

(4)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.
O.A.No.179/98 Date of order: 16/5/2000
S.E.Sunariwal, S/o Shri Chitarmalji, R/o Vill. & Post
Rajgarh, Distt.Ajmer, retired A.A.O, W.Rly, Ajmer.
...Applicant.

vs.

1. Union of India through the General Manager, W.Rly, Churchgate, Mumbai.
2. The Financial Advisor & Chief Accounts Officer, W.Rly, Churchgate, Mumbai.
3. The Dy.Chief Accounts Officer (Traffic Accounts) W.Rly, Ajmer.

...Respondent.

Mr.W.Wales - Counsel for the petitioner.

Mr.S.S.Hasan)- Counsel for respondents.

CORAM:

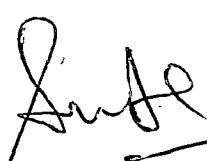
Hon'ble Mr.S.K.Agarwal, Judicial Member

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

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this original application under Sec.19 of the Administrative Tribunals Act, 1985, applicant makes a prayer to quash and set aside the observation 'Government displeasure' conveyed to the applicant vide impugned order Anxx.A1 and to direct the respondents to grant him proforma promotion with notional fixation on the post of Accounts Officer Group-B w.e.f.1.3.92 or from the date when his junior was promoted and to pay arrears alongwith interest @ 12% per annum and also release the amount Rs.10,000/- so withheld.

2. The case of the applicant in brief is that he was initially joined in the Railway service in Accounts department and was promoted as Asstt.Accounts officer w.e.f. 3.8.88. He was promoted as Accounts Officer in the year 1991 but on his request for defferment of his promotion, the same was deferred. It is stated that a Memorandum of charge sheet was issued to the applicant under the Railway Service (Discipline & Appeal) Rules, 1968 for major penalty. Enquiry was conducted and the enquiry officer was submitted the enquiry report on 15.12.94, A copy of the enquiry report was sent to the applicant on 2.1.96 and the applicant submitted his representation on 13.8.97. It is stated that the applicant was superannuated on 31.8.95. It is also stated that the impugned order casts stigma/damage to the reputation and penal in character. It is also stated that even promotion cannot be withheld in cases where penalty of Censure is



imposed. It is also stated that the disciplinary authority was required to take action as per rules only, therefore, the action of the disciplinary authority was not legal and denial of promotion to the applicant is arbitrary and illegal. Therefore, the applicant filed the O.A for the relief as mentioned above.

3. Reply was filed. It is stated in the reply that the applicant was superannuated on 31.8.95, therefore, no action was taken against him and only 'government displeasure' was communicated. It is further stated that the applicant was promoted in the year 1991 and the same was deferred at the request of the the applicant but during the deferment period a charge sheet for major penalty was issued and finally the DAR action ended with 'government displeasure' vide order dated 3.8.97 and the case of the applicant was thereafter closed on 28.8.97. Therefore, the applicant has no case for interference by the Tribunal.

4. Heard the learned counsel for the parties and also perused the whole record.

5. It is admitted by the learned counsel for the parties that communication 'government displeasure' has not been provided as any of the penalty in Railway Servants (Discipline & Appeal) Rules, 1968. After departmental enquiry if the disciplinary authority was of the opinion that charges are established against the delinquent, the penalty as provided under the aforesaid rules could have been inflicted upon him. In the reply, it has been clearly stated that the applicant was superannuated on 31.8.95, therefore, 'government displeasure' was communicated to the applicant in pursuance of the disciplinary proceedings, we are of the considered opinion that in pursuance of the disciplinary enquiry under Railway Servants (Discipline & Appeal) Rules 1968, the communication of 'Government displeasure' is not in accordance with the rules and the same cannot be approved against the applicant, therefore, liable to be quashed.

6. On the perusal of the pleadings of the parties, it also appears that the applicant is also entitled to be considered for proforma promotion in senior scale on the post of Accounts Officer w.e.f. 1.3.92 or from the date on which his juniors were promoted.

7. We, therefore, allow the O.A and quash the observation 'government displeasure' conveyed to the applicant vide communication dated 3.8.97 (Annex.A1);

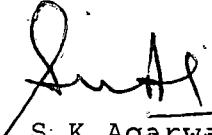
(ii) Direct the respondents to consider the applicant for proforma promotion on the post of Accounts Officer Senior Scale w.e.f. 1.3.92 or from the date when his junior was given promotion.

(iii) Direct the respondents to fix the pay of the applicant notionally in the higher grade from the date of his promotion and also fix the pension and retiral benefits and also revise the pension accordingly.

(iv) Pay the arrears. The whole exercise must be completed within 3 months from the date of receipt of a copy of this order.

8. No order as to costs.


(N.P. Nawani)
Member (A).


S.K. Agarwal
Member (J).