

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.162/2000

New Delhi this the 15th day of May, 2001

(21)

HON'BLE MR. V.K. MAJOTRA, MEMBER(A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)

Shri Bishan Singh,
S/o Shri Attar Singh
Resident of House No. 1011,
Sector 28,
Faridabad (Haryana)

-Applicant

(By Advocate: Shri B.S. Mainee)

Versus

Union of India

Through:

1. The Secretary,
Ministry of Railways,
(Railway Board),
Rail Bhavan, Raisina Road,
New Delhi.
2. The General Manager,
Central Railway,
Mumbai CST.
3. The Divisional Railway,
Central Railway,
Jhansi.
4. The Senior Divisional Engineer (Co-ordn.),
Central Railway,
Divl. Rly. Manager's Office,
Jhansi.

-Respondents

(By Advocate: Shri V.S.R. Krishna)

ORDER (Oral)

By Mr. Shanker Raju, Member (J)

The applicant who retired as Chief Permanent Way Inspector was issued a major penalty for an alleged misconduct under the Railway Servants (Discipline & Appeal) Rules, 1968 on 29.9.95. Thereafter the enquiry proceeded vide an order dated 12.3.99. The report of the Enquiry Officer has been forwarded to the applicant to file his

representation, which he filed on 3.2.99. The applicant assails the charge sheet issued to him on the ground that the same is issued without seeking approval of the President of India and also that the enquiry proceeded against him is without following the procedure laid down under the Railway Servants (D&A) Rules, 1968. It is contended that despite expiry of more than two years, the final decision has yet to be taken on his representation and also due to pendency of the enquiry without any justified reasons, the retiral benefits of the applicant have been arbitrarily with-held by the respondents. Drawing our attention to Railway Board's letter, it is contended that maximum period for concluding disciplinary proceedings under the Railway Servants Rules ibid is 150 days. The respondents in the instant case had taken around six years to conclude the enquiry and yet have not passed a final order despite submission of reply to the finding. The applicant has sought quashing of the charge-sheet and also grant of all retiral benefits along with interest @ 18% P.A. It is also contended that delay in concluding the proceedings is not at all attributable to the applicant. It is also stated that mere pendency of the present OA has not precluded the respondents to issue a final order as there was no stay of the proceedings.

2. The respondents on the other hand by drawing our attention to the ratio of Apex Court in Union of India Vs. Upendra Singh 1994 (3) SCC 357 contended that in a judicial review the Tribunal would not interfer at an inter-locatory stage unless the charges framed in the disciplinary enquiry are without any misconduct and the correctness of charges

cannot be gone into by the Tribunal unless the proceedings is finally concluded and order is passed by the Disciplinary Authority. It is also contended that during the pendency of this OA, the respondents have not taken a final decision in the disciplinary proceedings against the applicant.

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3. We have carefully considered the rival contentions of the parties and perusal of the relevant records.

4. We agree with the contention of the learned counsel of respondents that at an interlocutory stage the correctness of the charge should not be gone into by the Tribunal, as the Tribunal would not assume the role of Appellate Authority and come to a conclusion to be different from the Disciplinary Authority to be taken up in the disciplinary proceedings. The power of judicial review is exercisable only when the disciplinary proceedings have concluded and the final order has been issued by the departmental authorities. On the other hand the contention of the learned counsel of the applicant is that where serious illegalities vitiate the enquiry and the matter should not be allowed to proceed at the disadvantage of delinquent officer particularly when the applicant is a retired Government servant and the retiral benefits are withheld.

5. Having regard to the facts and circumstances of the case and also keeping in view the Railway Board's letter prescribing the maximum period of 150 days to conclude the disciplinary proceedings and the fact that the disciplinary proceedings have been pending against the

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applicant for last 5 years and despite submission of his reply to the finding of the Enquiry Officer on 27.3.99 the respondents have yet to take a final decision in the disciplinary proceedings affecting the retiral benefits of the applicant. We, in the interest of justice, direct the respondents to conclude the disciplinary proceedings and to pass a final order within a period of four months from the date of receipt of a copy of this order. It is however made clear that in the event no final order is passed during this period, the proceedings shall abate and the applicant shall be entitled to all the consequential benefits including his withheld retiral dues. No costs.

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S. Raju
(Shanker Raju)
Member (J)

cc.

V.K. Majotra
(V.K. Majotra)
Member (A)