

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 366 of 2001

Allahabad this the 27th day of September, 2002

Hon'ble Mr.S. Dayal, Member (A)

Jayanti Prakash Saxena, aged about 57 years, S/o Late K.B. Saxena (Ex. Station Supdt. Bhatura, N.Rly. Moradabad) Resident of Achal Bhawan, Chhoti Bazar, Claterbuckganj, Bareilly (UR)

Applicant

Shri K.N. Katiyar,  
Shri Z.A. Faruqui

Versus

1. Union of India through the General Manager, Northern Railway, H.Q. Office (Baroda House), New Delhi.
2. Divisional Railway Manager, Northern Railway, Moradabad.
3. Additional Divisional Railway Manager, Northern Railway, Moradabad.
4. Sr. Divisional Operating Manager, Northern Railway, Moradabad.
5. Chief Operating Manager, Northern Railway, (Baroda House), New Delhi.

Respondents

By Advocate Shri Prashant Mathur



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O R D E R ( Oral )

By Hon'ble Mr.S. Dayal, Member (A)

This application has been filed for setting aside the punishment notice dated 30.12.97 as the order of punishment was passed after three months of expiry of notice period. In the alternative, a prayer has been made to set aside the voluntary retirement order dated 25.11.1998 and direct the respondents to arrange the refund of Rs.2995/- unauthorisedly deducted from gratuity and pay T.A. Bills for Rs.808/-, refund electricity charges of Rs.1500/- and security deposits of Rs.300/- as well as leave encashment of Rs.35,000/-.

2. The case of the applicant is that he was working as Station Superintendent in the Grade of Rs.2000-3200 (Rs.6500-10500). He made an application for voluntary retirement on 02.09.97 giving three months notice. He was issued a minor penalty charge sheet by Senior D.O.M., Moradabad on 03.10.1997, charging him that he signed the joint note of signal failure without confirming it from the site. The punishment of withholding an increment temporarily for one year without postponing future increments, was imposed by punishment notice dated 30.12.1997 w.e.f. 01.03.1998. He filed an appeal and the appellate authority reduced the punishment to withholding of increment for a period of six months, instead of one year from 01.03.1998. The applicant was allowed to retire voluntarily in response to his request for voluntary retirement on 25.11.1998. It is stated by learned counsel for the applicant that the applicant continued to work till 25.11.1998

as he was not replaced by any other officer.

3. The arguments of Shri K.N. Katiyar for the applicant and Shri Prashant Mathur for the respondents have been heard.

4. As far as the issue of deemed acceptance of voluntary retirement after expiry of 3 months raised by the applicant in para-8(a) is concerned, same cannot be allowed in view of the fact that the applicant continued to work till his retirement was accepted on 25.11.1998 .

5. The second relief sought by the applicant regarding setting aside the voluntary retirement order dated 25.11.1998 is also not admissible because the applicant did not withdraw his request for voluntary retirement before the order of retirement was passed.

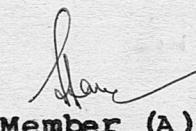
6. Learned counsel for the applicant mentions that the order of punishment against the applicant resulted in reduction of his pension. He also drew attention to Rule 11(2), which reads as under:-

"Notwithstanding anything contained in Clause(b) or sub-rule(1), if in a case, it is proposed, after considering the representation, if any, made by the Railway Servant under clause(a) of that sub rule to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension\* (or special contribution to Provident Fund) payable to the Railway Servant or to withhold increments of pay for a period exceeding three years or to

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withhold increments of pay with cumulative effect for any period, an enquiry shall be held in the manner laid down in sub-rules(6) to (25) of Rule 9, before making any order imposing on the Railway Servant any such penalty."

7. It is not disputed that the provisions of Rule 9(6) to 9(25) were not applied in holding inquiry against the applicant despite the fact that withholding of increment is likely to <sup>affect</sup> adversely the amount of pension payable to the railway servant. Since the order came into effect from 01.03.1998 and remained in effect upto 31.08.1998, the pension of the applicant was adversely affected. Hence the order dated 30.12.1997 of the disciplinary authority and the order dated 19.05.1998 of the appellate authority are bad in law, and are set aside. As the applicant has retired, it is not appropriate to permit the authorities now to proceed against the applicant in a disciplinary case. The applicant shall be paid his pension and other retiral benefits as if orders dated 30.12.1997 and 19.05.1998 of disciplinary and appellate authority respectively had not been passed. This order shall be implemented within a period of 3 months from the date of receipt of this order. Regarding other grievances, the applicant made a representation to the respondents, who shall decide the same by a reasoned and speaking order with the aforesaid time. The O.A. stands disposed of accordingly. No order as to costs.

  
Member (A)

/M.M./