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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No.OA-1486/89

Date of decision: 29.05.92

Shri B.B. Lal Applicant

Versus

Union of India through
the General Manager,
Northern Rly & Anr. Respondents

For the Applicant Shri B.S. Mainee, Advocate

For the Respondents None.

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. I.K. Rasgotra, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporters or not? *Yes*

(Judgement of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice-Chairman)

The applicant, who has retired from the post of Assistant Superintendent in the office of the respondents, filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying that the respondents be directed to release the retirement benefits to him in its entirety without effecting any recovery from him. After holding an ex parte inquiry against the applicant, the respondents have ordered recovery of a sum of Rs. 60,447.35 from the retirement benefits payable to him.

2. We have heard the learned counsel for the applicant and have gone through the records of the case, including the counter-affidavit filed by the respondents. This case was listed peremptorily on 26.5.1992, but none appeared on behalf of the respondents. The facts of the case in brief are that on 11/27.4.1985, a memorandum proposing to hold an enquiry against the applicant under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 was issued to the applicant. The Article of Charge framed against him was that Shri Harbans Lall, Ex Senior Clerk, had filed a case at Kanpur under Section 15 of the Payment of Wages Act claiming wages from 26.11.1980 for the period of his unauthorised absence. The Labour Court declared an award of Rs.60,447.35 on 21.5.1984. Against the said award, the Railways filed an appeal in the Court of Additional District Judge, Kanpur, which was dismissed on 28.1.1985. A stay order of Additional District Judge, Kanpur, was obtained on 11.2.1985 by the Railway Advocate of Kanpur not to release the deposited amount to Shri Harbans Lall upto 25.3.1985. A copy of the stay order was to be obtained by the applicant on 12.2.1985, but he was alleged to have evaded from obtaining the same. He obtained it on 15.2.1985 for submission of the Labour Court, but failed to do so. Thus, he was charged that he failed to perform his legitimate duties and allowed the withdrawal

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of such a huge amount by not delivering the stay order in time to the Labour Court. It was, therefore, alleged that this action of the applicant not only was an act of disobedience and failure of duty but indicated his involvement in the withdrawal of Government money by Shri Harbans Lall.

3. The applicant has stated that he gave his detailed reply on 25.5.1985, wherein he stated that since he was dealing with the case of Shri Harbans Lall, the latter had become hostile to him and there was no question of his helping Shri Harbans Lall to withdraw the amount. He further stated that Shri Harbans Lall had lodged a criminal complaint No.379/81 against him alleging harassment and victimisation. In the case of Shri Harbans Lall, the appeal filed by the Railway Administration was dismissed. The Labour Court wrote to the Treasury Officer to release the amount of Rs.60,447.35 deposited by the Railway Administration to Shri Harbans Lall. He has further stated that on his insistence, the Railway Administration wrote to the Labour Court on 7.2.1985 regarding their intention to file an appeal in the High Court. He has explained that the Railway Advocate had arranged a copy of the stay order and delivered it to the applicant on 15.4.1985 at 1630 hrs.

On 13th and 14th February, 1985, the applicant had been ordered to go to Allahabad with pay-sheet and as such, the stay order could not be delivered to the applicant before 15.2.1985. Before going to Allahabad, he had requested for making alternative arrangements for obtaining the copy of the stay order from the Railway Advocate and deliver the same to the Labour Court, but that was not done. On 16.2.1985, the applicant was on leave and 17th being Sunday, he went to the Court on 18.2.1985, when there was a strike. A copy of the stay order was delivered in the Labour Court on 19.2.1985. Thus, according to the applicant, the delay in delivery of the stay order in the Labour Court was not on account of any negligence/slackness on his part.

4. The applicant has raised several procedural irregularities in the conduct of the enquiry having the effect of vitiating the same in its entirety. These include the non-furnishing of the documents required for its defence, the calling of the prosecution witness not by name, but by designation, non-supply of a copy of the inquiry report before the imposition of penalty, and the disposal of his appeal by the appellate authority on 17.5.1989 by a non-speaking order.

5. The non-supply of the documents required for the defence of the applicant in the enquiry, is, to our mind,

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a fatal flaw in the enquiry. On receipt of the charge-sheet, by the applicant, he wrote to the respondents on 25.5.1985, wherein he submitted that he would like to inspect the documents mentioned in the charge-sheet issued to him and that after inspecting the same, he would submit a list of additional documents, if necessary. This was followed up by subsequent representations on 28.8.1986, 7.10.1986, 1.8.1987, 15.9.1988 and 27.9.1988. The applicant had stated in his representation addressed to the Enquiry Officer on 28.8.1986 that he needed as many as 13 documents listed in his representation to refute the charges and to defend himself in the enquiry. The Enquiry Officer in his reply dated 12.9.1986, informed him that he should have completed inspection of the documents before submitting his defence note on 22.5.1985. He stated that keeping in view the natural justice, three out of the 13 documents required by him, were concerned with the enquiry and that the same have been furnished. In his representation dated 7.10.1986, addressed to the Enquiry Officer, the applicant stated that the documents supplied to him were not complete and that any incomplete documents would not serve any purpose. He also stated that the Enquiry Officer has not recorded any reasons for refusal of the documents.

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6. On 18.7.1988, the Enquiry Officer wrote to the applicant stating that the remaining documents were not available. He was, therefore, requested that he might produce copies of the documents in support of his evidence and that the same would be honoured.

7. On 1.8.1987, the applicant again sent a representation to the Enquiry Officer asking for the documents in question so as to put up an effective defence. He also stated that the responsibility for supplying the documents is that of the disciplinary authority.

8. On 15.9.1988, the applicant sent another representation to the Enquiry Officer, regarding the supply of the documents.

9. On 18.8.1988, the respondents informed the applicant that he had demanded inspection of additional documents on 28.8.1986, i.e., 15 months after the receipt of the memorandum. They also stated that the applicant had not indicated the relevance of the documents. The applicant was informed that his late demand for irrelevant papers, was refused.

10. On 20.9.1988, the Enquiry Officer informed the applicant that he had earlier made efforts and asked the respondents to supply the documents demanded by him but the respondents had informed that the demand for supply of the documents illegal, and as such, the same had been turned down.

11. On 17.9.1988, the Enquiry Officer advised the applicant that his demand for supply of additional documents was not placed within 10 days of the receipt of the charge-sheet and that the demand was made 15 months thereafter and as such, his request was too late and illegal.

12. On 20.9.1988, the applicant wrote to the Enquiry Officer that the enquiry may be proceeded only after the documents were made available to him.

13. It was in the above factual matrix that the enquiry was conducted ex parte.

14. In our opinion, the refusal by the respondents to give to the applicant the documents required by him, amounted to denial of reasonable opportunity and vitiates the entire proceedings. In this context, reference may be made to the O.M. No.F.3/5/61-AVD dated 25.8.1961 issued by the Ministry of Home Affairs dealing with the instructions regarding supply of copies and affording access to confidential records to the delinquent officer. Referring to the decision of the Supreme Court in Trilok Nath's case, the aforesaid O.M. clearly lays down that the power to refuse access to confidential records, should be very sparingly exercised and that "the question of relevancy should be looked at from the point of view of defence and if there is any

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possible line of defence to which the documents may, in ⁹ ~~the~~ some way be relevant, though the relevance is not clear to the disciplinary authority at the time that the request is made, the request for access should not be rejected". In any case, where it is decided to refuse access, reasons for refusal should be cogent and substantial and should invariably be recorded in writing. In the instant case, the respondents have not done so.

15. In State of Madhya Pradesh Vs. Chintaman, AIR 1961 S.C. 1623, the Supreme Court observed that rules of natural justice require that a party should have opportunity of adducing all relevant evidence on which he relies".

16. In Trilok Nath Vs. Union of India & Others, 1967 SLR (SC) 757 at 763 and 764, the Supreme Court has observed that "if the public servant so required for his defence, he has to be furnished with copies of the relevant documents; i.e., documents sought to be relied upon by the Enquiry Officer or required by the public servant for his defence. There are similar observations in the judgement of the Supreme Court in State of Gujarat Vs. Ramesh Chandra Mashruwala, 1977 SLJ 178 at 201 and in Kashi Nath Dikshita Vs. Union of India, A.I.R. 1986 S.C. 2118 at 2122.

17. In view of the aforesaid legal infirmity in the disciplinary proceedings held against the applicant which goes into the root of the matter, it is not necessary to go into the other contentions raised by the applicant. We are of the opinion that the impugned order dated 28.11.1988 passed by the respondents ordering recovery of Rs. 60,447.35 from the applicant, is not legally sustainable. We, accordingly, set aside and quash the same. The appellate order dated 17.5.1989 at page 58 of the paper-book, is a non-speaking order and the same is also set aside and quashed. We, therefore, allow the application and direct that the respondents shall release to the applicant the retirement benefits admissible to him without effecting any recovery therefrom. In case any recovery has already been made, the same should be refunded to him together with simple interest at the rate of 12 per cent per annum. The respondents shall do so as expeditiously as possible, but preferably within a period of three months from the date of communication of this order. There will be no order as to costs.

I.K. Rasgotra
(I.K. Rasgotra) 29/5/92
Administrative Member

P.K. Kartha
(P.K. Kartha) 29/5/92
Vice-Chairman (Judl.)