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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : DELHI

O.A. NO. 1797 OF 1990

Date of decision 3-1-1991

Shri Avtar Singh

... APPLICANT

Shri B. S. Mainee

... Counsel for the
Applicant

Vs.

Union of India & Others

... RESPONDENTS

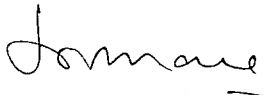
Shri Ramesh Gautam

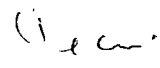
... Counsel for the
Respondents

CORAM : HON'BLE SHRI P. C. JAIN, MEMBER (A)

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

1. Whether Reporters of local papers may be
allowed to see the Judgment ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the
fair copy of the Judgment ? ✓
4. To be circulated to all Benches of the
Tribunal ? ✓


(J. P. Sharma)
Member (J)


(P. C. Jain)
Member (A)

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J U D G M E N T

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

The applicant who retired as Office Superintendent from the Northern Railway on 31.3.1989 has filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying for quashing the disciplinary proceedings initiated against him vide memorandum dated 6.12.1989 (Annexure A-1); for a direction to the respondents to pay 90 per cent of the gratuity without any further delay with interest at 18 per cent per annum, and for releasing the amount of commutation of pension.

2. Briefly stated, the relevant facts are that the applicant retired from the Railway service on 31.3.1989. He has been paid his provident fund, leave encashment and also provisional pension. However, his death-cum-retirement gratuity which is estimated by him to be approximately Rs.46,000/- and the commutation of pension stated to be approximately Rs.56,000/- have ^{30th} far been paid to him. Vide memorandum dated 6.12.1989 (Annexure A-1) he was informed that in pursuance of the sanction accorded by the President of India under Rule 2308 of the Indian Railway Establishment Code Vol.-II for initiating departmental proceedings, it was proposed to hold an enquiry against him in accordance with the

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procedure laid down in Rule 9 of the Railway Servants (D&A) Rules, 1968. A statement of articles of charge and a statement of imputation of misconduct and misbehaviour in support thereof were also supplied along with a list of witnesses. He was directed to submit a written statement of his defence within ten days. The articles of charge are as below :

- "i) he intentionally delayed the appointment on compassionate grounds of Smt. Saroj Bala w/o. Late Shri Shyam Sunder, Smt. Renu Prabha w/o. Late Shri Brij Mohan and Smt. Chanderwati w/o. Late Shri Devi Dayal,
- ii) he also failed to ensure the maintenance of priority register of the wards for appointment on compassionate grounds though the same was essentially to be maintained as per extant instructions."

He was, therefore, stated to have contravened Rule 3(1) (ii & iii) of the Railway Servants (Conduct) Rules, 1966.

3. The memorandum was said to have been received by him on 2.1.1990 and he submitted his reply dated 8.3.1990 which was received on 14.3.1990. In his reply he stated that the charge sheet against him was time barred as the case related to the year 1986 while the memorandum had been received by him after four years on 2.1.1990 which is against the existing rules. He further stated that being a non-gazetted officer he was not empowered to make compassionate appointments; that Smt. Saroj Bala had not applied to his office but had probably applied to the Headquarters Office and her case was referred to his office by the Headquarters Office vide letter dated 8.5.1985 and in reply to which a certificate of her qualification was sent to the Headquarters Office and that a reminder was sent to Headquarter; that Smt. Renu Prabha whose husband had expired in 1976 applied for appointment on compassionate grounds on 16.10.1985 and her request was forwarded to the Headquarters Office and a reminder was sent to the Headquarter; that the application of Smt. Chanderwati received on 18.1.1986 was also forwarded to Headquarters Office; that the appointment of female wards of ex employees was restricted to peons and

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Watermen only vide Headquarters letter dated 15.10.1983 and as such against the vacancies of Khalasis which were available in Workshop as well as in S & T Training School, the aforesaid three widows could not be appointed; and that when specific approval was received from the higher authorities for appointment of female wards even against post of Khalasis, their cases were processed. As regards the charge of failure to maintain a priority register, he has stated that the appointment of staff was under the control of Deputy C.S.T.E. and that he was not at all concerned with the matter. It was also stated that there were no vacancies of peons and Waterwomen in the Workshop or elsewhere. The applicant has contended that the disciplinary proceedings against him have not progressed at all since then and that even an enquiry officer has not so far been appointed. All the disciplinary proceedings are required to be completed within a fixed period as laid down by the Railway Board.

4. The case of the respondents is that the irregularities in the work of the applicant were found after his retirement and he has thus been charge-sheeted for the same. It is also stated that the gratuity has not been paid as an enquiry is pending against the applicant. The commutation of pension is also stated to have been withheld on this account. The allegations against the applicant as in the articles of charge have been reiterated. It is admitted that he was not empowered to make appointment but he could not escape from his liability for delaying the appointment and the failure to maintain priority register. It is further stated that the respondents have already taken steps to appoint and nominate the enquiry officer and that they have taken steps to complete the disciplinary proceedings as soon as possible. They have also taken the plea that the Principal Bench of the Tribunal

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has no jurisdiction to entertain this application as the applicant had retired from Ghaziabad (U.P.) which falls within the territorial jurisdiction of the Allahabad Bench.

5. The applicant has filed his rejoinder affidavit. As the pleadings in this case are complete and the learned counsel for the parties agree that the case may be finally disposed of at the admission stage itself, we have heard the learned counsel for parties on the merits of the case and have also perused the record on the file.

6. As regards the plea of jurisdiction, the applicant has stated in his rejoinder affidavit that the application is maintainable in accordance with the provisions of Rule 6 of the Central Administrative Tribunal (Procedure) Rules, 1937. Rule 6 *ibid* *inter alia* provides that an application can be filed with the Registrar of the Bench within whose jurisdiction the cause of action, wholly or in part, has arisen. The memorandum of charges has been issued by the Ministry of Railways (Railway Board) which is located at Delhi and, therefore, the cause of action can be rightly, at least partly, said to have arisen at Delhi which is within the jurisdiction of the Principal Bench of the Tribunal. Thus, we hold that the preliminary objection of the respondents in regard to jurisdiction is not legally tenable.

7. The learned counsel for the applicant did not press his prayer for release at this stage of the amount of commutation of pension. As regards the prayer for quashing the disciplinary proceedings, the applicant has made an alternative prayer that the respondents be directed to complete the disciplinary proceedings within a specified time. Accordingly we do not propose to go into the merits of the case against the applicant. The learned counsel for the respondents informed us at the time of oral submissions that an enquiry officer had

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not yet been appointed to hold the enquiry but steps in that connection are being taken. It is ^{thus} seen that even though the memorandum of charges was issued on 6.12.1989 and the reply of the delinquent official had been received on 14.3.1990, the oral enquiry has not yet commenced. Undoubtedly, this has caused avoidable suffering to the applicant who is a retired Government official inasmuch as his entire amount of D.C.R.G. has been withheld because of the pendency of disciplinary proceedings. It is true that the respondents are authorised to withhold the D.C.R.G. but this cannot be withheld indefinitely and the disciplinary proceedings cannot be allowed to prolong with unreasonable delay. Moreover, the articles of charge in this case do not appear to be such which would prima facie result in forfeiture of the entire D.C.R.G. otherwise payable to the applicant. We, therefore, partly allow this application in terms of the following directions :

1. The respondents shall complete the disciplinary proceedings and pass an appropriate order in pursuance of the memorandum dated 6.12.1989 (Annexure A-1) within a maximum period of four months from the date of receipt of the copy of this order.
2. The respondents shall release 80 per cent of the death-cum-retirement gratuity payable to the applicant within one month of the receipt of a copy of this order. The applicant, however, will not be entitled to any interest at this stage on the above amount.

We leave the parties to bear their own costs.

J. P. Shama

(J. P. SHAMA)
MEMBER (J)

P. C. Jain
(P. C. JAIN)
MEMBER (A)