

(34)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION 451/95

dt.12-4-96

Between

G.V.S.

: Applicant

and

Chief Post Master General
AP Circle, Hyderabad

: Respondent

Counsel for the applicant

: GVS Murthy, Party-in-person

Counsel for the respondent

: N.R. Devaraj, Sr. CGSC

CORAM

HON. MR. JUSTICE M.G. CHAUDHARI, VICE CHAIRMAN

HON. MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

Judgement

(Oral order per Hon. Mr. Justice M.G. Chaudhari, VC)

Heard Sri GVS Murthy, party in person and Sri N.R. Devaraj, learned counsel for the respondent.

2. Some unfortunate circumstances have resulted in giving rise to the present grievance of the applicant. He is a retired person. He retired on 31-3-1993. He retired as Assistant Head Record Officer from the office of HRD Z Division at Hyderabad. That post was equivalent to HSG post. The next higher post is HSG-I. Four officials from HSG-II post were promoted on adhoc basis as HSG-I by the order of CPMG, Hyderabad dated 10-3-1993. Although the applicant was senior to those four persons he was not considered for that adhoc appointment. The reason was that as on that date a disciplinary proceeding was in progress against him.

..2.

hull

(36)

3. The disciplinary inquiry ended in a penalty of reduction of pay by one stage from Rs.2,100 to 2050 for a period of six months with effect from 1-10-1992 to 31-3-1993 with a direction that the applicant will not earn increment in pay during that period, vide memo dated 30-9-92. Aggrieved with that punishment the applicant filed an appeal to the Appellate authority on 30-12-92. That appeal came to be disposed of on 30-3-93. That was just one day before the applicant retired from service. The appellate authority (Director of Postal Services) quashed the penalty imposed upon the applicant on the ground that the charge sheet was issued by an officer who was not competent to do so and the penalty was imposed by an officer who was not competent to do so.

4. It is the case of the applicant that since he must be deemed to have been exonerated from the penalty proceedings he has to be deemed to have been eligible for promotion on adhoc basis on 10-3-1993 when his juniors were promoted and he should be held entitled to get notional adhoc promotion from that date which will ~~entire~~ ^{entire} to his pensionary benefits. According to him he had been put to a monetary loss due to the wrong proceeding launched against him on account of which he was deprived of the adhoc promotion.

5. We find it extremely difficult to accept the submission of the applicant to give him retrospective benefit of the adhoc promotion. The very concept of adhoc promotion which does not by itself confer any right upon an employee is that it is liable to be terminated at any

...3.

hell

(25)

time and it is a fortuitous circumstance arising in exigencies of administration for the time being. In the absence of such right being vested in the applicant there does not arise any question of giving that benefit to him retrospectively as would be the case in respect of a regular promotion which is a matter of right.

6. The applicant has sought to rely on a decision of this Bench of Tribunal in P. Sivasankara Rao Vs. Chairman Central Water Commission, in OA.337 of 1989 dated 14-2-92 (Swamy's case Law Digest, 1993 pp.794). In that case the applicant was not available for being given the ad hoc promotion as on the material date he was on deputation to another agency. His juniors were therefore promoted. It was held in this back ground that since the applicant was repatriated to his parent department and became available (in April 1988) the authorities ought to have given him ad hoc promotion if necessary by reverting the junior most ad hoc promotee. What is significant to note is that all the juniors were promoted in 1986. No retrospective benefit was given to the applicant in that case with reference to that date but since he was available for ad hoc promotion on his repatriation he was directed to be given that promotion prospectively from the date of his availability. Unfortunately as it is in the instant case since the applicant retired on the very next day after his punishment was set aside and the clog that existed as against ad hoc promotion stood removed, there was no occasion to give him any prospective ad hoc promotion. The decision thus does not help the applicant in the peculiar facts of the case.

huk

7. Mr. Devaraj, learned counsel for the respondent inter alia submitted that an adhoc promotion cannot be made effective retrospectively and the decision relied upon by the applicant does not help the applicant's case besides there are departmental instructions that adhoc promotion can only be given prospectively. We have already taken

the foregoing discussion.

8. Thus, the situation boils down to saying that no relief can be granted to the applicant in terms of what is prayed by him.

9. We are not, however, convinced that the applicant has not been required to suffer some disadvantage particularly in respect of the retirement benefits by reason of a penalty having been imposed upon him by an officer who was not competent to impose the penalty as held by the Appellate authority. For whatever reason it might be and we assume that it was the result of a bonafide mistake the fact remains that the applicant cannot be legally held guilty of misconduct on the charges that were levelled against him. Had this happened few days prior to the retirement of the applicant then possibly he might have earned atleast the benefit of promotion on adhoc basis from that date onwards which could have resulted in his last pay drawn on the date of retirement being something more. This small injustice which has resulted from the situation does call for some amelioration. We think that the only way to compensate the applicant owing to the mistake occurred in imposition of the penalty by an officer who was not competent to do so although it might be unintentional and purely an error,

..5.

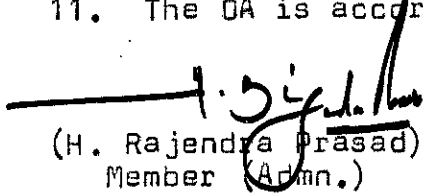
hmr


... costs to him with the object that if he secures the amount in deposit with a bank, he may earn interest to compensate him for the loss of monthly pension of Rs.4/- (which figure is stated by the applicant himself) and loss of other incidental benefits. We quantify the amount as Rs.500/-.

10. In the result the following order is passed :

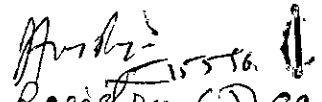
The respondent (CPMG) is directed to pay a lumpsum ... the applicant within a period of one month from today, towards costs of this application. No other relief is granted. It is made clear that this order may not be understood as holding the officer who had imposed the penalty as personally responsible to pay the costs.

11. The OA is accordingly disposed of.


(H. Rajendra Prasad)
Member (Admn.)


(M.G. Chaudhari)
Vice Chairman

Dated : April 12, 96
Dictated in Open Court


Deputy Registrar (D) cc.

sk

up

To

1. The Chief Postmaster General,
A.P.Circle, Hyderabad.
2. One copy to Mr.G.V.S.Murthy, Party-in-person,
H.No. 7-26, Chitanyapuri, Hyderabad-60.
3. One copy to Mr.N.R.Devraj, Sr.CGSC.CAT.Hyd
4. One copy to Library, CAT.Hyd.
5. One spare copy.

pvm.

Urgent

8/11/96

I COURT

TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE M.G. CHAUDHARI
VICE-CHAIRMAN

AND

THE HON'BLE MR. H. RAJENDRA PRASAD :M(A)

Dated: 12-4-1996

ORDER/JUDGMENT

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

in

O.A.No.

151/95

T.A.No.

(w.p.)

Admitted and Interim Directions
issued.

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn.

Dismissed for Default

Ordered/Rejected.

No order as to costs.

vm

