

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH, ALLAHABAD.

Allahabad Dt. This the 14th January, 1999.

ORIGINAL APPLICATION NO: 1898 of 1994.

Coram: Hon'ble Mr.S.K.Agrawal, J.M.,
Hon'ble Mr.G.Ramakrishnan, A.M.,

Virendra Nath Dixit son of
Sri Ram Krishna Dixit, resident of
No: 115/259, Maswanpur post Rawatpur,
district Kanpur Nagar. .. Applicant.

(Sri B.N.Singh, Advocate)

versus:

1. Union of India through General Manager,
Northern Railway, Baroda House,
New Delhi.
2. Divisional Railway Manager, Northern
Railway, Allahabad.
3. Senior Divisional Opting Manager,
Northern Railway, Allahabad. .. Respondents.
(C/Respds Sri A.V.Srivastava, Advocate)

Order:

(By Hon'ble Mr. S.K.Agrawal, J.M.,)

In this Original application, the applicant makes a prayer for quashing the impugned Order dated 26.11.1992 and to direct the respondents to pay 30% deducted amount of Rs 25629.30(P) from the retirement dues of the applicant alongwith interest at the rate of 18% per annum.

In brief, the facts of the case as stated by the applicant are that the applicant has taken voluntary retirement on the post of Chief Yard Master, Northern Railway, Panki, Kanpur with effect from 27.11.1992. The

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applicant was chargesheeted on 11.3.1992 imposing minor penalty and respondent No3, conducted departmental enquiry against the applicant and penalised the applicant and directed that 30% of Rs85,431/- be deducted from the retirement benefits due to the applicant vide order dated 26.11.1992. It is submitted that a Crime Case No:238/88 was also registered in the matter and a charge sheet was filed against Sri D.K.Srivastava and Sri Uma Shanker for an offence under section 409 of the Indian Penal Code, which is pending. Applicant sent so many reminders to pay him the retirement dues but no result. It is submitted that the Area Manager, Northern Railway, Kanpur has given responsibility of remittance to the Chief Goods Supervisor but the respondents without conducting the Enquiry held the applicant responsible for the alleged embezzlement. It is, therefore, submitted that the impugned order dated 26.11.1992 be quashed and respondents be directed to refund 30% of the amount so deducted from the retirement dues of the applicant.

Counter was filed. It is stated in the counter that that this O.A. is barred by limitation as provided under Sec. 21 of the Act. Applicant was served with minor penalty and Chargesheet given in which question of conducting enquiry does not arise. Applicant was penalised by the Disciplinary Authority after taking into consideration the gravity of the charges and the record of the fact finding enquiry Committee and thereafter, decided to deduct Rs85431/- from the D.C.R. Gratuity of the applicant and the same was communicated to the applicant vide impugned order but the applicant never requested for supplying copy of the preliminary Enquiry report before the impugned Order dated 26.11.1992 was passed.

Against the impugned Order, applicant filed a Statutory appeal, which is under consideration. It is submitted that a crime case was filed under section 409 of the Indian Penal Code, against the applicant, Sri D.K. K. Srivastava and Sri Uma Shanker, which is pending.

Applicant has filed this Original Application without waiting disposal of the appeal, therefore, this Original Application is pre-mature and liable to be dismissed.

It is also stated that the letter does not clarify that the Chief Yard Master Panki, Kanpur is in any way responsible if the case was not carried out by IInd A.C. It is stated that the Railway Administration suffered a huge loss because of the lapse and negligence

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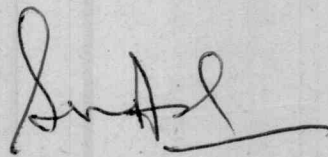
of the applicant. The enquiry was conducted as per provisions as given in the Railway Servants(Disciplinary And Appeal Rules) 1968 for minor penalty and charge sheet and the applicant has never demanded for the detailed enquiry when a Separate departmental action has already been initiated against the persons in addition to the Criminal case pending against them so, there is no discrimination. No reasonable opportunity of hearing was provided to the applicant before passing an impugned order. It is also stated that the Chief Yard Master, Panki, Kanpur was personally responsible for the correct remittances of the earning, therefore, the impugned order was perfectly legal, valid and justified and the present application is not maintainable and liable to be dismissed.

Rejoinder has been filed reiterating the facts stated in the O.A.

Heard the learned lawyer for the applicant and the learned lawyer for the applicant and perused the whole record.

It appears that on the report of the applicant a crime Case No: 238/88 Under section 409 Indian Penal Code, was registered. ~~In fact~~ ^{and after} investigation report ~~and~~ chargesheet for the trial of the offence as defined under section 409 of the Indian Penal Code, was filed against the applicant, Sri Uma Shanker and Sri D.K.Srivastava, which is pending.

A Similar minor penalty Charge Sheet was also issued to Sri D.K.Srivastava, and Sri Uma Shanker. Against Sri D.K. Srivastava, the Disciplinary Authority imposed penalty ~~by~~ ^{for} the stoppage of increment for 3 years without postponing future increments and recovery of 30% of the embezzled amount of Rs85,431/- as it has been done in the case of the others ~~and~~ has not been done. The appeal and revision of Sri D.K. Srivastava were rejected vide orders dated 6.12.1995 and 10.7.1996. Sri D.K.Srivastava, thereafter, filed this O.A. before this Tribunal, which was registered as O.A No: 1010/96 and this Tribunal vide Judgement dated 15.7.1997 quashed the impugned order dated 19.7.1997 of the Revision in which, the Order dated 6.12.1995 of the Appellate Authority and the Order dated 27.9.95 of the Disciplinary Authority was merged. The case of the present applicant is also on the similar footing. On the similar facts this Tribunal has also decided the Original Application No: 1364/95 on 5.6.1997.

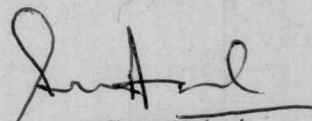


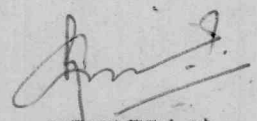
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We have also gone through that judgement delivered in the aforesaid Original Application. In view of the judgement delivered by this Tribunal in Original application No:1010/96 on 15.7.1997 and the Judgement delivered in O.A.No:1364/95 on 5.6.1997, We are of the opinion that the case of the applicant is similarly situated, therefore, the applicant is entitled to the relief sought for.

We, therefore, allow this Original Application and quash the impugned order dated 26.11.1992 and direct the respondent -s to refund Rs25,629.30(P) with interest at the rate of 12% per annum from 26.11.1992 within 30 days from the date of the receipt of the copy of this Order.

No order as to cost.


MEMBER(J)


MEMBER(A).

rds/