

H

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

O.A. No. 635/1994

DATE OF DECISION : 23.02.2001

Chandrika Prasad Sharma

Petitioner

Mr. S.K. Jain

Advocate for the Petitioner (s)

Versus

Union of India & Ors.

Respondent

Mr. Manish Bhandari

Advocate for the Respondent (s)
Nos. 1 & 2.


None is present for private respondents.

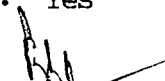
CORAM :

The Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

The Hon'ble Mr. Mr. N.P. Nawani, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? No
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal ? Yes


(N.P. NAWANI)
Adm. Member


(JUSTICE B.S. RAIKOTE)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH : JAIPUR

Date of order : 23.02.2001

O.A. No. 635/1994

Chandrika Prasad Sharma, son of Shri Kanhaiya Lal Sharma, aged 46 years, resident of 263/L, Carriage Colony, Gangapur City, now-a-days working as H.T.X.R. Gr. 1600-2660, Western Railway, Gangapur City.

... Applicant.

v e r s u s

1. Union of India through the General Manager, Western Railway, Church Gate, Bombay - 20
2. Senior Divisional Mechanical Engineer (E), Western Railway, Kota Division, Kota.
3. Shri Bhagwati Prasad Gupta, C.T.X.R., Western Railway, Gangapur City.
4. Shri Mukesh Kumar Jain, C.T.X.R., Western Railway, Kota.
5. Shri Ram Bharose, C.T.X.R., Western Railway, Kota.
6. Shri G.P. Pathak, C.T.X.R., Western Railway, Kota.
7. Shri Mohan Lal P., C.T.X.R., Western Railway, Agra East Bank.

... Respondents.

Mr. S.K. Jain, Counsel for the applicant.

Mr. Manish Bhandai, Counsel for the official respondents.

None is present for private respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. N.P. Nawani, Administrative Member

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

This application is filed under Section 19 of the Administrative Tribunals Act, 1985, for issuing a direction to the respondents to promote the applicant on the post of Chief T.X.R. grade Rs. 2000-3200 from the date his juniors were promoted with all consequential

RA

benefits, including the arrears with 18% interest.

2. It is the case of the applicant that the persons, who were juniors to the applicant, have been promoted to the post of Chief T.X.R. with the pay scale at Rs. 2000-3200, vide Annexure A/1 dated 12.11.93, and this order is illegal. It is also stated that the respondents 3 to 7 have been promoted with effect from 1.3.93 on the basis of upgradation, and the applicant being senior-most, should have also been promoted. Therefore, promoting his juniors vide Annexure A/1 and not promoting the applicant to the post Chief T.X.R. in the scale of Rs. 2000-3200 is illegal and violative of Articles 14 and 16 of the Constitution. Therefore, there should be an appropriate direction to the respondents to promote the applicant. The applicant made representations vide Annexures A/3 dated 26.11.93 and A/4 dated 6.1.94, but the same have not been considered by the respondents. Therefore, this Tribunal may be pleased to issue necessary directions to the respondents to promote the applicant with effect from 1.3.93, over and above the private respondents 3 to 7.

3. The official respondents and the private respondent No. 3 by filing separate reply statements, have denied the case of the applicant. The respondents have stated that the case of the applicant and the private respondents were considered by the Selection Committee on the basis of the service record for the purpose of promotion to the post of Chief T.X.R, under the modified selection procedure. But the applicant was not having the good record, therefore, the Selection Committee did not recommend the case of the applicant for promotion, and the applicant's juniors have been recommended for promotion to the post of Chief T.X.R. They have contended that against the applicant departmental proceedings were initiated, and vide Annexure R/1 dated 6.8.91, the applicant was imposed a punishment of withholding of

RM

increment for a period of 2 years without cumulative effect. Thus, he was under punishment, when the impugned order was issued, promoting the applicant's juniors to the post of Chief T.X.R. Therefore, there are no merits in the application. It is stated that the promotion is not a matter of right. Nevertheless, his case was considered by the Selection Committee, but he was not promoted because of the said punishment imposed on him, and such punishment was in force when the applicant's junior was promoted vide Annexure A/1 dated 12.11.93. Therefore, the applicant is not entitled to any relief, as prayed for in the application. Accordingly, the application is liable to be dismissed.

4. Heard.

5. From the pleadings and arguments addressed at the Bar from both sides, we have to see whether the respondents are justified in not promoting the applicant alongwith his junior in view of the fact that the applicant was under punishment vide Annexure R/1. The fact that the applicant suffered the punishment in the departmental proceedings is not disputed by the applicant himself. From one of his representations vide Annexure A/4, it is clear that, the applicant admitted that he was punished in the departmental proceedings. In his representation vide Annexure A/4 dated 6.1.94, the applicant stated as under :-

"... In this regard, I beg to state as under:-

(i) That I was awarded the penalty of withholding of increment for two years without effecting future increment vide the then Sr. DME-KTT's NIP No. E/L/308/9/8226 dated 6.8.91.

This penalty came into effect on 1.1.92 and was completed as on 31.12.1993.

(ii) That on expiry of this punishment i.e. on 1.1.94, I am entitled for promotion to the post CTXR scale Rs. 2000-3200 (RP). In the present case, the Railway Board have prescribed modified



procedure of selection in order to fill up the selection posts as a result of restructuring. According to this procedure, the staff was to be promoted in accordance with their seniority position on the basis of judging their suitability on service records."

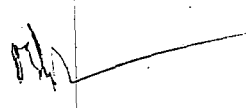
6. From the above statement made by the applicant in his representation vide Annexure A/4 dated 6.1.94, it is clear that even according to the case of the applicant, the period of punishment stands completed on 3.12.93. The learned counsel for the applicant contended that the increment falls due on 1st January of every year. Therefore, the applicant had completed the punishment, before the impugned promotion order was given vide Annexure A/1 dated 12.11.93. At any rate, the punishment being one of only withholding of increment for a period of 2 years without cumulative effect, the applicant's promotion could not have been denied. But in our opinion, the contention of the learned counsel for the applicant cannot be accepted for more than one reason. The promotion of the juniors to the applicant was made as per modified selection according to the eligibility as on 1.3.93. From the order of the punishment vide Annexure R/1, it is clear that the punishment of withholding of increment for a period of 2 years without cumulative effect was imposed on the applicant on 6.8.91, and the period of 2 years from this date would be over on 5.8.93. If the increment to be withheld after 6.8.91, is taken as in the month of January, 1992, as suggested by the applicant, then the period of punishment would come to an end on 1.1.94. Even the applicant himself in his representation vide Annexure A/4 dated 6.1.94, admitted that the period of punishment came to an end only on 1.1.94. If that is so, the consideration for promotion took place during the continuance of punishment vide Annexure A/1 dated 12.11.93. However, the learned counsel for the applicant submitted that the punishment of withholding of increment for a period of 2 years without cumulative effect, would not have any effect on the right of the applicant for promotion. By

R

relying upon the decision No. 3 of Swamy's Digest at page No. 271, he contended that the punishment of withholding of increments for a period of 2 years, cannot come in the way of the applicant for further promotion. But in our opinion, this issue is no more a res integra. In (1992) 21 ATC 842 [Union of India & Ors. vs. K. Krsihan], Hon'ble the Supreme Court has held that during the currency of the penalty, a person may not be considered for promotion as a consequential result of his punishment, and such denial of promotion cannot be taken as double punishment. We think it appropriate to extract the relevant part of the judgement as under:-

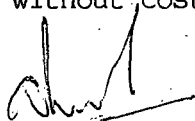
"4. We have considered the matter closely and in our opinion the view taken by the Tribunal both in the impugned judgement and in the earlier decisions holding that as a result of the provisions of Rule 157 forbidding the promotion of a State employee during the currency of the penalty results in a second punishment, is not correct. There is only one punishment visiting the respondent as a result of the conclusion reached in the disciplinary proceeding leading to the withholding of increment, and the denial of promotion during the currency of the penalty is merely a consequential result thereof. The view that a Government servant for the reason that he is suffering a penalty or a disciplinary proceeding cannot at the same time be promoted to a higher cadre is a logical one and no exception can be taken to Rule 157. It is not correct to assume that Rule 157 by including the aforementioned provision is subjecting the government servant concerned to double jeopardy. 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 judgement is, therefore, set aside."

7. The same principle is reiterated by Hon'ble the Supreme Court in the recent judgement in 2000 (3) ATJ 348 [The Collector of Tanjavur Distt vs. S. Rajagopalan & Ors.]. In this case also, Hon'ble the Supreme Court pointed out that the denial of promotion during the currency of punishment would not amount to penalty, and it would be open to the authorities to take into account the fact that some punishment was imposed on the person during the relevant period for the

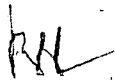


purpose of promotion, and accordingly, the Apex Court found fault with the order of the Tribunal, challenged in that case. In view of this law of Hon'ble the Supreme Court, the contention of the learned counsel for the applicant that notwithstanding such punishment of withholding of increment, the applicant is entitled to be considered for promotion, cannot be accepted. Accordingly, we find that there are absolutely no merits in this application. Hence, we pass the following order:-

"Application is dismissed. But in the circumstances,
without costs."



(N.P. NAWANI)
Adm. Member



(JUSTICE B.S. RAIKOTE)
Vice Chairman

cvr.