

OA 733/88

2.3.1989

Present :-

Smt N N Aggarwal Advocate Counsel
for the applicant

Smt S.N. Sikka Advocate, Counsel
for the respondents

Arguments Concluded.

Judgment Reserved

A. Jha

(Kaushal Kumar)

Member (A)

2.3.1989

P. K. Kartha

V.C (J)

2.3.89

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 733/ 1988.
XXXXNo.

DATE OF DECISION 15th March, 1989.

B. N. Asthana Petitioner Applicant.

Shri N. N. Aggarwal Applicant.
Advocate for the Petitioner(s)

Versus

Union of India Respondent

Shri S. N. Sikka Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. Kaushal Kumar, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

MGIPRRND-12 CAT/86-3-12-86-15,000

(KAUSHAL KUMAR)
MEMBER (A)

(P. K. KARTHA)
VICE-CHAIRMAN (J)

15.3.1989.

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 733/1988. DATE OF DECISION: 15.3.1989.

B.N. Asthana Applicant.

V/s.

Union of India Respondents.

CORAM: Hon'ble Mr. P.K. Kartha, Vice-Chairman.
Hon'ble Mr. Kaushal Kumar, Member (A).

For the Applicant Shri N.N. Aggarwal, Counsel.

For the Respondents Shri S.N. Sikka, Counsel.

(Judgment of the Bench delivered by
Hon'ble Mr. Kaushal Kumar, Member)

JUDGEMENT

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who retired as Executive Assistant to the Divisional Railway Manager, Northern Railway, Moradabad on 31.10.1986, has called in question the charge-sheet which was issued to him vide Memorandum dated 14.10.1986 (Annexure P-1 to the application) and the order dated 17.6.1987 (Annexure P-4 to the application) whereby the Commissioner for Departmental Inquiries in the Central Vigilance Commission was appointed as Inquiry Officer to inquire into the charge framed against the applicant. The applicant has also prayed for a direction to the respondents to pay to him the gratuity along with interest with effect from 31.10.1986 till the date of payment as also the commuted amount of pension as per the relevant rules.

2. The learned counsel for the applicant contended that although the charge-sheet was dated 14.10.1986, it was actually served on the applicant on 30.10.1986, one day prior to his retirement from service and the charge related to the year 1979, nearly seven years prior to the date when the charge-sheet was issued. The charge related

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to the alleged misconduct on the part of the applicant as a member of the Screening Committee for screening of casual labourers on 21.7.1979. The applicant was at that time working as Assistant Track Supply Officer (E), Northern Railway and he along with Assistant Personnel Officer (E) conducted the screening. He as a member of the Committee declared fit and empanelled 18 persons even though they had not completed the requisite service of 120 days and were not eligible for screening / empanelment as per instructions and rules on the subject. The applicant, in his explanation, had clarified that the instructions regarding 120 days working as a pre-requisite condition for eligibility was not in his knowledge and that during the course of his screening he was only seeking the physical fitness of the candidates. The learned counsel for the applicant referred to the instructions of the Railway Board filed as Annexure P-3 to the application, laying down the time schedule for finalisation of disciplinary proceedings as 202 days. The relevant para reads as follows: -

"2. In accordance with the revised time-schedule, the target period for finalising disciplinary proceedings is 202 days. The Board observe that it should be generally possible for the Railway Administrations to finalise the disciplinary proceedings within the revised target of 202 days. However, in certain S.P.E/Vigilance cases, where a Railway Administration does not find it practicable to adhere to this target rigidly, steps should be taken by them to minimise, as far as possible, the additional time likely to be taken, over and above the target period. But, it is imperative that, in cases of accidents, where prompt and expeditious finalisation of disciplinary action is of utmost importance and which do not present the difficulties encountered in S.P.E./Vigilance cases, all possible measures should be adopted to ensure that the time-schedule of 202 days for finalisation of disciplinary proceedings is not exceeded. It may be noted that with the revision of the time-schedule the overall target prescribed

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for finalisation of all accident cases including those in which disciplinary proceedings are involved as also others viz., 90 days would not be affected."

Relying on the above instructions, the learned counsel for the applicant vehemently argued that the inquiry having not been completed within the prescribed period of 202 days, it was liable to be quashed. He also referred to the reply given by the applicant to the charge-sheet on 30th October, 1986 wherein he had admitted that the irregularity was committed by him inadvertently due to ignorance of rules on the subject relating to Personnel Branch without any malafides and requested for a lenient view to be taken in the matter since he was retiring on 31.10.1986 on superannuation. The learned counsel for the applicant contended that in view of the admitted facts of the case, neither any enquiry nor its prolongation was warranted. He also pleaded that the applicant was suffering from a serious ailment and deserved compassion and sympathy.

3. The learned counsel for the respondents stated that the time taken in the institution of the inquiry was due to the fact that the written statement of defence of one Shri M.P. Sharma, Sr. Personnel Officer, Northern Railway, who was also charged along with the applicant and proceeded against departmentally, had not been received and the respondents had to wait reasonably to allow the other accused officer to submit his written statement of defence and that there had been no deliberate attempt on the part of the respondents to delay the departmental proceedings.

4. Para 315 of the Manual of Railway Pension Rules, 1950 confers on the President the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if, in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including

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service rendered upon re-employment after retirement. Proviso (a) to para 315 (1) also lays down that such departmental proceeding, if instituted while the Railway servant was in service, whether before his retirement or during his re-employment, shall, after the final retirement of the Railway servant, be deemed to be a proceeding under the said para and shall be continued and concluded by the authority by which it was commenced in the same manner as if the Railway servant had continued in service. In this case, the charge-sheet was served on the applicant before he retired from service and, therefore, legally there is no bar to the continuance of the departmental proceeding after retirement and the only penalty which can be imposed can be the withholding of the whole or part of the pension. Admittedly, there has been no pecuniary loss to the Government in this case, and the penalty of withholding of the whole or part of the pension can be imposed only if the applicant is found guilty of grave misconduct or negligence.

5. The statement of article of charge (Annexure-I to the Memorandum dated 14.10.1986 (Annexure P-I to the application) reads as follows: -

"Shri B.N. Asthana while functioning as ATSO-II Hd. Qrs. Office during the year 1979 committed misconduct inasmuch as he as a member of the Screening Committee for screening of casual labourers empanelled 18 candidates as a result of screening held in the year 1979 and panel was declared vide No. E-220/4/TSO dated 19.10.79, with malafide intention as they had not completed the requisite 120 days service and were thus not eligible for such screening/empanelment."

"By his aforesaid action, Shri Asthana committed misconduct and failed to maintain absolute integrity and acted in a manner unbecoming of a Railway Servant in contravention of Rule 3(1)(i)(ii) & (iii) of the Railway Services (Conduct) Rules, 1966."

6. It will be only after the inquiry has been completed and a finding arrived at that the disciplinary authority can take action, if warranted in the light of the Inquiry Report, in terms of the provision of para 315 of

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the Manual of Railway Pension Rules, 1950, referred to above. The charge-sheet having been served on the applicant while he was still in service, the same cannot be held to be illegal even though it relates to a transaction or act of commission or omission on the part of the applicant in the year 1979. We also do not find an inordinate delay in the appointment of Inquiry Officer; the charge-sheet having been served in October, 1986, the Inquiry Officer was appointed in June 1987 within a period of 8 months. It is true that since the matter in respect of which the applicant has been charged pertains to 1979, no charge-sheet could be legally served on the applicant after his retirement since the matter pertained to a transaction which took place more than four years before the institution of the departmental proceedings as per proviso (c) to para 315 (1) of the Manual. Mere delay in the initiation of the disciplinary proceedings while the applicant was still in service would not vitiate the charge-sheet. The departmental instructions relied upon by the learned counsel for the applicant that the inquiry should be completed within a period of 202 days are mere guidelines and directory in nature. Departure therefrom could not warrant quashing of the charge-sheet.

7. Strong reliance has been placed by the learned counsel for the applicant on the decision of the Calcutta Bench of this Tribunal in SANTOSH KUMAR MITRA Vs. UNION OF INDIA AND OTHERS (1987 (3) SLR page 278). The facts giving rise to the said case and the observations of the Calcutta Bench relied upon by the learned counsel are extracted below:-

"4. The applicant retired with effect from 1.7.1984. As a justification for continuing the departmental proceedings after retirement, the respondents have referred to Rule 2308 of the Railway Establishment Code (Vol. II). It is laid down in the proviso to the first paragraph of said rule that a departmental proceeding if initiated while the railway servant was in service, whether before his retirement or during

his re-employment, shall after the final retirement of the railway servant be deemed to be a proceeding under this rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service."

"5. But, this rule will apply if the departmental proceeding is not concluded before retirement. In the instant case, we find no justification for not concluding the departmental proceeding within the period from 2.12.1983 when the applicant admitted the charges till 1.7.1984 when the applicant retired. The respondents had plenty of time to pass the final order in the departmental inquiry. To keep the departmental proceedings pending without reason and justification and to deprive the applicant of his retirement benefits on that ground is arbitrary and against the principles of equity and fair play."

In the said case, there was a clear admission of the guilt by the applicant on 2.12.1983 and the departmental proceedings had not concluded till 1.7.1984 when the applicant retired. What the Tribunal held in the said case was that departmental proceedings had been kept pending without reason and justification after admission of the guilt by the applicant till the date of his retirement which was arbitrary and against the principles of equity and fair play. In the instant case under our consideration, the charge-sheet itself was served on the applicant in the month in which he was due to retire. It is not a case where departmental proceedings have been kept pending with any ulterior motive to deprive the applicant of his retirement benefits. Moreover, the reply submitted by the applicant on 30.10.1986 in reply to the charge-sheet can also not be considered as an unqualified admission of guilt. In the statement of imputations of misconduct or misbehaviour in support of article of charge framed against the applicant (Annexure-II to the Memorandum dated 14.10.1986 (Annexure P-1 to the application), it is inter-alia stated as follows:

"Railway Board in their letter No.E(NG)-II-76CL/67 dated 23.7.76 circulated vide G.M. (P) letter No.220-E/O/4-III (E. IV) dated 7.8.76 clearly laid down that all

casual labour who have put in minimum of 4 months continuous service whether on open line in the Division or on adjacent construction project should be listed for screening. But the above were enlisted for screening and empanelled when they had not worked for 120 days in contravention of extant orders with malafide intention."

The applicant in his reply dated 30.10.1986 stated that he had committed the irregularity inadvertently due to ignorance of rules without any malafides. Whereas the statement of imputation of misconduct attributes malafide intention to the applicant, he denied the same in his reply. As such, this is not a case of unqualified admission of guilt. The facts are clearly distinguishable from those which gave rise to the decision of the Calcutta Bench of this Tribunal relied upon by the learned counsel for the applicant. Accordingly, we do not see any justification for quashing the charge-sheet or the order appointing the Inquiry Officer at this stage. The present application is obviously pre-mature and liable to be dismissed as such. The applicant, if he is aggrieved by any order of the disciplinary authority may, after exhausting the departmental remedies ~~xxxx~~, if so advised, file a fresh application in the Tribunal.

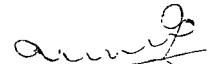
8. Admittedly the applicant has already been sanctioned provisional pension and while disciplinary proceedings are pending against him, he is not entitled to payment of death-cum-retirement gratuity as per provision of para 316(1) of the Manual of Railway Pension Rules, 1950. Para 318 of the Manual also states that withholding of pension under para 315 extends to only recurring pensions and commuted value thereof which are governed by the Pension Act, 1871. As such, while disciplinary proceedings are pending against the applicant, he is not entitled to payment of DCRG or commuted value of the pension.

9. The applicant is stated to be suffering from a serious ailment and taking a humane view, we direct that

the inquiry should be finalised expeditiously and the departmental proceedings concluded within a period of four months from the date of receipt of a copy of this judgment by the respondents. With these directions, the application is dismissed with no order as to costs.



(KAUSHAL KUMAR)
MEMBER (A)



(P.K. KARTHA)
VICE CHAIRMAN.

15.3.1989.