

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No.3197 of 2002

This the 27th day of January, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri Shankar Prasad, Member (A)

Shri Bhagwan Dass Arya
S/o Shri Puran Mal Arya
Ex. Pharmacist
Northern Railway Health Unit,
Shahdara
R/o House No.16/303, East End Aptt.
Cooperative Group Housing Society,
Mayur Vihar, Ph.I Extension,
Delhi-110096.

....Applicant

(By Advocate : Shri S.K. Sawhney)

Versus

1. Union of India through
General Manager
Northern Railway,
Baroda House,
New Delhi.
2. Chief Medical Director
Northern Railway,
Baroda House,
New Delhi.
3. Medical Supdt.
Northern Railway,
D.R.M. Office,
Chelmsford Road,
New Delhi.
4. Divisional Railway Manager,
Northern Railway,
D.R.M. Office, Chelmsford Road,
New Delhi.

.....Respondents

(By Advocate : Shri R.L. Dhawan)

ORDER (ORAL)

Shri Justice V.S. Aggarwal, Chairman :

By virtue of the present application,
applicant, Shri Bhagwan Dass Arya, seeks quashing of
the order dated 22.7.1982 and of 23.10.2002 with
further relief that a direction should be issued to

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the respondents to treat the applicant having continued in service from 22.7.1982 till the date of his attaining the age of superannuation and all the retiral benefits should be paid to him.

2. Some of the relevant facts, in this regard, are that the applicant had been arrested and thereafter tried by the Special Judge, Delhi for the offence punishable under 161 IPC read with sub-section (2) to Section 5 and Section 5 (1) (d) of the Prevention of Corruption Act. It was on the allegation that he had demanded and accepted a bribe of Rs.50/- from one Shri Darshan Lal. Learned Special Judge, Delhi on 26.2.1982 had held the applicant guilty of the above said charge and passed an order of sentence. The applicant had preferred an appeal. The aforesaid judgement and order of sentence passed by the learned Special Judge, Delhi was set aside and the High Court of Judicature at New Delhi had allowed the appeal on the ground that the sanction accorded to prosecute the applicant was not given by the appropriate person. The operative portion of the orders passed by the Delhi High Court in Criminal Appeal No.52/82 reads as under:-

"Consequently, the sanction accorded by the Divisional Medical Officer is of no avail as he is not competent to do so. The appointing authority is the removing authority and/or superior authority to the appointing authority can accord sanction. The sanction having not been granted by the competent authority, Criminal Appeal 52/1982 is allowed. The impugned

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judgement of the learned Special Judge dated 26th February, 1982 in Corruption Case No.39/80 is set aside. Having held that the sanction is bad, I need not go into other aspects of the case."

3. After the decision of the Delhi High Court, the applicant had submitted a representation seeking that he should be granted arrears of wages including promotion to higher post to which he would have been entitled during the period from 19.4.1980 till the date of his attaining the age of superannuation with retiral benefits.

4. Needless to state, the applicant had earlier filed OA No.1208/2002, which was disposed of on 7.5.2002 by this Tribunal with the following directions:-

"In the facts and circumstances of the case, the OA is disposed of with a direction to the respondents to consider the aforesaid representations made by the applicant in accordance with law, rules and instructions and pass a reasoned and a speaking order, with intimation to the applicant as expeditiously as possible. In any case, the order should be passed by the respondents within a period of six weeks from the date of receipt of a copy of this order."

5. In pursuance thereto, the Chief Medical Director, Northern Railway, Baroda House, New Delhi, had passed order dated 23.10.2002 that instead of dismissal from service after conviction, it was converted into the punishment of compulsory retirement. The said order reads as under:-

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"After conviction from the Special Judge CBI, a Show Cause Notice was served to you in exercise of powers conferred under rule 14(i) of the Railway Servants D&AR.1968. After considering carefully your reply of Show Cause Notice. Disciplinary Authority viz. Medical Superintendent, Northern Railway/Divl. Hospital/Delhi has imposed upon you the penalty of dismissal from service. The appeal submitted by you has also been considered by the Appellate Authority and has been rejected.

After considering all the facts and circumstances of the case, I, hereby, in exercise of the powers conferred on me in terms of Railway Servants (Discipline and Appeal) Rules 1968, set aside the order of dismissal No.8-Vig./202/20/Medical dated 22.07.82 and reduce the punishment to compulsory retirement."

6. Learned counsel for the applicant contended that the said order is illegal and contrary to law and, in any case, such an order could not have been passed after one year from the date of passing of the original order. On the contrary, the respondents' learned counsel has referred to Rule 6 of the Railway Servants (Disciplinary and Appeal) Rules, 1968 in this regard.

7. For disposal of the present case, we deem it unnecessary to venture into the controversy pertaining to Rule 6 of the Railway Servants (Disciplinary and Appeal) Rules, 1968. The reasons are obvious. The learned Special Judge, Delhi had held the applicant guilty of the charges framed under the Prevention of Corruption Act. The Delhi High Court, as referred to above, had set aside the said order on the ground that

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sanction to prosecute the applicant had not been accorded by a competent authority.

8. To say that the findings of the learned Special Judge, Delhi has not been set aside would be traverse to the facts and justice. Reasons are not far too fetch. Under the Prevention of Corruption Act, unless there is a valid sanction, the Special Judge cannot take cognizance of the offence. The sanction to prosecute the applicant has been held to be invalid. Therefore, any such findings of the learned Special Judge in this regard need not be gone into nor it would be valid. Otherwise also, once the judgement and the order of sentence had been set aside, the said findings also cannot be used against the applicant in this regard.

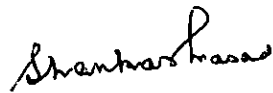
9. Once the judgement and order of sentence had been set aside, if any other punishment had to be inflicted, the respondents may go into it in accordance with law but not use the findings of the Special Judge, Delhi against the applicant. Necessarily the disciplinary proceedings, if ^{permitted} ~~directed~~ in law, could be held and thereafter any ^{punishment} ~~sentence~~ permissible in law could be passed. But the impugned order has been passed without any such disciplinary proceedings, consequently the said order cannot be sustained.

10. For the reasons given above, we accept the present application and quash the impugned order.

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However, we make it clear that nothing said herein would restrain the respondents from, if they deem it appropriate, getting the sanction to prosecute the applicant and proceed in accordance with law or to initiate departmental action, if permitted under the relevant rules. The applicant would be entitled to the consequential benefits as permissible in law.

11. Subject to aforesaid, the present OA is disposed of.



(Shankar Prasad)
Member (A)



(V.S. Aggarwal)
Chairman

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