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CAT/7/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1062/93
T.A. No.

199

DATE OF DECISION 8/10/93

<u>Sh. Gurdarshan Singh</u>	Petitioner
<u>Sh. R. K. Kamal with Sh. S. K. Gupta</u>	Advocate for the Petitioner(s)
Versus	
<u>U.O.I. & Others</u>	Respondent
<u>Sh. Romesh Gautam</u>	Advocate for the Respondent(s)

CORAM

● The Hon'ble Mr. N.V. Krishnan, Vice Chairman (A)

The Hon'ble Mr. B.S. Hegde, Member (J)

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

JUDGEMENT

(delivered by Sh.B.S. Hegde, Member (J))

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985

praying that the Enquiry Report (Annexure-1), penalty

order (Annexure A-2) and proposed penalty orders

(Annexure A-3) be set aside and quashed as they are ab initio illegal and void, with all consequential benefits and also direct the respondents be restrained from requiring the applicant to vacate railway quarter I 11/B and to allow him to occupy the same until the

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payment of all final settlement dues, on normal rental charges and also to pay all full settlement dues to the applicant with penal rate of interest etc.

2. The applicant held a civil post of Capt.Ticket Examiner in grade of Rs 1600-2660 before his retirement under Divisional Rail Manager, Northern Railway Mens Union (Moradabad Divn) He xxx superannuated from service on 30.11.90. The applicant, in the capacity of President of N.R.M.U. Moradabad Division, had to represent against malpractices and cases of victimisation of staff at the highest level from time to time. it is alleged Thereby, he incurred the wrath of Divisional officer. Three months before his retirement, he was served with two charge-sheets for major penalty. However, these charge-sheets were cancelled without any enquiry for more than a year after his retirement. A copy of the cancellation letter dated 18.12.91 is at annexure A-4.

3. The main contention of the applicant is that all retiral benefits have been withheld by the respondents arbitrarily and illegally, including a sum of Rs 1,23,092/- regarding gratuity, commutation.

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pension and leave encashment etc. The authorities have still not released the aforesaid amount, though the applicant has retired as on 30.11.90, thereby, he could not meet his urgent domestic obligations and he could not provide for himself an alternative accommodation for want of money. The Senior Divisional Commercial Supdt. Moradabad issued another charge sheet on 27.9.88 (Annexure A-5). An enquiry was initiated against the applicant. In the meanwhile Enquiry Officer ~~was~~ died and another Enquiry Officer was appointed to proceed with the case and the enquiry was completed and submitted to the competent authority on 31.7.91. The applicant submitted, that the alleged inquiry report is illegal, arbitrary and violative of principles of natural justice and not in accordance with law and no reasonable opportunity was given to the applicant to present himself before the Enquiry Officer and findings of the enquiry officer was arrived with no evidence. He was not even furnished a copy of the enquiry report. The senior D.C.S. imposed a penalty of withholding of 30 percent DCRG amount and advised the applicant to prefer an appeal to the (An. A3) ADRM, Northern Rly. The applicant drew our attention that there is no provision of statutory appeal to ADRM against an order signed for Divisional (i.e. An. A3)

Railway Manager. He also submitted that there is also no stipulated time in DAR for such appeal. The applicant, however, to avoid any further abuse of quasi judicial powers submitted representation on 23-12-91 (An.A6). But no reply has been received by the applicant from the respondents so far.

4. Respondents in their counter reply conceded that two major penalty proceedings had been initiated against the applicant but the same were dropped vide letter dated 18-12-91. Regarding withholding of gratuity amount of Rs.41,663-00, it is stated that this is on account of one vigilance case pending against the applicant. The non-payment of DCRG is also due to the unauthorised occupation of the Railway quarter No.T-11/B at Dehradun even after his retirement. It is stated in para 4.9 that the appropriate authority has considered the case of the applicant and reduced the punishment of a cut in the DCRG from 30% to 1% which was conveyed to the applicant vide office order dated 10-9-1992.

5. We first take up the prayer relating to the An.A1 Enquiry Report dated 31-7-91. This Enquiry Report pertains to the Memorandum of charges (An.A5) issued to the applicant on 27-9-88, as is clear from the An.A2 order of penalty. We notice from the first paragraph of the Enquiry Report that the enquiry was first conducted by Shri MC Dubey upto 13-12-90. After his death, this case was entrusted to RN Meena on 4-6-91 and it is he who has submitted the An.A1 report.

6. Paras 1 & 2 of the report read as under:-

"The undersigned was appointed as the Inquiry Officer in this case as per letter No. even dated 4-6-91. Since the case had already been inquired into by the late M.C.Dubey ACS/MB upto 13-12-90 vide S.No.18, finally and the defence note was submitted by the undersigned. A photo copy of the same was supplied to the undersigned

by the CO on 12-7-91.

Since the ordersheets, exhibits and oral evidence etc are not in proper order the detailed history of the case cannot be made out. However whatever has been made out is as under:-"

One does not know what the Enquiry Officer means by the underlined portions of para 1. The learned counsel of the respondents could not explain what this portion of para 1 means. No light is thrown by the An. A2 order of November, 1991 of the disciplinary authority on these two sentences. It is further clear that as the order sheets, exhibits and oral evidence were not in proper order, the detailed history of the case could not be made out by this Enquiry Officer. The report is made in these circumstances.

7. The Enquiry Officer has then reproduced the three charges against the applicant and given his findings and at the end he has given his conclusions. Charge No.1 and charge No.3 have not been proved. Charge No.2 is stated to be proved. That charge is as follows:-

"He did not perform his duty as per duty roster and also did not perform duty on 13/8, 14/8/86, 1/8, 2/8, 4/8, 6/8, 7/8, 8/8, 10/8, 11/8, 17/8, 19/8 and upto 25-8-86 but showed himself on duty, the Hd.TCR/DDN has shown '?' against the name of Shri Gurdarshan Singh in the duty poster as is evident on the record."

The findings of the Enquiry Officer are as follows:-

"This charge is also about non-working of the train by CO as per roster. Again reliance is placed on appearance register. CO Shri Gurdarshan Singh had stated in his defence that there was no such order and CO was not aware of this or intimation regarding its existence. It is not acceptable at all as it is the foremost duty of TTE's working on sleeper links (but going) must sign on appearance register maintained for this purpose in every Hd.TC Office & without the signing on in lobby appearance register, the TTE is treated NTU (not turn up) on duty and the charge is proved."

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The Enquiry Officer has not set out how the charge was sought to be proved by the Department and how it was denied by the applicant. The applicant's case is set out in the An.A6 appeal filed by him wherein he has stated as follows:-

"From the perusal of the above, it is evident that there is no correlation between the Charge No.2 and the Enquiry Officer's findings on it. In fact nowhere during the proceedings of the Enquiry, the P.M's, myself or the Defence Note submitted by me has taken this stand in relation to Charge No.2. On the contrary I had given my datewise movements from 27-7-86 to 26-8-86 (vide Annexure III to Defence Note) wherein I had proved that I was on duty either by way of Special Casual Leave for attending Union Meetings which included the journey time for going out to the place of meetings and returning back to Headquarter (which were duly granted by DRM/MB) or by way of waiting for link (Station duty), which was being at the disposal of the Hd.TC/DDN to be utilised vice any vacancy. On each date Hd.TC/DDN had booked another TTE vice me on the link programme whenever I was out to attend meetings, which can be ascertained after perusal of Duty Roster of Hd.TC/DDN (Relied upon document p-4/1-31) for the period 28-7-86 to 27-8-86 supplied during the enquiry) and I had no liberty to pick programme at my own sweet-will, unless booked by Hd.TC/DDN. I had proved my presence on duty with proof on alleged dates in my Defence Note (Annex.I,II & III). But no cognizance seems to have been taken of my Defence Note in regard to Charge No.2, and imaginary findings have been drawn on facts no where existing on the case file."

The reply filed by the respondents does not deal with this reply. The learned counsel of the respondent is unable to explain why the material evidence on record has not been considered either by the Enquiry Officer or by the disciplinary authority. The respondents state in para 4.9 of the reply that the ADRM passed the appellate order dated 10-9-92 by which the penalty was drastically reduced from 30% cut in DCRG to 1% cut. A copy of this order has not been filed. One does not know whether the appellate authority considered this case of the applicant ^{as} set out above.

9. The Sr. Divisional Commercial Supdt. in the D.R.M's office passed the An.A2 order in Nov. 1991

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based on the Enquiry Officer's report. He has just stated that he agreed with the Enquiry Officer and imposed a penalty of withholding 30% of his DCRG because the applicant had retired before the order was passed. He has not cared to examine the record to find out what defence was presented by the applicant.

10. Surprisingly, the same authority issued a letter on 12-12-91 (page 14 of the paper book) stating as follows:-

"The advice given vide this office letter of even No. dated 15-11-91 is not the final notice of imputation of penalty but it is only the advice of proposed penalty which has been communicated to you to enable you to submit your appeal against the proposed penalty before passing final order after final approval from the competent authority. A copy of enquiry report and finding of E.O. is again enclosed herewith which may kindly be acknowledged."

No final order as contemplated in this letter has been filed either by the applicant or by the respondent. This is dealt with in para 4.9 of the respondent's reply referred to above.

11. We are of the view, that the respondents are utterly confused in dealing with this case. One cannot understand how An.2 can be construed to be only a proposal to impose penalty. If it is only a proposal there can be no appeal but only a representation. Respondents have submitted in para 4.9 of the reply that the "appeal" preferred by the applicant (i.e. An.A6 dated November 1991) was considered by the ADRM who is the competent appellate authority. The appeal has been submitted to the ADRM by the applicant against the An.A2 order which is stated to be only a proposal. Nevertheless, the ADRM has reduced the penalty to a 'cut' of the gratuity equal to 1% instead of 30% as was ordered by the disciplinary authority in An.A2.



12. The "appellate" order has not been produced before us. The very fact that the quantum of penalty has been reduced by 96% (i.e. cut of 1% of DCRG instead of 30%) itself indicates that there was no merit in the second charge against the applicant. Considering the totality of circumstances leading to the imposition of the penalty, we are of the view that the finding given by the Enquiry Officer is without any evidence and therefore, the ultimate penalty imposed of 1% cut in DCRG deserves to be quashed. We are further of the view that this is a case where the respondents should not be given an opportunity to resume the disciplinary proceedings.

13. The next question is whether the respondents were entitled to withhold the DCRG pending the disposal of the departmental proceedings and whether they can withhold the payment of the DCRG till the applicant vacates the railway quarter occupied by him. Admittedly, the applicant is in occupation of the railway quarter. In this regard the learned counsel of the applicant has filed a decision of the Allahabad Bench of the Tribunal in OA No.922/91 dated 1-10-91 while the respondents have relied on the orders of the Supreme Court dated 27-11-89 in SLP No.7688-91 of 1988. The learned counsel of the parties submitted that this issue be decided on the basis of these two decisions.

14. In the case decided by the Allahabad Bench the applicant had retired from railway service from 31-1-87. The Estate Officer of the North Eastern Railway ordered the applicant to pay Rs.37,713 as rent from 1-2-87 to 30-11-90 and Rs.909.90 as monthly rent thereafter. The Tribunal came to the conclusion that as the applicant has been allotted this accommodation and as no cancellation order has been issued, the question of eviction and payment of penal rent does not arise. The Tribunal also held that

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a decision of the respondents to withhold the amount of gratuity in full is a measure of punishment and the respondents were directed to pay the applicant all arrears on this account.

15. The order of the Supreme Court Raj Pal Wahi's case arose out of the challenge that the Railways were wrong in withholding the DCRG and complimentary passes on the basis of the administrative instructions dated 24-4-82. In this regard, the Supreme Court observed that on vacation of the quarter, the DCRG has been paid and the railway passes restored. The petitioner had already paid the penal rent for the period for which he stayed in the railway quarter after retirement. The Supreme Court observed that the railway circular dated 24-4-82 has been issued to impress upon the retiring employees to vacate the railway quarters in time for which purpose they temporarily withheld the DCRG as well as the railway passes till the quarter was vacated. The Supreme Court was, therefore, to consider only the claim of the applicant for interest on the delayed payment of the DCRG. In that connection, it held that the delay was on account of withholding the DCRG on the basis of the aforesaid circular and hence, they held that the petitioner was not entitled to get any interest.

16. If the pensionary dues i.e. DCRG and commutation were being withheld only on the ground that the railway quarter had not been vacated on retirement, the applicant should have been informed of this consequence so that he could take a conscious decision. At any rate, he should have been informed of this decision soon after retirement to enable him to take a proper decision. That has not been done. That apart, we are satisfied that these were withheld mainly because of the three D.E. cases pending at the time of the applicant's retirement on

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30-11-90. Para 4.3 of the reply almost admits this position. Two proceedings initiated on 4-9-90 and 5-9-90 were dropped by the order dated 18-12-91 (An.A.4). The penalty imposed in the third D.E. is being ~~quashed~~ ^{quashed} by us in this judgment.

17. Considering the totality of the circumstances including the shoddy manner in which the D.E. initiated on 27-9-88 has been dealt with, we are of the view that there was no justification to withhold the DCRG or commutation of pension.

18. The learned counsel for the applicant stated that the applicant will vacate the quarter within one month from the date of receipt of order in this case.

19. In the circumstances, we allow this application with the following directions/orders:-

i) We quash the An.2 order dated 15-11-91 of the Senior Divisional Commercial Supdt. and the appellate order dated 10-9-92 stated to have been passed by the ARDM, Moradabad as mentioned in para 4.9 of the respondent's reply and we further bar the resumption of the disciplinary proceedings.

ii) The amounts still remaining to be paid to the applicant as a consequence of his retirement shall be paid to him within three months from the date of receipt of this judgement, failing which interest at 12% on the amounts shall be paid from the date of this judgment till the amounts are paid.

iii) The applicant shall vacate the railway quarter within one month from the date of receipt of this judgment, failing which he shall be liable to pay penal rent ^{after the stipulated date}.

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iv) The applicant shall be liable to pay the normal rent for four months from the date of retirement and double that rate for the period ~~subject~~ ^{subsequent} thereto till he vacates the quarter as directed in (iii) above. This can be recovered by the respondents from the dues payable to him.

20. In the circumstances, parties may bear their costs.

B.S.Hegde
(B.S. HEGDE)
Member (J).

8/10/93

N.V.Krishnan
(N.V. KRISHNAN)
Vice Chairman(A)