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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 2367 OF 2001

New Delhi this the 1st day of April, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).
Hon'ble Shri M.P. Singh, Member(A).

IN THE MATTER OF:

J.L. Jain,
S/o Shri S.L. Jain,
R/o 509, New Swastik Group Housing
Society Ltd., Plot No. 2, Sector-9,
Rohini, Delhi-110085. ... Applicant.

(By Advocate Shri S.C. Luthra)

Versus

Union of India through
The Secretary,
Railway Board, Rail Bhawan,
New Delhi. ... Respondent.

(By Advocate Shri R.L. Dhawan)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).

The applicant is aggrieved by the action and orders issued by the respondents, that is, the Railway Board dated 18.12.1998, 10.8.2001 and 2.2.1998,
~~respondents~~

2. The brief relevant facts of the case are that while the applicant was working as FA & CAO (s), Northern Railway, he was issued a charge memo dated 22.2.1989. He retired from service on 31.12.1994 and the inquiry continued against him in terms of Rule 9 of the Railway Services (Pension) Rules, 1993 (hereinafter referred to as 'the Pension Rules'). The Inquiry Officer had held the charges as partially proved, on which the Railway Board, by the impugned memo dated

18.12.1998 has conveyed its displeasure. The applicant had filed an appeal against this order dated 5.3.1999 which has been dismissed by letter dated 10.8.2001. In this letter, they have stated that the applicant's representation cannot be treated as an appeal as no appeal lies against a communication of Government's Displeasure as the same is not a penalty whatsoever. However, they have considered the representation and held that the communication of Government's Displeasure does not by itself deny or vary the pay, allowances, pension, provident benefit, service gratuity and all other conditions of service as regulated by Rules of Agreement. It has, however, the effect of non-payment of interest on the gratuity, if withheld till the time such communication is issued. They have also dealt with the other points raised by the applicant in the representation and have held that the earlier order dated 18.12.1998 communicating Government's Displeasure to him is in order and rejected the same. Hence, this O.A.

3. Shri S.C. Luthra, learned counsel, has submitted that no punishment orders can be passed against a retired Government servant unless the disciplinary proceedings which had been instituted while he was in service continued thereafter, under the provisions of Rule 9 of the Pension Rules. He has submitted that under the proviso to sub-rule (2) of Rule 9, where the departmental proceedings have been instituted by an authority subordinate to the President like in the

present case, that authority has to submit a report recording its findings to the President. Learned counsel has, therefore, submitted that it is only the President who can pass any orders of withholding or withdrawing pension in such cases under Rule 9 (1), subject to fulfilment of the other conditions laid down in that sub-rule where the pensioner is found guilty of grave misconduct or negligence during the period of his service and not otherwise. He has submitted that the penalty in the case is only one of conveying Government's Displeasure to the applicant by the Railway Board which is not competent to convey any such order, which does not also amount to punishment under the Railway Servants (Discipline and Appeal) Rules 1968 (hereinafter referred to as 'the 1968 Rules'). He has submitted that Rule 9 and sub-rules under this Rule have to be harmoniously interpreted. He has pointed out that the respondents have not stated categorically whether the findings of the disciplinary authority have been placed before the President, as required under the proviso to Rule 9 (1). Apart from this, he has contended that the impugned order of penalty conveying Government's Displeasure by the President has been done by the Railway Board and not the President which is also not the competent authority. Learned counsel has relied on an order passed by the Tribunal in another case filed by the same applicant, **S.L. Jain Vs. Union of India & Ors.** (OA 1837/95), decided on 19.12.1996 (copy placed on record).

4. The respondents have controverted the above submissions. We have seen the reply filed by them and heard Shri R.L. Dhawan, learned counsel.

5. A preliminary objection taken by the learned counsel that the application is barred by limitation cannot be accepted as one of the orders challenged by the applicant is the letter issued by the Railway Board dated 10.8.2001 on the representation filed by the respondents dated 5.3.1999 read with the further representation dated 4/6.5.1999 against the Railway Board's order dated 18.12.1998. The O.A. has been filed on 6.9.2001. In the facts and circumstances of the case, the plea of bar of limitation taken by the respondents is rejected.

6. The respondents have submitted that the order conveying Government's Displeasure to the applicant is not one of the penalties prescribed under Rule 6 of the 1968 Rules and as such no statutory appeal lies under the Rules against the communication of this order. They ~~have~~ relied on the Circular dated 16.3.1999 issued by the Railway Board, in which it has been clarified that in cases where disciplinary proceedings initiated against the railway employees while they were in service are finalised after their retirement from service with the communication of Government's Displeasure to them, it will not be held that the proceedings have resulted in dropping of allegations or that the railway employees have been completely exonerated. It has been further

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stated that in such cases where the retired railway employees have been communicated Government's Displeasure, they will be equated to those of serving railway employees on whom minor penalties have been imposed. Learned counsel for respondents has further submitted another circular issued by the Railway Board dated 28.6.1996, copy placed on record. In this circular, it has been stated that the communication of Government's Displeasure to railway employees can be done by General Managers personally in the cases of officers under their charge upto and including officers of Junior Administrative Grade. Shri R.L. Dhawan, learned counsel has submitted that in this case Government's Displeasure has been conveyed by the Railway Board itself, taking into account the relevant facts and circumstances of the case and there is, therefore, no infirmity on this ground. He has also referred to another circular issued by the Railway Board dated 2.2.1998 modifying the Schedule circulated by Board's letter dated 28.6.1996 indicating the authorities competent to issue Government's Displeasure to retired railway employees which provides the General Managers and officers of equivalent rank as mentioned therein to Group 'A' officers under their control upto, and including officers in Selection Grade of JA Grade in respect of major penalty proceedings also, which were initiated against them before their retirement. He has, therefore, submitted that although the Government cannot amend or supersede the statutory rules by administrative

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instructions but where the rules are silent on any particular point, Government can fill up the gaps and issue instructions which are not inconsistent with the Rules which he submits is the position in the present case. He has, therefore, prayed that the D.A. may be dismissed. He has relied on the judgement of the Supreme Court in *Sant Ram Vs. State of Rajasthan* (AIR 1967 SC 1910).

7. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

8. The relevant portion of Rule 9 of the Pension Rules provides as follows:

"9. Right of the President to withhold or withdrawn pension.- (1) The President reserves to himself the right of withholding or withdrawing a pension or gratuity, or both, either full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Railway, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees three hundred seventy-five per mensem.

(2) The departmental proceedings referred to in sub-rule (1)--

(a) if instituted while the railway servant was in service whether before his retirement or during his re-employment, shall after the final retirement of the railway servant, be

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deemed to be proceeding under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the railway servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report according its findings to the President.

(b) x x x x x x x "

In this case, admittedly, memo. of charges dated 22.2.1989 for departmental proceedings have been initiated against the applicant while he was still in service. After his retirement from service w.e.f. 31.12.1994, those proceedings have been continued. In the facts and circumstances of the case, the provisions of Rule 9 (2) (a) of the Pension Rules would be applicable and the proceedings shall be deemed to be proceedings under this Rule to be continued and concluded by the authority by which they were commenced in the same manner if they had continued in service. There is no specific averment made by the respondents whether the aforesaid proviso below sub-rule (2) has been complied with by them, namely, whether the report of the Railway Board of its findings on the disciplinary proceedings has been submitted to the President. The contention of Shri R.L.Dhawan, learned counsel, that as the order issued by the Railway Board conveying Government's Displeasure to the applicant is not a penalty under the provisions of the 1968 Rules, therefore, the instructions issued by the Railway Board dated 2.2.1998 can be followed which is contrary to Rule 9 of the Pension Rules cannot be accepted. On the other hand, we see force in the submissions

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made by Shri S.C.Luthra, learned counsel that the provisions of Rule 9 of the Pension Rules have to be read harmoniously. The departmental proceedings dealt with in sub-rule (2) of Rule 9 in turn make a reference to the provisions of sub-rule (1) which empowers the President to withhold or withdraw pension or gratuity either in full or in part whether permanently or for a specified period, where the pensioner is found guilty during the period of service. It is noted from the provisions of Rule 9 (2) (a) of the Pension Rules that the same authority which had commenced the departmental proceedings can continue and conclude the proceeding in the same manner as if the Railway servant had continued in service, subject to that authority submitting a report regarding its findings to the President. This procedure has not been followed by the respondents in the present case. After the applicant has retired from service during the pendency of the disciplinary proceedings, only the President has been vested with powers to pass the appropriate orders provided in sub- rule (1) of Rule 9. It is further relevant to note that the respondents themselves have submitted that Government's Displeasure is not one of the penalties prescribed under Rule 6 of the 1968 Rules and there is no provision of appeal under these Rules against such an order. In the circumstances of the case, we, therefore, find that not only the procedure as prescribed under Rule 9 of the Pension Rules has not been followed, the Railway Board is also not competent authority to pass the impugned order dated 18.12.1998.

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9. Further, on the ground that Government's Displeasure is not one of the penalties as prescribed in the Rules, the respondents have also submitted that, therefore, no appeal lies against this order, although applicant's representation was considered by the competent authority and rejected by the letter dated 10.8.2001. Therefore, the orders dated 18.12.1998 and 10.8.2001, are liable to be quashed and set aside.

10. Learned counsel for respondents had contended that under the Instructions issued by the Railway Board dated 16.3.1999 read with the clarifications dated 2.2.1998, the authorities who can convey Government Displeasure to Group 'A' officers like the applicant have been given. He has also contended that these Instructions are not contrary to the Rules and, therefore, there is no infirmity in the impugned orders. The Instructions dated 16.3.1999 deal with the subject of promotion to the employees in respect of whom disciplinary proceedings have been finalised after their retirement from service with communication of Government's Displeasure. Rule 9 of the Pension Rules contains provisions dealing with cases where departmental or judicial proceedings have been instituted while the Railway servant was in service and the circumstances in which they can be continued after he has retired from service. The Rule also indicates the nature of the order that can be passed by the President. Rule 9 empowers the President to pass a penalty order of withholding or withdrawing pension or gratuity either in full or in part

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whether permanently or for a specified period and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Railways, if in any departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service. The Instructions relied upon by the respondents, therefore, are contrary to the provisions of Rule 9, in so far as they empower the Railway Board to delegate to other authorities the power to issue Government's Displeasure on retired Railway employees. In Sant Ram Sharma's case (supra) relied upon by the respondents, the Hon'ble Supreme Court has held:

"It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed...."

The aforesaid Instructions issued by the Railway Board and relied upon by the respondents do not merely fill up the gaps and supplement the Rules but are inconsistent with the provisions of Rule 9 of the Pension Rules, which the respondents cannot do as it amounts to amending or superseding the Rules by Administrative instructions. In this view of the matter, the impugned Instructions issued by the Railway Board dated 2.2.1998 read with the earlier letter dated 28.6.1996 are liable to be quashed and set aside, so far as they relate to retired railway employees who are governed by the provisions of Rule 9 of the Pension Rules.

11. In the result, for the reasons given above, the O.A. is disposed of with the following directions;

(i) The impugned Memo dated 18.12.1998 and letter dated 10.8.2001 issued by the Railway Board are quashed and set aside;

(ii) The impugned Administrative Instructions issued by the Railway Board dated 2.2.1998 with reference to retired Railway employees are quashed and set aside;

(iii) In the facts and circumstances of the case, the O.A. is remitted to the respondents, with a direction to them to submit the report regarding their findings on the departmental proceedings held against the applicant to the President. The President may thereafter pass appropriate orders in the matter in terms of Rule 9 (1) of the Railway Services (Pension) Rules, 1993.

No order as to costs.


(M.P.Singh)
Member (A)


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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