

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH

CIRCUIT COURT SITTING AT INDORE

Original Application No. 533 of 2003
Original Application No. 534 of 2003

Indore, this the 1st day of October, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri A.S. Sanghvi, Judicial Member

1. Original Application No. 533 of 2003 -

S.N. Meena, ASM - Jawad Road,
Near Rly. Station, Rly. Quarter,
Jawad Road, Distt. Neemuch (MP). ... Applicant

(By Advocate - Shri A.N. Bhatt)

V e r s u s

Union of India :
Represented by -

1. The General Manager, Western
Railway, Headquarter Office,
Churchgate-Mumbai.
2. The Divisional Rail Manager,
Western Railway, Divisional
Office - Ratlam. ... Respondents

(By Advocate - Shri Anand Pathak)

2. Original Application No. 534 of 2003 -

S.N. Meena, Asstt. Station Master,
Jawad Road, Rly. Station, Neemuch
Distt. (MP). ... Applicant

(By Advocate - Shri A.N. Bhatt)

V e r s u s

Union of India,
Represented by :

1. The General Manager, Western
Railway, Churchgate, Mumbai-20.
2. The Divisional Rail Manager,
Western Railway, Divisional
Office, Ratlam. ... Respondents

(By Advocate - Shri Anand Pathak)

Common O R D E R

By A.S. Sanghvi, Judicial Member -

Both these OAs are ~~contested~~^{moved} by the same applicant
and the question of law and facts raised are also inter-
linked, ~~therefore~~^{and hence}, both of them are heard together and
being decided by this common order.

2. The applicant who was serving as an ASM at Kony Station was after a disciplinary enquiry ⁱⁿ ~~when~~ ^{that} an accident took place on that station was visited with a penalty of removal from service imposed by the disciplinary authority. After an unsuccessful appeal the applicant had approached the CAT, Ahmedabad Bench with OA No. 951/1995 challenging the penalty imposed on him and seeking reinstatement in the service. The Tribunal vide order dated 22.11.1999 held that the punishment of removal from service imposed on the applicant was quite harsh and excessive and set aside the same and in place of the removal from service substituted the punishment as that of reduction of pay by three stages in his scale of pay with cumulative effect. The Tribunal also allowed 50% of his wages for the period beginning from the date of his termination from the date of reinstatement and directed that the said period shall be treated as duty for all purposes. The order of the Tribunal was challenged before the Hon'ble High Court of Gujarat at Ahmedabad, by the Railway authorities by way of Special Civil Application No. 13494 of 2000 but the same has come to be rejected by the Hon'ble High Court vide order dated 5.12.2001. The respondents thereafter reinstated the applicant in service and enforced the penalty order from 9.5.2002 onwards and fixed his pay accordingly. The applicant has contended that since the Tribunal had substituted the penalty, the same ought to have been enforced from the date the disciplinary authority passed the order i.e. with effect from 22.9.1994 by reducing his pay by three stages to Rs. 1440/- with future effect. According to the applicant instead of substituting the penalty imposed by the disciplinary authority on 22.9.1994 the respondents have enforced the penalty with effect from 9.5.2002 thereby depriving him of his normal increments, pay fixation with effect from 1.1.1996 and further promotion to

the higher grade of Rs. 5500-9000/- as per his seniority. According to the applicant the respondents have misinterpreted the orders of the Tribunal and therefore, they are required to be directed to consider imposition of the penalty with effect from 22.9.1994 and after reducing his pay by three stages in the scale of pay, he should be given all other service benefits. He has also prayed for direction to the respondents to consider him for promotion to the higher scale of Rs. 5500-9000/- from the date his junior was promoted and for all consequential benefits including the pay and allowances and arrears admissible.

3. The respondents in their reply have contended inter alia that in compliance with the orders passed by the CAT, Ahmedabad Bench they have fixed his pay and have passed appropriate orders in this regard. According to them, as no ^{period was} prescribed in which the penalty of reduction of pay was ^{to be} given effect to, therefore, they have imposed the same ^{penalty} from the date when he again joined the service.

Since the applicant was not in service till his reinstatement in 2002, it was not possible to reduce his pay by 3 ^{and pay him 50% wages only} stages. This could ~~hardly~~ be possible when he would again join the service. According to them the applicant completed his one year of eligible service on 9.5.2003 and therefore from 1.5.2003 he was given the increments. Similarly as far as the case of the promotion is concerned, since the earlier punishment was given with loss of seniority, he was given seniority only from 25.10.1993 in the pay scale of Rs. 1400-2300/- (Rs. 5000-8000/-). He therefore, lost his seniority and his juniors got promoted because of the punishment imposed on him by way of disciplinary authority. They have also contended that the date from which the applicant had been given seniority in the pay scale of Rs. 5000-8000/- is 25.10.1993 and no junior whether from SC category or from general category, has been given promotion

Hence, there is no reason or occasion arises for the promotion of the applicant.

4. We have heard the learned counsel of both the parties and duly considered the rival contentions.

5. From the above narrated facts it becomes quite evident that the order of the Tribunal passed in OA No. 951/1995 is completely ^{mis-} construed by the respondents. While disposing of ~~the~~ OA the Tribunal had given the following directions:

"14.
In the conclusion, therefore, we hold that the order passed by the disciplinary authority imposing the punishment of removal from the service ~~of~~ the applicant is quite harsh and excessive and therefore, we set aside the same and in place of removal from the service, we substitute the punishment as that of reduction of pay by three stages in his scale of pay with cumulative effect. The applicant is also allowed 50% of his wages for the period beginning from the date of his termination to the date of reinstatement and the said period shall be treated as duty for all purposes. The respondents shall implement the order within eight weeks from the date of receipt of a copy thereof."

6. The above direction of the Tribunal in no sense could have been construed as permitting the respondents to enforce the penalty of reduction of pay by three stages from the date he was reinstated in service. It is clearly stated that the order passed by the disciplinary authority imposing the punishment of removal from service on the applicant is quite harsh and excessive and therefore the same is being set aside and in place of removal from the service, punishment as that of reduction of pay by three stages was being substituted. If the order of the disciplinary authority passed on dated 22.9.1994 was coming into force immediately on the passing of the same, then when the same was being set aside and substituted by an order of punishment of, ~~that of~~ reduction of pay by three stages in his scale of pay with cumulative effect, the respondents were clearly required to implement the same from the date the disciplinary authority passed the order. We are unable

to understand how the respondents construed that the order was to be implemented only from the date the applicant was reinstated in service. There was no direction of implementing the orders ~~of the disciplinary authority~~ in the orders passed by the Tribunal. When the order of the disciplinary authority stood substituted by another order of punishment, obviously the same was to be enforced from the date the disciplinary authority ~~has~~ passed the order. The respondents were, therefore, required to reduce the pay of the applicant by three stages on the date on which the disciplinary authority had passed the order i.e. 22.9.1994. Even if he was reinstated in service subsequently his pay was ~~therefore~~ required to be fixed on dated 22.9.1994 by reducing the same by three stages and then he would have been paid 50% of backwages of the reduced pay from the date of his removal from the service till reinstatement. The contention that it would not have been possible to pay ~~him~~ 50% backwages to the applicant unless he had been reinstated in service with full backwages and therefore this substitution of the penalty cannot be given effect during the period for which he was given 50% backwages is clearly misconceived and un-sustainable. What was required to be paid to the applicant ^{was 50% of wages} after fixing his pay by reducing the same by three stages as on 22.9.1994 ^{will cumulative effect.} ~~during the 50% of the pay which he would have verified on that day.~~

7. So far the question of seniority of the applicant is concerned, we are unable to appreciate the reasoning advanced by the respondents in the reply for denying him promotion and proper seniority. The punishment imposed by the disciplinary authority has already been set aside by the Tribunal and therefore, the question of relying on that punishment does not arise at all. No order directing the loss of the seniority of the applicant is passed by any

authority and therefore it cannot be accepted that because of the orders passed earlier the applicant had lost his seniority. Since only the punishment of reduction by three stages in his pay by cumulative effect has been awarded on the applicant, it cannot be argued that he has lost his seniority and therefore was not entitled for promotion. We hold that the applicant is very much entitled to his seniority in the post of ASM in the scale of Rs. 1400-2300/- (Rs. 5000-8000/-) enjoyed by him on 22.9.1994 and he is required to be allowed to enjoy the same seniority onwards. If any of his juniors are promoted, he also will have to be considered for further promotion to the higher scale.

2
8. For the reasons stated above and in view of the facts and circumstances of this case, we allow both these OAs and direct the respondents to substitute the punishment of reduction of pay by three stages in his scale of pay i.e. in the scale of Rs. 1400-2300/- (Rs. 5000-8000/-) with effect from 22.9.1994 and after effecting the punishment, pay him the 50% of wages arrived at by reducing his pay by three stages for the period beginning from the date of his termination to the date of his reinstatement in the service. Since this period is directed to be treated for duty for all purposes, the applicant shall be entitled to retain his seniority which he was enjoying on 22.9.1994 and shall be entitled for consideration for further promotion if any ^{and} of his immediate junior has been extended the promotion during this period, from the date his immediate junior was promoted. His pay also be accordingly fixed from 22.9.1994 onwards keeping in mind that the reduction to three stages is to be given with cumulative effect. This exercise shall be completed within 6 months from the date of receipt of a copy of this order.

9. Both these OAs stand disposed of with this direction.
A copy of this order be placed in OA No. 534/2003. There shall be no order as to costs.

A. S. Sanghvi
(A.S. Sanghvi)
Judicial Member

M.P. Singh
(M.P. Singh)
Vice Chairman

"SA"

पूठांकन सं ओ/न्या.....जबलपुर, दि.....
प्रतिनिधि अवैधित:-

- (1) सचिव, उच्च न्यायालय वर एसोसिएशन, जबलपुर
- (2) अध्यक्ष श्री/श्रीमती/कु.....के काउंसल
- (3) प्रत्यक्षी श्री/श्रीमती/कु.....के काउंसल
- (4) अध्यक्ष, कोषा, जबलपुर न्यायपीठ

सूचना एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार

AN Bhatt
Anand Pathak

Issued
On 5-10-04
BS