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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.**

ORIGINAL APPLICATION No. 252/2003

Date of decision: 11th April 2003

Hon'ble Mr. Kuldip Singh, Vice Chairman.

Hon'ble Mr. M K Misra, Administrative Member.

Chaturbhuj, S/o Shri Hari Ram, aged about 61 years, resident of Traffic Colony, Merta Road, Dist. Nagour, last employed on the post of Goods Driver at Merta Road Railway Station, northern Railway now North Western Railway.

: Applicant.

Rep. by Mr. B. Khan: Counsel for the applicant.

VERSUS

1. Union of India through the General Manager, North Western Railway, Jaipur.
2. The Divisional Mechanical Engineer (Power), Northern Western Railway, Jodhpur Division, Jodhpur.
3. The Additional Divisional Railway Manager, North Western Railway, Jodhpur Division, Jodhpur.

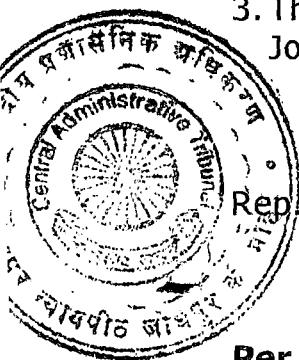
: Respondents.

Rep. By Mr. Vinay Jain: Counsel for the respondents.

ORDER

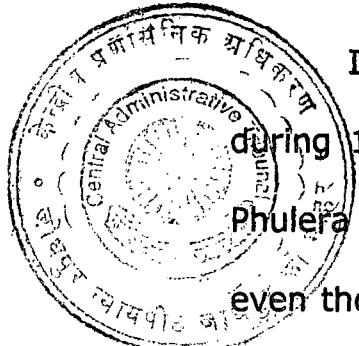
Per Mr. Kuldip Singh, Vice Chairman.

Rule 9(2) of the Railway Services (Pension) Rules, 1993, provides that the departmental proceedings, if instituted against a Railway servant, while he 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 the said rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the railway servant had



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continued in service. Proviso to this rule provides that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.



In this case the applicant, who was a Goods Train Driver during 1996, was sent for duty to take goods Train No.E./Box from Phulera to Rai-ka-Bag. He stopped the train at Banar Railway Station, even though there was a green signal and informed PRC Jodhpur that he cannot proceed further as he has completed 10 hours of duty. He was directed to take the train upto Rai-ka-Bag, which he refused to comply. He was charge sheeted vide communication dated 14.8.1996 (Annexure A-1) and an inquiry was conducted against him. In the inquiry report supplied to him by communication dated 12.11.1997 (Annexure A-5), he stood exonerated of the charges. The disciplinary authority disagreed with the findings of the enquiry officer and held the applicant guilty of the misconduct and imposed the penalty of compulsory retirement by order dated 30.12.1997 (Annexure A-10). Appeal preferred by applicant resulted into rejection by order dated 14.7.1998. The applicant was to retire on attaining the superannuation on 30.10.2001. However, aggrieved against the punishment and appellate orders, he filed O.A.No.245/1999 which was disposed of on 23.11.2001, by quashing the punishment as well as appellate order, but the disciplinary authority was given liberty to pass orders afresh after giving an opportunity of hearing to the applicant in

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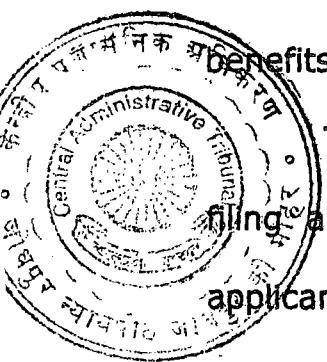
accordance with law.

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The applicant was issued show cause notice dated 9.5.2002 (Annexure A-6) to which the applicant submitted a reply on 26.7.2002 (Annexure A-7). However, the respondent no.2, i.e. The Divisional Mechanical Engineer (Power), Northern Western Railway, Jodhpur Division, Jodhpur, imposed punishment of compulsory retirement vide order dated 18.12.2002 (Annexure A-12). By this order, the applicant stands compulsorily retired w.e.f. 30.12.1997. The applicant submitted appeal dated 31.1.2003 (Annexure A-8), which has also been rejected vide order dated 24.3.2003 (Annexure A-3).

By way of the present Original Application under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing the charge sheet dated 14.8.1996 (Annexure A-1); impugned order of punishment dated 18.12.2002 (Annexure A-2) and appellate order dated 24.03.2002 (Annexure A-3), with all the consequential

benefits.


The respondents have contested the Original Application by filing a detailed reply. They supported the impugned orders. The applicant has filed a rejoinder.

We have heard learned counsel for the parties and perused the material on the file.

The issues which arise for our consideration are as to whether the fresh order of punishment could be passed by the respondent no.2 (subordinate authority) himself when the applicant stood retired from

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service or it was required to be passed by and in the name of the President or as to whether the respondents can impose punishment on the applicant with retrospective effect.

It is undisputed that the applicant had been compulsory retired from service as a measure of punishment by order dated 30.12.1997 and his appeal against such order was rejected on 14.7.1998. On being challenged in O.A.No.245/1999, these two orders stood quashed by order dated 23.11.2001 (Annexure R-2). Once these two orders stood quashed by this Tribunal, the natural consequence to follow was that applicant had to be treated as being in service with all the consequential benefits, as if no order of punishment had been passed against him and he was to be extended all the consequential benefits including retirement on attaining the age of superannuation and the permissible retiral benefits. However, it appears that this course was not adopted by the respondents and they kept the applicant on tenter hooks. They mis-interpreted the liberty granted by the Bench of this Tribunal. Infact the liberty granted to the respondents was to proceed against the applicant by affording him reasonable opportunity of being heard in accordance with law. The law is that when a punishment order has been quashed, its effect also stands diminished. In other words, the applicant was to be treated as having been in service and retired as per the rules.

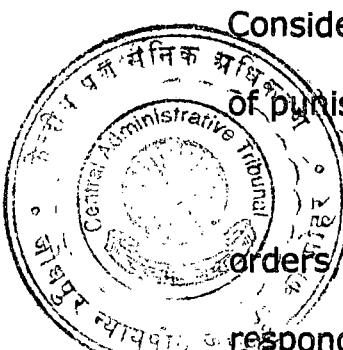
The proviso to rule 9 (2) of the Railway Services (Pension)

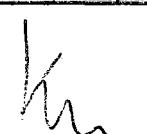
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Rules, 1993, makes clear that where the departmental proceedings are instituted by an authority subordinate to the President against a railway servants who has retired, that authority shall submit a report recording its findings to the President. In this case, the applicant stood retired on 30.10.2001 itself and the show cause and punishment order has been issued by an authority subordinate to the President in 2002. Thus, there is clear violation of the rule 9(2) of the Railway Services (Pension) Rules, 1993, and the impugned orders of punishment cannot be sustained on the touchstone of fair procedure. Thus, the impugned orders have to be quashed and set aside.

We also find that the order of punishment has been passed on 18.12.2002 and it imposes the punishment of compulsory retirement on the applicant w.e.f. 30.12.1997. It is well settled that a punishment cannot be imposed against an employee with retrospective effect more particularly when it is going to cause substantial damage to him.

Considered in the light of this legal provision also the impugned order of punishment has to be quashed.

 In view of what has been discussed above, the impugned orders Annexures A-2 and A-3 are quashed and set aside. The respondents are directed to grant the applicant all the consequential benefits i.e he has to be treated as having been in service from 30.12.1997 to 30.10.2001, with all the benefits of pay and allowances etc. including retiral benefits. However, the respondents are at liberty to proceed against the applicant in accordance with procedure

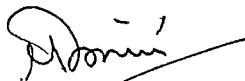


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prescribed in rule 9 (2) of the Railway Services (Pension) Rules, 1993. These directions shall be complied with within a period of three months from the date of receipt of a copy of this order. No costs.




(M K Misra)
Administrative Member.


(Kuldip Singh)
Vice Chairman.

HC*

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Part II and III destruction
in my presence on 10/11/05
under the supervision of
Section Officer () as per
order dated 10/12/05

Section Officer (Revised)
11/11/05