

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.272/99

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

New Delhi, this the 26th day of April, 2000

B.S.Sarin
s/o Late Sh. M.C.Sarin
r/o Flat No.308
Type-IV, Lakshmi Bai Nagar
New Delhi - 23. ... Applicant

(By Shri A.K.Bhardwaj, Advocate)

Vs.

1. Union of India through
The General Manager
Northern Railway
Baroda House
New Delhi.
2. The Divisional Railway Manager
Bikaner Division
DRM Office, Bikaner
Rajasthan.
3. The Divisional Superintending Engineer
Bikaner Division, Northern Railway
DRM Office, Bikaner
Rajasthan.
4. Assistant Engineer (Planning)
Inquiry Officer
Northern Railway
Bikaner Division
Rajasthan.
5. The Divisional Personnel Officer
DRM Office
Bikaner Division
Bikaner, Rajasthan.
6. Shri R.S.Gupta, PWI,
Northern Railway
Loharu. ... Respondents

(By Shri R.L.Dhawan, Advocate)

O R D E R

By Reddy. J.

The applicant was appointed as Assistant Permanent Way Inspector (APWI) in the Western Railway in the year 1963. Thereafter he was transferred to Northern Railway and he was promoted as Permanent Way Inspector Grade-I and retired from service on 30.4.1993. On 25.7.1990, the applicant was transferred and posted as PWI-Gr.I, Northern Railway from Sarai Rohilla/Gurgaon to Bikaner and in place of the applicant Respondent No.6 was posted. The

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applicant was to hand over the work charge of PWI-Gr.I to Respondent No.6 but instead of repeated requests, Respondent No.6 did not make himself available to take the material charge from the applicant. However, the respondents vide order dated 10.10.1990 stopped the payment of the salary to the applicant, when the applicant filed OA No.1646/91. The OA was disposed of by order dated 13.4.1992 directing the respondents to release the salary of the applicant and giving liberty to the respondents to proceed with the departmental enquiry against the applicant in case it was found that he has committed any misconduct but the respondents did not hold any enquiry and in the meanwhile, the applicant retired from service in the year 1993. (9)

2. After his retirement the respondents' stopped the payment of the Gratuity, hence the applicant filed another OA No.1233/94 which was allowed by order dated 1.10.1996, however, extending the time to hold an enquiry within a period of three months. Accordingly, an administrative enquiry was held and it was found by the impugned order dated 14.2.1998 that the applicant was responsible for not handing over the complete charge to his successor Respondent No.6 and for shortage of material amounting to Rs.1,55,821/- An amount of Rs.41,250/- was

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from the

adjusted towards DCRG and the balance amount of Rs.1,14,571/- was directed to be deposited. This order is under challenge in this OA.

3. The learned counsel for the applicant vehemently contends that as the applicant was a pensioner the impugned order issued without the approval of the
xxxxxxxxxxxxxxxxxxxxxxxxxxxxx President is illegal and without

[Signature]

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jurisdiction. It is further contended that as recovery of the amount for pecuniary loss, being one of the punishments, the procedure that is contemplated under the Railway Servants (Discipline & Appeal) Rules, 1968 has to be followed and as no charge has been issued nor the procedure as per rules has not been followed, the impugned order is liable to be set-aside. It is lastly contended that the enquiry is vitiated as no material was available against the applicant and as Respondent No.6 being responsible for not taking charge from the applicant, any shortage in the stores should be recovered from Respondent No.6 and that the enquiry was not even completed against the applicant.

(20)

4. The learned counsel for the respondents, however, raised a preliminary objection that the OA is premature as the applicant has got a right of appeal against the impugned order and unless the said remedy of appeal is exhausted, the OA is not maintainable. On merits, it is contended that the enquiry officer has conducted the enquiry and on the basis of the material on record came to the conclusion that the applicant was responsible for the shortage. Hence, he was rightly liable to pay the said amount. It is further contended that the recovery was sought to be dropped and recovered under Rule 15 of the Pension Rules and an enquiry was held as per the directions of the Court in OA No.1233/94 filed by the applicant himself. Hence the enquiry cannot be questioned on any ground.

5. We have given careful consideration to the arguments made by the learned counsel on either side and perused the pleadings carefully.

6. We will now consider the preliminary objection raised by the respondents' counsel that the OA is premature. It is the contention that the

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impugned order having been passed by the competent authority under Rule 15 of the Railway Servants (Pension) Rules 1993 and as appeal lies against the said order under Rule 18 of the Railway Servants (Discipline & Appeal) Rules, 1968 and as no appeal has been filed, the OA is not maintainable. The learned counsel for the applicant, however, submits that there is no provision of appeal against the impugned order as the applicant is a pensioner and ceased to be a Railway Servant, hence the Railway Servants (Discipline and Appeal) Rules are not attracted.

7. In the impugned order the applicant was held responsible for the shortage of material to the extent of Rs.1,55,821/- . After adjusting an amount of Rs.41,250/- towards DCRG, the balance of Rs.1,14,571/- was directed to be deposited. Under Rule 6 of the Railway Servants (Discipline and Appeal) Rules, 1968, recovery from the pay of whole or part of any pecuniary loss caused to the Railway Administration is one of the minor penalties. Rule 19 of the Railway Servants (Discipline & Appeal) Rules, 1968 makes it clear that railway servant, including a person who has ceased to be in railway service, may prefer an appeal against all or any of the orders specified in Rule 18 to the authority specified in this Rule. Rule 18 mentions the orders against which appeal lies. Under this rule, the order imposing any of the penalties prescribed under Rule 6 whether made by the disciplinary authority or by ¹ appellate or revising authority is shown as one of the appealable orders. Thus, the impugned order, assuming that it was rightly passed, amounts to minor penalty specified in Rule 6 and hence an appeal lies against the impugned order.

8. In view of the clear provision in Rule 19,

where it is stated that even a person who ceased to be in railway service is entitled to file an appeal the applicant has a right of appeal. The OA therefore cannot be entertained as the applicant got an adequate alternative remedy which has not been exhausted. No reason was given why he has not approached the appellate authority. (22)

9. In the circumstances, we hold that OA is premature and is liable to be dismissed on this ground. If the applicant files an appeal within 15 days from the date of receiving a copy of this order, the appellate authority shall entertain the same and dispose it within 30 days thereafter, as per law.

10. As the OA itself is not maintainable, we do not find it necessary to go into the other points raised by the learned counsel for the applicant. It is open to the applicant to raise all the points raised in the OA before the appellate authority.

11. The OA is accordingly disposed of at the admission stage itself. No order as to costs.

Shanta Shastray
(SMT. SHANTA SHAstry)
MEMBER(A)

Chariamn
(V.RAJAGOPALA REDDY)
VICE CHARIAMN(J)

/RAO/