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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 2891/2001

NEW DELHI THIS ...30th...DAY OF June 2004

HON'BLE SHRI KULDIP SINGH, MEMBER (J)
HON'BLE SHRI S.A. SINGH, MEMBER (A)

M.S. Md. Ibrahim
(Retd. Sr. DEN/SC Railway, S/o. Mr. Shaik Ismail
R/o C4E, 179, Pocket-11
Janakpuri, New Delhi - 110058

.....Applicant

(By: Shri M L Chawla, Advocate)

VERSUS

1. Union of India: through
Chairman cum Secretary,
to the Govt of India,
Railway Board, Min. of Railway,
Rail Bhawan, New Delhi
2. General Manager, South Central Railway,
Secunderabad - 500071

.....Respondents

(By E.X. Joseph, Sr. Counsel with Sh. Rajinder
Khatter, counsel for respondents.)

O R D E R

The applicant filed this OA against the Railway Board's order dated 5.7.1999 imposing a permanent cut of 20% in pension. He has prayed for quashing of this order and restoration of pension and payment of arrears.

2. The applicant joined Railway service on 21.7.1958 and superannuated on 31.5.1989 from South Central Railway. CBI registered a case against the applicant alleging possession of disproportionate assets to known-sources of income. He was thus sanctioned provisional pension of Rs.2745/- per month.

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A chargesheet in connection with this offence was also issued. Penalty of 100% cut in pension was imposed. In the criminal case, the applicant was convicted by the Trial Court and sentenced to undergo R.I. for one year and also pay a fine of Rs.50,000/-. On appeal, sentence of the said case was set aside by the High Court of Judicature Andhra Pradesh. Consequently, the penalty of 100% withholding of pension was also modified to cut of 5% of monthly pension for three years.

3. In addition to the above case, six more chargesheets were served on the applicant after his retirement. However, chargesheet issued on 9.8.91 by the respondents is relevant in this OA. The chargesheet pertains to alleged irregularities in purchases by the applicant in the year 1988. On being held guilty a penalty of 20% cut in pension on permanent basis was imposed vide impugned order dated 5.7.1989. It is the case of the applicant that the six chargesheets, including the one in question in the present OA have been based on the disproportionate assets case filed by the CBI. The minds of the authorities have been prejudiced by this case even though the conviction has been set aside by the High Court of Andhra Pradesh. Further, the chargesheet concerning incident in 1988 was issued in August, 1991, i.e., two years and three months after retirement and the disciplinary proceedings completed in August, 1998. There has been a delay of more than seven years. This

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delay in initiating the chargesheet has prejudiced his case as after retirement he is unable to properly defend his case because of the difficulty to recollect the circumstances prevailing at that time. The delay in initiation of the enquiry is bad in the eyes of law. In support this contention, the applicant relied upon a catena of judicial pronouncements, especially in the case of State of Madhya Pradesh Vs. Bani Singh and Another (AIR 1990 SC 1308).

4. Further, the applicant pleaded that after retirement, he could not be proceeded against without obtaining proper sanction of the President. This is necessary under the Rule 2308 R-II and as such the order should be set aside.

5. The applicant pleaded that his appeal has been rejected by a bald and non-speaking order and without application of mind by the respondents. The President has been influenced by the advice of the UPSC and has agreed with the recommendations of the UPSC without applying his mind independently and hence the order is not sustainable in the eyes of law. The applicant relied on the Chandigarh Bench's judgement of this Tribunal in the case of B.B.Gupta Vs. Union of India and Ors. in OA 599JK of 1994 decided on 17.8.1995 in this regard. The recommendations of the UPSC were also not supplied to the applicant before imposing penalty.

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6. Respondents strongly contested the averment of the applicant and pointed out that the OA is misconceived and frivolous as the applicant has participated in the inquiry proceedings, which were conducted as per rules and regulations and he has not shown any infirmity in the proceedings. The applicant has been found guilty as per rules and a penalty has been imposed after his plea was rejected by the President on the basis of evidence available on record. Inquiry proceedings were started, after obtaining the sanction of the President, as required under Rule 2308 R-II. As per this Rule, there was no delay in initiation of the proceedings as the chargesheet was initiated within the time limit of four years. The event pertains to the year 1988 and the chargesheet was issued in August 1991. The applicant had retired in May, 1989. There is no infirmity on this count.

7. We have heard the counsel for the parties and gone through the documents available on record. The incident pertained to the year 1988 and the chargesheet has been issued in August, 1991, i.e. within four years of the alleged offences. The chargesheet was issued after the applicant had retired from service on 31.5.1989. Rule 2308 R-II lays down that no departmental proceedings can be instituted in respect of any event which took place more than four years before such institution. In the present case, the proceedings have been instituted within four years as such the plea of delay in starting the proceedings

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cannot be considered as a basis for setting aside the impugned order. The respondents have also stated that disciplinary proceedings against the applicant were initiated under Rule 2308 R-II with the sanction of the President. However, the applicant has contested in the rejoinder that sanction of the President has to be issued in the form of Notification, which has not been specifically made. Hence the contention of the respondents that sanction of the President was taken is not correct.

8. We find from reading of the Rule that disciplinary proceedings can be started after obtaining sanction of the President. Sanction does not imply that a specific Notification is required to be issued. All that is necessary is that sanction exists on the case file before initiating the proceedings. The respondents have stated that the proceedings were started with the sanction of the President as required in the Rules. We find no infirmity in this regard.

9. As far as the question of independent application of mind by the appellate authority is concerned, we quote the relevant para of the impugned order, which reads as under:

"4. Now, the President, in consultation with the Union Public Service Commission, has carefully considered the proceedings of the Inquiry, the Inquiry Report and the representation submitted by Shri M.S.Md, Ibrahim there against as also records of the case. Agreeing with the

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UPSC's findings, the President had held all the charges against Shri M.S.Md. Ibrahim as clearly proved for the reasons mentioned in UPSC's letter O.F.3/79/98-SI dated 19.5.99."

10. It is clear from the reading of this order that the disciplinary authority has based his conclusion almost entirely upon the reasons mentioned in the letter of the UPSC. It has been held in the case of B.B.Gupta (supra) that mechanical implementation of advice of the UPSC without application of mind by the disciplinary authority vitiates the proceedings. It is also seen that the copy of the UPSC's advice dated 19.5.1999 was not made available to the applicant for meeting the points put forward by the UPSC before the disciplinary authority. As such the applicant was denied reasonable opportunity to defend his case, which once again vitiates the proceedings.

11. In view of above, the impugned order is quashed with all consequential benefits. The respondents, however, have liberty, if they so desire, to pick up the threads of the disciplinary proceedings from the stage of receipt of the UPSC's advice dated 19.5.1999 and proceed as per rules, instructions and law.


(S.A. Singh)
Member(A)


(Kuldeep Singh)
Member(J)

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