

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserve Date : 09-12-2015

Date of Decision : 21 - 12-2015

CORAM :

THE HON'BLE DR.JUSTICE S.TAMILVANAN
AND

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

W.P.No.5308 of 2015

V.Janakiraman

..... Petitioner

vs

1. Union of India represented by the Member
Railway Board, Rail Bhavan,
New Delhi - 110 001.
2. The General Manager
Southern Railway HQ,
Park Town, Chennai - 600 003.
3. The Registrar
Central Administrative Tribunal
Madras Bench, Chennai - 600 104.
4. The Secretary
Union Public Service Commission
Dholpur House, Shahjahan Road,
New Delhi - 110 069. Respondents

(R4 impleaded as per order, dated 14.10.2015
passed by S.M.K.J & M.V.J in M.P.No.1 of 2015
in W.P.No.5308 of 2015).

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order of the third respondent / Tribunal made in O.A.No.58 of 2013, dated 06.01.2015, to quash the same and consequently, direct the respondents 1 and 2 to consider the claim of the petitioner for Group 'A' status (conferment of IRSE status on the petitioner) with effect from the date, his immediate junior has been given the said benefit with all other consequential benefits both service and monetary.

For petitioner : Mr.L.Chandrakumar

For Respondents : Mr.M.Vellaisamy for
Mr.V.G.Suresh Kumar for R1 & R2

R3 - Tribunal

Mr.M.T.Arunan
Standing counsel for UPSC for R4

* * * * *

ORDER

(Order of the Court made by S.TAMILVANAN, J)

This Writ Petition has been filed by the petitioner, invoking Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order of the third respondent / Tribunal made in O.A.No.58 of 2013, dated 06.01.2015 and quash the same and consequently, direct the respondents 1 and 2 to consider the claim of the petitioner for Group 'A' status (conferment of IRSE status on the petitioner) with effect from the date on which, his immediate junior was given the said benefit and also other consequential benefits both service and monetary.

2. The petitioner was initially appointed to Railway Service as an Inspector of Works Grade III on 22.05.1981. Based on his performance in the written examination as well as viva voce, the petitioner was promoted as an Assistant Executive Engineer (Group 'B' Gazetted) on 23.11.2000 and in the Gazetted cadre, he was further promoted to Senior Scale, as Executive Engineer from 26 / 27-10-2007 in which post, he continued till the date of filing the writ petition. The next avenue of promotion to the petitioner is that of Group 'A', for which Indian Railway Service of Engineers (in short ISRE) is to be conferred on an Officer by the Departmental Promotional Committee (DPC).

3. The petitioner further averred that the Ministry of Railways (Railway Board) has prescribed the "Procedure for promotion to administrative grades in Railway Services" vide letter No. 2002/SCC/3/1, dated 03.06.2002, as per which the Bench mark for promotion from Senior scale to Junior Administrative Grade (including Selection Grade) is 'Good' only. The petitioner's gradings given in his Annual Confidential Reports are above the 'Bench mark' prescribed by Railway Board.

4. The petitioner, during the year 2005, was issued with a penalty charge memo, bearing No. P(G)/Con/I/11/2001, dated 09.03.2005 for some alleged misconduct, which finally culminated in the imposition of the minor penalty of "with-holding of one increment for a period of six months without cumulative effect" (from 01.07.2010 to 31.12.1010), vide the penalty memorandum, dated 05.02.2010. The petitioner further submits that during the beginning of the year 2012, the Ministry of Railways (Railway Board) mooted a proposal to fill up 148 vacancies (116-UR, 22-SC & 10-ST) pertaining to the period 2010-11 and 2011-12 (74 vacancies for each year) in the promotee segment of Group 'A' / Junior scale of IRSE and sent the said proposal to the Union Public Service Commission (UPSC) for convening the Departmental Promotion Committee (DPC). UPSC convened the DPC on 22.11.2012 and 23.11.2012. In the said meeting, the DPC did not include the name of the petitioner in the select list, in view of the fact that the petitioner had suffered the minor penalty of "with-holding of increment for a period of six months" from 01.07.2010 to 31.12.2010. Aggrieved over the same, the petitioner submitted a detailed representation, dated 24.12.2012 to the Member (Staff), Railway Board and the same did not yield any result. Hence, the petitioner filed Original Application in O.A.No.58 of 2013 before the Central Administrative Tribunal, Madras Bench at Chennai.

5. The Central Administrative Tribunal, Madras Bench, by order, dated 06.01.2015, disposed of the Original Application with the above observation :

"Thus it is not possible to give a direction to the Respondents to promote the applicant as Group A / IRSCE Officer against the vacancies for 2011-12. However, his case ought to be placed in the DPCs as and when convened for the vacancies of the subsequent year(s) to adjudge his suitability for promotion to IRSE / Group 'A' which will no doubt consider the case taking into account the nature of acts of omission / commission on the part of the Applicant and take a view whether the penalty should or should not continue to operate as a bar to promotion, and then necessary action taken by the Respondents based on the recommendations of the DPC."

Aggrieved over the said order, the petitioner has come forward with the present writ petition, seeking for the relief of Certiorarified Mandamus, as stated supra.

6. Learned counsel appearing for the petitioner submitted that when the Departmental Promotion Committee, met on 22.11.2012 and 23.11.2012, the petitioner was free from all charges, to be conferred with Group 'A' status, i.e., conferment of IRSE. However, the DPC has held that the petitioner was suffering with the penalty of "with-holding of increment" and on that ground, the rejected the claim of the petitioner. Learned counsel further submitted that the petitioner was imposed with minor penalty of "with-holding of increment" for a period of six months by the order of the General Manager, Southern Railway, dated 05.02.2010. It was also made clear that the above said minor penalty would come into effect from 01.07.2010 to 31.12.2010. The said DPC met only on 22.11.2012 and 23.11.2012 and on the said crucial date, there was no impediment for considering the name of the petitioner for giving him Group 'A' status (conferment of IRSE), however, that was not given by the respondents, which necessitated in filing this writ petition.

7. Per contra, learned counsel appearing for the respondents 1 and 2 submitted that the petitioner was not given the benefit, in view of the Memorandum issued by the second respondent, which was communicated as per order, dated 05.02.2010. It is seen that the memorandum reads as follows :

"As this is a procedural mistake not leading to any loss with malafide intention to the Railways, I impose a minor penalty of "withholding of annual increment for a period of six months without cumulative effect" on the charged officer."

8. As contended by the learned counsel appearing for the petitioner, it has been made clear in the said order that only a minor penalty of withholding of annual increment for six months was ordered and the conclusion arrived at by the second respondent was that a procedural mistake had been committed by the petitioner herein, which caused no loss to the department and there was no malafide intention of the petitioner in committing the mistake.

9. When it was a procedural mistake, even as per the view taken by the respondents 1 and 2, only a minor penalty could be imposed and accordingly, increment of the petitioner was withheld only for a period of six months without cumulative effect, which cannot be extended beyond six months.

10. It is not in dispute that the juniors to the petitioner were considered for providing Group 'A' status (conferment of IRSE status). In this regard, the learned counsel appearing for the respondents 1 and 2 also drew the attention of this Court to the Proceeding in No.2002/SCC/3/1, dated 03.06.2002, wherein para 9 reads as follows:

"The DPC would not be guided merely by the grading, if any, recorded in the ACRs but should make its own assessment on the basis of the entries in the ACRs, including the various parameters and attributes. The Committee shall also take into account whether the officer has been awarded any major or minor penalty or whether any displeasure of any superior officer or authority has been conveyed to him, as reflected in the ACRs. The DPC should also have regard to the remarks on the columns of integrity."

Similarly, paragraph No.14 was also specifically pointed out by the learned counsel for the respondents 1 and 2, which reads as follows :

"DPC shall, for promotion to administrative grades, grade officers as 'fit' or 'unfit' only with reference to the benchmark mentioned above. Only those who are graded as 'fit' shall be included in the select panel prepared by the DPC in order of their inter-se seniority in the feeder grade. There shall be no suppression in the matter of "selection" (merit) promotion among those who are found "fit" by the DPC in terms of the prescribed benchmark."

11. It is relevant to refer the decision of the Hon'ble Supreme Court, rendered by a Three Judge Bench in Union of India v. K.V.Janakiraman, reported in (1991) 4 SCC 109, wherein it is held that in case of an employee for promotion or getting higher grade, crossing of efficiency bar, higher scale of pay cannot be withheld, merely on the ground of pendency of any preliminary inquiry / criminal investigation against him.

12. In the instant case, it is not in dispute that Benchmark for promotion to various grades shall be as under :

- (a) From Senior Scale to JAG / SG : Good
- (b) SAG : Very Good
- (c) HAG : Very Good

As per the communication sent by Ministry of Railways, Railway Board, dated 03.06.2002, the Grading shall be one among, 'Outstanding', 'Very Good+', 'Very Good', 'Good' and 'Unfit'. An employee, who was given grade 'unfit' as per the Benchmark would not be eligible, however, for getting promotion in the case of senior scale to JAG / SG, 'Good' is sufficient. It is not in dispute that the petitioner has got sufficient grade of Benchmark for getting promotion.

13. On the date of Departmental Promotion Committee, i.e. on 22.11.2012 and 23.11.2012, the petitioner was in the cadre of Executive Engineer. However, the name of the petitioner was not considered in the said DPC, on the ground that he had been imposed with the minor penalty of 'with-holding of increment for a period of six months' as per order of the second respondent, dated 05.02.2010. Admittedly, the said penalty runs from 01.07.2010 to 31.12.2010. The Departmental Promotion Committee (DPC), held on 22.11.2012 and 23.11.2012, nearly two years after the expiry of the minor penalty period of the petitioner however, the DPC did not considered the name of the petitioner, though immediate juniors to the petitioner were considered and given the benefit. The benefit was not extended to the petitioner, in view of the withholding of annual increment for a period of 6 months without cumulative effect, as ordered by the second respondent. Even as per the communication of the Deputy Chief Engineer, Engineering Workshops, Arakkonam, dated 03.02.2011, communicated to the petitioner, it has been specifically stated that the annual increment was due for the petitioner on 01.07.2010, that was withheld for a period of six months with effect from 01.07.2010 to 31.12.2010 and the increment would be restored on 01.01.2011 on completion of the penalty period. It has been made clear by the respondents in the said order that from 01.01.2011 onwards, the petitioner would be entitled for restoration of increment. Learned counsel for the petitioner argued that there could be no reason or sustainable ground to deny the right of promotion, in view of the minor penalty of withholding of increment for six months, after the expiry of the currency period of the penalty. As the petitioner is eligible to be considered for promotion to the post of Group 'A' (ISRE), along with his juniors, the same could not be denied legally by the respondents 1 and 2.

14. In this regard, a decision in DIG of Police v. V.Rani, reported in 2011 (3) CTC 129, a Full Bench of this Court held as follows :

"During the period of currency of minor punishment, an employee cannot claim as a matter of right to be promoted to the next category merely on the basis that he is otherwise fit for promotion and to that extent, the finding of the Division Bench in Subramanian v. Government of Tamil Nadu, rep. by its Secretary, Chennai and others, 2008 (5) MLJ 350, stands overruled. It is needles to state after the currency of punishment period, the Government servant is entitled to be considered for promotion to the next post, if otherwise eligible."

15. In Union of India and others v. K.V.Janakiraman and others, 1991 (4) SCC 109 and in Union of India v. A.N.Mohanan, 2007 (3) CTC 621 (SC), it was held that penalty of censure is also a blameworthy factor, which cannot give right to a person to be considered for promotion during the currency period of the penalty. The Supreme Court in A.N.Mohanan's case (cited supra) has held thus :

"11. Awarding of censure, therefore, is a blameworthy factor. A bare reading of Para 3.1 as noted above makes the position clear that where any penalty has been imposed the findings of the sealed cover are not to be acted upon and the case for promotion may be considered by the next DPC in the normal course."

16. The order passed by the second respondent is "withholding of annual increment for a period of six months without cumulative effect", considering the procedural mistake, which had not caused any loss to the Railways. It is an admitted fact that the respondents have taken a view in the Departmental Proceeding that the petitioner herein had committed only a procedural mistake, without any malafide intention and on account of the same, there was no loss to the Department (Railways) and for which the penalty imposed was only withholding of increment for six months without any cumulative effect. The second respondent has specifically stated in the order communicated to the petitioner that the currency period of the penalty of withholding the increment is from 01.07.2010 to 31.12.2010 and from 01.01.2011, his increment would be restored. Therefore, it is not fair and legal to impose any higher penalty or punishment, by denying his right of promotion, nearly two years after the currency period of withholding of increment. However, the Central Administrative Tribunal, has not considered the legal aspect properly in the impugned order, dated 06.01.2015 passed in O.A.No.58 of 2013 and therefore, we are of the considered view that the writ petition has to be allowed, to meet the ends of justice.

17. In the result, this writ petition is allowed and the order, dated 06.01.2015 made in O.A.No.58 of 2013 on the file of the Central Administrative Tribunal, Chennai is set aside. The respondents 1, 2 and 4 are directed to consider the claim of the petitioner for Group 'A' status (conferment of IRSE status) with effect from the date of his immediate junior, getting the Group 'A' status, with all consequential benefits both service and monetary as prayed for. The respondents 1 and 2 are directed to comply with the said order, within a period of Four weeks from

the date of receipt of a copy of this order. However, no order as to costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

tsvn
To

1. The Member
Union of India,
Railway Board, Rail Bhavan,
New Delhi - 110 001.
2. The General Manager
Southern Railway HQ,
Park Town, Chennai - 600 003.
3. The Registrar
Central Administrative Tribunal
Madras Bench, Chennai - 600 104.
4. The Secretary
Union Public Service Commission
Dholpur House, Shahjahan Road,
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