

THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH-ALLAHABAD.

O.A. No. 813 of 1989.

Anand Mangal Gandhi..... Applicant.

Versus

Union of India & others..... Respondents.

Hon'ble Mr. A.K. Sinha- J, M.

1. This application under Sec. 19 of the Administrative Tribunals Act, 1985 (hereinafter called the Act) has been filed for quashing the entire disciplinary proceedings and charge-sheet issued by the Chief Works Manager, Work-shop, North-Eastern Railway Gorakhpur and for a direction to the respondents to give pensionary benefits to the applicant with interest at the rate of 12% per annum besides costs.

2. The admitted short facts giving rise to this application are as follows:-

On 11.7.52 the applicant was appointed in the Railways and after completing 35 years and odd months in the service, he superannuated on 30.11.87 as Office Superintendent Grade-II in the Office of the Chief Works Manager, Work-shop Gorakhpur. On 28.11.87, just two days before superannuation, the Chief Work-shop Manager had issued charge-sheet against the applicant under Rule 9 of the Railway Servant Discipline and Appeal Rules 1968 (hereinafter called rules of 1968). The applicant submitted his representation vide Annexure B-2 dated 7.12.87 before Chief Works Manager, Work-shop who found his representation to be un-satisfactory and initiated disciplinary proceeding under the rules and entrusted the enquiry to Sri Jai Shanker Prasad Singh Divisional Personnel Officer Work-shop Gorakhpur.

3. The averment of the applicant is that the charge-sheet issued against him by the disciplinary authority is base-less and does not constitute any mis-conduct and mis-behaviour and that the Disciplinary Authority without giving the copies of the relevant documents to the applicant proceeded with the

inquiry under the clear violation of Article 311 of the Constitution of India and the principle of Natural Justice.

4. On the basis of these material facts, the learned counsel for the applicant submitted that the charge-sheet issued against the applicant by the disciplinary Authority just two days before his retirement was malafide and prayed that the entire disciplinary proceeding be quashed and the pensionary benefits to the applicant be given with interest at the rate of 12% per annum for non payment of Gratuity and Leave Encashment.

5. The respondents put in their appearance and filed written statement and inter-alia on amongst other grounds, their contention is that the representation of the applicant dated 7.12.87 Annexure B-2 was found to be un-satisfactory and so an enquiry was entrusted against him to Sri Jaishanker Prasad Singh Divisional Personnel Officer Work-shop, Gorakhpur, to proceed with the departmental enquiry under rule 9 of the rules. It was further submitted that the applicant did not verify the retirement list correctly due to which one Sita Ram Ticket No. 1204, Motor Driver Work-shop Gorakhpur ^{W.L.O.} _{A.M.} was due to retire on 31.5.87 continued in service upto 27.9.87 causing pecuniary loss to the Railway Administration and, therefore, it was urged that on account of the negligence on the part of the applicant, the Railway Administration has suffered loss, and, as such, the Disciplinary Proceedings against the applicant was not malafide and there was no violation of any provision of Article 311 of the Constitution much less principle of Natural Justice.

6. The learned counsel for the applicant submitted that the action of the Disciplinary Authority in initiating the disciplinary proceedings against the applicant just two days before his retirement was a malafide in as-much-as it was

A 2
3
A

against the provisions of Railway Servant Discipline and Appeal Rules. There is nothing in the Railway Servant Conduct Rules 1966 to show that a human error occurring in scrutinizing the seniority list by the applicant was a gravest act of mis-conduct and in this connection the learned counsel for the applicant drew my attention to rule 3 of the Railway Servant Conduct Rules 1966 and submitted that nowhere the action of the applicant could be termed as ~~grave~~^{grave} act of mis-conduct.

7. During the course of hearing of the arguments, it was conceded at the bar that the disciplinary proceedings against the applicant was dropped vide order dated 29.6.90 of the Chief Works Manager, Work-shop Gorakhpur and the amount of pensionary benefit i.e. D.C.R Gratuity has been ordered to be released in favour of the applicant.

8. The learned counsel for the applicant submitted that in view of this development that the disciplinary proceeding has been dropped against the applicant by an order dated 29.6.90 passed by the Chief Works Manager, Work-shop Gorakhpur. His only prayer is that the order dated 29.6.90 clearly shows that there was no malafide intention on the part of the applicant and, as such, the applicant was entitled to interest at the rate of 12% per annum in respect of the amount of Gratuity and Leave Encashment which was withheld since 30.11.87 to 29.6.90.

9. I have gone through the order dated 29.6.90 passed by Sri N.K. Agrawal, Chief Works Manager (Personnel) Gorakhpur which would, on perusal, show that the Railway Authorities, after going through the inquiry report, found that there was no malefide intention on the part of the applicant, but nevertheless there was some negligence on his part on account of which the Railway Administration had incur financial loss.

10. On a consideration of the facts of the case and submissions of the learned counsel for the parties and the relevant provisions

10
4

of Railway Rules, it appears to me that where as, however, the Chief Works Manager, Workshop Gorakhpur on consideration of the report of the Inquiring Officer dropped the disciplinary proceedings against the applicant holding that there was no malafide intention on his part, but there was some negligence due to which the Railway Administration had to incur financial loss, and ordered to release the amount of D.C.R.Gratitude in favour of the applicant after a period of two years and odd months, it must be held in the facts and circumstances of the case that "some negligence" must be constituted to be "human error" without any malafide intention and it is a well-known preposition that to err is human and if there was no malafide intention on the part of the applicant ⁱⁿ due ^{financial} discharge of the ^{his} ^{due} ^{by} ^{his} duty, the ^{protracted} disciplinary proceeding against him to the prejudice of the applicant, in my opinion, tantamounts to harassment.

11. In that view of the matter, I am clearly of the view and hold accordingly that the applicant is entitled to interest at the rate of 12% per annum over his D.C.R.Gratitude amount for a period ⁱⁿ it was kept withheld by the Railway ~~Adminis~~ ^{Adminis} Administration for no fault of the applicant.

12. In the result, the application is allowed to the extent that the respondent shall pay interest at the rate of 12% per annum to the applicant over the D.C.R.Gratitude amount which was ordered to be released in his favour vide order dated 29.6.90 passed by the Chief Works Manager Gorakhpur while dropping the disciplinary proceeding against the applicant. The payment of interest at the rate of 12% shall be payable to the applicant within a period of three months from the date of ~~in~~ communication of this order, failing which the applicant shall be at liberty to move this court for appropriate action against the respondents. In these circumstances, there will be no order as to the costs.

Dt: Dec. 4, 1992.
(DPS)

Abhoy Kumar Singh,
Member (J). 4/12/92