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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.746/97.

Dt. of Decision : 29-01-99.

D.Devasahayam

.. Applicant.

Vs

1. The General Manager,
SC Rly, Rail Nilayam,
Secunderabad.
2. The Divl. Rly. Manager (P),
SC Rly, Personnel Branch,
Sanchalan Bhavan, Sec'bad. .. Respondents.

Counsel for the applicant : Mr.K.Sudhakar Reddy

Counsel for the respondents : Mr.V.Rajeswara Rao,
SC for Rlys.

CORAM:-

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

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

ORDER

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

Heard Mr.K.Sudhakar Reddy, learned counsel for the applicant. None for the Respondents.

2. The brief facts of this case are as follows:-

The applicant was a Station Master in Sec'bad Division of SC Railway and retired on superannuation on 31-07-95. During 1984, the applicant was involved in a

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case "for unlawful possession of Cement bags on 16-1-84 while working as Station Superintendent/Secunderabad military siding". He was prosecuted under the RP (UP) Act before XIII Metropolitan Magistrate Court for Railways. However he was acquitted on 24-12-90 under section 248(i) Cr.P.C. He was also involved in a Vigilance case and a major penalty charge sheet was issued to him on 21-11-88. During the pendency of these proceedings the applicant was not promoted on par with his juniors. However, the pending disciplinary proceedings were finalised by imposition of a minor penalty. The disciplinary authority imposed a penalty of with-holding of increment due on 1-8-91 for a period of one month (Cumulative).

3. The appellate authority enhanced this penalty to two years with cumulative effect. However the reviewing authority by his orders dated 29-6-93 finally confirmed the penalty of with-holding of increment by one month cumulative imposed by the disciplinary authority.

4. On conclusion of the said proceedings, the applicant who was in grade Rs.455-700/- (1400-2300) was promoted to grade Rs.1600-2660/- (RSRP) by order No.149/ Optg/1993 dated 16-9-93. He was further promoted to grade Rs.2000-3200/- (RSRP) vide orders No.166/Optg./93 dated 28-9-93 duly protecting his seniority but giving fixation of pay only under normal rules. The applicant filed OA. 1068/96 on the file of this Bench seeking promotion on par with his juniors who were promoted during May, 1986. That OA was disposed of by order dated 11-9-96 directing the respondents to dispose of his representation dated 15-6-94 within a period of two months by a speaking order. The respondents disposed of that representation by communication No.CP/535/P.11/SS/Dy.SS dated 3/5-2-97

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(Annexure-VII Page-19 to the OA).

5. This OA is filed challenging that impugned order No.CP/535/P.11/SS.Dy.SS dated 3/5-2-97 and praying for a direction to the respondent authorities to step up his pay to the grades of Rs.1600-2600/- and to Rs.2000-3200 (RSRP) w.e.f., 1984 and 1986 respectively on par with his juniors and pay the consequential arrears as per para 3.6 of the Railway Board's letter dated 21-1-93 circulated vide CPO/SC Lr.No.PCR/227/X dated 17-2-93 (Annexure-V to the OA).

6. A reply has been filed in this OA. The respondents submit that the applicant is entitled for the relief prayed for in this OA if the conditions laid down in para 3.5 of serial circular 16/93 is fulfilled. As the applicant was punished in the disciplinary proceedings his case was decided in accordance with the para 3.6 of the said serial circular. The applicant also relying on the para 3.6 praying for the relief as asked for in this OA.

7. In view of the above, the point for consideration is which para, whether it is para 3.5 or para 3.6 of the serial circular 16/93 is relevant in this case.

8. Before examining this case, it should be examined whether the applicant could be promoted on par with his juniors after the expiry of the punishment even if he is found fit for promotion by the DPC. This issue has been elaborately considered in OA.1118/95 (Smt.L.Masthanamma Vs. UOI and Another) decided on 2-6-98. It was held in that judgement that "an employee found guilty of misconduct cannot be placed on par with the other employees and the case of that employee 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

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an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti."

9. The above observation is in accordance with the reported cases 1995 (29) ATC 555 (State of Tamil Nadu Vs. Thiru K.S.Murugesan), 1993 (2) SLR 509 (Delhi Development Authority Vs. H.C.Khurana) and AIR 1991 SC 2010 (Union of India Vs. K.V.Jankiraman). In view of the above the applicant may not be eligible for promotion on par with his juniors i.e., assigning the seniority on par with his juniors. But the respondents state that the applicant was assigned seniority on par with his juniors but the pay fixation was done based on the normal rules as per para 3.6 of the serial circular 16/93. It is not considered necessary at this juncture to direct the respondents to review their earlier orders. This OA is only to decide whether the impugned order dated 3/5-2-97 has been issued in accordance with the existing rules of the Railways as the serial circular 16/93 is in force in the Railway Department.

10. The applicant submits that he should be promoted in the year 1984 and 1986 to the higher grades of Station Master viz., Rs.1600-2600/- and Rs.2000-3200/- respectively on par with his juniors. For this he relies on the para 3.6 of the serial circular 16/93. The respondents submit that the applicant is entitled for the relief asked for if he has been fully exonerated in the disciplinary proceedings. If he is fully exonerated he has to be empanelled/enlisted and promoted in his turn. This will also apply to prosecution cases in accordance with the para 3.5 of the serial circular 16/93. But the disciplinary proceedings had ended with a minor penalty. When a minor

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penalty order was issued the applicant cannot demand the promotion and fixation of his pay on par with his juniors in accordance with the para 3.5 of the serial circular 16/93 as he was not fully exonerated. The para 3.5 of the said circular reads as below:-

"If the disciplinary proceedings against the person under suspension etc. for whom a vacancy has been reserved, in the case of promotion to selection posts, is finalised within a period of two years of the approval of the provisional panel, and, in the case of promotion to non-selection posts is finalised at any point of time and if the person is fully exonerated or his suspensions held to be wholly unjustified, he may be empanelled/enlisted and promoted in his turn. This will also apply to prosecution cases."

11. It is a fact that the applicant was punished finally with the stoppage of increment for one month due on 1-8-91 (cumulative) by the reviewing authority. Hence, it cannot be said that the applicant was exonerated fully. Hence para 3.5 of the serial circular 16/93 is not applicable in this case.

12. The respondents submit that the applicant was promoted on par with his juniors as he was inflicted with only a minor penalty. As the minor penalty was inflicted on him he was given promotion to the higher grades of Rs.1600-2600/- and Rs.2000-3200/- without affecting his seniority. But his fixation of pay was done following the normal rules i.e., his pay in the higher grade was fixed from the actual date of his promotion. But the seniority on par with his juniors does not give right to the applicant to fix his pay also on par with his juniors in view of the instructions given in para 3.6 of the said circular. Hence stepping up of pay cannot be granted to the applicant on par with his junioros in the higher grades.

13. The para 3.6 of serial circular 16/93 reads as

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below:-

"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/suitability list and his empanelment/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, he should be promoted by reverting the junior most person if necessary and his pay on promotion should be fixed under the normal rules." (emphasis added)

The applicant submits that in case there were no vacancies his juniors had to be reverted after the expiry of punishment and he should be promoted against that vacancy fixing his pay on par with his juniors. The applicant is right in so far when he states that in case there are no vacancy his juniors to be reverted and the applicant should be promoted. But when he says that his fixation of pay also should be co-related to the pay of the junior is not corroborated by para 3.6 of the said circular. It has been clearly stated that his pay on promotion should be fixed under normal rules. The fixation of pay ^{under} normal rules means that the pay of the applicant will be fixed in the higher scales from the date of his promotion even though he got seniority on par with his juniors. Hence para 3.6 also does not come to the rescue of the applicant for stepping up of pay on par with his juniors.

14. The applicant in para 6(h) (Page-6 to the OA) tries to substantiate his cases for stepping up of pay on the ground that "the respondent authorities delayed the disciplinary proceedings initiated for long time and ultimately the disciplinary proceedings ended in the year 1993."

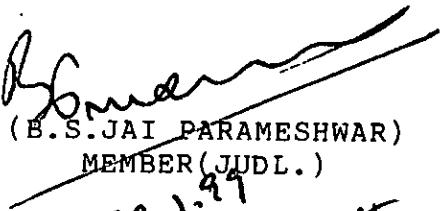
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15. It is too late to consider this contention at this stage. If the disciplinary proceedings are delayed inordinately the applicant should have taken appropriate action then and there itself to complete the enquiry proceedings in time. Having failed to do so, he cannot raise such a contention of delay in finalising the disciplinary proceedings causing hardship to him. ^{now. It is not a} ~~cannot be~~ a proper ground to grant the relief of stepping up of pay. Hence, this contention has to be rejected.

16. In view of what is stated above, there is no merit in this OA. Hence, the OA is liable to be dismissed and accordingly it is dismissed. No costs.


(B.S.JAI PARAMESHWAR)

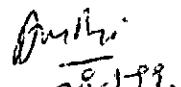
MEMBER (JUDL.)

99.1.99

Dated : The 28th January, 1999.


(R.RANGARAJAN)

MEMBER (ADMN.)


99.1.99.

SPR

COPY TO:-

1. HONJ
2. HHRP M(A)
3. HBSJP M(J)
4. D.R.(A) ✓
5. SPARE ✓

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. NASIR ✓
VICE CHAIRMAN

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

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

THE HON'BLE MR. B. S. JAI PARAMESWAR :
MEMBER (J)

DATED: 29-1-99

ORDER/JUDGMENT

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

In

C.A. NO. 746/97

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

SRR

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