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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./T.A. No. 1837/1995
M.A. No. 1482 of 1996

Decided on: 19.12.96

Shri J.L. JainApplicant(s)

(By Shri K.C. Mittal Advocate)

Versus

U.O.I. & OthersRespondent(s)


(By Shri R.L. Dhawan Advocate)

CORAM:

THE HON'BLE SHRI A.V. HARIDASAN, VICE CHAIRMAN(J)

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter^{4/8} or not?
2. Whether to be circulated to the other Benches of the Tribunal?


(K. MUTHUKUMAR)
MEMBER (A)

(3)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. NO. 1837 of 1995
M.A. No. 1482 of 1996

New Delhi this the 19th day of December, 1996

HON'BLE MR. A.V. HARIDASAN, VICE-CHAIRMAN
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Shri J.L. Jain
R/o SC-6, Basant Lane,
New Delhi-110 055.

..Applicant

By Advocate Shri K.C. Mittal

Versus

1. Union of India through
Chairman-cum-Principal Secretary,
Ministry of Railways,
Rail Bhawan,
New Delhi.
2. Shri K.L. Dua
Deputy Secretary (Estt.II),
Railway Board,
Rail Bhawan,
New Delhi.
3. Shri Chandy Andrews
CDI/CVC as Enquiry Officer,
Jamnagar House,
Akbar Road,
New Delhi.

..Respondents

By Advocate Shri R.L. Dhawan

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

The applicant is a retired officer of the
Indian Railway Accounts Service (IRAS).
He retired on superannuation on
31.10.1994. While he was working as Financial
Advisor and Chief Accounts Officer (Northern

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Railway), disciplinary proceedings under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 (hereinafter referred to as 1968 Rules) were initiated against him by Railway Board's Memorandum dated 22.2.1989 on the following charge:-

"Shri J.L. Jain while posted as FA&CAO, Northern Railway during the period 1986-1988 and functioning as a Member of the Tender Committee set up in connection with the consideration of tenders for the award of work relating to construction of Road Over Bridge at Okhla attempted to favour a particular contractor by way of giving justification at various stages of the case on apparently wrong premises with the intention to help that particular contractor to get the work and in that process he even recorded inconsistent and contradictory notes at different stages and also wrongly took cognizance of letters from the contractor which had been received subsequently".

The aforesaid act was considered as a misconduct by the respondents and he was accordingly proceeded against in the above disciplinary proceedings. The applicant was prematurely retired from service under Rule 2046 (h)(i) Vol.II (Rule 1802 of the Indian Railway Establishment Code Volume II) vide order 13.3.1989 by a Presidential order of the same date. The applicant successfully challenged the aforesaid compulsory retirement vide his application OA No. 650 of 1989 and the order of premature retirement was set aside by the Tribunal's order dated 6.9.1991 and appeal against this order also failed in the Apex Court and thereupon, he was reinstated in service by the respondents order dated 11.12.1992. Respondents thereupon issued another order dated 29.4.1993, Annexure A-7, whereby he was informed that

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disciplinary proceedings initiated by the Railway Board against him under Rule 9 of the 1968 Rules would continue against him as per the Memorandum of Charges issued to him by the Memorandum dated 22.2.1989 referred to above. The above Memorandum of Charges was challenged by the applicant in O.A. No. 649 of 1989 when the departmental enquiry was continuing. During the pendency of the aforesaid O.A. in the departmental enquiry, an exparte order was passed on 18.5.1992 which was impugned by the applicant in a separate O.A. 1508/1992. The ex-parte order was passed due to the absence of the applicant on that date and for the reasons mentioned by the Enquiry Officer, it was ordered that the proceedings were taken ex-parte. The applicant in the aforesaid O.A. 1508 of 1992 prayed for setting aside the order of the Enquiry Officer dated 18.5.92 for holding ex-parte enquiry, and also for a direction to the respondents to allow the applicant to crossexamine the author/producer of the documents produced by the Presenting Officer. This O.A. was dismissed by the order of the Tribunal dated 26.10.1994. The applicant filed a Special Leave Petition against this dismissal in the Civil Appeal No. 3636 of 1996 and their Lordships passed the following order:-

" Leave granted.

We have heard the counsel on both sides.
The notice issued in this case itself indicates why the inquiry should not be reopened; the inquiry officer should not give another opportunity to the appellant to

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participate in the inquiry. It was also stated that if the respondent is agreeable to reopen the matter, it would be confined to only one time opportunity to appellant and unless the appellant participates in the inquiry and conducts his case, he would forfeit his defence. In view of the notice and in view of the statement of the respondents in the counteraffidavit that they are agreeable to give an opportunity, the impugned order is set aside and opportunity is directed to be given to the appellant to participate in the inquiry. The inquiry officer is directed to issue notice to the appellant by registered post with acknowledgment due giving 30 days' time fixing a date on which date the appellant should appear and participate in the inquiry. The inquiry officer is directed to make available all the witnesses sought to be examined in proof of the charge on that date and it would be open to the appellant to cross-examine those witnesses. If the appellant intends to adduce any defence evidence, inquiry officer is directed to give another date to the appellant to adduce the same on the adjourned day; the inquiry would be completed after examining those witnesses. Thereafter, the inquiry officer would free to proceed according to rules and take appropriate action.

The appeal is accordingly allowed. No costs."

2. As pointed out earlier, the applicant had retired on superannuation on 31.10.1994. The respondents thereupon issued orders dated 28.7.1995 and 16.8.1995 by which the disciplinary proceedings started by the Railway Board's Memorandum of even number dated 22.2.1989 were continued in terms of proviso (a) to Rule 9 of the Railway Service (Pension) Rules, 1993 (erstwhile rule 2308 R II) after his retirement, and the respondents appointed the Enquiry Officer and Presenting Officer respectively by these two impugned orders in the said enquiry against the applicant. The applicant being

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aggrieved by these orders has approached this Tribunal now for quashing and setting aside the impugned orders. He has alleged that the aforesaid orders are illegal, unsustainable and without jurisdiction as the enquiry under Rule 9 of 1968 Rules, does not continue after the retirement of a Railway Servant automatically when the applicant had been punished already in the same cause of action. Besides this, the applicant has taken the following grounds:-

- (i) The applicant was already punished by the order of compulsory retirement passed on 15.2.1989.
- (ii) As the applicant had retired finally, the provisions of Rule 2308 R-II does not come into play when the respondents themselves have severed the relationship of master and servant consequent on his final retirement and, therefore, if fresh proceedings have to be started it has to be only with the sanction of the President and only in case the premature retirement takes place, these proceedings can continue under deeming provisions.
- (iii) The position taken by the respondents that Rule 2308 is applicable to all pensioners and does not exclude any category, is not sustainable as this rule does not include cases of pensioners who retire on normal superannuation.
- (iv) With the premature retirement of the applicant originally ordered on 13.3.1989, the proceedings initiated against him by the Railway Board's letter dated 22.2.1989 had come to an end and

could not be revived under the deeming provisions of the rule. In any case, any fresh proceedings against the pensioner can be started only with the sanction of the President, which was not taken in his case.

(v) As the disciplinary authority under Rule 2308 R-II, is the President, the Railway Board on their own cannot continue proceedings under Memorandum dated 22.2.1989 and convert the said proceedings under any other rule as there is no such deeming provision and, therefore, the proceedings are to be considered as non-est and defunct, on the resinstatement of the applicant in December, 1992.

(vi) The applicant has also challenged the provisions of Rule 9 of the Railway Services (Pension) Rules, 1993 (erstwhile Rule 2308 R-II) on the ground that the aforesaid rule permits arbitrary powers upon the disciplinary authority to revive the proceeding started while the Railway servant was in service or initiate further proceedings on retirement/superannuation, irrespective of whether charges are of minor nature or where a major penalty chargesheet is contemplated ^{or} / irrespective of whether the charge is such as to characterise the misconduct as a "grave misconduct or not" or whether there was any pecuniary loss or not. The other grounds taken for challenging the Rule is that the said rule does not lay down whether the selection of a particular case, in which the departmental proceedings which are proposed to be continued, is to be decided by the President or any subordinate authority or whether

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the proceedings are to be continued compulsorily in every case. In the light of this, the applicant alleges that the aforesaid rule vests arbitrary powers on the Railway Establishment to continue departmental proceedings even after retirement/superannuation of Railway employee and, therefore, is arbitrary and violative of Article 14 of the Constitution. He also alleges that Rule 9 of the Railway Services (Pension) Rules 1993, relates only to grave misconduct as the charge in the case against the applicant can neither be characterised as " grave misconduct " nor has it resulted in any pecuniary loss to the Railway/Government and, therefore, even if the proceedings have to be taken as proceeding under Rule 9 of the Railway Services (Pension) Rules, 1993, the President could not sanction or/continue departmental proceedings as there was no 'grave misconduct' and negligence leading to any pecuniary loss to the Government. The applicant also alleges mala fide intention of the respondents in continuing the departmental proceedings even after retirement.

3. In contesting the pleadings of the applicant, the respondents have pointed out that with the dismissal of the O.A. No. 649 of 1989 and in the light of the directions issued by the Supreme Court in SLP No.3636 of 1996, the Memorandum of Charges issued in February, 1989 was subsisting on the date of superannuation of the applicant on 31.10.1994. The ex-parte order passed by the Enquiry officer was

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... before his retirement, it is incumbent

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challenged by the applicant in O.A. No. 1508 of 1992 and it was on the order of the Tribunal which dismissed the O.A., the matter went to the Apex Court. The issue in the O.A. was that the order passed by the Enquiry Officer for exparte proceedings as a result of noncooperation of the applicant. It was on this aspect that the Apex Court had directed the respondents to give another opportunity to the applicant to participate in the enquiry and the Enquiry Officer was directed to issue notice to the appellant fixing the date on which date the appellant should appear and participate in the enquiry. The Enquiry Officer was also directed to make available all the witnesses sought to be examined in proof of the charge on that date and it would be open to the appellant to cross-examine those witnesses. In the light of this, the respondents have strongly argued that applicant has no case and, therefore, the application deserves to be dismissed.

4. The learned counsel for the applicant strenuously argued that Rule 9 of the Railway Services (Pension) Rules, 1993, mandates that the question of withholding or withdrawing the pension to a retired Governemt Government servant is to be decided by the President and since the applicant had retired, the respodents cannot revive the departmental proceedings which were started against him in February, 1989. Further, he argued that since no fresh proceedings were started before his retirement, it is incumbent on the respondents to obtain the sanction of the

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President for instituting any fresh proceedings.

5. We have heard the learned counsel for the parties and have also carefully perused the material on record.

6. Disciplinary proceedings initiated against the applicant by issue of Memorandum of chargesheet dated 18.2.1989 was proceeded with and the Enquiry Officer passed certain ex-parte order on 18.5.1992. On this being challenged, the Tribunal noted that ^{as} the proceedings which were held exparte _____ in the absence of the applicant, these proceedings were closed for filing the report of the Enquiry Officer and it was at that stage the aforesaid ex-parte proceedings of the Enquiry Officer were challenged by the applicant in O.A. No. 1508 of 1992. The Tribunal held that no application would lie against that order and it was provided that the applicant might challenge the alleged illegality only after the final order of the disciplinary authority was passed. When this matter was taken by the applicant to the Hon'ble Supreme Court, the Apex Court held that the notice in this case itself indicated why the enquiry should not be reopened and it was further held that in view of the notice and in view of the statements of the respondents in the counter-affidavit that they are agreeable to give another opportunity, the impugned order was set aside and the opportunity was directed to be given to the appellant to participate in the enquiry. It was also directed by the Apex Court that the Enquiry Officer would issue notice to the

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appellant by registered post giving 30 days' time for fixing the date, and on which date, the appellant should appear and participate in the enquiry and it was also provided that the Enquiry Officer should make available all the witnesses sought to be examined in proof of the charge on that date and it was open to the appellant to cross-examine those witnesses and the appellant should be given another date to adduce any defence witnesses on the adjourned day and the enquiry would be completed after examining the witnesses. After this, it was provided that the Enquiry Officer would be free to proceed according to the rules and take appropriate action. In the light of the very clear directions of the Apex Court, it cannot be said that the proceedings and the enquiry which were started following the Memorandum of Charges dated 22.2.1989 do not subsist. No doubt when the matter was before the Apex Court, the applicant had retired on superannuation, i.e., 31.10.1994 but the proceeding had not been dropped at any stage and the Apex Court had, in fact, allowed the enquiry to be proceeded with after giving another opportunity to the applicant. In view of this matter, it would not be correct to say that the entire proceedings had abated on the superannuation of employee on 31.10.1994.

7. In regard to the contention of the applicant that no charge of grave misconduct has been taken against him and only when such a charge is there, the respondents could take action under Rule 9 of the Railway Services (Pension) Rules, 1993, we do not

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agree with this contention. Read in the proper perspective, this rule clearly provides that the President has a right of withholding or withdrawing the pension or gratuity either in full or in part whether permanently or for a specified period. Such right will be exercised 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 reemployment after retirement. If the departmental proceedings had been instituted while the applicant was in service, those proceedings shall be deemed to be the proceedings for the purpose of this Rule and on his being found guilty of the charges and on a report being submitted to the President by the disciplinary authority, the question of consideration by the President for withholding or withdrawing the pension as provided under the rules will be taken. Only if no proceedings had been taken before the retirement of the Railway servant, fresh proceedings after his retirement in respect of any event which took place during the 4 years preceeding the retirement, shall be taken with sanction of the President. This statutory rule is applicable to all the Railway employees who retire from Railway service. We do not find anything ^{in this Rule which is} arbitrary or ultra vires of any provisions of the Constitution. Accordingly, we do not find any merit in the challenge to the vires of the aforesaid rule. In the instant case, disciplinary proceedings were initiated

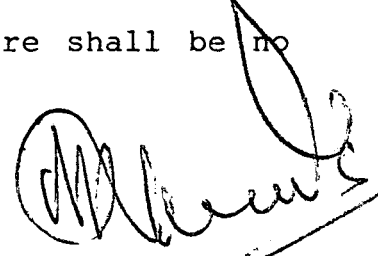
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against the applicant by the competent authority by the Memorandum dated 22.2.1989 and by the order of the Apex Court, the enquiry in the said proceedings was continued. Therefore, the case of the applicant falls squarely under the provisions of Rule 9(2)(a) and the proceeding should be deemed to be proceedings under the said rule and in view of this, the impugned orders dated 28.7.1995, 6.9.1995 and 16.8.1995 cannot be held to be bad in law and, therefore, the prayer of the applicant for quashing the aforesaid impugned orders cannot be allowed.

8. In the light of the above, this application is misconceived and has no merit and is accordingly dismissed. In the circumstances, there shall be no order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)


(A.V. HARIDASAN)
VICE CHAIRMAN(J)

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