

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD

ORIGINAL APPLICATION NUMBER 628 OF 2001

TUESDAY, THIS THE 12th DAY OF NOVEMBER, 2002

HON'BLE MR. JUSTICE R.R.K. TRIVEDI, VICE-CHAIRMAN

HON'BLE MR. SARVESHWAR JHA, MEMBER (A)

Kure aged about 62 years son of Shri Kishori,  
r/o Village and Post Dhawakar, Tehsil,  
Mauranipur, District-Jhansi.

....Applicant

Counsel for the Applicant: Shri R.K. Nigam

**V E R S U S**

1. Union of India through General Manager,  
Central Railway,  
Mumbai CST.
2. Divisional Railway Manager,  
Central Railway,  
Jhansi.
3. Additional Divisional Railway Manager (I),  
Central Railway,  
Jhansi.

....Respondents

Counsel for the Respondents: Shri K.P. Singh

O R D E R

Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

By this O.A. filed under section 19 of A.T. Act,  
1985, applicant has challenged the order dated 12.01.2001  
by which the appeal of the applicant against order dated  
31.08.1994 retiring him <sup>✓</sup>compulsorily <sup>✓</sup>from the post, has been  
dismissed.

.....2/-

2. The facts in brief, giving rise to this application are that while the applicant was serving as Pointsman Grade-A, he was served with a memo of charge dated 14.09.1992 for unauthorised absence from duty from 24.11.1991 to 01.07.92. The Enquiry Officer was appointed. Applicant denied the charge. The Enquiry Officer submitted Enquiry Report on 13.04.1993. The Disciplinary Authority agreed with the report of the Enquiry Officer and passed the order of punishment dated 24.08.1993, reverting the applicant from Pointsman Grade-A to Pointsman Grade-8 for a period of 2 years with cumulative effect. Against this order, the applicant filed an appeal which was decided by the appellate authority on 10.12.1993/29.12.1993. The appellate authority though maintained the punishment of reduction to lower grade for a period of 2 years, but made it non cumulative. The reviewing authority however, issued a show cause notice to the applicant on 13.06.1994, proposing to enhance the penalty. The reviewing authority passed order on 31.08.1994, (Annexure-4) by which he imposed the penalty of compulsory retirement on the applicant. Against this order, the applicant had filed

D.A. No.1726/1994, which was disposed of finally on 31.07.2000. <sup>at</sup> learned counsel for applicant submitted that notice for enhancement was time barred. Shri K.P. Singh, learned counsel for the respondents on the other hand submitted that the order was though prepared on 10.12.1993 but it was actually signed on 29.12.93. Hence the show cause notice issued on <sup>on 13-6-1994</sup> ~~31.08.1994~~ was well within time, and the order of the reviewing authority does not suffer from any error of law.

3. We have considered the submissions of the counsel for the parties.

4. We find force in the submission made by the learned counsel for the respondents that the date of order will be the date on which the appellate authority signed the order.



From perusal of the order (Annexure-3), it appears that the order was prepared on 10.12.1993 but it was actually signed by the authority on 29.12.1993. Thus for purposes of counting limitation of period of ~~period~~ <sup>period</sup> 6 months providing <sup>u</sup> under rule ~~29~~ <sup>29</sup>, 29.12.1993 shall be taken in to account. If the period of 6 months is calculated from the above date, the show cause notice was well within time. The second submission of the learned counsel for the applicant is that the punishment of compulsory retirement, ~~the order~~ <sup>awarded</sup> by reviewing authority, is wholly unwarranted, excessive and ~~is~~ <sup>not</sup> commensurate to the charges found proved against the applicant. It is submitted that the extreme penalty provided under rule ~~25~~ <sup>25</sup> ~~and~~ <sup>is</sup> passed against the delinquent employee ~~until~~ when he is found unfit to be retained in the service. In the present case the reviewing authority has not recorded any finding on which basis it could be inferred that applicant rendered himself disqualified, to be retained in service of the Railways. It is further submitted that the Enquiry Officer in his report found that the applicant had sent intimation about his ~~willingness~~ <sup>illness</sup> and there was explanation of absence. The Enquiry Officer recommended for sympathetic consideration. The reviewing authority however, ignoring all this matter, pass the order of compulsory retirement in arbitrary manner.

5. Shri K.P. Singh, learned counsel for the respondents on the other hand submitted that the applicant failed to submit his reply to the show cause notice and in absence of his reply, the reviewing authority was justified in awarding the punishment of compulsory retirement. No interference by this Tribunal is called for.

6. We have carefully considered the submissions made by the counsel for the parties. The legal position is well



settled that for enhancing punishment, the reviewing authority ought to have recorded cogent reasons justifying the enhancement. In the present case, <sup>the</sup> reviewing authority utterly failed to record any findings as to how the punishment already awarded, was in sufficient. He also failed <sup>to</sup> record any findings as to how the applicant had rendered <sup>himself</sup> unfit to be retained in service. In absence of such findings, the order of punishment enhancing the punishment, cannot be <sup>accepted</sup> ~~permitted~~ to be justified and legal. If the applicant had failed to submit explanation to the show cause notice, the punishment awarded by the disciplinary authority, that <sup>the</sup> reduction in scale with cumulative effect could ~~not~~ have been restored. In our opinion, the applicant is entitled for the relief. The next important question is whether the matter should be sent back to the authorities for passing fresh order in the light of observations made in this order or <sup>it may</sup> ~~be~~ closed <sup>the</sup> ~~the matter~~ here by modifying the punishment. The memo of charge in this case was issued on 14.09.1992, more than 10 years have passed. In the circumstances, it will not be in the ends of justice to send <sup>the</sup> matter back to the authorities and to keep the litigation open. The applicant has also attained the age of superannuation and it will not be proper to put him again to involve himself in litigation.

7. We have heard counsel for parties on question of punishment. In our opinion, in the facts and circumstances of the case and considering the nature of charges, the punishment awarded by the disciplinary authority may be restored.

8. The applicant has already retired from service, there is no question on his reinstatement. However, <sup>he</sup> ~~it~~ will be entitled for 50% of the back wages for the period from the date of compulsory retirement <sup>and</sup> ~~had~~ given effect and <sup>the</sup> ~~the~~ date <sup>he</sup> ~~attained~~ the age of superannuation. The pension



of the applicant shall also be recalculated accordingly.

9. For the reasons <sup>stated</sup> above, the O.A. is allowed. The impugned order dated 12.11.2001 (Annexure-I), order dated 31.08.1994 (Annexure-4) and order dated 10.12.1993/29.12.93 are quashed. The order of the disciplinary authority shall ~~be stand to~~ <sup>be</sup> restored, the applicant, ~~who~~ <sup>he</sup> shall be entitled for 50% of the arrear of salary for which he would ~~not~~ <sup>not</sup> have ~~been~~ <sup>been</sup> entitled in the absence of <sup>the order of</sup> compulsory retirement, till he actually attained the age of superannuation. His pension shall also be recalculated. <sup>This order shall be given in effect within four months from the date a copy of the order is placed before the competent authority.</sup>

10. There shall be no order as to costs.

MEMBER (A)

VICE-CHAIRMAN

shukla/-