

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

ORIGINAL APPLICATION 894 OF 1999

ALLAHABAD, THIS THE 12<sup>th</sup> DAY OF October 2004

HON'BLE MR. D. R. TIWARI, MEMBER(A)

Smt. Suraj Kali  
w/o late Sant Kumar,  
resident of 86/252 Garg Road,  
Raipurwa, Kanpur.

.....Applicant

(By Advocate : Shri S. Dwivedi)

V E R S U S

1. Union of India through the General Manager,  
Northern Railway, Baroda House, New Delhi.
2. The Joint Director, Establishment (D&A)  
Railway Board, New Delhi.
3. The Chief Traffic Manager,  
Northern Railway, Kanpur.
4. The Chief Area Manager,  
Northern Railway, Kanpur Central,  
Kanpur.

.....Respondents

(By Advocate : Shri A.K. Gaur)

O R D E R

By the instant O.A. instituted under section 19 of the A.T. Act, the applicant has prayed for quashing of the punishment order dated 08.12.1997 by which his 50% of the monthly pension has been withheld. He has further sought to declare the order dated 05.08.1998 passed by Chief Traffic Manager to be illegal and hence be quashed. He has also sought ~~issue~~ a direction to the respondents for payment of

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arrears of pension with interest at the rate of 18% per annum to the applicant.

2. Briefly stated, the applicant at the relevant time was working as TTE. A major penalty proceedings was initiated against him by a charge memo dated 25.11.1992. He denied all the charges and the enquiry was conducted. The enquiry officer held the charges proved. Meanwhile the applicant superannuated from service w.e.f. 28.02.1995. Since he retired from service the President of India being the disciplinary authority in this case has imposed the aforesaid penalty of withholding of 50% of the pension of the applicant, which was communicated to him by the impugned order dated 08.12.1997 by Joint Director, Establishment Railway Board.

3. The applicant has assailed the impugned order on various grounds mentioned below:-

- (A) denial of reasonable opportunity to defend himself during the course of enquiry.
- (B) Non supply of material documents.
- (C) the opinion given by Union Public Service Commission is not based on any legal documents or evidence.
- (D) The appeal against the order dated 08.12.1997 preferred by the applicant has not been considered by the competent authority and has been rejected on unreasonable grounds.
- (E) Both the punishment order as well as the rejection of the appeal are non-speaking <sup>one</sup> and are arbitrary and illegal.

4. The respondents, on the other hand have opposed the contention of the applicant and they have submitted that during the surprise checking conducted by C.B.I. official in Sialdah Express, the applicant was trapped. The applicant

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has been afforded reasonable opportunity during the enquiry, as provided under the rules. It has been further submitted that during the course of surprise checking, applicant was charged for taking Rs.10/- extra for allotting birth in 3112 Dn. Sealdah Express on 04.02.1992 and that he was having Rs.223/- in excess of declared personal cash and the collected fare from the passengers. The enquiry officer found the applicant guilty on both the charges imposed on him and the case was sent to General Manager (P), Northern Railway, Baroda House, New Delhi for approval/decision of the President of India with a proposal of punishment of 10% cut in pension for a period of 3 years. However, the U.P.S.C. considered that ends of justice would be met if 50% of the monthly pension is withheld on permanent basis(Annexure R-9). The President of India has considered the case in consultation with the U.P.S.C. and after considering all the facts and circumstances of the case, he has decided to withhold 50% of the monthly pension, which is otherwise admissible to the applicant on permanent basis.

5. They have denied that he was not supplied the relied upon documents. They have further stated that his mercy appeal to the President of India was not forwarded under the Rules as it is necessary that the mercy appeal has to be forwarded to the President of India with recommendation of the competent authority and in case, it is decided to withhold the petition, the applicant may be informed accordingly. The said mercy appeal was examined by the competent authority in the light of Para-2 & 3 of APP of Indian Railway Establishment Code Volume-I and it was decided to withhold the petition with sufficient reasons and the same was communicated to the petitioner vide letter dated 05.08.1998(Annexure A-2)

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They have further submitted that the opinion of the UPSC has been given to the applicant along with the copy of the order dated 08.12.1997 vide letter No.C-AM/Z/Viz/92/41 dated 27.02.98 hence they have submitted that application is devoid of merit and may be dismissed.

6. I have heard the counsel for both the sides at length and perused the pleadings as well.

7. During the course of the ~~discussion~~<sup>argument</sup>, learned counsel for the respondents Shri A.K. Gaur has invited my attention on the supplementary counter reply filed on 20.10.2000 in which he has clearly stated that the applicant's prayer to quash Chief Traffic Manager's decision to withhold his petition to the President is squarely covered by the decision of the Hyderabad Bench of this Hon'ble Tribunal in its order dated 10.03.1999 in O.A. No.1446 of 1997 wherein it has been observed that the prescribed authority under the instructions has got discretion to withhold a petition submitted by the Railway Servant to the President. The authority has to consider whether it is a fit case to submit the petition to the President of India. Learned counsel for the applicant shri S. Dwivedi has opposed this contention on the ground that case cited is very much different from the case in hand. He has stated that in that case the petition to the president was withheld because in that case the opportunity of appeal and revision was availed of by the applicant, whereas in this case, the President of India is the disciplinary authority and only an appeal could be made to the President of India as he is the disciplinary authority. Be that as it may, the learned counsel for the applicant did not press very strongly the point regarding the rejection of mercy appeal. I do not propose to elaborate this point.

8. The crucial question which falls for consideration

in the present case is whether that there has been any irregularity in decision making process. I am very much aware of the constraint in case of disciplinary proceedings. The courts and tribunals cannot question the quantum of punishment awarded by the competent authority because it is the exclusive jurisdiction of the authorities concerned. Our function is to see whether there has been any illegality in the decision making process.

9. From the above discussions, it may be noticed that the disciplinary authority in this case while considering the entire evidence has also got the opinion of Union Public Service Commission. The respondents have stated that only 10% cut in pension was proposed but the U.P.S.C. increased it is 50% monthly basis. The allegation of the applicant that he was not supplied the copy of the opinion of the UPSC. The question of non-supply of the copy of the opinion of UPSC has been ~~engaging~~ <sup>large</sup> knocking attention of the coordinate benches of the Tribunal in many cases. It has been held in number of decisions that non supply of UPSC advised to the affected employee or retired person was violative of principles of natural justice. The latest decision in the case of K. S. SUBRAMANIAN VS. UNION OF INDIA & ORS. by ERNAKULAM BENCH of this Tribunal reported in AISLJ 2004(2) 170 is very much relevant. After going through the decisions in the case of CHARANJIT SINGH KHURANA VS. UNION OF INDIA reported in 1994(2)SLJ CAT 360 and RAJ KAMAL VS. UNION OF INDIA & ORS. reported in 2000(2) ATJ 122. The Principal Bench has held that non supply of UPSC advise before the impugned penalty order was passed was violative of principles of natural justice as it denied the opportunity of pre-decisional hearing. to highlight the UPSC advise.

10. It is true that it is the prerogative of the president to withhold or withdraw pension permanently or for a period ~~of~~ in whole or in part. It is mandatory that a finding that a pensioner committed a grave misconduct or negligence must precede the exercise of the right of the President. In the case of D.V. Kapoor Vs. Union of India reported in AIR 1990 SC 1923, the Hon'ble Supreme Court has laid down that a finding regarding commission of grave misconduct or negligence in the discharge of the charged persons duty while in office is a condition precedent to the exercise of powers under Rule 9 of the CCS (Pension) Rules which is, *parimateria*, with Rule 2308 of IREC/Rule 9 Railway Servants (Pension) Rules. It has been held that employee's right to pension is a statutory right. The measure of deprivation therefore, must be correlative to or commensurate with the gravity of the grave misconduct or irregularity as it offends the right to assistance at the evening of his life as assured under Article 41 of the constitution.

11. The ratio of the Supreme Court decision seems to be squarely applicable to the facts of this case. More so the disciplinary proceedings suffers from serious illegality in so far as it relates to non supply of the advise of the UPSC and the great prejudice has been caused to the applicant as he could not represent on this point. In view of the facts and legal position, the O.A. is liable to be succeeded. In normal course I would have remitted the matter back to the competent authority for considering the grievances of the applicant regarding non supply of the advise of the UPSC. However, in this case during the pendency of the case the applicant had died and I do not think it necessary to sent it back.

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12. In view of the facts and circumstances mentioned above, the O.A. succeeds and is allowed. The impugned order dated 08.12.1998 is quashed and set aside. Respondents are directed to release all the arrears of pension without interest, which is due under the provisions of law.

13. There shall be no order as to costs.

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Member (A)

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