

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. No.1643/89.

New Delhi, this the 17th day of May, 1994.

SHRI J.P. SHARMA, MEMBER(J).

SHRI B.K. SINGH, MEMBER(A).

Shri R.K. Yadav,  
Son of Shri Rulsi Ram Yadav,  
working as ASM, Western Railways Station,  
Bhagega Tehsil, Neemka Thana,  
Distt. SIKAR (RAJASTHAN).

....Applicant

By advocate : Shri V.P. Sharma.

VERSUS

1. The Union of India, through  
The General Manager, Western Railway H.Q.,  
Churchgate, Bombay.
2. The Chief Operating Supdt. (COPS),  
Western Railway HQ, Churchgate,  
Bombay.
3. The Divisional Railway Manager,  
Western Railway, Jaipur.
4. The Divisional Safety Officer,  
Western Railway, Jaipur.

...Respondents

By advocates : Shri P.S.Mahendru, counsel with Shri K.S.  
Ahuja for Shri Jagjit Singh.

O R D E R (ORAL)

SHRI J.P. SHARMA :

The case has a chequered history. The applicant was appointed as ASM on 12-4-1957. A chargesheet was issued regarding criminal misappropriation of Rs.428.70 against the applicant under Railway Servants (Discipline and Appeal) Rules, 1968. The inquiry officer on conclusion of the inquiry submitted his report dated 11-11-1982 holding the applicant guilty of the charge. The disciplinary authority imposed the penalty of reduction to lower stage in the time scale for a period of two years without future effect by the

order dated December 31, 1982. The applicant preferred statutory appeal to the D.R.M., Jaipur and who, after consideration of the appeal, issued a show cause notice under rule 22, sub-clause (2), proviso (ii). The Divisional Railway Manager imposed the penalty of the dismissal from service on the applicant by the order dated 26-4-83. The applicant filed suit no.267/83 in the Civil Court and the show cause notice dated 19-2-83 was held to be illegal. The applicant thereafter, since he was not allowed to join the duties, filed OA-14/86 before the Chandigarh Bench which was decided by the order of June, 1986 where the applicant was directed to file an appeal under the rules to the appellate authority, if he so desires. The respondents were directed to entertain the appeal of the applicant by condoning the delay and then to dispose of the appeal within six months. The applicant's appeal was rejected by the Chief Operating Superintendent, Western Railway by the order dated 31-12-1986. The applicant filed OA-148/87 before the Principal Bench which was decided by the order dated 7-10-87 and the matter was remitted to the appellate authority to again consider the appeal and pass a speaking order. The respondents filed a review application no.3/88 which was disposed of by the order dated May 17, 1988 and it was directed that the appellate authority to dispose of the appeal by a speaking order in the light of the observations made in the body of the judgment. The applicant was reinstated in service by the order dated 4-11-88 and since then the applicant was continued to work as ASM. The applicant was thereafter issued a show cause notice by the appellate authority dated 27-6-89 (annexure A-I) under rule 22, sub-clause(2)

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whereby it is stated that gravity of the offence is such as to warrant severe form of punishment and that the penalty of the dismissal from service is warranted for the reasons given in the enclosed sheet. The applicant filed the present application on 25-8-89 and prayed for the grant of the reliefs that the show cause notice dated 27-6-89 being illegal, unjust and arbitrary be quashed and that the chargesheet is illegal and the applicant be deemed in continuous service for all purposes such as grant of back wages, bonus, seniority, promotion, etc. and be also awarded costs.

2. A notice was issued to the respondents who filed the reply and took the preliminary objection that the application is totally based on false and misrepresented facts. After dealing with the facts of the case that the applicant had already filed a CCP-84/89 against a show cause notice dated 27-6-89 and the present application is liable to be dismissed. The respondents also denied various averments made by the applicant.

3. The applicant has also filed rejoinder to the reply filed by the respondents.

4. We heard the learned counsel for the parties at length and perused the record. The applicant in the meantime superannuated from service on 31-10-93 while serving in the grade of Rs.2000-3200. By the order dated 23-12-93 passed on MP-3436/93, the provisional pension was granted to the applicant.

5. It transpires from the aforesaid facts of the case that the order of the disciplinary authority is still under challenge by the applicant before the

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appellate authority. As said above, the order of disciplinary authority dated 31-12-92 is reduction to lower scale of Rs.550/- in the time scale of Rs.425-640 for a period of two years without future effect. This order has not been set aside. The appeal by the applicant is with a prayer before the administration under rule 22 to set aside the aforesaid punishment on the basis of grounds averred in the appeal. Chief Operating Superintendent, the appellate authority, has issued a show cause notice dated 27-6-89 and this has been challenged by the applicant. The appellate authority has got the power to enhance the penalty but no order imposing the penalty shall be made unless the applicant is given a reasonable opportunity, as far as may be, in accordance with the provisions of rule 11 of making a representation against such an enhanced penalty. A perusal of the aforesaid show cause notice goes to show that the appellate authority while considering the appeal, as is expected, saw the gravity of offence and that was of a criminal misappropriation of money, in his statutory authority, proposed to enhance the punishment from that \_\_\_\_\_ of reduction by two stages by the disciplinary authority to that of dismissal from service and he has also enclosed his reasons in an annexure appended to the aforesaid show cause notice. The Tribunal cannot interfere in an interlocutory proceedings and the Hon'ble Supreme Court has considered a similar point in the case of UNION OF INDIA vs. BHUPENDRA NATH reported in 1994<sup>(1)</sup> SCALE page 634. In that case, the question of quashing of the chargesheet came before the Hon'ble Supreme Court where the Tribunal has granted the relief and the Supreme Court in the aforesaid judgment considered all such

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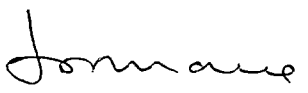
aspects of passing orders on the grievance on the basis of interlocutory order and held that the scope of the Tribunal is limited. In this case, the appellate authority had the power to issue show cause notice. <sup>24</sup> The contention of the learned counsel for the applicant is accepted of quashing this show cause notice, <sup>24</sup> that the matter of appeal shall remain pending and in that case, the appellate authority will be deprived of exercising its power of considering the enhancement of punishment which otherwise the authorities is competent to do under statutory power. The applicant though retired from service yet he is facing this departmental inquiry since the year 1982 and that inquiry cannot come to an end merely on superannuation of the delinquent. It may be that the respondents have to exercise their power as in a case of a retired employee under the relevant provisions, i.e., the Railway Servants (Pension) Manual, 1950. Thus, this application cannot be said to have become infructuous by virtue of the retirement of the applicant or that the respondents cannot deal with the delinquency of the applicant highlighted in the charges for which he has been tried departmentally under the relevant Indian Railway (Punishment and Appeal) Rules, 1968.

6. We have given a careful consideration to all the aspects of the matter and we find that the present application is totally devoid of merit. Though respondents made an attempt for vacation of the interim direction, that was not successful. Now, it is directed that the respondents shall expeditiously complete the inquiry, whether the applicant cooperates or not, and shall pass a final order taking into

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consideration the grounds taken in the memo of appeal and also give valid reasons for enhancement of punishment, if any. It is expected that the expeditious orders shall be passed to dispose of this matter finally. Costs on parties.

  
(B.K.SINGH)  
MEMBER (A)

  
(J.P.SHARMA)  
MEMBER (J)

'KALRA'