

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O. A. NO. 922/1999

New Delhi this the 6th day of August, 2001.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI S.A.T.RIZVI, MEMBER (A)

Prem Narain S/O Mithan Lal,
R/O Flat No.68, Deluxe apartment,
D-5, Vasundhara Enclave,
Delhi-110096.

... Applicant

(By Shri Surinder Singh, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of Railways,
Rail Bhawan, New Delhi.
2. General Manager,
North Eastern Railways,
Gorakhpur (UP).
3. FA & CAO,
North Eastern Railway,
Gorakhpur (UP).
4. Senior Divisional Accounts Officer,
North Eastern Railway,
Izat Nagar,
Bareilly (UP). ... Respondents

(By Shri P.M.Ahliawat, Advocate)

O R D E R (ORAL)

Shri S.A.T.Rizvi, Member (A) :

This is the second round of litigation in this case. Earlier, the applicant had filed OA No.1195/1997 which was decided by the Tribunal on 1.12.1997 with a direction to the respondents to conclude the departmental proceedings against the applicant within three months' time.

2. On the charge of unauthorised absence combined with embezzlement, the applicant was tried in the criminal court of competent jurisdiction. The lower court exonerated the applicant by its order

dated 29.5.1991. On the matter being taken up before the High Court, that Court held as follows :

(7)

"Under the circumstances, I am of the opinion that the learned court below has rightly given the benefit of doubt to the accused respondent..... I accordingly hold that the appeal has got no force. It is accordingly dismissed."

3. On the same set of charges, the applicant was tried departmentally by appointing an enquiry officer and proceeding further in accordance with the ~~summarised~~ prescribed procedure. The findings of the enquiry officer are reproduced below :

"On the basis of the above facts but having some procedural lacunae i.e. Annexure-IV of the Memorandum being left blank & due to non availability of the persons related to the case/due to non availability of certain original documents, the charges framed against Shri Prem Narain Sr.Cashier/IZN could not be established. Therefore the benefit of the doubt may be granted."

4. The disciplinary authority after considering the aforesaid report/findings passed orders in the following terms :

"Of the two charges levelled against Shri Prem Narain, he has been held guilty only of unauthorized absence and it is considered that no punishment is required for this on such a late date, seeing that Shri Prem Narain had already been suffering the consequences of his misdeeds....."

"Since Shri Prem Narain has been given only a benefit of doubt in the criminal case by the court of law and the disciplinary authority has also not completely absolved him of charges levelled against him, it is proposed to pass the following orders as regards the period of suspension, that is, from 10.3.79 to 31.3.90 (the date on which Shri Prem Narain superannuated) :

- A. The allowance to be paid to Shri Prem Narain for period of suspension ending 31.3.90 would be the same as that already paid to him as subsistence allowance which was 50% of the pay from 10.3.79 to 9.9.79 and 75% of the pay from 10.9.79 to 31.3.90 plus usual allowances as admissible.
- B. The said period of suspension will not be treated as a period spent on duty. It will be treated as leave dies non which will not count for any purpose other than regularizing of his service from 10.3.79 to 31.3.90, his date of superannuation."

The reasons for arriving at his conclusion with regard to the charge of unauthorised absence have been detailed by the disciplinary authority in an annexure running into more than three pages.

5. On the matter being taken up before the appellate authority, that authority observed as under in his order dated 22.3.1999 :

"...I have reached at the conclusion that there is no need to review the matter as he has been acquitted on grounds of the benefit of doubt."

6. On a combined reading of the orders passed by the disciplinary authority and the appellate authority it is not difficult to see that while the aforesaid authorities have clearly found the applicant guilty of unauthorised absence, they have decided after a proper consideration of the facts and circumstances of the case not to impose any punishment on the applicant in respect of the said charge. However, insofar as the other charge with regard to embezzlement of funds is concerned, the aforesaid authorities have relied on what the High Court has held. The High Court, we find has clearly held that

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The benefit of doubt had been given to the applicant in the criminal case. On consideration, we do not find anything wrong if the disciplinary authority as also the appellate authority have gone by the judgment rendered by the High Court in the matter and have on that basis decided to deal with the period of suspension in the manner brought out in paragraph 4 above.

7. The learned counsel appearing on behalf of the respondents submits that insofar as the payment of post-retiral benefits is concerned, the following amounts have already been paid to the applicant :

"(1) Difference of pay and admissible allowances on account of revision of pay under IVth Pay Commission.	Rs. 68,326.00
(2) Service Gratuity.	Rs. 31,200.00
(3) Final pension vide Pension Payment Order dated 8-7-1999 (Rs. 982/- to Rs. 2826/- per month).	Rs. 2,826.00
(4) Difference of Encashment of leave (180 day leave upto 9-3-1979).	Rs. 2,910.00
(5) Difference of pay & allowances.	Rs. 2,760.00
(6) Payment of withheld GIS amount.	Rs. 2,282.00

According to him, the applicant is by no means entitled to productivity-linked bonus for the reason that he did not perform his duties in physical terms during the relevant period. The applicant is also not entitled, according to the learned counsel, to be considered for promotion inasmuch as he could have been considered for promotion only in the event of

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complete exoneration from charges. The applicant's acquittal in the criminal case is based on the benefit of doubt and in respect of unauthorised absence also the applicant has been found guilty by the disciplinary authority. The applicant, according to him, had absconded from duty without handing over charge, and this fact is borne out by the evidence on record.

8. In the aforesaid circumstances, we find no force in the various pleas raised by the learned counsel for the applicant. The impugned order need not be interfered with. The applicant is not entitled to any of the reliefs sought. The OA is thus dismissed without any order as to costs.

S.A.T.Rizvi
(S.A.T.Rizvi)

Member (A)

Ashok Agarwal
(Ashok Agarwal)
Chairman

/as/