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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1735/95 by
MA No.1079/98
MA No.426/2000
MA No.785/2000

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New Delhi this the 11th day of May, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman
Hon'ble Mrs. Shanta Shastry, Member (Admnv)

J.L. Jain,
FA&CAO (Retd),
SC 6, Basant Lane,
New Delhi-110055.

...Applicant

(By Advocate Shri Romesh Gautam)

-Versus-

1. Union of India,
through Chairman-cum-
Principal Secretary,
Ministry of Railways,
Rail Bhawan,
New Delhi.

3. Jt. Secretary (E), Railway Board
Rail Bhawan, New Delhi.

2. Deputy Secretary (Estt II),
Railway Board,
Rail Bhawan,
New Delhi.

4. Smt. Meeta Nambiar, COI/CVC-Inquiry Officer
Satarkata Bhawan, GPO Complex
Block-A, INA, New Delhi-110 023.

...Respondents

(By Advocate Shri R.L. Dhawan)

ORDER

By Reddy, J.

Though the matter is of 1995 and all the matters of 1995 have been disposed of, this case remains undisposed of, in view of an earlier order passed by the Tribunal about which we will present notice.

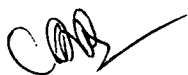
2. The record is bulky, but the point involved is a short one and the case can be disposed of upon consideration of the few relevant facts of the case.

3. The applicant was initially appointed with the Indian Railway Accounts Service Class I on the basis of I.A.S. and Allied Services Competitive examination held in

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the year 1960. While he was working as Financial Adviser and Chief Accounts Officer, by the order dated 13.3.89 the applicant was compulsorily retired from service. After his pre-mature retirement the chargesheet dated 10.11.89 was issued with the sanction of the President of India, which was challenged in OA-147/90 before the Principal Bench of the Tribunal. Subsequently, as he has been re-instated into service and the chargesheet dated 10.11.89 has been withdrawn the OA-147/90 was disposed of without any adjudication, as it had become infructuous. After his reinstatement the chargesheet dated 2.12.93 was issued and the same was again challenged by the applicant in OA-641/94 and it was disposed of by an order dated 11.4.94, directing the respondents to hold the enquiry only after culmination of the enquiry proceedings in respect of a chargesheet dated 22.2.89 pending against him, which remained unenquired into, for one reason or the other. As it is now stated that the proceedings in respect of the said chargesheet were culminated in April, 1999, the enquiry into the chargesheet dated 2.12.93 were taken up and in that regard, respondents passed the impugned order dated 6.1.2000, intimating remitting the charges contained in the charge memo dated 2.12.93 for enquiry and appointing an enquiry officer and the Presenting Officer respectively and the orders of appointment of the enquiry officer and the Presenting Officer were enclosed. The above enquiry was sought to be initiated under the Railway Servants (Discipline & Appeal) Rules, 1968. These three orders of even date (6.1.2000) are under challenge in this OA. It should be stated that meanwhile, the applicant retired from service on superannuation on 31.10.94.



4. The learned counsel for the applicant vehemently contends that the chargesheet dated 2.12.93 itself is illegal. Hence, no Enquiry Officer or Presenting Officer could be appointed and enquiry to be conducted in pursuance of the illegal chargesheet. The learned counsel for the respondents, however, refutes the contention submitting that the validity of the chargesheet dated 2.12.93 cannot be gone into as the judgement dated 11.4.94 in OA-641/94 filed by the applicant challenging the same chargesheet, was heard on merits and disposed of in which the validity of the chargesheet was challenged and hence the same operates as res judicata.

5. Having given careful consideration of the arguments of the learned counsel of either side and the pleadings, we find ourselves in agreement with the learned counsel for the respondents. We have perused the judgement in OA No.641/94 wherein we find that the applicant has raised the validity of the chargesheet dated 2.12.93, which has been considered but rejecting the challenge, directed the respondents to enquire into the said chargesheet only after the enquiry in the earlier chargesheet was culminated. The validity of the chargesheet was, therefore, upheld by the Tribunal and the same cannot be re-agitated in this OA, as it operates as res judicata.

6. The second contention pertains to the validity of the orders dated 6.1.2000, whereby the charge memo dated 2.12.93 was remitted for enquiry, appointing Enquiry Officer and the Presenting Officer. It is the argument of the learned counsel that the charge memo having been initially issued under Rule 9 of the Railway Servants (Discipline &


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Appeal) Rules, 1968, while the applicant was in service, the impugned order, directing the enquiry under the same rules even though the applicant now stood retired, is not permissible. The learned counsel for the respondents, however, submits that under Rule 9 (2) of the Railway Servants (Pension) Rules, it is permissible for the President of India to continue the disciplinary proceedings even after the retirement of the officer, under the same rules and in the same manner as if the Government servant had continued in service.

7. We have given careful consideration to the arguments advanced on either side and the points raised. The enquiry had been instituted while the applicant was in service into the charge memo dated 2.12.93. As stated supra, the enquiry was held up in view of an order passed by the Tribunal in an OA filed by the applicant. Meanwhile, the applicant superannuated from service in 1994. The enquiry is now sought to be taken up on the same charge memo dated 2.12.93. Rule 9 (2) (a) is very clear on this aspect. It reads as under:-

"(2)(a) The departmental proceedings referred to in sub-rule (1), if instituted while the government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government 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 recording its findings to the President."



8. This rule, therefore, permits the departmental proceedings to be continued even after the Government servant was superannuated, if the proceedings were instituted when the officer was in service, as per the rules under which the enquiry was initiated. A deeming provision is thus incorporated in Rule 2(a) to treat the officer even after his retirement as if he were continued in service for the purpose of continuance of the disciplinary proceedings. Hence, the enquiry can be continued against the applicant under the same rules, subject, however, to proviso to Rule 2 (a). We do not find, therefore, any infirmity in the impugned order dated 6.1.2000 and the order of appointment of the Enquiry Officer and the Presenting Officer of the even date.

9. But a related question that crops up about the justification ~~to~~ proceed with the enquiry after his retirement. That depends upon the nature of charge. This question is relevant for the purpose of recovery from the pension by ^{sanctioning of} the President of India, in the event of finding the pensioner guilty. Under Rule 9(1) of the CCS (Pension) Rules, any recovery could be made from the pension only when an officer was found guilty of 'a grave misconduct or negligence'. Rule 9 (1) is in the following terms:

"(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in 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 Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of 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 pensions shall not be reduced below the amount of rupees three hundred and seventy-five per mensem."

10. The learned counsel submits that the alleged misconduct being a minor one, it would serve no purpose to continue the departmental proceedings as no recovery could eventually be made from the pension. To find the nature of the charges against the applicant, we will have to look into the memorandum dated 2.12.93. The charge is reproduced hereunder:


"Sh. J.L. Jain, while working as Financial Adviser and Chief Accounts Officer (Survey), Northern Railway during 1987 committed misconduct as under:

1. That Sh. J.L. Jain concurred in and recommended the proposal for enhancement of quantities of dry flat brick pitching of agreement 2A/CS/SEN/C/SOG dated 19.8.96 from 2000 sq. meter to 67000 sq. meter without ensuring the compliance of the instructions dated 8.1.87 made by the regular FA&CAO(C) Sh. Gaube to the effect that CE/C-II may obtain approval of the competent authority for -

- (a) material modification,
- (b) excess over the sanctioned estimated cost, and for
- (c) award of work on single tender basis.

2. That Sh. J.L. Jain concurred in and recommended the above proposal taking undue interest and without ensuring that the rate being allowed was negotiated and considered by a properly constituted Tender Committee.

Thus, Sh. J.L. Jain, the then FA&CAO had failed to maintain absolute integrity, devotion to duty and had acted in a manner unbecoming of a Railway servant contravening Rule 3(1)(i), (ii) & (iii) of Railway Services (Conduct) Rules 1966."



11. A perusal of the above charge makes it manifest that the charge is indeed grave. The applicant was alleged to have recommended the proposal for enhancement of quantities of dry flat brick pitching of from 2000 sq. metres to 67000 sq. meters without ensuring the compliance of the extant instructions, incurring heavy expenditure to the Government. His integrity was, therefore, doubted. The enquiry was initiated under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. Rule 9 provides for imposing the major penalties which are specified in items (v) to (ix) of Rule 6. Rule 6 speaks of minor penalties and major penalties. Major penalties are given in sub clauses (v) to (ix) and minor penalties are enumerated in items (i) to (iv). The major penalties are removal from service, dismissal, compulsory retirement etc. Hence, we are of the view that the charges are grave and this is a fit case where the disciplinary enquiry ^{needs to} be continued under Rule 9 (1) of the Railway Servants (Discipline and Appeal) Rules, 1968. The objection of the learned counsel, therefore, is also devoid of merit and hence rejected.

12. In view of the above, we find no merit in this OA. The OA, therefore, fails and is accordingly dismissed. No costs.

Shanta Shastri

(Smt. Shanta Shastri)
Member (Admnv)

"San."

V. Rajagopala Reddy

(V. Rajagopala Reddy)
Vice-Chairman (J)