

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(THIS THE 20th DAY OF May 2011)

Hon'ble Dr.K.B.S.Rajan, Member (J)

Hon'ble Mr.D. C. Lakha, Member (A)

Original Application No.467 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

Ashok Chandra
S/o R. P. Sharma
R/o Quarter No. T-10/4,
Railway Quarter, Railway Station,
Phulpur, District Allahabad.


.....Applicant

Present for Applicant: Shri A. K. Srivastava, Advocate

Versus

1. Union of India, through the General Manager,
Northern Railway,
Barada House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Hazratganj,
Lucknow.
3. Senior Divisional Operating Manager,
Northern Railway,
Lucknow Division,
Lucknow.

.....Respondents

 Present for Respondents: Md. Yusuf, Advocate

ORDER

(Delivered by Hon. Dr. K. B. S. Rajan, Member-J)

The applicant who joined the Railways in 1988 was promoted to the post of Station Superintendent in February 1995 and was posted in that capacity at the Raibareilly Railway Station on 01.2.1999.

2. According to him, in August, 1999 he developed certain physical ailment and reported before the Medical Authorities. The Chief Medical Superintendent, Lucknow referred the applicant on 04.9.1999 to the intensive medical check-up at Central Hospital Northern Railway, New Delhi. On 14.1.2000 the Chief Medical Superintendent found the petitioner fit for duty subject to restrictions as contained in Para 5.73 of Indian Railway Medical Manual. This was forwarded to the Divisional Operational Manager, Lucknow. The applicant also filed representation on 02.02.2000 and 16.2.2000 for creation of supernumerary post and as no action was taken the applicant moved the Tribunal in OA No. 511/2000, which was disposed of on 14.7.2000 with a direction to the respondents to decide the representation of the applicant.

3. Apart from the above OA the applicant also filed OA No. 461/2001 and this was also disposed of with a direction to the respondents to consider the representation.

4. On 18.5.2003 on some penalty proceedings respondent No. 3 imposed penalty of reduction to a lower stage bringing the

pay of the applicant from Rs. 8100 to Rs. 6500/- in the pay scale of Rs. 6500-10,500. The applicant's appeal against the aforesaid order was not decided when the applicant moved OA No. 1606/2003. This was disposed on 12.1.2004 with a direction to the respondents/Appellate Authority to consider the applicants appeal pending before it. As the order was not complied with, the applicant moved Contempt Petition No. 86/2004 in May, 2004. On 18th August, 2004 the Appellate Authority issued the Show Cause Notice to the applicant asking him to show cause as to why the applicant be not visited with the penalty of removal from service.

5. The applicant has challenged the aforesaid show cause notice in this OA and has prayed for the following reliefs also:-

- (a) To issue an order or direction quashing the order dt. 17.4.2003 passed by the respondent no. AS APPEAL against order of penalty of reduction to power stage and against the order dated 20.07.2000, 25.04.2001, and 12.10.2004 passed by the Hon'ble Tribunal.
- (b) To issue an order or direction commanding the respondents to provide alternative duty to the applicant in pursuance of order passed by this Hon'ble Tribunal and to pay arrears of difference of pay to the applicant during suspension period and the entire arrears of Traveling, transfer allowances, contingent money, medical allowance and arrear of personal increment amount, children's tuition fee amounts and other benefits attached to the post of the railway department.

6. Respondents have contested the OA. They have stated that after declaring unfit for service, the applicant was getting salary and

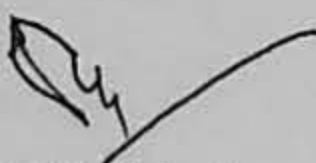
action is being taken to adjust him on a suitable post by the department.

7. When the case came up for hearing with the consent of the parties' counsel written arguments were permitted to be filed and the order was reserved. Respondents' counsel has filed the written argument in which after narrating the sequences of events he has stated that after declaring unfit for service the applicant was getting salary and action is being taken to adjust the applicant on a suitable post.

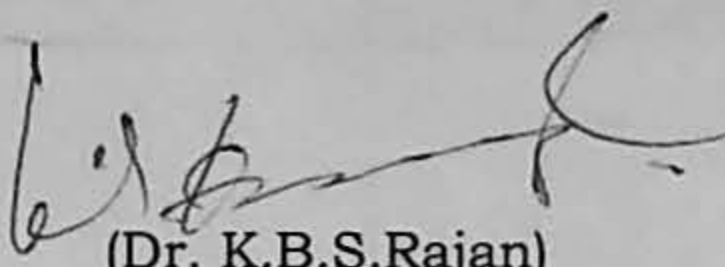
8. Written arguments and pleadings were considered. So far as show cause notice is concerned, vide Para 4.23 of the O.A. the same has been withdrawn. What subsists is the order of the Appellate Authority imposing the penalty. The penalty seems to have been imposed for drawl of House Rent Allowance when the applicant was occupying the accommodation. The applicant is holding the post of Station Superintendent and he is under him a number of subordinates. If he had indulged in the act of claiming and receiving House Rent Allowance despite in possession of Railway accommodation, the same has been rightly held as fraud by the respondents. The applicant has not brought out any ground specifically indicating the rule or regulation that has been violated in passing the penalty order. He had stated that the action of the respondent in violation of the principles of Natural justice and violation of Article 14 of the Constitution. This has not been explained during the course of the arguments. The applicant tried to interlink the impugned order on the one hand and the alleged failure to

provide alternative employment on the other. These two are two independent issued and cannot be correlated. As far as the applicant's alternative employment is concerned he should not have any grievance against the same (nor can that be a matter to be considered in this O.A. as this is purely related to quashing the penalty order). The penalty order being for having claimed and received the House Rent Allowance even on possessing the Railway Accommodation, the same cannot be declared as illegal.

9. The order of the respondents does not suffer from any illegality. As such, **OA is dismissed.** No costs.



(D.C. Lakha)
Member (A)



(Dr. K.B.S. Rajan)
Member (J)

Shashi