

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

C.A. 1086/96.

Dt. of Decision : 8-12-98.

I.V.Siva Rama Krishna Sarma

..Applicant.

vs

1. The Accountant General
(Accounts & Entitlement),
A.P., Hyderabad.

2. The Sr. Dy. Accountant General,
(Administration), O/o Accountant
General (A&E), A.P., Hyderabad.

..Respondents.

Counsel for the applicant : Mr.V.Venkateswara Rao

Counsel for the respondents : Mr.G.Parameshwar Rao

CORAM:-

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

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

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ORDER

ORAL ORDER (PER HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.))

Heard Mr.V.Venkateswara Rao, learned counsel for the applicant and Mrs.Sakthi for Mr.G.Parameshwar Rao, learned counsel for the respondents.

2. The applicant in this OA was promoted as LDC w.e.f., 29-12-1979. Thereafter he ~~was~~ passed the departmental examination and became eligible for promotion to the post of Accountant in the month of July, 1984. He was over looked for promotion to the post of Accountant and his junior was promoted. He filed Writ Petition No.1172/85 for promotion to the post of Accountant w.e.f., the date when his immediate junior was promoted. Pursuant to the Interim directions of the High Court, the applicant was promoted as Accountant w.e.f., 1-3-85. Subsequently the order of promotion was given effect to from 29-12-84. The Writ Petition No.1172/85 was transferred to this Tribunal and numbered as T.A.No.854/86 and disposed of on 18-08-1988. It is stated by the applicant that the respondents in T.A.854/86 ~~had~~ sought to deny the applicant promotion as an Accountant ~~as~~ ^{as some} ~~that~~ Disciplinary proceedings were pending against him. It was stated in Writ Petition No.985/82 on the file of the High Court that the CCS (Conduct) Rules are not applicable to the employees of the Office of the Accountant Generals and that judgement was confirmed in Writ Appeal No.754/82. The applicant contended that there are no charges pending against him and that he is fully eligible for the next higher promotion of the Senior Accountant. But that was denied on the ground that the disciplinary proceedings ^{were} ~~alleged~~ to be pending against him. The applicant then contended that he is eligible for promotion as he had qualified in the departmental examination for promotion to the post of Senior Accountant on the basis of his seniority subject to the rejection of unfit. As it was proved futile he has filed OA.109/89

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(Annexure-1 to the OA) seeking a direction to consider him for promotion to the post of Senior Accountant in the grade of Rs.1400-2600/- w.e.f., 17-1-89 on which date his immediate junior in the category of Accountant was promoted. That OA was disposed of by the judgement dated 2-2-90. The operative portion of the judgement reads as below:-

"Obviously the charges framed in 1979 have not stood in the way of the applicant in getting promotion in various lower categories. Equally so the charges should not be a bar or hinder him from getting a promotion in the category of Senior Accountant. The 2 year period referred in the instructions would refer to normal case of delay and not to a case of extro-ordinary delay in completion of the Disciplinary Proceedings as in the instant case. In cases where the Disciplinary Proceedings have been pending long prior to the meeting of the DPC the instructions can be read down to mean that the case of the applicant can be considered with-in six months of the meeting of the DPC provided 2 years have expired from the date of framing of the charges. We will accordingly direct that the case of the applicant be considered in terms of Government of India, Ministry of Personnel & Training O.M. No.22815/2/86 (E) dated 10-4-89 by opening the sealed cover and if the applicant is found fit and suitable for promotion, promotion may be accorded to him. The question of retrospective promotion from the date of his junior can be considered only after the conclusion of the Disciplinary Proceedings in the event of the Supreme Court holding in favour of the respondents on the question of the applicability of the CCS (Conduct) Rules to the employees under the control of the Comptroller & Accountant General of India. This order passed by us will not however preclude the respondent from imposing any punishment in the category of Senior Accountant in the event of the charges being maintainable and employee being found guilty. With these directions the application is allowed."

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3. The applicant on the basis of that judgement was promoted as Sr.Accountant by order No.Admn.I/A&E/4-27/89-91 dated 24-5-90 (Annexure-II). Thereafter the disciplinary proceedings had ended and the applicant was imposed with a punishment of with-holding the three increments due to the applicant for a period of one year without cumulative effect in the post of Sr.Accountant. The above said order bearing No. MAB/JD/C.14/14-3/79-96/304 dt. 15-4-96 is at Annexure-III. Thereafter the impugned order No.Admn.I/A&E/I/4-27/96-97 dt. 28-8-96 (Annexure-IV) was issued. By this order the applicant was reverted to the post of Accountant w.e.f., 19-8-96 afternoon. It is also ordered that his pay in the post of Accountant will be fixed, as if, he would have continued as Accountant through out the period and there will be no recovery of difference of pay between the pay as Accountant and the pay as Sr.Accountant for the period w.e.f., 25-5-90 afternoon to 19-8-96 afternoon (that is the date of his adhoc promotion till the date of termination of his adhoc promotion) as Sri Sarma had already discharged the duties of Sr.Accountant on adhoc basis. It is also added in that order that his seniority will be regulated in the cadre of Accountant as if he would have continued as Accountant through out the period.

4. This OA is filed to set aside the office order No.96 (No.Admn.I/A&E/I/4-47/96-97) dated 28-8-96 (Annexure-IV) issued R-2 and for a consequential direction to continue him as Senior Accountant with all consequential benefits such as arrears of pay and allowances, seniority etc.

5. A reply has been filed in this OA. The main contention of the respondents in this OA is that in terms of the O.M. dated 10-4-89 the applicant has to be reverted and the punishment is

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be imposed on him. The relevant portion of that O.M. reads as below:-

"If the Government Servant is not acquitted on merits in the criminal prosecution but purely on technical grounds and the Government either proposes to take up the matter to a higher court or to proceed against him departmentally or if the Government servant is not fully exonerated in the departmental proceedings the adhoc promotion granted to him should be brought to an end."

6. Relying on the above extracted portion of the O.M. the learned counsel for the respondents submits that the applicant though punished by with-holding the increments in the cadre of Sr. Accountant that order was reviewed by the competent authority and on review the impugned order dt. 28-8-96 was issued reverting him to the lower grade and passing the consequential order. Hence, when the direction in CA.109/89 was given in terms of the Govt. of India O.M. dt.10-4-89 the action taken by the respondents in reverting him is in order. Hence, the applicant cannot demand retention as Sr. Accountant as he was punished in the disciplinary proceedings.

7. The learned counsel for the applicant submits that the impugned order dt. 28-8-96 is not a review of the earlier order dt. 15-4-96. That order was issued reverting him without any connection to the earlier order and also the order of this Tribunal in CA.109/89.

8. We have heard both the sides.

9. The impugned order dt. 28-8-96 does not state that it is in continuation of the order dt. 15-4-96. It has to be held that the order dt. 28-8-96 was issued on the premise of following the instructions given in O.M. dt. 10-4-89. In our opinion the earlier order dt. 15-4-96 was issued without giving any due consideration to the O.M. dt. 10-4-89 or to the Tribunal's direction in CA.109/89. Probably it was realised that the

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impugned order dt. 28-8-96 need to be issued to ensure that it relates to the O.M. dated 10-4-89. In that view it may be said that the impugned order dt. 28-8-96 is a continuation of the earlier order dt. 15-4-96 and that was issued in view of the O.M. dt. 10-4-89. But the impugned order dt. 28-8-96 does not indicate that it was issued in view of the O.M. dt. 10-4-89. It talks of the O.M. No. 22011/4/91/Estt(A) dated 14-9-92 and because of that order the adhoc promotion to the post of Sr.Accountant granted to the applicant vide order No. Admn.I/A&E/4-27/89-90/0.0. No. 31 dt. 7-6-90 was terminated w.e.f., 19-8-96 afternoon. On perusal of the O.M. dt. 14-9-92 it indicates that it is more or less reproduction of the earlier O.M. dt. 10-4-89 in regard to the reversion of the applicant due to the disciplinary proceedings ended with punishment to him. Para-5.4 of the O.M. dt. 14-9-92 is relevant. The para-5.4 reads as below:-

"If the Government servant is not acquitted on merits in the criminal prosecution but purely on technical grounds and Government either proposes to take up the matter to a higher court or to proceed against him departmentally or if the Government servant is not exonerated in the departmental proceedings, the adhoc promotion granted to him should be brought to an end".

The sum and substance of the relevant portion is same as the sum and substance of the relevant portion in O.M. dt. 10-4-89 which has already been extracted.

10. The whole issue has to be examined in the light of the order given by this Tribunal in OA.109/89. The relevant portion of the order had already been extracted. No doubt the Tribunal had directed to consider the case of the applicant for promotion in terms of the Government of India, Ministry of Personnel & Training O.M. dt. 10-4-89 by opening the sealed cover and if the applicant is found fit and suitable for promotion, promotion may be accorded to him. But it is also stated in the order that the

said order passed by the Tribunal will not however preclude the respondent from imposing any punishment in the category of Senior Accountant in the event of the charges being maintainable and employee being found guilty. If the imposing of the punishment in the category of Sr. Accountant is not in accordance with the O.M. dt. 10-4-89 then the respondents should have approached this Tribunal by filing a review petition to modify that order to the effect the applicant had to be reverted if punished and consequential punishment ~~will~~ ^{would} be imposed in the lower category in accordance with the O.M. dated 10-4-89. But, ^{we} I find that no such review petition has been filed in this connection. Hence, the direction given in OA.109/89 having become final the respondents cannot escape the result of that judgement. Because of that direction only in our opinion the earlier order dated 15-4-96 was issued imposing a penalty on the applicant when he was posted as a Senior Accountant. But ^{now} some ~~had~~ the respondents once again reconsidered and issued the impugned order dated 28-8-96. In our opinion in view of the judgement in OA.109/89 the reversion order passed by the impugned order dated 28-8-96 is not in accordance with the judgement in OA.109/89. Hence on that score itself, the impugned order dated 28-8-96 has to be set aside and the respondents are directed to adhere to the earlier order dated 15-4-96. However, the regular promotion of the applicant can be decided in accordance with the law as it has been clearly stated in the previous judgement in OA.109/89 that "the question of retrospective promotion from the date of his junior can be considered only after the conclusion

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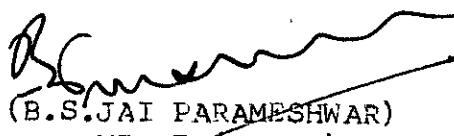
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the disciplinary proceedings in the event of the Supreme Court holding in favour of the respondents on the question of the applicability of the CCS (Conduct) Rules to the employees under the control of the Comptroller & Accountant General of India."

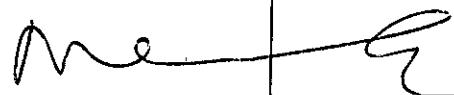
10. In view of what is stated above the impugned order No. Admn. I/A&E/I/4-27/96-97 dated 28-8-96 is set aside and the earlier order dated 15-4-96 is revived. The question of promotion to the applicant on par with his junior can be decided in accordance with the law.

11. The OA is ordered accordingly. No costs.


(B.S. JAI PARAMESHWAR)

MEMBER (JUDL.)

8/12/98


(R. RANGARAJAN)

MEMBER (ADMN.)

Dated : The 08th December, 1998.
v(Dictated in the Open Court)

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28/12/98
II COURT

Copy to :-

TYPED BY
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APPROVED BY

1) D.R. (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

2) Spore

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

AND

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

DATED: 8/12/98

ORDER/JUDGMENT

MAY/R.A./C.P.No.

DA. NO.

in
1086/96

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

SRR

