

(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 R1

CORAM:

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

Contd:...2/

O.A. 156/94.

Dt. of Decision : 24-04-95.

ORDER

¶ As per Hon'ble Shri A.B. Gorthi, 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 O.A.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

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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 ^{would} rendered him in-eligible 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 ^{are said} ~~as set~~, to commence only from the date of issuance of the charge memo and not prior to that.

8. As ^{soon} 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 ^{on} ^{basis} been given effect ~~/proforma/~~ from 1982 and actually from 1983 in terms of ^{instructions contained} ~~/in the railway boards 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 promotion only after ^{the} ~~/~~ period of penalty was over. This in fact is the main issue to be determined in this case.

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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 ^{as the junior-most person} under the normal rules."

"If such a person as afore said 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, ^{where} ~~whether~~ an employee ^{is} 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 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 in his ^{turn, &} 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.


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~~ ^{just and} 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 ^{is} ~~is~~ suitable for promotion inspite of the penalty imposed on him. If he is considered ~~for~~ ^{on} suitable for promotion, he should be given ^{basis} ~~on~~ the same ~~proforma~~ ^{on} with effect from 01-08-1982 and ~~actual~~ ^{on} 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. Gorthi)
Member (Admn.)

Dated : The 24th April 1995.
(Dictated in Open Court)


Deputy Registrar (Jur)

Copy to:-

1. Divisional Railway Manager, South Central Railway, Secunderabad 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.

Rsm/- ^{spr}

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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. GORTHY: MEMBER (A)

DATED

24/4/95

~~ORDER/JUDGMENT~~

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

O.A.NO.

in
156/ay

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions

Dismissed.

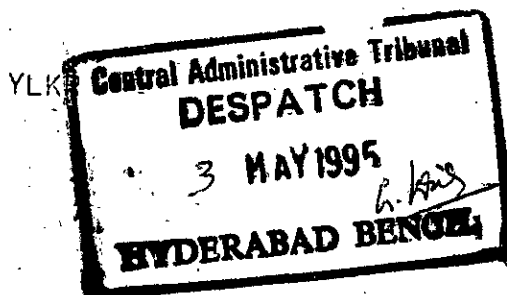
Dismissed as withdrawn

Dismissed for default

Rejected/Ordered.

No order as to costs.

no spare copy



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Leo