

12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH  
AT HYDERABAD.

O.A. NO.156 of 1994.

Between

Dated: 24.4.1995.

P.B.Dasan

... Applicant

And

1. Divisional Railway Manager, South Central Railway,  
Secunderabad Division, Secunderabad.
2. Senior Divisional Personnel Officer, South Central Railway,  
Secunderabad Division, Secunderabad.

... Respondents

Counsel for the Applicant

: Sri. Narasimha Sarma for Sri.  
V.Rama Rao

Counsel for the Respondents

: Sri. D.Francis Paul, SC for RI

CORAM:

Hon'ble Mr. A.B.Gorthi, Administrative Member

Contd:...2/

O.A. 156/94.

Dt. of Decision : 24-04-95.

ORDER

1. As per Hon'ble Shri A.B. Gorathi, Member (Admn.)

The relief claimed by the applicant is for a direction to the respondents to correctly fix his pay in the post of Assistant Station Master.

2. The applicant was serving as an Assistant Station Master in the scale of pay of Rs. 330-560, when, on 19-01-83 he was served with a charge memo. ~~But~~ the disciplinary proceedings ended in the imposition of the penalty of reduction of pay by two stages for a period of two years without cumulative effect, on 22-05-1984. The appellate authority on appeal waived the balance period of punishment with effect from 28-02-1986. The effect of the punishment thus came to an end on 28-02-1986.

3. The applicant had to face another disciplinary enquiry which resulted in the penalty of removal from service. Aggrieved by the same he filed OA.No. 352/89. The said OA was allowed and the punishment was set aside. Consequently, the applicant was re-instated as an Assistant Station Master in the scale of Rs. 1200-2040/- (Revised) without loss of seniority as per office memo dated 23-10-1991. The pay of the applicant was re-fixed keeping in view his seniority and the re-structuring orders issued on 29-07-1983. As a result, the pay of the applicant on his re-instatement was

5. As regards the facts of the case there is hardly any dispute. The respondents however stated that as per the restructuring policy <sup>contained in a</sup> ~~of~~ Railway Boards letter dated 29-07-1983, the benefit of restructuring was to be given proforma with effect from 01-08-1982 ~~and~~ actual monetary benefits to be given to the employees from 01-08-1983. The benefit of the re-structuring is to be given on the basis of a modified selection system involving mere scrutiny of the confidential reports of the employee. As the respondents found that on the date when the re-structuring policy was announced there was a disciplinary proceeding~~s~~ against the applicant, they came to the conclusion that the applicant would not be entitled to the benefit of re-structuring with effect from 01-08-1982/01-08-1983. They accordingly revised the pay fixation by holding that the applicant became eligible for the benefit of re-structuring only on the conclusion of the penalty period, that is, 20-02-1986.

6. Shri Sharma for Shri V.Rama Rao, learned counsel for the applicant assailed the respondent's decision on several grounds. Firstly, <sup>he</sup> contended that the unilateral action of the respondents in revising the pay fixation of the applicant to his dis-advantage would ~~be~~ <sup>be</sup> the principles of natural justice and cannot therefore stand the scrutiny of law. ~~There~~ can hardly be any dispute in this regard and the respondent's decision is liable to set aside on this ground only. But in view of the fact that the respondents have since come up with <sup>a</sup> detailed counter affidavit explaining ~~the~~ <sup>the</sup> circumstances which led them to effect the revision of the pay fixation, I am of the considered view that there is no need at this ~~belated~~ stage <sup>to</sup> direct the respondents to go through the formality <sup>of</sup> ~~issuing~~ notice and then taking action in this regard. It would be in the interest of justice if the case is examined on merits instead of allowing it on

the afore stated technical ground# only.

7. The charge memo, for the first time, having been issued to the applicant on 19-01-1983, it is evident that as on 01-08-1982 there was nothing adverse against the applicant as <sup>was</sup> ~~rendered~~ him ineligible for the re-structuring benefit with effect from that date, that is, 01-08-82. It is settled law that disciplinary proceedings, which could hinder promotion of an employee <sup>are said</sup> ~~are set~~, to commence only from the date of issuance of the charge memo and not prior to that.

8. As <sup>soon</sup> ~~since~~, as the penalty period was over the respondents considered the case of the applicant and gave him the benefit of the re-structuring by granting him the higher scale of pay with effect from 01-08-1982 on a proforma basis and from 1983 on ~~actual~~ basis. In view of this the applicant's counsel urged that the respondents obviously found nothing adverse in respect of the applicant and thus promoted him. Accordingly the said promotion should have been given effect <sup>on</sup> ~~proforma~~ from 1982 and actually from 1983 <sup>instructions contained</sup> in terms of ~~in~~ the railway board's letter. This contention of the applicant's counsel was stoutly opposed by Shri D. Francis Paul, learned standing counsel for the respondents. His contention is that when the policy of re-structuring was announced on 29-07-1983 the applicant was facing disciplinary proceedings which ended in the imposition of major penalty. Thus the respondents' counsel contends that the respondents acted correctly in considering the case of the applicant for the promotion only after ~~the~~ period of penalty was over. This in fact is the main issue~~s~~ to be determined in this case.

9. My attention has been drawn to Para 3.6 of Railway Boards letter No: E(D&A)92 RG6-149(A) dated 21-01-1993, governing the promotion of railway servants who are facing disciplinary proceedings. Para 3.6 reads as under:-

"If the disciplinary proceedings against the person under suspension etc., for whom a vacancy has been reserved, is finalised. Within a period of 2 years of the approval of the provisional panel in the case of promotions to selection posts or at any point of time in the case of promotion to non-selection posts and if such a person is inflicted only a minor penalty, he should automatically be assigned the position in the Selection panel/enlistment announced and he may be promoted in his turn. If his junior has already been promoted before interpolation of his name in the selection panel/suitability list, if necessary and his pay on promotion should be fixed under the normal rules."

"If such a person as aforesaid is held guilty and awarded one of the major penalties of reduction to lower time scale of pay/grade etc., or reduction to lower stage in the time scale of pay, his case should be referred to the authority which approved the original selection panel/suitability list for consideration whether he is suitable for promotion inspite of the penalty imposed on him. If he is considered suitable for promotion, his case be dealt with in the same manner as that of a person who is awarded a minor penalty as indicated above."(underlined for emphasis)

If on the other hand, the person concerned is considered unsuitable for promotion, his case should be referred to the authority next above that which approved the original selection panel/suitability list and that authority should take a final decision regarding the suitability or otherwise for promotion of such a person.

If he is considered suitable for promotion by that authority, his case should then be dealt with in the same manner as that of a person who is awarded a minor penalty. If on the other hand, he is considered unsuitable for promotion by that authority, he should not be promoted on the basis of his earlier selection/earlier decision regarding's suitability and the vacancy reserved for him should be carried forward for inclusion in the number of vacancies for formation of next selection panel/suitability list."

"While reviewing the cases of staff under suspension etc., after finalisation of the disciplinary proceedings against them, the competent authority need not follow the rigid formula laid down for the purpose of promotion to selection posts, i.e., to allot marks under various heads like record of service etc., In such cases, the competent authority may take an overall decision - whether it is for promotion to selection posts or non-selection posts - having regard to the facts of the case, whether the person concerned is suitable for promotion even after the conclusion of the disciplinary proceedings".

10. As per the above Railway Board's letter, <sup>where</sup> ~~whether~~ an employee <sup>is</sup> awarded a major penalty of reduction to a lower stage in the time scale of pay, his case should be referred to the authority which approved the original <sup>is</sup> selection for consideration whether he ~~is~~ suitable for promotion inspite of the penalty imposed on him. If such an employee is considered suitable for promotion he should be promoted <sup>from</sup> ~~in~~ his term, that is, from the date when his junior is promoted. In the instant case the record does not indicate whether the case of the applicant was considered in terms of the re-structuring policy dated 29-07-1983 at ~~any~~ time prior 1986.

24

-8-

Consequently it would be appropriate ~~if~~ the case of the applicant is re-considered by the competent authority in terms of what is ~~contained~~ in para 3.6 of the Railway Board's letter dt. 21-01-1993.

11. In view of the afore stated, I deem it ~~thus~~ <sup>just and s</sup> reasonable to dispose of this OA with a direction to the respondents to refer the case of the applicant to the competent authority for re-consideration whether he <sup>is</sup> suitable for promotion inspite of the penalty imposed on him. If he is considered ~~not~~ suitable for promotion, he should be given <sup>on</sup> basis <sup>on</sup> the same/proforma/with effect from 01-08-1982 and/actual basis from 01-08-1983 with all consequential benefits. This shall be done within a period of three months from the date of communication of this order.

12. OA is ordered accordingly. No order as to costs.

*A.B. Gorai*  
(A.B. Gorai)  
Member (Admn.)

*Anil*  
Dated : The 24th April 1995. Deputy Registrar (Ju)  
(Dictated in Open Court)

Copy to:-

1. Divisional Railway Manager, South Central Railway, Secunderab Division, Secunderabad.
2. Senior Divisional Personnel Officer, South Central Railway, Secunderabad Division, Secunderabad.
3. One copy to Sri. V.Rama Rao, advocate, 3-5 -926/19/A, 1st floor Main road, Himayatnagar, Hyd.29.
4. One copy to Sri. D.Francis Paul, SC for Rlys, CAT, Hyd.
5. One copy to Library, CAT, Hyd.
6. One spare copy.

*spr*  
Rsm/-

27.156/ay

TYPED BY  
CHECKED BY

COMPARED BY  
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH

THE HON'BLE SHRI A.V.HARIDASAN: MEMBER (J)

AND

THE HON'BLE SHRI A.B.GORTHI: MEMBER (A)

DATED

24/4/95

ORDER/JUDGMENT

M.A.NO/R.P.NO./C.P.NO.

D.A.NO.

156/ay

Admitted and Interim directions issued.

Allowed.

Disposed of with directions

Dismissed.

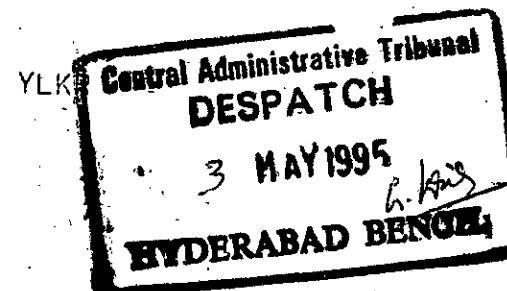
Dismissed as withdrawn

Dismissed for default

Rejected/Ordered.

No order as to costs.

*No spare copy*



✓  
J.C