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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH JODHPUR**

**Original Application No.246/2002
This the 1st day of March 2005**

CORAM :

Hon'ble Mr. Kuldip Singh, Vice Chairman
Hon'ble Mr. G.R. Patwardhan, Administrative Member

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L.C. Agarwal S/o Late M.R. Agarwal, aged about 63 years, resident of C-115, Kamla Nehru Nagar I, Jodhpur, last employed on the post of PWI Gd. I (Const) Nawacity, Northern Railway and retired from -service on dated 30.09.1996.

Applicant

(Mr. J.K. Mishra and Mr. B.Khan, Counsel for the applicant)

VERSUS



1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Delhi Division, Delhi.
3. Dy. Chief Engineer (C-II), Northern Railway, Jodhpur.
4. Dy. Chief Engineer (C-I), Northern Railway Jodhpur.
5. Chief Administrative Officer (C), Northern Railway, Kashmiri Gate, Delhi.

Respondents

(Mr. Kamal Dave, Counsel for the respondents.)

ORDER

[PER G.R.PATWARDHAN]

This O.A. has been preferred by L.C. Agarwal, last employed as Permanent Way Inspector – I (Construction), under Northern Railway and last posted at Nawacity. There are two orders that are under challenge passed by the 4th respondent – Dy. Chief Engineer, Northern Railway, Jodhpur. These are placed at Annexs. A/1 and A/2 both dated 2.2.2002. By the first order Mr. Harpal Singh, Assistant Engineer (Construction), was nominated as inquiry officer regarding allegations in the chargesheet against the applicant

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L.C. Agarwal and was directed to complete the inquiry within a period of 45 days. Annex. A/2 of the same date is another communication to Mr. Harpal Singh, Assistant Engineer, Northern Railway, Jodhpur nominating him as inquiry officer regarding another set of charges against the applicant within a period of 45 days.

2. Charges against the applicant, as disclosed by Annexs. A/3 and A/4, inter alia, indicate that the applicant, despite several notices by Dy. Chief Engineer, failed to submit account of various works in track conversion project which were completed some time in the year 1993-94. Another charge indicated that inspite of several notices issued by the Dy.Chief Engineer he failed to submit the store return of some project and this resulted in non-submission of completion reports.



3. The prayer part contained in paragraph 8 of the O.A. runs as follows :-

"(i) That the impugned order dated 2.2.2002 Annexure A/1 and A/2 passed by 4th respondent may be declared illegal and the same may be quashed and the applicant allowed all consequential benefits.

(ii) That the disciplinary proceedings against the applicant initiated as per chargesheet dated 25.9.1996 vide Annexure A/5 and A/6 may be treated as closed/dropped.

(iii) That the respondents be further directed to release complete retiral benefits with interest.

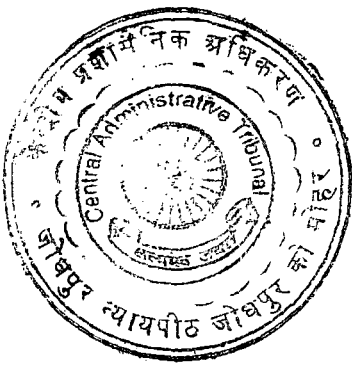
(iv) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice. The costs of this application may be awarded."

4. The O.A. Was filed on 7.8.2002, its reply on

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5.3.2003 and a rejoinder by the applicant – after nearly a year on 20.2.2004.

5. The admitted position as revealed by the pleadings is that the applicant, who was initially appointed to the post of APWI retired on 30.9.1996 and just a few days before that, he was served with two chargesheets as indicated above, which resulted in holding up of retiral benefits and non issuance of no objection certificate. This resulted in filing of O.A. No. 182 of 1997 before this Tribunal. During the pendency of this O.A., he was allowed provisional pension but, the case was dismissed vide orders of 1.4.1999, a copy of which has been placed at Annex. A/5. In paragraph 7 of that order the Tribunal observed that the O.A. was misconceived and the applicant should handover the charge of the post he was holding to the nominated officer before pressing his claim for pensionary benefits and that the respondents would afford all facilities to enable him to handover the charge. The applicant maintains that no progress was achieved in this direction and so another O.A. No. 51 of 2000 was filed challenging Annexs. A/1 and A/2 which also got disposed of by the Tribunal vide its order dated 18.7.2001, a copy of which is placed as Annex. A/6. The Tribunal issued directions to the respondents to complete the inquiry initiated as per the Chargesheet dated 25.9.1996 within a period of four months from the date of receipt of a copy of the order with further directions to the applicant to co-operate in the inquiry. These two chargesheets now are placed at Annexs. A/3 and A/4 as described above. The applicant maintains that despite this direction of the Tribunal,



the respondents have intentionally and deliberately delayed completion of disciplinary proceedings and thus, have forfeited their right to proceed against him and so, not only the charge at Annexs. A/3 and A/4 which are part of impugned orders at Annexs. A/1 and A/2 be quashed but, the disciplinary proceedings initiated against the applicant as per chargesheet dated 25.9.1996 (Annexs. A/5 and A/6), should also be closed and all his retiral dues released with interest.

6. Detailed reply has been filed on behalf of the respondents as also a rejoinder. We have heard the learned counsels for both the parties and have gone through the pleadings and with their consent disposing the O.A. At admission stage. At the very out-set, learned counsel for the applicant relied on :-



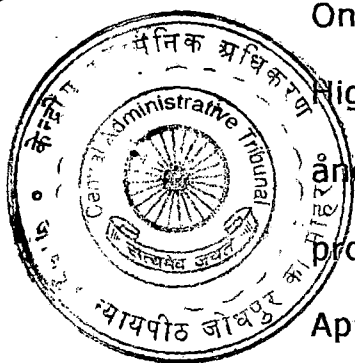
(a) T.A. No. 181 of 1988 – Panchu Gopal Banerjee Vs. Railways decided on 20.11.1990 by Central Administrative Tribunal Calcutta Bench,

(b) an order of Central Administrative Tribunal, Jaipur Bench in O.A. No.443/2001 S.K. Sharma Vs. Department of Atomic Energy, decided on 28.3.2002,

(c) an order passed by the Central Administrative Tribunal Lucknow Bench in O.A. No. 420 of 1995 Krishna Gopal s. Railways dated 6.1.2003 and

(d) an order passed by c.A.T. Cuttack in Uttam Chand Jena Vs. UOI in O.A. No. 277 of 2001 on 22.5.2003.

The first case of Panchu Gopal Banerjee Vs. Union of India and Others - T.A. No. 181/1988 reported in {1991 (1)ATJ62} related to an Assistant Station Master, who was proceeded against by suspension and information that a disciplinary proceeding was contemplated against him. This was some time in November 1978. He represented against the suspension and wanted to know the reason thereof but, that not forthcoming, in December 1978, he moved the Hon'ble High Court challenging the legality of the order of suspension whereupon Hon'ble the High Court stayed its operation. In the meantime, a charge sheet was issued in February, 1979 alleging failure to maintain absolute integrity. On further being informed of this development, Hon'ble the High Court extended the stay granted earlier on suspension and directed the Railway authorities to finalise the disciplinary proceedings within eight weeks. This order was passed in April 1979 but the respondents failed to finalise proceedings and the applicant got promoted in the meantime in 1981. However, in 1983, the inquiry was taken-up again with the applicant participating but even two years thereafter it remained pending. However in April 1984, he was served with an order reverting him to his former post. This was challenged before the Tribunal (C.A.T. came into existence in 1985) and on consideration of the materials on record, it held that the orders of the Hon'ble High Court to finalise proceedings were not complied with within the stipulated time and, therefore, these could not be continued. It, therefore, came to the conclusion that the departmental inquiry should be treated as abandoned and the order of reversion quashed.

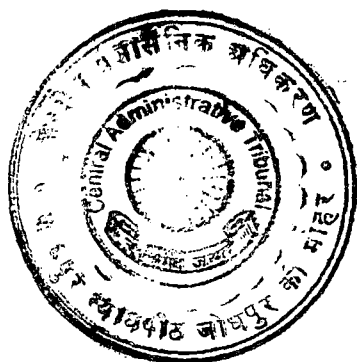


In the second case of S.K. Sharma Vs. The Secretary, Department of Atomic Energy (OA No. 443/2001) decided by C.A.T. Jaipur on 28.3.2002, the applicant, who retired in June 1995 from the post of Senior Clerk was served with a chargesheet two days prior to retirement on the allegation that he had not verified the cash book and cheque register properly, which resulted in defalcation of cash amounting to Rs. 1.20 lakhs. When he approached the Tribunal in the first instance, part of the retirement benefits were released and respondents directed to complete the proceedings within six months from the date of receipt of the copy of that order. The inquiry proceeded thereafter and the applicant submitted his written defence. Without concluding the same, the authorities ordered de novo inquiry vide order dated 6.6.1998 which got concluded in February 2000 but, nothing was informed to the applicant. This resulted in a Contempt Petition No. 66/2000 but it got dismissed. The respondents were to complete disciplinary proceedings by July 2001. However, this could not be adhered to and a prayer for extension of time also got rejected from Hon'ble High Court. The applicant again approached the Tribunal. The stand of the respondents at that stage was that obtaining the views of Central Vigilance Commissioner (CVC) and UPSC and the orders of the Minister Incharge took such a long time that final orders could be obtained only in January 2002, whereafter, the matter had to be referred to the UPSC again. Finally, it was said that the inquiry authority found the applicant guilty of defalcation. Tribunal, however, came to the conclusion that as respondents had failed to complete the



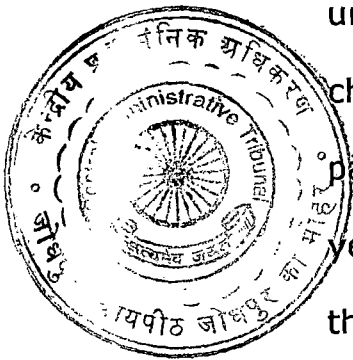
inquiry as per the direction of the Tribunal and thereafter of Hon'ble the High Court, seven years had been consumed since retirement and the CVC had opined that there was no mala fide or dishonest motive it was difficult to sustain the proceedings and they stood abated.

In Sri Krishna Gopal Vs. General Manager, Northern Railway, Lucknow, decided by Central Administrative Tribunal, Lucknow Bench, the applicant, who retired in July 1993, was issued with a chargesheet in 1988 regarding allegations of gross negligence and lapses in accounting of the material under his charge. An inquiry was held and in 1989 a penalty of censure was imposed closing the matter. Subsequently, an amount of about Rs. 45,000/- was proposed to be recovered from him pertaining to the same case. In the O.A. that he preferred, this order of recovery was quashed and respondents were given liberty to issue show cause notice and to complete the inquiry in case it is contested. The applicant prayed to the Tribunal that since passing of the above mentioned order in 1993 the amount of recovery was finalised at Rs. 6,21,653/-. The main ground to attack the proposed recovery was issue of double jeo pardy and lack of jurisdiction over a retired employee. Attempt was made by the respondents to distinguish the charges of the two proceedings but the Tribunal came to the conclusion that the authorities had been negligent in pursuing the matter and thus impugned orders could not be sustained. The applicant was , therefore allowed all the retiral benefits as if nothing was adverse against him to obstruct payment of pensionary benefits.



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The last case of Uttam Charan Jena Vs. Union of India and Ors. of Central Administrative Tribunal, Cuttack Bench, reported in 2003 (3) ATJ 96, related to removal of the applicant by the disciplinary authority. It was submitted by him that in the earlier application, the Tribunal had directed to finalise the proceedings within a period of 90 days but the disciplinary authority did not make even a feeble attempt to say as to why the same could not be completed in time and so the order passed in violation of the said direction was a nullity. The Tribunal, referring to the Apex court decision reported in 1995 (2) SCC 570 that if a delay is caused and is unexplained, the Courts should interfere and quash the charges, came to the conclusion that the authorities by passing order dated 11.7.2001 i.e. after about seven years, failed to take into account its earlier observations and thus the order of punishment i.e. removal from service needed to be quashed.



7. The learned counsel for the respondents, Mr. Kamal Dave, at the out-set, conceded that there has been delay on the part of respondents in completing the inquiry but that this was not wilful. He submitted that the earlier directions of the Tribunal were given on 18.7.2001 and this allowed them time up to 18.11.2001 provided the applicant cooperated with them in terms of the direction. He maintained that it took some time to initiate the process which should be evident from their letter of 2.2.2002 whereby, a inquiry officer was appointed and in which it was specifically mentioned that he had to complete the inquiry in terms of the directions of the

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Tribunal within 45 days. He further maintained that thereafter the applicant did not take initiative and approached the Tribunal in August 2002 (the present O.A.) and they were, therefore under the impression that as the case has again become subjudice, it was not appropriate for the inquiry officer to proceed in the matter. He further maintains that the applicant has not been able to explain how the directions of the Tribunal in his earlier O.A. No. 182 of 1997 decided on 1.4.1999 were complied with wherein, the applicant was directed to handover the charge of the post he was holding before his retirement to the nominated officer before pressing the claim for pensionary benefits. He maintained that when the applicant failed to handover the charge, they had to form a committee of officers to prepare a list in respect of records under the control of the applicant and this could be done only after breaking the lock of the Almirah. He, therefore, submitted that as the main charge against the applicant related to his failure to return the records of completion report of some project, he had to be proceeded against and despite serving chargesheets dated 22.12.1991, 18.3.1992 and 12.4.1993, the applicant did not care to respond to them.

Finally, the learned counsel submitted that in view of this back ground as also the conduct of the applicant noted by the Tribunal in their order of 26.9.2000 in O.A. 376/1996 - (Annex.R/1) where there is a specific mention of six disciplinary cases, the Tribunal would like to consider if a final opportunity should be given to the respondents to complete the proceedings in a given time frame.

8. In the orders referred-to by the learned counsel for the respondents - especially, one dated 26.9.2000, we find



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that right from 1991 (the applicant retired on 30.9.1996), the applicant has been facing departmental proceedings on one count or the other. While it is a fact that the respondents have not been able to complete the proceedings within the time frame stipulated in the order of the Tribunal, there is nothing on record or in the arguments which could convince us that the applicant has taken sincere steps to cooperate.

9. Even the cases referred to by the learned counsel for the applicant and which have been described above in paragraph 6 are materially different; the only commonality being prayer to quash proceedings. While one of these, S.K. Sharma Vs. Secretary, Department of Atomic Energy, can be compared only from the point of view of service of chargesheet close to the date of retirement, we find that the applicant was facing many other proceedings started as far back as 1991 and to that extent, the latest one which has come to notice through this O.A. by itself cannot lead to an impression that the respondents have been prejudiced or biased against the applicant.



10. The rejoinder filed by the applicant would like us to believe that as the applicant suffered an accident and fractured his legs in June 1997, he could not completely hand-over the charge and that the respondents are out to harass him. The fact, however, remains that he retired on 30.9.1996 and was expected to hand over the charge much before that. Not only that some of the averments in the rejoinder (extracts follow) are near admissions of guilt and one relating to an alleged defective lock on his almirah - quite

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Abstract



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how the almirah was locked when 'the lock' was not in 'working' condition' **and**

(vi) the manipulation in the records by the respondents cannot be ruled out and the question of applicant's presence does not arise to prepare the list of office record which was lying in the custody of Mr. Raja Ram DS/KP/C Nawa City for the last four years.

11. We, therefore, do not propose to accept the prayer of the applicant to quash the proceedings in question. The respondents are directed to finalise the proceedings for which they have appointed an inquiry officer vide Annex. A/1 and A/2 within a period of 120 days. It is also made clear that in case, Mr. Harpal Singh, the inquiry officer has been transferred or superannuated, a new inquiry officer shall be appointed within next 15 days strictly as per rules. The inquiry should be held on a day to day basis with notice to the applicant. It is expected that the applicant will cooperate now with the respondents towards completion of the same.



12. It is made clear that we have not expressed any opinion on the merits of the case or the charges, which are subject matter of inquiry and the applicant would be at liberty to agitate the matter again, if so advised, after the inquiry is concluded and a final decision taken on the charges.

13. It is noticed that Northern Railway - as it was in 2002 when the O.A. was filed, has been reorganised with Jodhpur, Jaipur and Bikaner Division, *now being brought* under North Western Railway. As the applicant has retired

from Bikaner Division and is residing at Jodhpur, a copy of this order shall be sent by the Registry to the General Manager, North Western Railway, Jaipur, Divisional Railway Manager, North Western Railway, Jodhpur as also to Dy. Chief Engineer (Construction - I), North Western Railway, Jodhpur, for immediate necessary action.



14. No orders as to costs.

(G.R. Patwardhan)
Administrative Member

(Kuldip Singh)
Vice Chairman

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~~Part II and III destroyed~~
in my presence on 8/11/14
under the supervision of
section officer 61 as per
order dated 8/12/13

Section officer (Record)

Copy of order
Sent to G. M. Jaipur,
JRM Jaipur & Dy. Chief
engineer (C) J Jaipur
by Speed Post Regd AD
Wale n. 44
to 46
dt 9.3.05

R/Copy
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10/07/05
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