsequent litigation delaying the orders of promotion;
- ii) The official was also responsible for the undue delay in prolonging the disciplinary proceedings initiated by the General Manager vide Charge Memorandum No.I-244/83/II/1715 dated 04.07.1983 which could have been normally completed before considering him for promotion in normal course in April, 1984.
- iii) Hence, I am of the view that the delay is solely attributable to the applicant only. Hence, he is not entitled to any back wages during the relevant period.

6. The aforesaid order is under challenge now in the present application. The applicant is aggrieved by the aforesaid order of the respondent and ⁱⁿ support of his grievance, he has stated in this application, that he was not responsible for causing any undue delay in the finalisation of the disciplinary proceedings against him. This is the aspect which needs to be considered and decided

TYPED BY

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. A. B. GORTHI : MEMBER (A)

AND

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

AND

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

Dated: 28-2-1994.

ORDER/JUDGMENT:

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

in

O.A. No.

61/93

T.A. No.

(W.P. No.)

Admitted and Interim Directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

Rejected/Ordered.

No order as to costs.

