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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD

Registration T.A.No.422 of 1986(O.Suit no.37 of 1984)

Babu Singh Plaintiff

Vs.

Union of India and 3 others ... Defendants

Hon.D.S.Misra,AM
Hon.G.S.Sharma,JM

(By Hon.G.S.Sharma,JM)

This original suit has been received by transfer from the Court of Munsif Fatehabad, Agra under Section 29 of the Administrative Tribunals Act, XIII of 1985.

2. The case of the plaintiff is that he joined the service of the Western Railway as Goods Clerk on 1.11.1952 and after his confirmation on this post in 1956, he was promoted as Senior Goods Clerk on 10.8.1963. While posted as a Senior Goods Clerk at Achnera he was served with a charge sheet dated 6.12.1980 for committing certain irregularities on 17.9.1980. He had submitted his statement of defence within time but the defendant no.4, the Divisional Commercial Superintendent, imposed the penalty of stoppage of increment for two years without future effect on 11.2.1981 with the observation that the plaintiff had failed to submit any defence. The appeal preferred by the plaintiff against this order to the defendant no.3, the Divisional Railway Manager Jaipur proved ineffective. Again the plaintiff was served with charge sheet dated 20.11.1980 while working at Achnera. The plaintiff had submitted his statement of defence explaining the circumstances and pleading his ignorance but the defendant no.4 on 3.3.1981 again withheld his increment for 2 years with the observation that the defence of the plaintiff was nil. On 23.7.1981 the plaintiff was served with another charge sheet while working as Senior

22

.2.

Goods Clerk at Achnera and without considering the statement of defence submitted by the plaintiff, the defendant no. 4 passed an order of withholding his increment for one year on 7. 10.1981. The plaintiff has challenged the validity of these orders and it is alleged that the defendant nos. 3 and 4 did not consider his case judiciously and in fact, he had committed no misconduct and the punishments awarded to him were not justified and called for. During the pendency of this case, the plaintiff retired on 31.12.1985 on reaching the age of superannuation and he got his plaint amended to raise a new ground of challenge to the effect that the punishment orders passed by the defendant nos. 3 and 4 affect the amount of his pension, they are accordingly illegal in view of the provisions of rule 11(2) of the Railway Servants (Discipline and Appeal) Rules, 1968. The plaintiff has claimed a decree for declaration that the three punishment orders dated 11.2.1981, 19.3.1981 and 7.10.1981 and the orders passed in appeal are null and void and without jurisdiction and he is entitled to consequential benefits including priority for promotion during service period.

3. The suit has been contested on behalf of the defendants and in the written statement filed on their behalf it has been stated that the first charge sheet dated 6.12.1980 was served on the plaintiff on 12.12.1980 but no representation was made by him within statutory period and consequently, the competent authority passed an ex-parte order on 1.8.1981 withholding his increment for 2 years without future effect. Only thereafter the plaintiff had submitted his representation on 3.4.1981 which was too late. The appeal preferred by the plaintiff on 7.7.1981 was not accepted by the defendant no. 3 and it was rejected on 4.9.1981. The plaintiff was rightly punished for the misconduct

82
83

.3.

alleged in the second charge sheet after carefully considering his defence version and he did not prefer any departmental appeal against the punishment order dated 19.3.1981. Similarly, the third penalty was imposed on the plaintiff in accordance with law after carefully considering the case taken up by him in his representation and the appeal preferred by him against the order dated 7.10.81 was finally disposed of on 28.4.1982. The claim of the plaintiff is not within limitation and it is also liable to be dismissed for want of a notice under Section 80 of the Code of Civil Procedure.

4. The parties have filed their documents before this Tribunal and we have carefully examined their case in the light of the submissions made on their behalf and have also perused the necessary records. All the three punishments awarded to the plaintiff are prima-facie minor punishments and according to the defendants, a full-fledged disciplinary inquiry as contemplated by rule 9 of the Railway Servants (Discipline and Appeal)Rules, 1968 (for short DA Rules) was not called for in his case. In our opinion, this contention is only partially correct. Under the first punishment order dated 11.2.1981, the increment of the plaintiff falling due on or after 1.8.1981 was withheld for a period of 2 years vide paper no.2 filed by the plaintiff before us. Under the second punishment order dated 19.3.1981, his increment falling due on or after 1.8.1983 was withheld for 2 years. Under the third punishment order dated 7.10.1981, paper no.22, his one increment falling due on or after 1.8.1985 was withheld for one year. The plaintiff thus did not earn any increment from 1.8.1981 and as he retired from service on reaching the age of superannuation on 31.12.1985 when the punishment orders were still in force as above. It ^{will} ~~has~~ have an adverse affect on the amount of pension which he would have earned in case these punishment orders were not current at the time of his retirement. Rule 11(2) of the D.A.Rules

provides that in case it is proposed to withhold increment of pay of a railway employee and such withholding of increment is likely to affect adversely the amount of pension or special contribution to the provident fund payable to the railway servant, an inquiry shall be held in the manner laid down in sub-rules (6) to (25) of Rule 9 of the DA Rules. It is thus evident that though the penalty of withholding of increment upto two years without cumulative effect is a minor punishment and can be awarded to a railway employee without a full fledged inquiry under rule 9 but if the withholding of increment for two years adversely affects the amount of pension payable to him, such penalty can be awarded only after following the procedure prescribed for major penalty under rule 9. There is, thus, substance in the contention of the plaintiff.

5. It has now to be seen as to whether the punishments awarded to the plaintiff have to be cancelled or set aside altogether or only in part. According to rules of pension, the average pay of last ten months is taken into consideration. We are, therefore, of the view that so far as the first penalty awarded to the plaintiff on 11.2.1981 is concerned, it should be deemed to have undergone upto 1.8.1983 much before the period to be taken into consideration for determining the pension payable to the plaintiff. The second penalty awarded on 19.3.1981 had to remain in force and affected the pay of the plaintiff upto 31.7.1985. It thus adversely affected that part of the pay of the plaintiff for a period of five months which was to be taken into consideration for determining his pension. In case, we reduce this penalty to save the plaintiff from the loss of pension, the validity of the penalty cannot be challenged on the ground that it is contrary to the provisions of rule 11 of the DA Rules.

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6. So far as the third penalty dated 7.10.1981 is concerned, it cannot be maintained even for a day ~~and~~ it had to start from 1.8.1985 and had to remain in force till the date of his retirement. This has, therefore, to be set aside in toto. As the plaintiff has already retired from service, it does not appear expedient to impose any other minor penalty of censure or withholding of his privilege passes etc. *in view of 2.2.2*

7. We have gone through all the relevant papers produced on the record by the parties and find that the plaintiff did not submit his statement of defence in respect of the first charge sheet in time and after the imposition of ~~time~~ ^{penalty} he was given an opportunity by the appellate authority to submit his representation against the charge sheet and the penalty within a given time and a further time of appeal was allowed to him. His appeal was duly considered. No detailed enquiry was called for in a case of minor punishment and as such, so far as the first punishment is concerned, we are of the view that it is not bad or illegal on any ground. The disciplinary authority had duly considered the defence of the plaintiff while awarding the second punishment and it appears that the plaintiff did not even challenge this punishment by way of an appeal and only after a period of about 3 years, he challenged the validity of this punishment in this suit. In our opinion, only to the extent indicated above, this penalty is bad in law but it is otherwise not illegal on any other considerations. The punishment was awarded to the plaintiff after due consideration in accordance with the procedures prescribed in this behalf.

8. The suit was filed on 23.1.1984 within 3 years of the passing of the 3 punishment orders and as such, it is within limitation and the contention of the defendants to the contrary is not correct. Regarding the claim of the plaintiff for promotion,

(A26)

.6.

we find that it has been made in a half-hearted way. It is not alleged by the plaintiff as to when he was due for consideration for promotion. We are, therefore, unable to consider his case for this relief.

9. There is no other point for consideration in this case and in the result, the suit should succeed only in part.

10. In view of the above findings, the first penalty dated 11.2.1981 awarded to the plaintiff is upheld. The second penalty dated 19.3.1981 withholding his increment for 2 years is modified and instead of it, he is awarded the penalty of withholding his increment for one year only without cumulative effect. The third penalty dated 7.10.1981 is set aside altogether. The defendants are directed to work out the pension payable to the plaintiff in accordance with these modified punishments and pay him the arrears of increments in the light of this order within a period of three months. The parties shall bear their own costs.

Bhawan
22/9/87

MEMBER (A)

Arshar
22/9/87

MEMBER (J)

Dated Sept. 22, 1987
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