

Central Administrative Tribunal
Principal Bench

O.A.No.637/2001
with
O.A.No.198/2000

Hon'ble Shri M.P.Singh, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 17th day of September, 2002

O.A.No.637/2001:

Shri S.K.Das
s/o Shri Ram Rattan Lal Aggarwal
Retd. Chief Inspector of Works (Construction)
Northern Railway
Bareilly.
r/o F-64 Behind DTC Depot.
Khanpur
New Delhi - 110 062. ... Applicant

(By Advocate: Shri P.J.Mehta with Shri Amitabh Yadav)

Vs.

1. Union of India
(Ministry of Railways)
Through General Manager
Northern Railway
Baroda House
New Delhi.
2. Chief Administrative Officer/Construction Division
Northern Railway, Kashmeri Gate
New Delhi - 110 007.
3. Deputy Chief Engineer/Construction Division
Northern Railway
Char Bagh, Lucknow/UP.
4. Divisional Railway Manager
Northern Railways
Allahabad/UP. ... Respondents
(By Advocate: Sh. H.K.Gangwani)

with

O.A.No.198/2000:

Shri S.K.Das
s/o Shri Ram Rattan Lal Aggarwal
Retd. Chief Inspector of Works (Construction)
Northern Railway
Bareilly.
r/o F-64 Behind DTC Depot.
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O R D E R

By Shri Shanker Raju, M(J):

As these two OAs are founded on same facts and involved same question of law, are being disposed of by this common order.

2. Applicant, who retired on 31.7.1997, in OA 637/2001, has impugned respondents' order dated 2.5.2000 whereby, after his superannuation, President has imposed upon him a penalty of withholding of 25% of monthly pension for a period of five years and forfeiture of the entire gratuity. Applicant has sought quashing of these orders and accord of retiral benefits including arrears with interest of 24%.

3. By an order dated 14.3.2001, order dated 2.5.2000, in so far as it relates to forfeiture of entire gratuity, has been stayed.

4. Applicant, while working as Chief Inspector of Works, was served upon a charge-sheet in disciplinary proceedings on 1.10.1991 as the inquiry had taken a long time to complete, and the inquiry officer was appointed only on 13.11.1996, applicant retired on 31.7.1997.

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5. Applicant was charged for making wrong payment to the Contractor to the tune of Rs.3.28 lacks and allowing used of second hand scrap material work without getting it tested as to the quality of raw material used in it. Being aggrieved with and delay in the proceedings OA 2303/97 was filed by the applicant wherein by an order dated 12.5.1998 directions have been issued to the respondents to complete the enquiry within a period of six months from the date of receipt of a copy of the order. Respondents have filed MA 2553/98 in OA 2303/97 for seeking extension of time to comply with the directions and by an order dated 2.2.1999 directions have been issued extending the period of further two months to implement the directions given in OA 2303/97 till the end of February, 1999. Another MA filed again for extension of time by the respondents in the aforesaid OA was rejected on 4.5.1999, CP 162/99 filed in MA 2303/97 was dismissed on 31.8.1999 by observing that the new cause of action cannot be a subject matter of Contempt Petition.

6. Admittedly, the enquiry report dated 16.1.1999 was served upon the applicant on 2.2.1999, against this, he preferred his representation to the disciplinary authority. Respondents thereafter as the applicant had retired under Rule 9 of the Railway Servants (Pension) Rules, 1993 referred the matter to the President and accordingly after consultation with UPSC and on the basis of the advice, a penalty order was passed on 2.5.2000, giving rise to the present OA.

7. In OA 198/2000, applicant has impugned the

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action of the respondents withholding his retiral benefits, and has prayed for payment of the same, with all benefits, including interest."

8. Shri P.J.Mehta, appearing for the applicant, impugns order on the following grounds:

8.1. Placing reliance on a decision of Apex Court in D.V.Kapoor v. Union of India & Others, AIR 1990 SC 1923 and in F.R.Jesuratnam v. Union of India & Others, 1990 (Suppl.) SCC 640 contended that in view of the provisions of Section 4(6)(a) of the Payment of Gratuity Act, 1972, gratuity cannot be withheld or forfeited unless the wilful omission or negligence results in termination of services. He also places reliance on a decision of Kerala High Court in K.C.Mathew v. Plantation Corporation of Kerala Ltd. & Anr., 2001 LLR 123 to substantiate his plea.

8.2. It is contended that in view of the decision of this Tribunal in OA 2303/97 respondents were directed to complete the enquiry within a period of six months and also in view of the order in MA supra, the enquiry is to be completed and finalised by the end of February, 1999, and thereafter their further request was rejected as the enquiry report was served upon the applicant on 2.2.1999 and the enquiry was not completed as the order of the competent authority was passed only on 2.5.2000, i.e., beyond February 28, 1999, the enquiry has abated.

8.3. It is further contended that as per the Model Time Schedule for disciplinary proceedings in Railways the maximum period to complete the enquiry is total 150 days from the date of issue of charge sheet and being mandatory in nature, these instructions having not been followed, vitiate the enquiry for inordinate and unexplained delay as the charge was served upon the applicant in 1991, enquiry was completed only on 2.5.2000, i.e., almost more than 9 years, he placed reliance on a decision of Apex Court in State of Andhra Pradesh v. N.Radhakishan, 1998(1) ATJ (SC) 559 to contend that delay causes prejudice and if there is no attribution of the Charged Officer in delay in completion of the enquiry the same vitiates the proceedings. He further relies on a decision of the Division Bench of High Court of Delhi in N.S.Bhatnagar v. Union of India & Anr., 2001 IV AD (Delhi) 843 to contend that delay prejudice the right of a delinquent and vitiates the enquiry and further stating that the case of the applicant, in all four, is covered by the decision of the High Court supra, enquiry is to be vitiated for inordinate delay and as a consequence the order passed by the President, is nullity.

8.4. It is stated, by referring to the definition of 'completion', that the same connotes action of making complete as well as the finishing or accomplishing in full of something theretofore begun.

8.5. It is also stated that advice of UPSC is cryptic as well as the order passed by the President without application of mind, without dealing with the contentions of the applicant and without affording him

a reasonable opportunity to show cause.

9. In so far as OA 198/2000 is concerned, it is stated that if the present OA is allowed, the same would be consequential and need not be adjudicated.

10. On the other hand, learned counsel for respondents denied the contentions of the applicant and further stated that the applicant has been charged for a grave misconduct of causing loss to the Railways to the tune of Rs.3.28 lacks. The charge was duly proved further on the advice of the UPSC, the President had passed the penalty order. As regards the payment of allowances, pension etc is concerned, it had already been disbursed to the applicant, as such OA 198/2000 is rendered infructuous.

11. Respondents have taken plea of resjudicata, by contending that OA 198/2000 has already been filed for pay and allowances.

12. Learned counsel for respondents further stated that unless the order of the work directing the respondents to complete the enquiry in a time frame, does not incorporate a direction as to the abatement of the proceedings, the same would not abate even if it is not completed, beyond the stipulated period. However, it is stated that in the order passed by the Tribunal on 12.5.1998, the enquiry was to be completed within a period of six months. On the request of the respondents for extension of time, it was extended till the end of February, 1999. As the enquiry was completed much before the stipulated period with

issuance of inquiry report on 16.1.1999 and thereafter applicant received it on 2.2.1999, which is a valid compliance and there exists no violation of the directions of the Tribunal. As such the enquiry cannot be abated.

13. However, by referring to the order in CP, it is contended that the contentions of the applicant have been taken into consideration to this regard and rejected.

14. In so far as withholding of gratuity is concerned, it is contended that Rule '9' of the Railway Servants (Pension) Rules, 1993 empowers withholding of the gratuity in part or full, and the order passed by the President is in consonance with these statutory rules as the applicant has not challenged virus of the Rules, the decision cited would be of no assistance to him.

15. In so far as the delay is concerned, it is stated that enquiry was completed within the stipulated period by the respondents, the matter was referred to the UPSC and immediately on their advice dated 31.3.2000, the Presidential order was issued on 2.5.2000. It is further stated that as the applicant was involved in grave misconduct, penalty imposed is commensurate with the misconduct and is legally sustainable.

16. On merits also, it is contended that enquiry was held in accordance with the rules, the punishment imposed is in consonance with Para 2308 of

IREM Vol.2 where the President can impose penalty upon retiring employee. The misconduct of the applicant was proved from the evidence adduced in the enquiry, and the arrears of pension, etc. of the applicant have already been disbursed to him. According to him, on account of grave misconduct as held by the Apex Court in D.V.Kapoor's case supra, the punishment is sustainable in law.

17. Learned counsel for applicant has reiterated in his rejoinder the pleas already taken in the OA.

18. We have carefully considered the rival contentions of the parties and perused the material on record. In so far as the contention of the applicant regarding withholding of his entire gratuity and the decisions of the Apex Court in D.V.Kapoor's case and F.R.Jesu Ratnam, are concerned, we find that both the cases in so far as withholding of gratuity is concerned, the same on the basis that being a statutory right, gratuity cannot be withheld as a measure of punishment and in absence of any provisions of law brought to notice to withhold gratuity, the Apex Court has ruled in favour of the petitioners therein.

19. In view of the statutory provisions contained in Rule 9 of the Railway Servant (Pension) Rules, 1993, virus of which has not been challenged, President reserves right to withhold gratuity either in full or part subject to consultation with the UPSC before a final order is passed.

20. The resort of the applicant to the

provisions of Payment of Gratuity Act, 1971 being the parent act, where the gratuity cannot be withheld unless the services have been terminated, would not be of any help to him.

21. It is settled by the Apex Court that if a proceeding is started before superannuation of Government servant the same can be continued subsequently but the final orders are to be passed by the President withholding the pension or gratuity subject to consultation of UPSC. As statutory provision of law exists under Rule 9 of the Pension Rules *ibid*, the President is competent to withhold the entire gratuity after following the due process of law and after consultation with UPSC which is in accordance with law and cannot be found fault with. Once the power exists with the President, in accordance with the statutory rules, the same cannot be questioned unless the *vires* of the rule is challenged, which has not been done in the present case. As the action of the respondents is in accordance with law, the contention of the applicant cannot be countenanced.

22. In so far as the contention of the applicant that as per the directions of the Tribunal to respondents to complete the inquiry amounts to finalisation of inquiry inclusive of a final order passed by the competent authority. Moreover despite extension of time to comply with the orders of the Tribunal till the end of February, 1999 respondents having failed to pass an order beyond this period the

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inquiry has been deemed to be abated and the President has no jurisdiction to pass an order of penalty. This plea has no substance.

23. From the perusal of the definition of completion of the inquiry, and in the circumstances, the directions have been issued by the Tribunal when the charge-sheet was delayed since 1991,, this Court has directed the respondents to complete the inquiry and not the disciplinary proceedings. These directions have to be interpreted harmoniously in the context of the subject matter. Inquiry is completed with issuance of the inquiry report by the inquiry officer. The intention of the Tribunal even in the order of extension of time in MA was to comply with the implementation of the judgement, till the end of February, 1999. Had the intention of the Tribunal being that the enquiry shall abate there would have been directions to that effect in the order passed by the Tribunal either in the OA or MA.

24. In our considered view finalisation/completion of the inquiry is achieved with issue of inquiry report by the inquiry officer and not with passing of a final order by the disciplinary authority. As the inquiry was completed on 16.1.1999, when the inquiry officer had issued his report, which was admittedly served upon the applicant on 2.2.1999, we do not see any wilful defiance by the

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respondents of the Tribunal's order. We hold that the enquiry was complete within the stipulated period, and has not abated.

25. Resort of the applicant to the decisions in N.S.Bhatnagar's case as well as N.Radhakishan's case supra, would not apply to the facts and circumstances of the present case and are distinguishable. In N.S.Radhakishan's case the enquiry was delayed without any justified reasons and this delay was not at all attributable upon the petitioner therein, but in the present case, the respondents have been given directions to complete enquiry within the stipulated period and accordingly the same was completed, we do not find inordinate delay on the part of the respondents in completion of the enquiry. Moreover, the charge against the applicant was of a grave nature pertaining to his negligence resulting in loss to the tune of Rs.3.28 lacks would not be absolve him from the charges merely on technical issue.

26. In so far as the contentions that the enquiry should be completed within a period of 150 days, we have seen the Railway Board's letter of the Model Time Schedule. We find that it is only the guide-lines to be followed by the disciplinary authority and inquiry officer but the same are not mandatory to vitiate the proceedings. In this view of the matter, this ground of the applicant also fails.

27. On merits as well, we find that the applicant has impugned the orders on the ground of non application of mind. We have perused the order passed by the President as well as advice tendered by UPSC, where contentions of the applicant have been taken into consideration and a reasoned order was passed by the President wherein the applicant has been found to be guilty of article 1 of the charge of making false entry in the measurement Board unjustified payment of Rs.3.28 lakhs to the Contractor. As this constitutes the grave misconduct the order has been rightly passed and does not suffer from any legal infirmity. Applicant has failed to point out any illegality of procedure crept up in conduct of the proceedings to vitiate the impugned order of punishment. No other legal valid grounds have been raised by the applicant to assail the proceedings.

28. We also find that in pursuance of the order passed by the President, applicant's retiral benefits have been worked out and disbursed to him.

29. In a judicial review, before parting with on merits, this Court cannot go into the correctness or truthness of charges. It also does not lie without jurisdiction to reappraise the evidence. As we do not find that the orders passed are perverse and no illegality in procedure has been pointed out, the punishment order cannot be interfered with.

30. In the result we do not find any merit in the present OAs, the same are accordingly dismissed but without any order as to costs.

S. Raju
(Shanker Raju)
Member(J)

(M.P. Singh)
Member(A)