

Central Administrative Tribunal  
Jodhpur Bench, Jodhpur  
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Date of order : 14.2.2001

ORIGINAL APPLICATION NO. 399/97

Surjan Lal Tiwari S/o Shri Babulal Tiwari, aged about 57 years R/o Khemara Sedan, Imliwali Gali Deogarh Madariya Distt. Raj Samand (Rajasthan), last employed on the post of Assistant Station Master, Charbhujia Road, Western Railway.

... Applicant.

Versus

1. The Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Ajmer Division, Ajmer.
3. Divisional Safety Officer, Western Railway, Ajmer Division, Ajmer.

... Respondents.

CORAM :

HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

Mr.J.K.Kaushik, Counsel for the applicant.

Mr.R.K.Soni, Counsel for the respondents.

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ORDER

PER HON'BLE MR.A.K.MISRA:

The applicant has filed this O.A. with the prayer that the impugned order SF-5 dated 21.8.92, Annex.A/1 and NIP dated 12.1.96, Annex.A/2, inflicting the penalty of compulsory retirement of the applicant from service passed by the respondent No.3 and any

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order adverse to the applicant, if passed in appeal may be declared illegal, without jurisdiction and be quashed with consequential benefits.

2. Notice of the O.A. was given to the respondents who have filed their reply to which no rejoinder was filed by the applicant.

3. We have heard the learned counsel for the parties and have gone through the case file.

4. It is alleged by the applicant that he was initially appointed on the post of Traffic Signaller cum Assistant Station Master. On 21.8.82, when the applicant was working on the post of Assistant Station Master, DOHM, was served with a chargesheet. The applicant denied the charges. Thereafter, a preliminary inquiry was conducted. On the basis of the inquiry report, the applicant was inflicted the penalty of removal from service w.e.f. 30.3.90 by the order passed by the disciplinary authority. Against the said order the applicant preferred an appeal to the departmental appellate authority and the appeal was accepted. The removal order was cancelled without prejudice to further DAR action. In the mean time, the applicant had been acquitted of the criminal charges on the basis of compromise arrived at between the parties. However, the disciplinary authority inflicted the penalty of compulsory retirement of the applicant from service w.e.f. 12.1.96 vide its order of the same date. The applicant preferred an appeal against the said order retiring the applicant compulsorily, however, the appeal is not decided and is still pending with the appellate authority. Having not heard anything from the appellate authority.

*Yours*

authority in respect of his appeal, the applicant had filed this O.A. in which the applicant has challenged the order of the disciplinary authority on the ground that the applicant has been found guilty on the basis of conjectures and surmises. The disciplinary action was not taken by the competent authority against the applicant. The applicant was denied reasonable opportunity to defend him inasmuch as he was never supplied with the copy of the inquiry report. It is also stated by the applicant that in view of the acquittal of the applicant in a criminal case, the penalty of compulsory retirement is dis-proportionate.

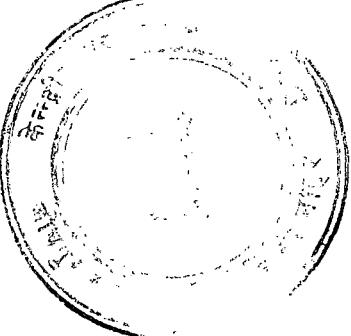
5. The respondents have filed their reply in which the pendency of appeal preferred by the applicant is admitted. However, it is stated by the respondents that retiring the applicant compulsorily is no punishment because applicant has not been deprived of his pensionary benefits. The respondents have not said anything in respect of delivery of copy of the inquiry report. But, it has been stated by the respondents that no prejudice has been caused to the applicant in conduct of the inquiry.

6. We have considered the facts of the case and the rival contentions of the parties. There is nothing on record to establish that the applicant was given a reasonable opportunity to defend himself before the disciplinary authority by giving him a copy of the inquiry report. The respondents have been evasive in this regard. The specific allegation of the applicant about the non-delivery of copy of inquiry report has been replied that 'it requires no comments'. This in

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our opinion a clear admission of non delivery of copy of the inquiry report. In Mohammed Ramzan Khan's case reported in AIR 1991 SC 471 -(Union of India and Others Vs. Mohammed Ramzan Khan), it has been held by the Hon'ble Supreme Court that the delinquent is entitled to the copy of inquiry report where the inquiry is conducted by an inquiry officer. It would be useful to quote the words of the Hon'ble Supreme Court thus :-



"Where by law application of natural justice could be totally ruled out or truncated, nothing has been done by the 42nd amendment which could be taken as keeping natural justice out of the proceedings and the applicability of the rules of natural justice to such an inquiry is not affected by the 42nd amendment. Therefore, supply of a copy of the inquiry report along with recommendations, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof. The Forty-Second Amendment has not brought about any change in this position."

7. In the instant case, the copy of the inquiry report was not provided to the applicant and, therefore, principles of natural justice have been violated. The applicant, in our opinion, in these circumstances could not place before the disciplinary authority, all the relevant material favouring him by adducing objections relating to the inquiry report and conclusion of the inquiry officer. In view of this glaring illegality it is difficult to sustain the order of the disciplinary authority awarding punishment of compulsory retirement to the applicant.

8. No doubt as per rules, the employer is entitled to compulsorily retire a Government servant after considering

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his record and in such circumstances, the compulsory retirement cannot be treated to be a punishment. But when considering the material relating to the inquiry in a disciplinary case, the punishment of compulsory retirement awarded then this is very much a penalty as provided under the CCS (CCA) Rules. The penalty is not judged on the basis of deprivation or non-deprivation of the retiral benefits, therefore, the learned counsel for the respondents in this regard are without any substance.

9. Since we have come to the conclusion that the punishment order is required to be quashed on the basis of infaraction of principles of natural justice, we would not like to debate on the point of competence of the disciplinary authority imparting the punishment because non supply of inquiry report itself, vitiates the entire action of the disciplinary authority.

10. We are told that the applicant had attained the age of superannuation during the pendency of this O.A. and there cannot be any order in relation to the reinstatement of the applicant. However, as per the discussions made-<sup>therefore</sup> above we come to the conclusion that retiring the applicant compulsorily from service was bad in law. Consequently, he shall be deemed to be in service ~~until~~ his normal date of superannuation which is said to be 30.11.1997 and would also be entitled to all consequential benefits including the arrears of pay <sup>etc minor</sup> ~~excluding~~ pension received by the applicant

11. In view of the above discussions, the Original application deserves to be accepted in part and the

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penalty order of compulsory retirement deserves to be quashed.

12. The O.A. is, therefore, partly accepted. The penalty order dated 12.1.96 (Annex.A/2), ordering compulsory retirement of the applicant from service passed by the respondent No.3, is hereby quashed and set aside. The applicant shall be deemed to be in service till his normal date of superannuation. He shall be entitled to his pay from 12.1.96 onwards till his normal date of superannuation with all the consequential service benefits. However, the pension paid to the applicant for the said period, shall be adjusted at the time of making payment of arrears of salary etc. The respondents are given three months time to comply the orders of the Tribunal from the date of communication of the order.

13. It is also ordered that if the retiral benefits of the applicant including the pension are required to be recalculated and revised as a consequence of the aforesaid order then the same should be recalculated, revised and arrears be paid to the applicant accordingly, within a further period of three months.

14. The parties are left to bear their own cost.

*lmp*  
( A.P.NAGRATH )

Adm.Member

*km*  
14/2/2001.  
( A.K.MISRA )  
Judl. Member

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jrm

R. S  
R  
2/12/1901

R (Copy  
on 26/12/01

Part II and III destroyed  
in my presence on 21.3.07  
under the supervision of  
section officer (S) as per  
order dated 19.12.02

Section officer (Record)