

Central Administrative Tribunal
Principal Bench, New Delhi.

OA-1597/88

Fourth day of November, 1993.

Shri J.P. Sharma, Member (Judl.)

Shri B.K. Singh, Member (A)

Shri Raj Kumar
s/o Shri Ram Ditta Mal
r/o A-7, Budh Vihar,
Delhi-110041.

Applicant

By Advocate Shri S.C. Luthra

Versus

1. Union of India, through the
General Manager, North-Eastern Rly.,
Gorakhpur.(U.P.)
2. The Divisional Railway Manager,
North-Eastern Railway,
Izatnagar, Distt. Bareilly(UP).

Respondents

By Advocate

(ORAL) O R D E R

Shri J.P. Sharma

The applicant was last working as a Head Booking Clerk and he sought voluntary retirement from service with the respondents w.e.f. 30.3.1987. He was served with an order of punishment dated 19.7.1985 on 18.2.1987 after he returned and joined from protracted leave of about 354 days. This order of punishment was passed on a minor penalty charge-sheet SF-II served on him on 27.6.1984 imposing the penalty of stoppage of increment for one year non-cumulative. The applicant assailed this order by way of departmental appeal preferred on 25.2.1987 to ADRM, North-Eastern Railway, Izatnagar. This appeal was disposed of by the appellate authority communicated by the order dated 26.3.1987 observing that the appeal and the case has been looked into and there is no alteration in the punishment. Aggrieved

by the same, he preferred a revision to the Divisional Railway Manager under Rule 25 of Railway Servants (Discipline and Appeal) Rules, 1968 on 16.5.1987 and that was dismissed by the order communicated to the applicant on 31.8.1987/1.9.1987 observing that whatever decision taken is correct and there is no question of reducing the penalty.

2. Aggrieved by the aforesaid orders of punishment, the applicant, after his retirement on 22.8.1988, filed the present application for grant of the following relief:-

- (i) that the impugned order dated 1.9.1987 and also the impugned order said to have been issued in 1985 but actually received in February, 1987, be set aside;
- (ii) the applicant may be allowed the benefit of increment which was illegally stopped by the respondents and other consequential benefits; and
- (iii) the period of suspension from 29.8.1984 to 31.10.1984 which was already treated as duty, should be implemented immediately and the applicant who has been denied the arrears of wages, should be paid the same.

3. A notice was issued to the respondents, who contested the application and filed the reply, annexing the copy of the revisional order as Annexure R-1. In the reply, it is stated that the applicant himself is to blame on account of having proceeded on 354 days' leave without pay and thereafter gave the notice of voluntary retirement

from service which had the effect of retarding his increment due on 1.1.1987, leading to the reduction in pension. It is further stated that a minor penalty charge-sheet was served on 24.6.1984 and when the applicant wanted a confronted enquiry, another charge-sheet dated 22.11.1984 was served on him which was earlier major penalty charge-sheet but later on, changed to minor penalty charge-sheet. The latter charge-sheet was subsequently dropped. The applicant had also been put under suspension from 29.4.1984 to 31.10.1984, but by a subsequent order dated 30.3.1987, the said period of suspension was treated for all purposes, as period spent on duty (Annex.A-2). It is also admitted in the reply that the punishment imposed upon the applicant on the minor penalty charge-sheet dated 24.6.1984, could be served only on 16.2.1987, though the order was passed on 19.7.1985 because the applicant was on leave and when he joined, the order was served upon him.

4. Shri S.C. Luthra, Counsel for the applicant gave a statement at the Bar that the applicant has contacted him only about 3 months ago and thereafter, he could not know about him. Shri K.N.R. Pillai filed the reply in this case and Shri P.V. Sreedharan, Proxy appeared for him.

5. We have heard the learned counsel for the parties and perused the record.

6. The learned counsel for the applicant pointed out that the impugned order of punishment was given effect to without communicating the same to the applicant which is illegal and the increment of the applicant from 1.1.1986 was wrongly withheld as at that time,

no punishment was communicated to him, which is admitted by the ~~by the~~ respondents in their reply. Merely because the applicant happened to be on leave, would not, by itself, be taken as a *fait accompli* by the respondents to enforce the order without communicating the same to the applicant. There is force in this argument and withholding of the increment from 1.1.1986, if it was otherwise due, is not in accordance with the rules. The effect of this would be that the increment could have been withheld only after the order was communicated on 18.2.1987 and not from 1.1.1986. The applicant, therefore, was in normal course, ifnot otherwise, deprived was entitled to the next increment on the date of increment i.e., 1.1.1986.

7. Regarding the order passed by the disciplinary authority, the appellate authority and the revisional authority, we have considered from the angle that it was a minor penalty charge-sheet. But even in such cases, the delinquent has a right to be informed by a speaking reasoned and discussed order as to what was the main facts and features coming in the enquiry which resulted in proving the alleged charge and consequently, the penalty imposed on the applicant. It is less said the better, because the disciplinary authority only in two sentences, observed in the order dated 19.7.1987 that he has nothing to say in the defence and then passed the order of punishment. Similarly, the appellate authorit in one sentence, disposes of the appeal dated 20.5.1987 which runs into 5 paras. of one foolscap page that he has seen the appeal and no interference in the punishment is warranted. The revisional authority also did not apply as well as appreciate the averments and the

grounds taken in the revision petition dated 16.5.1987 which runs into two foolscap pages in 7 paragraphs and the cryptic order passed is only "Whatever decision that is correct. There is no question of reducing the penalty."

8. The allegations against the applicant were of serious nature of excess charge from the passenger in the sale of ~~books~~^{tickets} and it was also the misconduct alleged in both the charge-sheet, i.e., of June, 1984 and of November, 1984. However, the allegations by themselves do not substantiate the guilt against the charged employee.

9. The Hon'ble Supreme Court, in the case of Ram Chander Vs. Union of India, A.I.R. 1986

has observed that after the amendment in 1986 in Article 311(2) of the Constitution of India, heavy duty is caused on the departmental appellate/revisional authorities to consider the impugned punishment assailed before them and dispose of such representations by way of such representations by way of appeal or revision by speaking, reasoned, discussed order even giving an opportunity of personal hearing to the delinquent.

10. We, therefore, find that the procedure adopted by the Department is totally against the rules to which the applicant is governed and the higher authorities did not properly in a justified manner, exercise the authority vested in them of considering the appeal and revision against the impugned order passed by the disciplinary authority. In such a circumstance, any of these orders cannot be allowed to stand.

11. The applicant has since been granted voluntary retirement. That aspect also has got much weight because only two weeks before the impugned punishment was conveyed, the voluntary retirement request was acceded to and appeal was pending with the appellate authority. Not only this, only on the date of retirement, i.e., 30.3.87, the period of suspension of the applicant was also condoned to be treated as on duty for all purposes. In view of this fact, though we consider the matter on technical aspects of not exercising the power in a justified manner by the authorities, we do not consider it a case where a fresh enquiry should be ordered.

12. The applicant has also claimed wages for the period he was under suspension but in para.6.16, the respondents in their counter, stated that this amount has already been paid and the applicant, in his rejoinder, did not dispute this fact.

13. The application is, therefore, partly allowed. The impugned punishment imposed upon the applicant of withholding the increment for one year with non-cumulative effect, is struck down and the respondents are directed to release the withheld increment by refixing his pay on the date of increment as if no punishment was passed, subject to the fact that he is otherwise entitled to the same and it has not been ~~recorded~~ because of his having been on leave for 354 days. In the circumstances, the parties to bear their own costs. The respondents to comply with the order within a period of three months from the date of receipt of this order. In case the applicant is granted the benefit as per the above direction his pension shall be refixed and other terminal benefits also and the revised P.P.O., gratuity, etc. be issued within the time allowed. No costs.


(B.K. Singh)
Member(A)


(J.P. Sharma)
Member(J)