

RESERVED
CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH
ALLAHABAD

Allahabad this the 6th day of April, 2010

PRESENT:

HON'BLE MR. A.K.GAUR, MEMBER-J

HON'BLE MRS.MANJULIKA GAUTAM, MEMBER-A

Original Application No.988/2006
 (U/s 19 of the Administrative Tribunals Act 1985)

R.P.Srivastava
 S/o Late Jagdamba Prasad Srivastava,
 R/o C.K. 60/64 Karanghanta, Nichibagh,
 Varanasi. ...Applicant

(By Advocate : Sri. A. Srivastava)

Versus

1. The General Manager,
 DLW, Varanasi.
2. The Chief Electrical Engineer,
 DLW, Varanasi. ...Respondents

(By Advocate : Shri A.K. Sinha)

ORDER

HON'BLE MRS.MANJULIKA GAUTAM, MEMBER-A

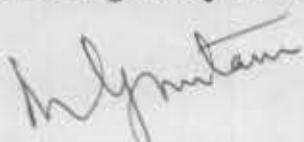
The applicant was working as Head Telephone Operator, Railway Tel. Exchange DLW Varanasi. He was served with the charge sheet under Rule 9 of Railway Employees (Discipline and Appeal) Rules, 1968, vide order dated 11.8.1995. The applicant denied all the charges. He submitted his defence and participated in the enquiry. Punishment of dismissal from service was imposed



upon him vide order dated 16.6.96. Against this he preferred an appeal dated 26.6.1996 and the appellate authority rejected the appeal vide order dated 11.3.1997. Aggrieved the applicant filed O.A.71/1997 which was decided on 6.6.2002, and it was conceded that the contention/pleas taken by the applicant against the punishment orders were not substantiated. The only issue which adjudicated by the Tribunal was whether the quantum of punishment was commensurate with the proven misdemeanor. The operative portion of the order reads as follows:

"Therefore, we consider it fit that the respondents may sympathetically consider the quantum of punishment. The punishment awarded by the Disciplinary authority and confirmed by the Appellate Authority is, therefore, quashed. In view of the earlier long service during which the applicant had never been punished, it would be proper for the respondents to consider sympathetically the punishment awarded to the applicant and to consider if the same can be modified/changed into compulsory retirement. The question of quantum of punishment shall therefore be reopened and considered and decided by the Appellate Authority within a period of three months from the date of a copy of this order is filed after hearing the applicant. There will be no order as to costs."

2. Alongwith the certified copy of the above order the applicant has filed a representation dated 14.6.2002 also annexing a copy of his appeal dated 26.6.96 to the appellate authority. Vide order dated 4.9.2002 the appellate authority changed the punishment of removal from service to the compulsory retirement with effect from the date of dismissal. The applicant have further sanctioned pension and gratuity at 2/3ds admissible to him on the



date of his compulsory retirement. But, subsequently, it was changed to 85% of the pension and gratuity as admissible. The case of the applicant is that, since the Tribunal had quashed the earlier punishment/rejection orders, he should have been reinstated in service from the date of dismissal and then compulsorily retired from the date of issue of the fresh order of the appellate authority. According to him no punishment order can be passed with retrospective effect. He has cited several rulings of Hon'ble High Courts and Supreme Court in support of this contention

3. In the counter affidavit filed by the respondents it has been clarified that, as per orders of CAT dated 6.6.2002 punishment of the applicant was changed from dismissal from service to compulsory retirement and as such, it would apply from the date of punishment of dismissal ~~was given~~. Therefore, the orders passed by the appellate authority are in conformity with the rules and law.

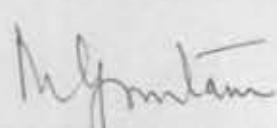
4. Having heard both parties and perused the record on file, we are of the opinion that the order of the Tribunal dated 6.6.2002 very clearly accepted that the applicant was guilty and was rightly punished. It is only on humanitarian consideration that the matter

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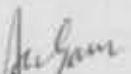
of punishment was reopened by the Tribunal, with the suggestion that the dismissal be substituted by compulsory retirement.

5. In view of this, we are of the opinion that, no illegality has been committed by the appellate authority in passing the order of compulsory retirement with effect from the date of dismissal of the applicant.

6. Therefore, there is no merit in the O.A. and the same is accordingly dismissed. No costs.



MEMBER(A)



MEMBER(J)