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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

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O.A. NO. 1609/1990

DATE OF DECISION 25.10.91

SHRI C.P. GANDHI

...APPLICANT

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

CORAM

SHRI I.K. RASGOTRA, HON'BLE MEMBER (A)

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

...SH. M.N. KRISHNAMANI

FOR THE RESPONDENTS

...SH. B.M. MANI

1. Whether Reporters of local papers may be allowed to see the Judgement? Jr
2. To be referred to the Reporter or not? W

J U D G E M E N T

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant who retired as Station Superintendent on 31.5.1988 filed this application under Section 19 of the Administrative Tribunals Act, 1985 has challenged the disciplinary proceedings initiated against him relating to an incident that took place on 29.7.1986 and are pending against him even after the applicant attained the age of superannuation on 31.5.1988. He has claimed the

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following reliefs :-

- (a) Issue appropriate orders washing the disciplinary proceedings initiated vide chargesheet No.257/C.1/8/86 dt. 26.9.88;
- (b) Issue appropriate directions declaring that the disciplinary proceedings initiated by Proc. No.257/C.1/8/86 dt. 26.9.86 became infructuous on 31.5.88 when the applicant retired from service;
- (c) Issue appropriate Writ, Order or Direction, declaring that Rule 2306 of the Railway Establishment Code, Vol.II, under which the disciplinary proceedings are continued even after the retirement of the petitioner, by a legal fiction, as null and void;
- (d) Issue appropriate directions for payment of full pension, gratuity and encashment of commutation of pension sought for by the petitioner.

2. The applicant has also moved MP 1071/91 in which he prayed for issue of appropriate direction to the respondents that the conduct of the Railway Administration in settling his pension unconditionally amounts to dropping of the disciplinary proceedings against the petitioner which are under challenge in the above CA and a further direction to disburse the applicant's gratuity within a reasonable time. The MP has been heard alongwith the Original Application.

3. The facts as stated by the applicant are :-

That he was working as Station Superintendent in 1986.

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While he was employed, the Steel Authority of India asked for reweighing of goods consigned by them because the said consignment appeared to have been different. The allegation against him was that he had over estimated the loss with an ulterior motive. This matter was entrusted by the Railway to the C.B.I. for investigation. In July, 1987, a departmental enquiry was ordered to be held. He requested for certain crucial documents from the Enquiry Officer to be produced at the enquiry, but those documents were not produced on the pretext that some of those documents were said to be missing while remaining documents are with C.B.I. who earlier conducted investigations against the applicant. This demand of the applicant for production of said documents was rejected by the Enquiry Officer. The applicant, therefore, approached the High Court of Jammu and Kashmir under Article 226 of the Constitution of India. The High Court directed him to approach the Central Administrative Tribunal as the matter was not any longer within the jurisdiction of the High Court. As a result, he filed an Original Application No. before C.A.T., Chandigarh Bench, which O.A. was dismissed as premature.

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4. The applicant further states that since the disciplinary action initiated on 26.9.86 is now more than 4 years old, the delay in completing the enquiry has vitiated the same process as such inordinate delay is violating of principles of natural justice. It is more so when he has not been supplied with certain documents essential for his defence in the enquiry proceedings. It is further stated that the Rule 2308 of the Railway Establishment Code, Vol.II is arbitrary, unreasonable and void. He has, therefore, claimed dropping of the disciplinary action since he has also superannuated and retired from service.

5. The respondents in their reply, both to C.A. and M.P. have stated that the challenge to the validity of Rule 2308 of the Railway Establishment Code, Vol.II is misconceived and untenable. It is stated that enquiry proceedings were not dropped as the same could not be finalised before 31.5.1988, when the applicant attained the age of superannuation. The delay in finalisation of the disciplinary proceedings was on account of the applicant's obtaining a stay against enquiry from the Jammu & Kashmir High Court on August 3rd, 1987 and again on 30th April, 1988. Thus at the time of retirement of the employee, disciplinary proceedings could not be progressed as the stay order granted by Jammu & Kashmir High Court was in operation. Rule 2308 of the Railway Establishment

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Code enables the respondents to continue the disciplinary proceedings even after the retirement of the Railway employee, and such continuation does not violate Articles 14, 19(1)(g) and 21 of the Constitution of India. It is stated that full opportunity was given to the applicant to lead evidence during enquiry proceedings and also during defence which had been considered by the Enquiry Officer. After the receipt of the major penalty chargesheet, the employee had requested on 16-2-1987 to examine certain documents and have extracts therefrom. The employee was afforded the opportunity of inspecting all the documents and take extracts from them as requested by him. Thus there was no necessity to produce these documents again on the request of the applicant, who had already been given this facility earlier. The applicant, according to the respondents, was interested only in delaying the proceedings. The stay granted by Jammu & Kashmir High Court in the enquiry proceedings on August 3rd, 1987 was subsequently vacated by C.A.T., Chandigarh in November, 1987. The employee again obtained the stay from Jammu & Kashmir High Court on 30th April, 1988 seeking annulment in the enquiry report furnished on 25-4-1988. The C.A.T. Chandigarh Bench vide order dated 2-12-1988

dismissed the said T.A. <sup>as</sup> withdrawn. In the meantime the employee was allowed to retire on 31st May, 1988 without imposing any punishment on him as on that date, as the case was subjudice and stayed as per facts mentioned above even though the enquiry was finalised on 25-4-1988. The applicant wanted an inspection of the documents for third time during the course of the enquiry by the Enquiry Officer and so he was rightly refused inspection as his only aim was to delay the proceedings.

6. In reply to the M.P., it is stated by the respondents that the petitioner's pension was settled and the commutation of pension allowed as per rules. The respondents, however, never decided to drop the disciplinary proceedings against him. As per Railway Pension Rules, recovery from pensionary benefits may be made:-

"When loss has been caused to the Government as a result of negligence or fraud on the part of the employee during service. Such recoveries may be made from recurring pensions as also commuted value thereof or from gratuity, if the employee is found guilty in the departmental enquiries or judicial proceedings."

It is stated by the respondents that the applicant has caused heavy loss to the Railways as is clear from the

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report of the Enquiry Officer. The pension of the applicant has been settled on humanitarian considerations. The M.P. therefore, has no force and is liable to be dismissed.

As stated by the applicant in the M.P. that pending disposal of the O.A., the respondents have settled his pensionary benefits without attaching any condition.

Annexure-1 dt.1/91 clarifies that even commutation has been permitted as per rules. By this, the applicant wants to assert the proposition that the disciplinary proceedings have practically come to an end. The respondents in their reply to the M.P. stated that petitioner's pension was settled and commutation has been permitted as per rules. It is further stated by the respondents that the disciplinary proceedings have not come to an end and because settling the pension of the applicant does not amount to dropping of the disciplinary proceedings against him.

7. We have heard the learned counsel of the parties at length and have gone through the record of the case. The respondents in their reply in 4(h) have stated, "The C.A.T., Chandigarh vide order dt. 2-12-1988 dismissed the application as withdrawn." This reply is to para 4(h) of the Original Application where the applicant stated at bottom p-11 "The applicant has been receiving only a provisional pension which has been fixed at Rs.1645/- per mensem,(Annexure-I) The applicant first approached the

High Court, Jammu & Kashmir under Art.226 of the Constitution of India since he was at that time working in the State of Jammu & Kashmir. In the said proceedings, he was directed to approach the Tribunal for redress. Upon that, the applicant approached the C.A.T. at Chandigarh, The Tribunal considered the matter premature at that state. Subsequently, the applicant approached the C.A.T., Chandigarh." This goes to show that the applicant has concealed the fact that an application filed earlier before the Chandigarh Bench of C.A.T. was withdrawn by him on 2nd December, 1988. The present application has been filed before the Principal Bench on 3th August, 1990. The applicant, therefore, cannot come again seeking relief of dropping the disciplinary proceedings against him. The applicant has relied on the judgement of D.V. Kapoor Vs. Union of India, reported in 1990 (4) S.C.C.P-314. This judgement is a complete answer to the fact that whether disciplinary proceedings can be dropped after retirement or not. The contention in the case of D.V. Kapoor was that the appellant having been allowed to retire voluntarily, the authorities are devoid of jurisdiction to impose the penalty of withholding gratuity and pension as a measure of punishment and the proceedings stand abated. The Hon'ble Supreme Court held, "we find no substance in this contention. Rule 9(2) of the Rules provided that the departmental proceedings if instituted, while the Government servant was in service whether before his retirement or



or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service. Therefore, merely because the appellant was allowed to retire, the Government is not lacking jurisdiction or power to continue the proceedings already initiated to the logical conclusion thereto." Rule 2308 is similar to Rule 9(2) of the Civil Services Pension Rules, 1972 which is reproduced below:-

" 2308.(C.S.R. 351- A)--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.

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

(c) no such judicial proceeding, if not instituted while the 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.

Explanation-For the purpose of this article-

(a) a departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Railway servant or pensioner, or if the Railway servant has been placed under suspension from an earlier date, on such date; and

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(b) a judicial proceeding shall be deemed to be instituted-

(i) in the case of a criminal proceeding, on the date on which the complaint or report of police officer, on which the Magistrate takes cognizance, is made, and

(ii) in the case of a civil proceeding, on the date of presentation of the plaint in the court.

(Railway Board's letter No.F(P)62/SCR-1/2 dt.4th April, 1964) (No.271-R11, dated 25th June, 1964)."

The Hon'ble Supreme Court has also held in D.V. Kapoor's case (supra) that the relationship of Master and Servant does not come to an end and the disciplinary proceedings are valid in law and they are not abated consequent to the retirement of the employee. In view of the above discussion, the reliefs (a), (b) and (c) are disallowed and it is held that Rule 2308 R-II is not ultravires to the Constitution nor it infringes the principle of natural justice and that the disciplinary proceedings against the applicant initiated during the course of his active services shall continue and be finalised as per guidelines laid down in Rule 2308 of Railway Establishment Code, Vol.II. As regards the payment of D.C.R.G. and pension, the

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applicant has himself stated that since he has been allowed pension and commutation of pension also, then the disciplinary proceedings should be deemed to be abated, but this is not so. During the course of arguments, the learned counsel for the respondents stated that due to certain apprehensions, the respondents have allowed commutation of pension alongwith the provisional pension, but that would not mean that the disciplinary proceedings have come to an end. It is argued by the learned counsel that there was a fear of contempt in the mind of the respondents as the applicant has approached three or four times before the Court and obtained stay orders. By the grant of provisional pension and commutation value thereof will not by itself amount to an end of the disciplinary proceedings pending against him as no final orders have been passed and the disciplinary proceedings were subjudice because of the stay granted by the Courts. On the other hand in D.V. Kapoor's case, it has been held that the D.C.R.G. cannot be withheld because the applicant was never given an opportunity that his gratuity could be withheld as a measure of punishment. In view of this fact, the applicant is entitled to the relief of payment of D.C.R.G.

The learned counsel for the respondents has relied on the Railway Pension Rules referring to Rule 66 where it is provided that when loss has been caused to the Government as a result of negligence or fraud on the part of the employee during service, such recovery may be made on recurring pension as also commuted value thereof or from gratuity if the employee is found guilty in the departmental enquiry or judicial proceedings. The learned counsel for the applicant, however, referred to sub-rule 3 of Rule 315 of Manual of Railway Pension Rules where it provided that in a case in which pension as such is not withheld or withdrawn, but the amount of any pecuniary loss caused to Government is ordered to be recovered from the pension, the recovery should not ordinarily be made at a rate exceeding one third of the gross pension originally sanctioned including any amount which may have been commuted. However, this provision is not at all relevant in the present case. According to Rule 2308 of the Establishment Code, Vol. II only remedy available against a delinquent retired employee is withholding or withdrawing of pension or any part of it permanently or for a specific period. Further the President can order recovery from pension of the whole or part of any pecuniary loss caused to the Government; as the case may be, if the pensioner is found guilty of grave misconduct. The Rule thus does not permit the

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appropriation of D.C.R.G. toward pecuniary loss caused to the Government proved in a disciplinary proceeding. It is only the pension sanctioned provisionally than can be reduced etc. for proven grave misconduct.

In view of the above discussion, the Original Application is disposed of as follows :-

- (i) The reliefs (a), (b) and (c) regarding abatement of disciplinary proceedings against the applicant are disallowed and the respondents are directed to finalise the disciplinary proceedings against the applicant as per Extant Rules after serving a copy of the enquiry report to the applicant and giving him an opportunity to place his case before the competent authority within a period of six months from the date of communication of this order.
- (ii) The respondents are further directed to pay the amount of D.C.R.G. as due with relevant rate of interest as per rules to the applicant within 3 months from the date of receipt of this order. In the circumstances, the parties shall bear their own costs.

*J. P. Sharma*  
(J.P. SHARMA)  
MEMBER (J) 25.10.91

*I. K. Rasgotra*  
(I.K. RASGOTRA) 25/10/91  
MEMBER (A)