

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A. NO.1708/1991

DATE OF DECISION : 27.3.92

SHRI PARSADI LAL SHARMA ...APPLICANT

VS.

UNION OF INDIA & ORS. ...RESPONDENTS

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

FOR THE APPLICANT ...SHRI B.S. MAINEE

FOR THE RESPONDENTS ...MS. SUNITA RAO

1. Whether Reporters of local papers may be allowed to see the Judgement?

2. To be referred to the Reporter or not?

JUDGEMENT

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

The applicant retired as Senior Clerk on 31.12.1987, but he has not still been paid the amount of gratuity.

The applicant has assailed the orders dt.28.6.1990

(Annexure A11) passed by DSO, Kota, dt.3.12.1990 (Annexure A13)

passed by DRM, Kota, and dt.7.12.1990 (Annexure A11) passed

by DRM, Western Railway, Kota. By the letter dt.7.12.1990,

it was stated that the President's sanction for forfeiture

of 30% of DCRG is yet to be obtained and after that the payment

of dues will be made on final decision from the Railway

Board. The letter dt.28.6.1990 is the penalty order passed

for forfeiture of 30% DCRG for the offence mentioned in

SF-5 dt.30.12.1986. The order dt.3.12.1990 is the order

passed on the appeal against the order dt.28.6.1990 (Annexure A11)

whereby the appeal was dismissed.

2. The present application has been filed on 30.7.1991 for the relief that the impugned orders dt. 28.6.1990, 3.12.1990 and 7.12.1990 be quashed and the respondents be directed to pay the gratuity to the applicant with interest of 18% p.a. from the date of retirement of the applicant till the date of payment. A notice was issued to the respondents in the case, but the respondents have not filed any counter. Ms. Sunita Rao, counsel for the respondents appeared on 12.9.1991, 4.11.1991. She did not appear on 23.12.1991, then again 2 weeks' time was allowed in absentia, but none appeared on the adjourned date, i.e., 10.2.1992 when the matter was heard and again adjourned that the matter will be heard finally on 12.2.1992 and a copy of this order was sent to the learned counsel for the respondents, Ms. Sunita Rao. None appeared on 12.2.1992 also, hence the case has been taken. The contention of the learned counsel is that the applicant retired from service on 31.12.1986 as Senior Clerk, though he joined as a Khallasi, Northern Railway on 22.12.1952. The applicant has been paid after retirement DCRG, but an amount of Rs, 19,781 has been retained as per letter dt. 9.1.1987. A chargesheet for major penalty was issued on 30.12.1986 and the applicant was informed that his final pension, DCRG and commutation of pension will be paid on finalisation of the chargesheet. The applicant was supplied with a copy of the Enquiry Officer's report on which the applicant submitted a representation, but the respondents

illegally and wrongfully imposed the penalty of forfeiting of 30% of the DCRG by passing a non speaking order. The appeal against this order was also rejected.

3. The learned counsel for the applicant argued that the applicant has not been given a reasonable opportunity to defend his case. In the grounds taken in the application and the arguments placed during the course of hearing materially differ. The learned counsel for the applicant argued that the only provision of withholding of DCRG or pension is by virtue of para-2308 of the Indian Railway Establishment Code Volume-I, which is reproduced below :-

"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

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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 and this Article under shall be continued and concluded by the authority by which 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 or dismissal from service could be made in relation to the Railway servant during his service;"

This para provides that only the President can withhold or withdraw the pension after retirement as a measure of punishment. The learned counsel referred to Amrit Singh Vs. UOI & Ors., Full Bench decisions Volume-I p-227 at p-244 in which it is held that, "The pension also includes gratuity." Thus the sanction of the President is necessary before passing the punishment order.

4. The learned counsel has also referred to the decision of the Calcutta High Court in Dinesh Chan Sarkar Vs. State of West Bengal, 1989 Labour and Industrial Cases p-329, but the facts of this case are totally different. In this case, the applicant has been proceeded with a departmental enquiry after serving a chargesheet for misconduct committed before retirement and the charge was that the applicant has given an employment to his own son during the course of service as well as to others, causing loss to the Railways. The learned counsel for the applicant has also placed reliance on the case of R.V.Kapoor Vs. UOI, reported in 1990(14) ATC p-906 SC. The facts of that case were also different. In that case, the applicant was not charged with nor was given any opportunity and simply deductions were ordered from the gratuity, which amounted to the order of punishment. In this case, the applicant before retirement has been duly served with a

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chargesheet and not only this, the enquiry proceeded against him and he has also been given a copy of the Enquiry Officer's report on which he was also given opportunity to make representation. However, what transpires is that the punishment order which has been passed on 28.6.1990 was passed without the sanction of the President and after an order of punishment, the sanction of the President is desired to be obtained. The Appellate Authority did not consider this fact. In the order of punishment which takes away the vested right of the applicant of getting DCRG, should have presidential sanction as laid down under para 2308 of the Indian Railway Establishment Code Volume-I. The punishment of withholding DCRG can only be imposed with the sanction of the President and not otherwise. Thus the punishment order dt. 28.6.1990 cannot be sustained.

5. The order of the Appellate Authority dt. 3.12.1990 and the subsequent order dt. 7.12.1990 also cannot be sustained as they did not find out the legal flaw in passing the punishment of withholding of DCRG which has arisen in the order of the Disciplinary Authority dt. 28.6.1990.

6. In view of the above facts, the impugned orders are quashed and set aside. However, the respondents are

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free to proceed against the applicant from the stage of furnishing of the Enquiry Officer's report to the applicant and the Disciplinary Authority may pass another order in accordance with para-2308 of Indian Railway Establishment Code within three months from the date of receipt of a copy of this order, otherwise the applicant should be paid the withheld amount of DCRG along with 10% interest. In case the Disciplinary Authority with the proper sanction of the President, as envisaged under para-2308, passes an order to the detriment of the applicant, then the payment of DCRG, if any, shall be subject to that order ^{or 2} from the appellate order, if any appeal has been preferred and the order of payment of DCRG passed above will not be given effect to till then and shall be subject to the final outcome of the orders of the Disciplinary, Appellate or Revisional Authority, as the case may be. In the circumstances, the parties shall bear their own costs.

J. P. SHARMA

(J. P. SHARMA)
MEMBER (J)

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