

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.1917/2013

Wednesday, this the 10th day of July 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Sanjay Kumar Pandhi
s/o sh. Kapur Chand
r/o R 212-A, HIG Sector 12
Pratap Vihar, Ghaziabad (UP)

..Applicant
(Applicant in person)

Versus

1. Union of India through the General Manager
Northern Railway, Baroda House, New Delhi
2. The Divisional Railway Manager
Northern Railway, Delhi Division
State Entry Road, New Delhi
3. The Sr. Divisional Personnel Officer
DRM's Office, Northern Railway
Delhi Division, State Entry Road,
New Delhi

..Respondents
(Mr. Shailendra Tiwary, Advocate)

O R D E R (ORAL)

Justice L. Narasimha Reddy:

The applicant was appointed as Electric Assistant (Assistant Loco Pilot) in Northern Railway in the year 1986. He faced disciplinary proceedings and was ultimately removed from service, through an order dated 18.05.1992. He challenged the order of removal by filing O.A. No.998/1993. The same was allowed on 05.07.1999 and the order of removal was set aside.

The respondents, however, were given liberty to continue disciplinary proceedings in accordance with the observations made in the order. The applicant was reinstated in service on 30.11.2000. The disciplinary proceedings were resumed by issuing a show cause notice and punishment of withholding of increments for a period of three years with cumulative effect was imposed, through an order dated 05.09.2002. In an appeal preferred by the applicant, the punishment was reduced to two years. In the further revision, the authority passed an order dated 11.04.2005 directing that the punishment of withholding of increments would be in force up to 31.03.2005.

2. The applicant states that the order of punishment of withholding of increments could not be implemented immediately after the order was passed, on account of the fact that he earned two successive promotions before the increments in the lower post became due. His pay was fixed as and when he was promoted. However, he was issued notice at a later stage, proposing to revise the pay structure. This O.A. is filed with a prayer to quash the orders dated 05.03.2013, 02.04.2012 and show cause notice dated 12.03.2010.

2. The applicant contends that once the punishment was directed to be in force up to 31.03.2005, the respondents were not entitled to implement the same for any time beyond that date or any time before the increment became due.

3. The respondents filed counter affidavit opposing the O.A. It is stated that though the punishment of withholding of increments for a period of three years with cumulative effect was imposed, the pay of the applicant was wrongly fixed at various stages and accordingly, a show cause notice dated 12.03.2010 was issued and his pay was fixed, through the impugned orders.

4. The O.A. was heard at length on earlier occasion and through a detailed order dated 15.10.2014, it was allowed, setting aside the orders dated 05.03.2013 and 02.04.2012. The respondents were directed to promote the applicant to the post of Senior Electrical Assistant from 01.10.2002 and Engine Turner from 25.09.2003. However, it was observed that the punishment of withholding of increments shall be in force from 01.09.2004 to 31.03.2006. The applicant filed W.P. (C) No.11063/2015 before the Hon'ble Delhi High Court, feeling aggrieved by the change of dates referable to the punishment. Through its order dated 09.08.2016, the High Court allowed the W.P. and remanded the matter to the Tribunal.

5. Today, we heard the applicant, who argued his case in person and Mr. Shailendra Tiwary, learned counsel for respondents, in detail.

6. The punishment of removal imposed against the applicant in the year 1992 was set aside by the Tribunal and accordingly,

he was reinstated. Availing the liberty given to continue the disciplinary proceedings, the respondents issued show cause notice and the disciplinary authority passed order dated 05.09.2002 imposing the punishment of withholding of increments for a period of three years with cumulative effect. This, in turn, was modified by the appellate authority to be in force for two years.

7. In further revision filed by the applicant, the authority has observed as follows:-

“4.... In view of the above circumstances & further since you are undergoing monetary hardship, I reduce the punishment from withholding of increment for two years with cumulative effect to withholding of increment up to 31.3.2005 with cumulative effect...”

Another direction was also issued as to the manner of dealing the period during which the applicant was out of service.

8. If the punishment against the applicant were to have been imposed on the basis of order dated 05.09.2002, the next increment, which became due, was required to be stopped. However, it so happened that the applicant earned promotion on 01.10.2002, much before the increment became due. This was followed by another promotion on 01.10.2003. Once again the punishment of withholding of increments could not be implemented. The possibility for implementing the punishment arose only from 01.10.2004 when the increment was due to the

applicant. In all fairness, the applicant stated that he never objected to the stoppage of increment, which became due on 01.10.2004. The punishment, if imposed, was to remain in force up to 31.03.2005, as directed by the revisional authority.

9. The respondents, however, proceeded to re-fix the salary of the applicant as though the punishment, as modified by the appellate authority, i.e., stoppage for two years, was to be implemented. Nowhere, the fact that the revisional authority has further reduced the punishment, was taken note of. The Tribunal was convinced even on the earlier occasion that the impugned orders dated 05.03.2013 and 02.04.2012 cannot be sustained in law. We subscribe the same view. However, as regards the punishment of stoppage of increment to be extended beyond 31.03.2005, the view taken by the Tribunal on earlier occasion did not find favour in the W.P. It is the prerogative of the concerned authority to impose or modify the punishment. There are instances where the Tribunal or a Court can reduce the punishment, but not of enhancement. Further, the applicant did not challenge the order of the revisional authority.

10. We, therefore, allow the O.A.:

- a) setting aside the impugned orders dated 05.03.2013 and 02.04.2012,

- b) directing that the punishment of withholding of increments against the applicant shall be in force for the period between 01.10.2004 and 31.03.2005,
- c) the pay structure, which was determined through impugned orders, shall be re-determined, as indicated in paragraph (b), and consequential benefits, that flow from the same, shall be extended to the applicant, within a period of three months from the date of receipt of a copy of this order.

There shall be no order as to costs.

(Mohd. Jamshed) (Justice L. Narasimha Reddy)
Member (A) Chairman

July 10, 2019
/sunil/