

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO. 1417 OF 1995

DATE OF ORDER : 1st May, 1998

BETWEEN :

P. BHAVANARAYANA ... APPLICANT

AND

1. Union of India,
represented by its Secretary,
Ministry of Defence,
New Delhi.
2. The Scientific Adviser to
the Minister of Defence &
Director General Research & Development,
Directorate of Personnel (RD/Legal Cell),
DHQ PO New Delhi.
3. The Chairman,
Zonal Departmental Promotion Committee,
C/O Defence Metallurgical Research Laboratory,
PO : Kanchanbagh, Hyderabad.
4. The Director,
Defence Research & Development Laboratory,
PO : Kanchanbagh, Hyderabad.

... Respondents

Counsel for the Applicants : Shri K. Sudhakar Reddy

Counsel for the Respondents : Shri N.V. Raghava Reddy

CORAM :

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (A)

THE HON'BLE SHRI B.S. JAI PARAMESHWAR : MEMBER (J)

(Order per Hon'ble Shri B.S. Jai Parameshwar, Member (J))

Heard Shri K. Sudhakar Reddy, Learned Counsel for the Applicant and Shri N.V. Raghava Reddy, Learned Standing Counsel for the Respondents.

This is an application under Section 19 of the Administrative Tribunal Act. The application was filed on 2.11.1995.

While the Applicant was working as UDC under Respondent No. 4's Laboratory, he was placed under suspension w.e.f 23-9-74 contemplating disciplinary proceedings. He was served with two charge memos. As a measure of penalty he was removed from service w.e.f. 13.11.1979.

The Applicant approached this Tribunal in OAs 645 and 855 of 1994 challenging the punishment of removal from service. This Tribunal clubbed both the OAs and by its common order imposed the penalty of stoppage of two annual increments of the Applicant without cumulative effect and to recover the amounts paid to the Applicant towards reimbursement of medical expenses. This punishment was imposed with respect to the misconduct

which was the subject matter in OA 645/94. With regard to the misconduct imputed against the applicant and which was the subject matter in OA 855/94, the Tribunal left to the disciplinary authority to pass a suitable order after giving an opportunity to the Applicant. The Tribunal directed the reinstatement of the applicant into service with the conditions that the applicant is not entitled to annual increments, seniority, and pay and allowances for the period from 13-11-79 till the date of reinstatement.

The applicant was reinstated into service w.e.f. 1-3-95.

On 4-4-95, Respondent No. 4 passed an order. In the said order the Respondent No. 4 treated the period of suspension of the applicant from 23-11-74 to 13-11-79 as under :

"Since the Hon'ble Central Administrative Tribunal, Hyderabad has given its finding that

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the charge in regard to the false claims of medical bills referred to in the charge-sheet dated 11-4-77 is proved, the period of suspension from 23-9-74 to 13-11-79 A/N shall not be treated as a period spent on duty and you shall not be paid more than the subsistence allowance already paid to you for the period of suspension. "

The applicant submits that the Zonal DPC met on 17-4-95 and 16-10-95 and did not recommend his case for promotion to the post of Office Superintendent Grade II on the grounds :

- (a) Not completed the required 5 years of qualifying service for promotion.
- (b) Since the punishment period is in currency not entitled for promotion.

The Applicant relying on the decisions in the cases of:

- (a) Sohanlal Sharma Vs Union of India ATJ 1990 (1) P.540 Chandigarh Bench, CAT.
- (b) Shiv Kumar Vs Haryana State Electricity Board, SLR 1988 (3) P. 524, SC
- (c) Praveen Kumar Vs Indian Council of Agricultural Research SLJ 1983 (3) (CAT), P. 649

and also on Sub-rules(1) and (3) of Rule 54-A of the Fundamental Rules has filed this OA for the following reliefs :

- (a) treat the period of suspension i.e. from 23-9-1974 to 13-11-1979 as spent on duty for all consequential benefits including full pay & allowances;
- (b) promote the applicant with effect from 17-4-95 as Office Superintendent Grade II the date on which the Zonal DPC first held on reinstatement of the applicant.

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The Respondents have filed a counter justifying their treatment of the period of suspension of the Applicant as suspension only and contend that the Applicant cannot claim promotion as a matter of right and that the minor penalty of censure does not have any periodicity and that the DPC which met did not recommend the case of the Applicant for promotion. Thus they submit that the OA lacks merits and is liable to be dismissed.

The Applicant has submitted a reply stating that the reliance of the Respondents on Rule 54 A(2)(i) and 54(5) are not correct and that the said rules are not attracted to this case and that in view of the fact that this Tribunal has imposed a minor penalty, ^{he} is entitled to treat the period of suspension from 23-9-74 to 13-11-79 as on duty. Further he submits that he was eligible to be considered for promotion to the post of Office Superintendent Grade II and that the DPC failed to consider his case properly.

Having considered the grounds urged by both the Counsel, we feel the following points arise for our determination :

- (1) Whether the period of suspension of the applicant from 23-9-74 to 13-11-79 can be regarded as the period spent by him on duty?
- (2) Whether the case of the Applicant be considered for promotion to the post of Office Superintendent grade II from 1-3-95 as contended by the applicant?
- (3) to what order?

Our findings :

(a) The period of suspension of the applicant from 23-11-74 to 13-11-79 has to be regarded as the period spent on duty.

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(b) The case of the applicant can be considered for promotion only after the currency of the punishment imposed by this Tribunal is completed;

(c) as under :

It is an admitted fact that between 23-11-74 and 13-11-79, the applicant was under suspension. The Respondent No. 4 while complying with the directions given by the Tribunal in OAs 645 and 855 of 94 treated the said period as periods spent on suspension. The applicant is aggrieved by the said decision of the Respondent No. 4. We have extracted above the decision of Respondent No. 4 in his letter dated 4-4-95.

The Learned Counsel for the Applicant contended that the punishment imposed by this Tribunal in OA 645/94 is a minor penalty in nature and that, therefore, he is entitled to treat the period of suspension as on duty. He has relied upon the sub-rules 1 and 3 of rule 54A of the Fundamental Rules. During the course of his arguments the Learned Counsel for the Applicant relied upon OM No. 11012/15/85-Est. (A) dated 3-12-85 wherein it is clarified as follows :

"(3) Period of suspension to be treated as duty if minor penalty only is imposed :-

Reference is invited to O.M. No. 43/56/64-AVD dated 22-10-64, containing the guidelines for placing Government servants under suspension and to say that these instructions lay down, inter alia, that Government servant could be placed under suspension if a *prima facie* case is made out justifying his prosecution or disciplinary proceedings which are likely to end in his dismissal, removal or compulsory retirement.

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These instructions thus make it clear that suspension should be resorted to only in those cases where a major penalty is likely to be imposed on conclusion of the proceedings and not a minor penalty. The Staff Side of the Committee of the National Council set up to review the CCS (CCA) Rules, 1965, had suggested that in cases where a Government servant, against whom an inquiry had been held for the imposition of major penalty is finally awarded only a minor penalty, the suspension should be considered unjustified and full pay and allowances paid for suspension period. Government have accepted this suggestion of the Staff Side. Accordingly, where departmental proceedings against a suspended employee for the imposition of a major penalty finally end with the imposition of a minor penalty, the suspension can be said to be wholly unjustified in terms of F.R. 54-B and the employee concerned should, therefore, be paid full pay and allowances for the period of suspension by passing a suitable order under F.R. 54-B."

Thus the Applicant submits that he is entitled to get the period of suspension treated as spent on duty and can claim pay and allowances for the said period.

On the contrary, the Respondents have denied their liability to treat the period of suspension as spent on duty for the reasons that in the first instance they had imposed the major penalty of removal from

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service on the Applicant and that they had then rightly treated the period of suspension as suspension only. However, they submit that it was as per the direction of the Tribunal that the punishment was modified as the one of stoppage of two annual increments and recovery of certain amounts disbursed to the Applicant towards medical reimbursement. They contend that this circumstance may not justify for them to treat the period of suspension as spent on duty.

If the Respondents were aggrieved by the decision of the Tribunal, two courses were left to them for remedial action. They are :-

- (1) The Respondents could have filed a review petition bringing out the error in the judgement in directing the Department to issue a minor penalty, or
- (2) The Respondents could have appealed against the decision of the Tribunal.

The Respondents have not taken recourse to any of these courses of action which were available to them. They have obeyed the directions of this Tribunal in so far as the punishment is concerned. That definitely shows that the Department is also in tacit agreement with the direction given by the Tribunal. If they had not agreed, they would have resorted to the courses left to them as indicated above. Having a tacit agreement with the directions of the Tribunal now they cannot turn back and say that the Respondents were concerned only with the direction of awarding minor penalty and the suspension could be decided in accordance with the

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rules as they deem fit. 38

Hence we are of the opinion that the tacit agreement taken by the Respondents they shall also have to treat the period of suspension on the basis of final penalty awarded to the Applicant.

They cannot have any other ~~view~~ ^{option} other than following guidelines given by the DOP&T. However, we make it clear that the pay and allowances, if any, to be paid to the Applicant is only in accordance with the pay and allowances eligible to the Applicant at the time he was under suspension.

In view of the clarification issued by the DOPT and in view of the sub-rules (1) and (3) of Rule 54-A of the Fundamental Rules we are of the considered view that the period of suspension of the Applicant from 23-9-74 to 13-11-79 has to be regarded as spent on duty.

Hence we answer this point accordingly.

Point B.

The next promotional post for the Applicant is to the post of Office Superintendent Grade II. It is his case that the Zone-wise DPC met on 17-4-95 and on 16-10-95 and did not recommend his case for promotion.

This Tribunal imposed the penalty of stoppage of two annual increments without cumulative effect.

As per

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letter dated 4-4-95 the punishments has not been implemented. 39

Even in the reply, it is not specifically stated from what month the annual increment was stopped.

The Learned Counsel for the Applicant had relied upon certain decisions of the other Benches of CAT and the Supreme Court. But in view of the decision of the Hon'ble Supreme Court in the case of Union of India ^{repted AIR} Vs Janakiraman, in 1991 Supreme Court 2010 and in view of the decision of the Hon'ble Supreme Court in the case of Union of India and others Vs K. Krishnan reported in (1992) 21 ^(QSLR 734 C.S.C.) 842 the applicant cannot claim promotion during the currency of the punishment.

The Hon'ble Supreme Court in para 8 in the case of K.V. Jankiraman has observed as follows :-

"According to us, the Tribunal has erred in holding that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensure purity in the administration. In the first instance, the penalty short of dismissal will vary from reduction in rank to censure. We are sure that the Tribunal has not intended that the promotion should be given to the officer from the original date even when the penalty imparted is of reduction in rank. On principle, for the same reasons, the officer cannot be rewarded by promotion as a matter of course even if the penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. He has only a right to be considered for promotion. The

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promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. If, further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion. For

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these reasons, we are of the view that the Tribunal is not right in striking down the said portion of the second sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum. We, therefore, set aside the said findings of the Tribunal."

In the case of Union of India and Others Vs K. Krishnan the Hon'ble Supreme Court has observed as follows :

"We do not find any merit in the argument that there is no justification or rationale behind this policy; nor do we see any reason to condemn it as unjustified, arbitrary and violative of Articles 14 and 16 of the Constitution of India. On the other hand, to punish a servant and at the same time to promote him during the currency of the punishment may justifiably be termed as self-contradictory. The impugned judgment is, therefore, set aside."

Thus the case of the applicant to the post of Office Superintendent Grade II can only be considered after the currency of the punishment is over.

~~Other h~~ ~~the case of the applicant may be considered for promotion after the currency of the punishment is over.~~

The Respondent No. 4 may place the service records of the applicant before the Zonal DPC for considering his case for promotion to the post of Office Superintendent.

In view of the above, we issue the following directions :-

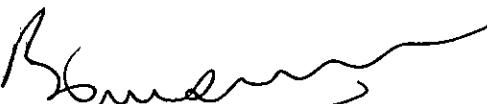
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(a) The Respondent No. 4 shall treat the period of suspension from 23-11-74 to 13-11-79 as spent on duty. Accordingly, the applicant is entitled to pay and allowances for the said period, *less sums already paid.*

(b) The case of the applicant for promotion to the post of Office Superintendent Grade II be considered by the Zonal DPC after the currency of the punishment is over.

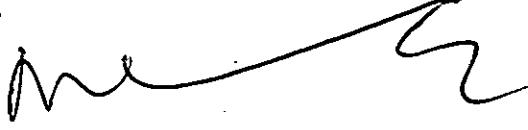
Time for compliance - 4 months from the date of receipt of a copy of this order.

With this direction the OA is disposed of. No orders as to costs.

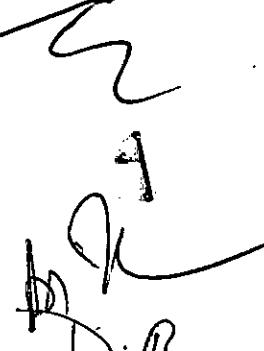

(JAI PARAMESHWAR)

MEMBER (J)

1.5.98


(R. RANGARAJAN)

MEMBER (A)


(DATE OF ORDER : 01-5-1998)

...js/-

Copy to:-

1. The Secretary, Ministry of Defence, New Delhi.
2. Director General to the Minister of Defence & of Personnel (RD/Legal Cell), DHQ PO New Delhi.
3. The Chairman, Zonal Departmental Promotion Committee, C/o Defence Metallurgical Research Laboratory, PO: Kanchanbagh, Hyderabad.
4. The Director, Defence Research & Development Laboratory, PO : Kanchanbagh, Hyderabad.
5. One copy to Mr. N. V. Raghava Reddy, Addl. CGSC., CAT., Hyd.
6. One copy to Mr. N. V. Raghava Reddy, Addl. CGSC., CAT., Hyd.
7. One copy to BS3P M(J), CAT., Hyd.
8. One copy to D.R.(A), CAT., Hyd.
9. One duplicate copy.

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II COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B.S.JAI PARAMESHWAR :
M (J)

DATED: 15/98

~~ORDER/JUDGMENT~~

M.A/R.A/G.P.NO.

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O. A. NO. 14

ADMITTED AND INTERIM DIRECTIONS
ISSUED

Autographed

DISPOSED DEATH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS.

Y L K R

