

File 27/15

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of Decision : 08.10.2003

O.A. No. 260/2001.

Girdhari Lal son of Shri Hanuman, aged about 50 years, resident of Bypura, Devnagar, Merta Road Distt. Nagour, last employed on the post of Gae Man the office of Senior Section Engineer (P Way), Northern Railway, Makrana.

... Applicant.

v e r s u s

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Superintending Engineering-I, Northern Railway, Jodhpur Division, Jodhpur.
3. Divisional Personnel Officer, Northern Railway, Jodhpur Division, Jodhpur.

... Respondents.

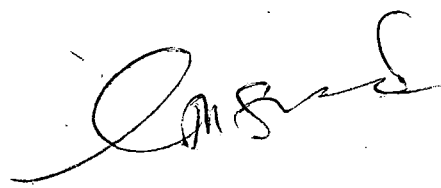
Mr. B. Khan counsel for the applicant.
Mr. Anil Mehta counsel for the respondents.

CORAM

Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.
Hon'ble Mr. G. R. Patwardhan, Administrative Member.

: O R D E R :
(per Hon'ble Mr. G. L. Gupta)

The applicant while working as Gangman was placed under suspension on 17.03.2000. A charge sheet was issued to him under the R S (D&A) Rules 1968. The enquiry was held and respondent No.2 imposed the penalty of reduction to lower post i.e Trackman(Gangaman) vide order dated 24.01.2001. The applicant submitted appeal against the said order and took objection that he had not been supplied the copy of the enquiry report. His appeal was allowed and the penalty order was withdrawn.



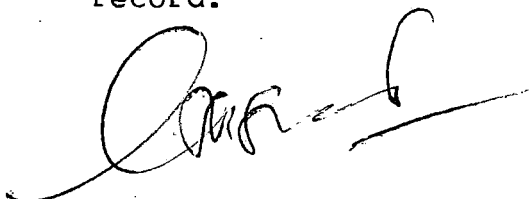
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Thereafter the applicant was supplied a copy of the enquiry report and he made representations against the same. No decision was taken in the enquiry for some time. In the mean time, on 31.03.2001 the applicant made an application praying for voluntary retirement. The same was allowed and the applicant stood retired on 20.05.2001. After his retirement, the penalty order dated 28.06.2001 (Annexure A-1) impugned herein, was passed, whereby the same penalty of reduction to lower post i.e. Trackman was imposed. By another order of the same date it was stated that the period of suspension of the applicant would be treated as 'as the period under suspension'.

2. The applicant calls in question the two orders dated 28.06.2001 mainly on the ground that no penalty could be imposed under Rule 6 of the R S (D&A) Rules 1968 after his retirement.

3. In the counter, the respondents have disputed the claim of the applicant. It is stated that the enquiry was conducted in accordance with rules and the Disciplinary Authority had the power to impose penalty.

4. We have heard the learned counsel for the parties and perused the documents placed on record.

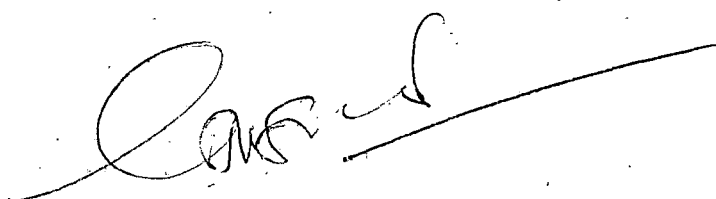


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5. It is evident from the facts stated in the OA and the documents placed on record that the order of Disciplinary Authority dated 24.01.2001 imposing penalty of reduction to lower post had been set aside by the Appellate Authority and the enquiry had been remanded to the Disciplinary Authority. During the pendency of the enquiry, the applicant made an application seeking voluntary retirement. The said application was allowed vide order dated 20.05.2001 (Annexure A-8).

5.1. After the retirement of the applicant, there could not be any occasion for imposing penalty of reduction to lower post to the applicant. If the respondents wanted to punish the applicant in the pending enquiry his request for voluntary retirement ought not to have been accepted. Once the request of the applicant for voluntary retirement was accepted and the applicant stood retired, it has to be presumed that the respondents had withdrawn the charge sheet dated 6.4.2000 and there was no enquiry pending against the applicant on the date of his retirement.

6. If an enquiry remains pending on the date of retirement then to punish an employee Rule 9 of the Railway Services (Pension) Rules 1993 can be invoked and it is the President only who



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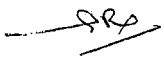
can pass order regarding pension. Admittedly no such order has been passed by the President under Rule 9.

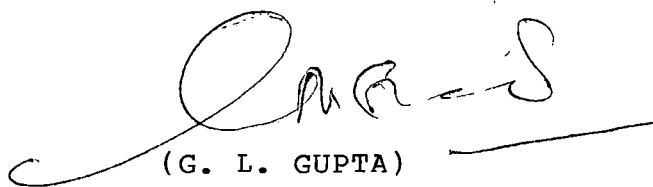
6.1. In our opinion, the order Annexure A-1 imposing the penalty of reduction to lower post is not sustainable in law and is liable to be quashed.

7. Learned counsel for the applicant, pointing out that the suspension period was of short duration, does not press this OA so far as the order Annexure A-2 is concerned.

8. Consequently, the OA is partly allowed. The order Annexure A-1 is hereby quashed. The respondents are directed to make payment of the pensionary benefits, amount of leave encashment, Commutation amount etc., to the applicant forthwith. The applicant shall also be paid interest @10% per annum on the amount payable to the applicant from the expiry of four months from the date of his retirement till the date of payment.

9. The applicant shall also get costs Rs.1000/- from the respondents.


(G. R. PATWARDHAN)
MEMBER (A)


(G. L. GUPTA)
VICE CHAIRMAN

Recd

Best

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on 9/10/03
[Signature]

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order dated/...../.....

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