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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 632 OF 1987
~~T.A. No.~~

DATE OF DECISION 3.1.1989

SHRI JANG BAHADUR GULABCHAND Petitioner

MR. Z.A. SHAIKH Advocate for the Petitioner(s)

Versus

THE UNION OF INDIA & ORS. Respondents.

MR. R.M. VIN Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. TRIVEDI, VICE CHAIRMAN.

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal. *Yes*

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Shri Jang Bahadur Gulabchand,
Retired Devl. Commercial Supdt.,
Age: 60, Residing at
Hariom Society,
Block No. 2,
Danteshavar,
Baroda.

..... Petitioner.

(Advocate : Z.A. Shaikh)

Versus.

1. The Chairman,
Railway Board,
Ministry of Railways,
Railway Bhuvan,
New Delhi.
2. Shri A.R. Malhotra,
Commissioner of Departmental
Inquiry Central Vigilance House,
Akbar Road,
New Delhi.
3. The General Manager
Western Railway,
Churchgate,
Bombay.

..... Respondents.

(Advocate: Mr. R.M. Vin)

J U D G M E N T

O.A.No. 632 OF 1987

Date : 3.1.1989

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

The petitioner Shri Jang Bahadur Gulabchand (60) of Baroda, being aggrieved by the notice dated 25th November, 1987, issued by Shri A.R. Malhotra, (C.D.I.) to hold a departmental inquiry against him, has filed this application under section 19 of the Administrative Tribunals Act, 1985, on 8.12.1987. It is contended inter-alia that the action of the respondents-railway administration in holding the departmental inquiry is illegal, bad in law and violative of principle of natural justice, as the

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circular on which the petitioner's action is construed as 'misconduct' has been superseded and since he has been permitted to retire from service, the provisions of "Railway Servants (Discipline & Appeal) Rules, 1968, are not applicable to him. The petitioner therefore prayed that the departmental inquiry be quashed and set aside and the respondents be directed to release and pay in full the amount of death-cum-retirement gratuity together with interest and also direct them ^{to release} ~~them~~ his full monthly pension instead of provisional pension paid to him.

2. The respondents-railway administration, have resisted the petitioner's application and denied the assertions and allegations made against them. According to them, the respondents had decided to hold a departmental inquiry against the petitioner Shri Jang Bahadur Gulabchand, Divisional Commercial Superintendent and one Shri Bishandas Prithichand Dutta, Assistant Commercial Inspector, who were jointly concerned in a disciplinary case in exercise of the powers conferred by Sub-rule 1 & 2 of Rule 13 of the Railway Servants (Discipline & Appeal) Rules 1968, vide order dated 23.1.85 and they were accordingly informed about the Article of Charges levelled against him, and thus even though the petitioner retired with effect from 30.11.1985 on superannuation, the provisions contained under Rule 2308 & Rule 2308A of the Indian Railway Establishment Code (framed under Article 309 of the Constitution of India), entitle them to complete the departmental inquiry instituted against the railway employee. The relevant provision pressed in service, read as under :

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"2308. (C.S.R.351-A) - The President further reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if, in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement -

Provided that -

(a). such departmental proceeding, if instituted while the Railway servant was in service, whether before his retirement or during his re-employment, shall, after the final retirement of the Railway Servant, be deemed to be proceeding under this Article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service.

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2308-A. (C.S.R.351-B) - (1) Where any departmental or judicial proceeding is instituted under Rule 2308 (C.S.R.351-A) or where a departmental proceeding is continued under clause (a) of the proviso thereto against a Railway servant who has retired on attaining the age of compulsory retirement or otherwise he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceeding, final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service upto the date of retirement, or if he was under suspension on the date of retirement, upto the date immediately preceeding the date on which he was placed under - suspension; but no gratuity or death-cum-retirement - gratuity shall be paid to him until the conclusion of such proceeding and the issue of final orders thereon."

3. On admission of the application, the respondents were restrained from proceeding with the departmental inquiry by way of interim orders passed on 9.12.87. When the matter came up for final hearing we have heard Mr.Z.A.Shaikh and Mr. R.M. Vin, the learned counsel for the petitioner and the respondents respectively. We have also perused the materials including the rejoinder filed

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by the petitioner on record.

4. During the course of arguments while inviting our attention to the circular dated 2.6.81, it was ^{by Mr. Shaikh} strenuously urged that the alleged misconduct of delivering three wagons containing soft coal to the merchant of 'Jam-Jodhpur' was justified and hence the departmental inquiry should be dropped. He however contended that when the petitioner has been allowed to retire from the Government service, no departmental proceedings can be instituted or continued against him, as under the notice he has been indicted for a major penalty. In support of his submission he relied on the cases viz;

(1) B.J.Shelat V/s. State of Gujarat & Ors. (A.I.R. 1978 S.C. 1109) and (2) The State of Maharashtra V/s. M.H.Mazumdar, (1988 S.C.C.(L&S) p.426.

5. Mr. R.M. Vin, the learned counsel appearing for the respondents, however, vehemently contended that the principles laid down in the cases cited by Mr. Shaikh are not applicable in the present case.

According to him, they are clearly distinguishable ^{the} as departmental proceedings had already initiated against the petitioner prior to his retirement and the same therefore can be concluded even after his retirement. According to him, the purpose of ^{notice} issuing a show cause is to afford opportunity of hearing to the Government servant and once cause is shown it is open to the Government to consider the matter in the light of the facts and submissions placed by the Government servant and only thereafter a final decision in the matter could be taken and interference by the Court before that stage would be premature. In support of his submission, he

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relied on the case of State of Uttar Pradesh V/s. Shri Brahm Datt Sharma and another (A.I.R. 1987 S.C. 943). He however conceded that since the petitioner has retired during the pendency of the departmental inquiry, the question of imposing any penalty prescribed under the Rule would not be attracted. However the respondents are entitled to direct reduction in the pension on the proof of the allegations made against the delinquent.

6. The fact that the petitioner while working as Divisional Commercial Superintendent at Ahmedabad in the year 1982 had ordered three wagons containing soft coal, to be delivered to a merchant of 'Jam-Jodhpur', is not in dispute. More over the fact that decision to hold a departmental inquiry was taken under order dated 23.1.85, and Article of Charges were served upon him prior to his retirement, is not controverted. The action of the respondents to hold an inquiry vide order dated 25.11.87 is challenged on the ground that the alleged action of the petitioner can not be considered as offending in view of the subsequent circular issued by the authorities. Now, in absence of adequate facts and materials which are likely to be disclosed during the inquiry, it is not possible to accept the contentions raised in this regard. Thus, when a show-cause notice were issued to the petitioner calling upon him to show-cause, ordinarily he must place his case to the authorised persons by showing cause. We are not satisfied to hold, at this stage, that the notice or the charge levelled against him are without any authority of law. We, therefore, do not find any justification to interfere with the

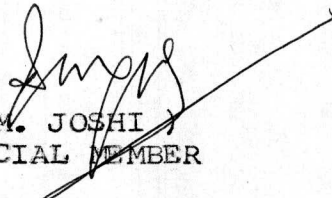
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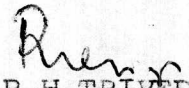
departmental inquiry conducted by the respondents. In State of Maharashtra V/s. M.H.Mazumdar (supra) cited by Mr. Shaikh, the Government employee was subjected to a departmental inquiry for the charges levelled against him about a year after his retirement. While referring to Rules 188 & 189 of the Bombay Civil Services Rules, it was held that the purpose of the enquiry was not to inflict any punishment but to determine the respondent's pension. It was further observed that these rules have expressly preserved the State Government's power to reduce or withhold pension by taking proceedings against a government servant even after his retirement. In the case of Mr. B.J.Shelat V/s. State of Gujarat & Ors. (supra) the disciplinary action was taken against him after his retirement. However in the present case disciplinary proceedings had already commenced while the petitioner was in the service. In view of the specific provisions laid down under Rule 2308 & 2308A, (reproduced earlier) such departmental proceedings are saved even after the retirement, if instituted while the railway servant was in service.

7. It is now well settled that if disciplinary proceedings against an employee of the Government are initiated in respect of misconduct committed by him and if he retires from service on attaining the age of superannuation, before the completion of the proceedings it is open to the State Government to direct deduction in his pension on the proof of the allegations made against him. If the charges are not established during the disciplinary proceedings, it is not permissible to the State Government to

direct deduction in the pension. But if the charges of serious allegations are established, which may have bearing on the question of rendering efficient and satisfactory service, it would be open to the Government to take proceedings against the Government servant in accordance with the Rules. In the present case there are serious allegations of misconduct against the petitioner and he has been called upon to face the departmental inquiry for the charges levelled against him. There is no legal bar against the respondents in following such a course of action. The actions of the respondents in providing provisional pension and not releasing the amount of death-cum-retirement gratuity as well as holding departmental inquiry against the petitioner do not suffer from any illegality. (see (1988) 8 Administrative Tribunal Cases, 315)

8. In the result, the application fails as it is devoid of merits whatsoever. Accordingly, the application is dismissed with no order as to costs. Rule discharged.


(P.M. JOSHI)
JUDICIAL MEMBER


(P.H. TRIVEDI)
VICE CHAIRMAN