

4

G

Date of decision:- 17th.May,1991.

Parsuram Mohapatra Applicant.

Versus,

Union of India & Ors. Respondents.

For the applicant:- Mr.B.S.Mishra-2,
Mr.N.K.Behera,G.Mishra,
(Advocates).

For the Respondents: Mr. R. C. Rath,
~~xxxxx~~ Standing Counsel (Railway).

C O R A M :

THE HON'BLE MR. B. R. PATEL, VICE-CHAIRMAN.

&

THE HON'BLE MR.N.SENGUPTA, MEMBER (JUDICIAL).

1. Whether reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the reporters or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgment ?

J u d g m e n t .

Mr.N.SENGUPTA, MEMBER (J).

The matterial facts are that the applicant is a Railway Guard. In 1980 there was a disciplinary proceeding against him in which he was found guilty and the punishment of stoppage of next increment raising his pay from Rs.420/- to Rs.430/- for three years was passed on 21.10.80 and the period of punishment was not to operate to postpone future increments after expiry of the punishment. Copy of this order of punishment is Annexure-1, to the application. Against that order, the applicant made a representation and on 3.1.81 the disciplinary authority passed an order cancelling the punishment notice dtd.21.10.80. Subsequently, on 5.1.81 the disciplinary authority modified the order passed on 21.10.81 stating that the next increment of the applicant raising his pay from Rs.430/- to 440/- was to be with-held for a period of three years with effect from the date when it was otherwise due to him and the punishment would not postpone future increments after the expiry of the period of punishment. Copy of this modification of punishment is Annexure-3 to the application. Against Annexure-3 the applicant made representation but he received no reply. On 18.7.89 an order of his promotion to the rank of Guard grade-B with retrospective effect from 1.1.85 on proforma basis, was passed

Handwritten signature and date:
17/5/91

(11)

6

- 3 -

but he was to get arrears with effect from 1.1.86. In that order it was further mentioned that the applicant was not eligible for his promotion¹⁶ Grade-B with effect from 1.1.84 as he was under-going punishment. The copy of this order is Annexure-4. After receipt of this order dtd.18.7.89, the applicant made a representation to the Divisional Senior Operating Superintendent that the punishment order dtd.21.10.80 was infructuous and as such the order dtd.18.7.89 needed modification entitling him to all the service benefits with effect from 1.1.81. Averting thus, the applicant has asked for payment of full salary to him making proper calculation after quashing Annexure-3 and 4.

2. The Railway Administration in its counter affidavit has averred that as by the date the order vide Annexure-1 was passed, the applicant had crossed the stage of Rs.420/- per month in the scale of pay, a modification of the punishment order was necessary. The case of the Railway administration further is that there was another disciplinary proceeding against the applicant in which an order of with-holding of increment for three months was passed, thus the total period of with-holding of an increment of the applicant was three years three months and Annexures-3 and 4

MS. 17 591.

- 4 -

to the application cannot be questioned.

3. We have heard Mr.B.S.Mishra, learned counsel for the applicant and Mr.R.C.Rath, Standing Counsel(Railway) for the Railway Administration. Mr.Rath has very vehemently contended that the applicant wants to quash an order passed almost a decade prior to the filing of his application, as such, the application is barred by limitation.Mr.Mishra for the applicant has contended that what the applicant has really meant is that Annexure-3 should be ignored being null and void. Mr.Mishra agrees that there has been some drafting error but that would not disentitle the applicant to get the relief that he is otherwise found entitled to. Mr.Mishra's arguments carries some force.The power of review is a creature of law, unless there be any specific provision empowering an authority to review any order, such authority cannot review an order. On going through the Railway Servants' (Discipline & Appeal) Rules, 1968 it is found that there is no provision empowering the disciplinary authority to review an order. In this regard Mr.Rath has contended that when an order was passed in ignorance of relevant facts for which reason it became unwor^kable, the disciplinary authority had the jurisdiction to make the necessary correction by way of a review to

Ms. S. S. 91
17

-5-

render the order workable. We would repeat that unless such a power is vested in the authority he cannot invoke such non-existent power. Not that there was no provision to remedy the defect, the matter could have been brought to the notice of the appellate or the Revisional Authority to exercise his powers to rectify the mistake. Since the disciplinary authority lacked inherent jurisdiction to review or revise his own order, Annexure-3 should be deemed to be non-existent in the eye of law and as such it needs no quashing.

4. With regard to the contention of the Railways about infliction of punishment in another Disciplinary proceeding, it has been submitted on behalf of the applicant that he has not received any intimation of such a punishment. We have no material before us to opine as to whether the applicant received the intimation about any such punishment. Therefore, we refrain from expressing any opinion in this regard except saying that the parties would be at liberty to act or take steps depending on, whether the applicant was served with any order of punishment said to have been inflicted in a subsequent proceeding.

5. Since the order at Annexure-4 was passed on the basis of Annexure-3 and the

*See Enp 4
17.5.91.*

alleged subsequent punishment order, and as Annexure-3 is a void order and for what we have stated just above regarding the subsequent punishment, we would direct that the service benefit of the applicant should be determined ignoring Annexure-3 and ~~the~~ ^{depending} ~~depend~~ on whether Annexure-R/1 was served on the applicant or not. The case is accordingly disposed of.

.....
Vice-Chairman



Mr. Sanyal
.....17.5.91.
Member (Judicial).

Central Administrative Tribunal
Cuttack Bench, Cuttack/ I.Hossain/
dt.17.5.91.