

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No. 1105 of 2013

Date of CAV: 25.01.2019

Date of Pronouncement:27.02.2019

Between:

C. Prabhakara Rao, S/o. C. Suryanarayana,
Aged 61 years, Retd. Chief Commercial Supervisor,
Chirala, R/o. H. No. 7-3-45/B, Bhimavari Street,
Near Ramalayam, Bapatla – 522 101.

... Applicant

And

1. Union of India, represented by
The General Manager (P),
South Central Railway,
Rail Nilayam, Secunderabad.
2. The Divisional Railway Manager,
Vijayawada Division, South Central Railway,
Vijayawada.
3. The Senior Divisional Personnel Officer,
Vijayawada Division, South Central Railway, Vijayawada.
4. The Senior Divisional Commercial Manager,
Vijayawada Division, South Central Railway, Vijayawada.
5. The Divisional Commercial Manager,
Vijayawada Division, South Central Railway, Vijayawada.

... Respondents

Counsel for the Applicant ... Mr. K.R.K.V. Prasad

Counsel for the Respondents ... Mrs.A.P. Lakshmi, SC for Rlys

CORAM:

Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. The OA is filed against the penalty of reduction of pay of the applicant by an incompetent authority and for not disposing the appeal made against the penalty order.

3. The brief facts are that the applicant while working as Commercial Supervisor was empanelled to the post of Chief Commercial Supervisor vide memo dt 15.2.2008. However, he could not be promoted due to currency of punishment which ended on 1.5.2008. The applicant was due for promotion from 2.5.2008. The applicant was proceeded against in one another disciplinary case vide memo dt 22.2.2008 and imposed the penalty of reduction of pay on 26.10.2009 in the time scale by one stage for a period of two years with cumulative effect w.e.f. 28.10.2009. The period of penalty was over on 27.10.2011. Yet the applicant was denied promotion and he retired on 30.4.2012. The applicant claims that an incompetent authority has imposed the punishment and that his appeal dt 5.11.2009 was not disposed. Therefore the punishment imposed on 26.10.2009 is null and void. Hence, he has to be given promotion from 2.5.2008. Applicant represented on 13.4.2011, 30.4.2011, 29.7.2011 12.10.2011 to dispose the appeal but since it was not disposed the OA has been filed.

4. The contentions of the applicant are that the charge memo was served on him only on 18.6.2008 with an ante date of 22.2.2008, in order to deny his legitimate promotion as Chief Commercial Supervisor. The inquiry officer held the charges proved without properly evaluating the facts of the case. An incompetent disciplinary authority without considering the valid submissions imposed the penalty of reduction of pay w.e.f 28.10.2009. Appeal made on 5.11.2009 was not disposed despite several representations. Applicant contends that deliberately the appeal was not disposed to deny him the due promotion till he retired on 30.4.2012, even though the currency of the punishment was over on 27.10.2011. Resultantly, the applicant has been denied legitimate promotion and

consequent pensionary benefits. The applicant pleads that the Tribunal need to intervene and render justice.

5. Respondents contend that the OA was not filed in time and without availing the alternate remedy of appeal. The applicant though empanelled as Chief Commercial Supervisor, could not be promoted in view of the currency of the punishments imposed. The competent disciplinary authority has imposed the punishment. There was no appeal preferred against the punishment order of reduction of pay. The currency of punishment was over on 28.10.2011 and as per service book entry the applicant was given the grade pay of Rs.4600 under 3rd MACP w.e.f 1.9.2008 vide memo dt 8.11.2011. Besides, applicant was promoted to the Grade pay of Rs 4600 as Chief Commercial Supervisor vide memo dt 18.4.2012, on review of his case by the 3rd respondent. Thus, based on grounds stated, the OA has to be dismissed.

6. Heard Sri K.R.K.V. Prasad, learned counsel on behalf of the applicant and Smt. A.P. Lakshmi, learned counsel represented the respondents. The case details and records submitted were perused in detail.

7. i) It is an undisputed fact that the applicant was empanelled as Chief Commercial Supervisor vide memo dt 15.2.2008. However, in view of currency of punishment till 1.5.2008, he could not be promoted. Understandable and is as per rules. Another charge sheet dt.22.2.2008 was served on the applicant as late as 18.6.2008. The reply statement does not give any reasons for the delay of 4 months in serving the charge sheet. The main charge was that the applicant while working as Supervisor in charge of PCT (Printed Card Ticket) has failed to properly secure one bundle of Printed Card Ticket, as a result the bundle was lost. Consequently, a debit to the extent of Rs.17,500 was raised by the Travelling Inspector Accounts. During the inquiry the applicant did depose in

response to question number 6, that as there was no almirah provided to secure the ticket bundle, it was checked and kept in the rack in the parcel office. The Chief Commercial Inspector, Tenali was also kept informed of the same. This submission answers the respondents objection in the reply statement that the applicant should have brought it to the notice of the superior, if an almirah was not provided to secure the tickets. In reply to question No.10 the applicant stated that the post of Commercial Supervisor is a working post. He was working in shift duties in Essentially intermittent (EI) roster. In shift duties it is the normal practice that when the reliever comes, the money value books, PCTs etc along with the keys are handed over to the reliever. The applicant has also stated that during his absence, one official by name Mr D.Ramkrishna working in the parcel office could be involved in the missing of the ticket bundle. In reply to the question at S1 No.11 the applicant submitted that the said Sri Ramkrishna was blamed by one another official Sri M.N. Choudhary in regard to missing of Tickets. Without proper arrangements being made to secure the tickets and the Commercial Supervisor post being manned on shift duties by other officials as well, it may not be fair to hold the applicant solely responsible for the loss of tickets. Unless a thorough investigation is done, one would not know as to who is the culprit. Without conducting such an investigation holding the applicant responsible is arbitrary. More so, when an official by name Sri D. Ramkrishna was suspected by the applicant in view of his being involved in similar such incident in the past. The respondents did not state anything as to whether the involvement of Mr. D. Ramakrishna was verified to get to the truth.

ii) Now coming to the aspect of competency of the disciplinary authority. As per Schedule II of D& A instructions, a Junior Administrative Grade officer or a Senior Scale officer holding independent charge of a

Department or a Division is the disciplinary authority to impose a major penalty on the applicant. The disciplinary authority who imposed the penalty was the Divisional Commercial Manger in Senior scale reporting to the Senior Divisional Commercial Manager. Therefore, he was not holding independent charge. Hence, he is not competent to impose the penalty. It goes without saying that the penalty imposed by an incompetent authority is invalid.

iii) Moving towards the objection raised by the respondents that the applicant has not preferred an appeal, it is on record that the appeal dated 5.11.2009 was forwarded by the Station Master, Kakinada vide his endorsement on the appeal. There can be no better evidence to claim that the appeal has been preferred. Further, the applicant did file a number of representations requesting to dispose the appeal, which were forwarded by officers under whom the applicant worked. If the respondents had any doubt they could have enquired from any of the officers forwarding the representations as to whether they have forwarded the same. By not doing so the objection lacks substance. In effect, the respondents have failed to dispose of the appeal filed, though the appeal and the representations thereof, were forwarded by responsible officers from their own organisation. Failure to dispose an appeal by the competent authority goes against the very spirit of RS (D&S) Rules 1968.

iv) Thus, by the decisions of the respondents, detailed in paras supra, which were found to be faulty, the applicant was not promoted on 2.5.2008. As seen from the case history, the applicant was involved in incidents which do not involve any moral turpitude. Mostly they were due to procedural lapses and factors beyond his control. The applicant did also put in more than 32 years of long service and seeking a legitimate promotion is but natural, particularly when he is not at fault. However, the respondents on review promoted the applicant to

the said post only on 18.4.2012 just a few days before his retirement on 30.4.2012.

vi) Therefore both on merits and technical grounds as explained above, the OA succeeds. The action of the respondents is against rules, illegal and arbitrary. The memo dated 26.10.2009 imposing the punishment of reduction of pay for a period of two years is quashed. Consequently, the respondents are directed to consider as under:

- a) To promote the applicant notionally to the post of Chief Commercial Supervisor as on 2.5.2008.
 - b) As the punishment imposed vide Memo. dt. 26.10.2009 has been quashed, the applicant has to be paid pay and allowances due, as if punishment was not imposed.
 - c) Refix the pension based on the notional promotion ordered from 2.5.2008.
 - d) Pay the arrears of pension and allied settlement dues by such refixation.
 - e) No arrears of pay need to be paid from the date of notional promotion.
 - f) Time allowed to implement is 3 months from the date of receipt of this order.
- vii) With the above directions the OA is allowed. There shall be no order as to costs.

**(B.V. SUDHAKAR)
MEMBER (ADMN.)**

**(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)**

Dated, the 27th day of February, 2019

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