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CENTRAL ADMINISTRATIVE TRIBUNAL KOLKATA BENCH

O.A/350/239/2015
M.A/350/181/2015

Date of Order: 13.12.2018

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative Member

Shri Kalyan Das, son of Late Hridaynath Das, aged about 61 years. Addl. General Manager (TM-II), Bidhan Nagar Telephone Exch. Kolkata Telecom District, Bharat Sanchar Nigam Limited, since retired and residing at 25, S.V Road, 3rd Lane, Birati, P.S Birati, Dist. North 24 Parganas. Pin -- 700051.

--Applicant

-vs-

1. Union of India, service through the Under Secretary, Govt. of India, Ministry of Communication & Information Technology, Department of Telecommunication West Block - I wing -2, Ground Floor, R.K Puram, Sector -1, New Delhi 110066.
2. The Chief General Manager, Kolkata Telecom District, Telephone Bhawan, 34, B.B.D Bag, Kolkata 700001.
3. The Sr. DDG (Establishment), Department of Telecom, Sanchar Bhawan, 20, Ashoka Road, New Delhi - 110001.
4. The Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi - 110069.
5. The Director, Central Vigilance Commission, Department of Telecom, Sanchar Bhawan, 20, Ashoka Road, New Delhi - 110001.
6. Shri P. Paul William, son of not known, DGM (Admn.) Circle Office, Kolkata - 700001.
7. Shri D.K Behara, son of not known, DGM (Trans), Circle Office, Kolkata - 700001.
8. Shri Dipesh Chandra Tikadar, General Manager, office of the CGMT, Assam Circle, Silchar, Dist. Cachar, Pin - 799001.

---Respondents

For The Applicant(s): Mr. J.R Das, Counsel

For The Respondent(s): Mr. S. Paul, Counsel

ORDER (ORAL)

Per: Bidisha Banerjee, Member (J):

Heard Id. Counsel for both sides.

2. This O.A was filed initially in order to seek the following reliefs:

" 8. (i) An order directing the respondents to set aside quash the purported order of punishment dated 15.1.2007 condoning the delay if any in the circumstances submitted herein above and also for setting aside the purported charge sheet dated 23.2.2004, the purported Inquiry Report dated 20.4.2005, communicated on 20.6.2005 and Inquiry proceeding thereto along with CVC letter dated 4.12.2003 and 25.5.2005 as also the UPSC letter dated 14.11.2006 since issued without due application of mind.

ii) An order directing the respondents for antedating of the promotion dated 2.2.2009 in non functional selection grade of JAG of ITS Gr. I.1.2002 since acceptedly due to the applicant and that no charge existed against the applicant on that date and accordingly further allowing of next promotion to SAG grade w.e.f 22.2.2011 at par with his juniors with due amendment of seniority list to place the applicant after Sl. No. 89 but above serial no. 90 as per his due position of seniority in the seniority list dated 13.7.2011 with all consequential benefits thereto including all monetary & interest thereof forthwith.

iii) An order directing the respondents to enhance the pension and pensionary benefits due to the applicant on effecting of aforesaid promotions since due.

iv) To direct the respondents to place all the papers on record in connection to the adjudging of the matter before the Hon'ble Bench.

v) And to pass such further or other order/orders further order/orders and/or direction or directions as to this Hon'ble Tribunal may seem fit and proper. "

Later on, by an order dated 9.6.2017, the applicant agreed to delete the prayer 8(ii). therefore, he confined his relief only to challenge the proceeding and benefits of enhanced pension, in case he succeeded.

3. At hearing, Ld. Counsel for the applicant admitted that although the charges were partially proved, he had not represented against the Inquiry report and thereby impliedly admitted the conclusion arrived at by the Inquiry Officer on the basis of which UPSC gave its advice and as such penalty was imposed in the name of the President with the following orders:

“3. The Union Public Service Commission (UPSC) have been consulted in the matter. The Commission have tendered their advice in the matter vide their letter No. F3/356/2005-SI dated 14.11.2006 (copy enclosed). The Commission have inter alia noted that the Charged Officer did not submit any representation to the Disciplinary Authority’s disagreement Memorandum. They have also noted that the Charged Officer had admitted in his pre-recorded statement to the Vigilance, that only five cable breakdowns had been reported during the monsoon in areas under the jurisdiction of SDOP (Central) (Four breakdowns) and SDOP (Bhadra) (One breakdown). The Charged Officer had also admitted that the cost of labour engaged for this purpose during the monsoon should have been Rs. 4800/- approximately. As against this, the Charged Officer had approved bills of the order of Rs. 5,42,627/- The Divisional Engineer (External) had indicated in his deposition that the Area Manager (the Charged Officer) was being apprised of the cable breakdowns and had also been visiting the sites of major breakdowns. In this way, the Charged Officer’s failure to correlate the bills for attending to monsoon cable faults put up to him, with the number of cable faults actually reported, could not be an act of mere omission.

3.3 In the light of their findings, and after taking into account all other aspects relevant to the case, the Commission consider that the ends of justice would be met in this case if the penalty of “reduction of pay by two stages in the time of scale of pay for two years, with further direction that the Government Servant will earn increment during the period of such reduction and the reduction will not have the effect of postponing the future increments of pay” is imposed on the Charged Officer. They have advised accordingly.

5. The President has carefully considered the records of the inquiry, the findings of the Inquiring Authority, the fact that Shri Kalyan Das did not submit any representation on receipt of a copy of the Inquiry Report and the proposal of the President to disagree with the findings of the Inquiring Authority, the advice tendered by the UPSC, and all other facts and circumstances relevant to this case. Considering the circumstances in totality and on an objective assessment of the

entire case, the President has accepted the advice tendered by the UPSC; and accordingly hereby orders that the pay of the said Shri Kalyan Das be reduced by two stages in the time scale of pay of Rs. 12000-375-16500/- for a period of two years, with the further direction that he will earn increments during the period of such reduction and that the reduction will not have the effect of postponing the future increments of his pay.

6. The receipt of this Order shall be acknowledged by Shri Kalyan Das."

3. After 8 years of imposition of such penalty, the applicant has come up with this O.A. challenging the penalty order with an M.A to seek condonation of delay, on the ground that, in 2015, he had come up with O.A which was withdrawn with liberty to file a fresh one which gave him a fresh cause of action in 2015 to challenge the proceeding that ended with a penalty order in 2007.

4. Such contention of the applicant fails to convince us, since while withdrawing his earlier application, he did not seek condonation of delay whereas the instant O.A is hopelessly time barred.

5. However, we allow the condonation of delay and proceed with the merits of the matter.

6. In view of the fact that, the applicant has not challenged the findings of the Inquiry Officer by way of any formal representation, which Ld. Counsel admitted at the bar, we are afraid there is no scope of interference with the penalty for the charges were partially proved and the penalty imposed is not a major one and it is not shockingly disproportionate to the charges leveled against the applicant to the extent proved.

7. At hearing, Ld. Counsel for the applicant would also agitate on the delayed promotion. Since he has himself forfeited his right to seek prayer 8(ii) due to its deletion, the prayer cannot be entertained at this stage being not legally permissible.

8. With the above observations, the O.A is disposed of. No costs.

(Nandita Chatterjee)
Member (A)

ss

(Bidisha Banerjee)
Member (J)