

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Reg. No. O.A. 1320/87.

DATE OF DECISION: 14-7-1992.

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Shri N.S. Yadav Applicant.

v/s.

Union of India & Ors. Respondents.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).

Shri O.P. Gupta, counsel for the applicant.
Shri M.L. Verma, counsel for the respondents.

JUDGMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who is a retired Chief Goods Clerk, Faridabad, having superannuated on 1.10.1980, has assailed Order dated 25.3.1987 (Annexure A-1) by which the Ministry of Railways (Railway Board) informed the General Manager, Central Railway, Bombay that "The President has carefully considered the disciplinary case of Sri N.S. Yadav, Retd. Chief Goods Clerk, Faridabad, in consultation with the UPSC and has decided that a cut of Rs. 75/- p.m. from the monthly recurring pension admissible to Sh. Yadav should be made for a period of 5 years." The applicant has prayed for setting aside and quashing the aforesaid impugned order dated 25.3.87 being illegal, arbitrary, malafide and void ab initio as no pecuniary loss was either alleged in the Memorandum or substantiated in view of the UPSC report. He has also prayed for any other relief deemed fit by this Tribunal.

2. The facts of the case, in brief, are that the applicant joined the Railways on 10.11.43 as U.T.C. and rose to the post of Chief Goods Clerk with effect from 1.6.79. He retired on superannuation with effect from 30.9.80 (A.N.) when he was holding the post of Chief Goods Clerk at Faridabad. According to the applicant, he was served a charge-sheet dated 15.12.82, which he received on 31.12.82.

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The Memorandum dated 15.12.82 (Annexure A-2) states to have been issued in pursuance of the sanction accorded by the President under Rule 2308 of the Indian Railway Establishment Code Volume II for instituting departmental proceedings. A statement of Articles of Charge framed against the applicant a statement of imputations in support of Articles of charge and a list of documents to be relied upon were also enclosed to the said Memorandum. The applicant was also informed that the departmental proceedings were to be conducted in accordance with the procedure laid down in Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968. The Enquiry Officer, in his findings dated 14.10.85, concluded that "Having carefully considered all the facts, circumstances, oral evidence, the statement of the delinquent employee and other available witnesses recorded during the enquiry, I find that Shri N.S. Yadav, retired Chief Goods Clerk, Faridabad, is guilty of the charges framed against him vide charge memorandum No. E(D&A)-82, AE-7-4 dated 15.11.82 issued to him by Dy. Director, Establishment (D&A), Railway Board for and on behalf of the President of India, in that -

- (i) He failed to ensure that proper actions were taken for back tracing the over due coal wagons Nos. (i) WR.75336 and (ii) ER-76467 (Box) both booked under Inv. No. 1, 771878 of 5.10.78 ex Andal to Faridabad, consigned to M/s Avinash Agencies, before those were connected with unconnected coal wagons;
- (ii) He failed to follow proper procedure in respect of the following unconnected coal wagons to connect them with the relevant despatch particulars before those wagons were linked with the overdue coal wagons/shortage certificates -

Wagon Nos.	Date of arrival at Faridabad.
SR-9164-C (SC-9164-C)	17.1.1979.
NR-69711-CRT	20.1.1979.
SE-66871-BOX	23.3.1979.
NR-51188-KC	21.12.1978.

- (iii) He initiated wrong actions in putting up the applications of -

- a) M/s Avinash Agencies, dated 31.1.79 & 30.3.79.
- b) M/s Sehgal Papers, dated Nil for linking of wagon No. NR-51188-KC

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to the Area Officer, to enable him to pass orders with an intention to give undue advantage of obtaining supplies of coal in the days of coal shortage, by acceding the requests in toto of the said parties for linking overdue wagons and shortage certificates with unconnected wagons.

In consultation with the UPSC, the President has decided that a cut of Rs.75/- p.m. from the monthly recurring pension admissible to the applicant should be made for a period of five years, vide the impugned order dated 25.3.1987, referred to above.

3. The case of the applicant is that there is no charge of causing any pecuniary loss and as such no enquiry could be initiated after his retirement; that the advice of the UPSC in para 6 of their communication dated 11.3.1987 (Annexure A-10) stated unambiguously that "the records of the case do not substantiate malafide intentions on the part of the charged official"; and that under Rule 2308 of the Indian Railway Establishment Code Vol. II, no departmental proceedings can be initiated after the retirement of the employee after lapse of four years of the date of incidence, and the first relevant date relating to the Article of Charges being 5.10.78, the disciplinary proceedings initiated vide Memorandum dated 15.12.82 and served on the applicant on 31.12.82 stand vitiated. The applicant has further stated in his O.A. that Rule 9 of the Railway Servants (Discipline & Appeal) Rules is ultra-vires the Article 311 of the Constitution in that that Rule does not provide for a fair opportunity to the applicant to represent his case against the advice of the UPSC. He has further stated that he was not supplied with the report of the preliminary enquiry treating the same as privileged document, which deprived him of a fair opportunity to meet the case. He has cited a number of cases in which the Hon'ble Supreme Court has held that pension/gratuity is neither a bounty nor a matter of grace depending upon the sweet will of the employer, nor an ex-gratia payment, and that delay in settlement and disbursement thereof must be visited with the penalty of

payment with interest at market rate till actual payment.

4. The respondents, in their counter-affidavit, have contested the application by raising two preliminary objections and replying the contentions of the applicant on merits para-wise. The first preliminary objection of the respondents is that the quantum of punishment is not open to judicial review and the second objection is that the applicant has filed a belated matter without any cause of action, which is barred u/s 20 and 21 of the Administrative Tribunals Act, 1985.

5. I have gone through the case carefully and heard the learned counsel for the parties. The impugned order is of March 25, 1987 and the O.A. was filed on 11.9.1987. As such, the O.A. is within limitation and the objection of the respondents that it is a belated matter without any cause of action is not tenable. In para 6(xxvi) of his application, the applicant pointed out that the invocation of Rule 2308 of the Indian Railway Establishment Code Vol. II is contingent on three conditions being fulfilled as below: -

- (i) A pecuniary loss has been caused.
- (ii) The said charge has been proved in the Enquiry.
- (iii) That no proceedings can be instituted after 4 years of the occurrence date.

In the instant case, according to the applicant, none of the conditions as stated above have been proved to exist and, as such, the whole proceedings and impugned orders are arbitrary, malafide, vindictive, full of hostile discrimination, bad in law and as such vitiated. Against this paragraph, the respondents in their counter-affidavit have only stated "Para 6 (xxvi) of the application is matter of record and needs no reply subject to preliminary objections." The Articles of Charge refer to the occurrences of the period from 5.10.78 to 30.3.1979. Thus, the period of four years elapsed only on 30.3.1983 and the disciplinary proceedings were initiated well within four years, as the applicant himself has admitted in Ground 'C' of his application that the Memorandum

dated 15.12.82 was served on him on 31.12.82. In the instant case, the condition of consulting the UPSC has also been observed. In para 6 of their communication, dated 11.3.1987, the UPSC opined that "Nevertheless, the facts of the case make it clear that Sh. Yadav showed gross negligence in back tracing overdue coal wagons and in disposing of the unconnected coal wagons. In AMRIT SINGH Vs. UNION OF INDIA AND OTHERS (1988 (4)(CAT) p. 1023), a Full Bench of this Tribunal examined in detail the provisions of Article 2308 of the Indian Railways Establishment Code which govern these proceedings and they read as follows: -

*2308 (C.S.R. 351) - The President further reserves to himself 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 service rendered upon re-employment after retirement.

Provided that:

(a) 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 proceeding under this Article 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.

(b) such departmental proceeding, if not instituted while the Railway servant was in service, whether before his retirement or during his re-employment.

(i) shall not be instituted save with the sanction of the President;

(ii) shall not be in respect of any event which took place more than 4 years before such institution; and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from

from service could be made in relation to the Railway servant during his service;

- (c) no such judicial proceeding, if not instituted while Railway servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or an event which took place more than 4 years before such institution; and
- (d) the Union Public Service Commission shall be consulted before final orders are passed."

The Full Bench of the Tribunal, after an analysis of the above Article 2308 held that the President has the right to withhold or withdraw pension and also to recover any pecuniary loss caused to the Government subject to the provisions of Article 2308. In the context of Rule 9 of the Tamil Nadu Pension Rules, the Full Bench of the Tribunal further observed:

"12. We are unable to agree that the power to continue the disciplinary proceedings under proviso to Rule 9 can only be for the purpose of recovering the pecuniary loss, if any, occasioned to the Government. That provision gives power to the competent authority to find if any of the charges are proved and if any of them are proved, the competent authority is vested with the further power not only to order withholding of whole or part of the pension but also to order recovery of whole or part of the pecuniary loss occasioned to the Government as a result of grave misconduct or negligence of the officer concerned. The Rule does not anywhere lay down that only if pecuniary loss is occasioned by the grave misconduct or negligence of the officer, pension may be withheld. If grave misconduct or negligence is established but no pecuniary loss is occasioned thereby, the competent authority can only direct withholding of whole or part of the pension. But if in addition, pecuniary

loss is occasioned, the disciplinary authority can also direct the recovery of the pecuniary loss."

Thus, it is not necessary that action could be initiated against the applicant only in the event of any pecuniary loss caused to the Government. The applicant has been found guilty of negligence in respect of the incidence which falls within four years of the initiation of departmental proceedings and the UPSC has also been duly consulted in the matter. All the conditions specified in Article 2308 of the Indian Railway Establishment Code are fulfilled in this case, and I have no hesitation in holding that it is within the powers of the President to withhold or withdraw a pension or a part of it permanently or for a specified period subject to the aforesaid conditions which are fulfilled in this case.

6. Learned counsel for the applicant cited the judgments in the cases of D.V. KAPOOR Vs. UNION OF INDIA AND OTHERS (1990) 14 Administrative Tribunal Cases p. 906) decided by the Hon'ble Supreme Court on 7.8.1990 and Dr. C. KALYANAM Vs. GOVERNMENT OF TAMIL NADU AND ANOTHER (1982 L.L.J. p.299) decided by the Hon'ble High Court of Judicature, Madras, on 16.10.1981. The facts of both these cases are not at all similar to the ones of the instant case. In the case of D.V. Kapoor (supra), the petitioner was not charged with nor was he given an opportunity that his gratuity would be withheld as a measure of punishment and in the circumstances, Hon'ble Supreme Court held that the order to withhold the gratuity as a measure of penalty was illegal and devoid of jurisdiction and thus quashed the same. In the case of Dr. C. Kalyanam (supra), the petitioner was governed by the Tamil Nadu Pension Rules and in that case admittedly no sanction of the Government had been obtained before issuing the show cause notice to the petitioner. Thus, the cases cited by the applicant herein are not applicable to the present case.

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and are of no help to him.

7. Learned counsel for the applicant did not press that Rule 9 of the Railway Servants (Discipline & Appeal) Rules is ultra-vires of Article 311 of the Constitution. As regards the contention that the applicant was not supplied with a copy of the report of the preliminary inquiry and accordingly, he was deprived of a fair opportunity to meet the case, it should suffice to state that the applicant has not been able to show that such an inquiry report was relied upon by the respondents in support of the Articles of Charge, or that such an inquiry report was cited in the list of documents in Annexure-3 to the Memorandum of Charge-sheet.

8. In view of the foregoing discussion, I do not find any merit in the O.A., which is hereby dismissed. No costs.

Dec 14/1992
(P.C. JAIN)
MEMBER(A)