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**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH: JODHPUR**

ORIGINAL APPLICATION NO. 235/2004

Date of decision: 16.8.2005

Shri R.B Saxena

...Applicant (in person)

V E R S U S

U.O.I. & Ors

...Respondents.

Mr. Manoj Bhandari

Advocate for Respondents.

CORAM:

Hon'ble Mr. J.K. Kaushik, Judicial Member.

Hon'ble Mr G.R.Patwardhan, Administrative Member.



1. Whether Reporters of local papers may be allowed to see the judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*

G.R.
(G.R.Patwardhan)
Administrative Member.

J K Kaushik
(J K Kaushik)
Judicial Member.

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CENTRAL ADMINISTRATIVE TRIBUNAL,

JODHPUR BENCH, JODHPUR

ORIGINAL APPLICATION NO.: 235/2004

DATE OF ORDER: ...16...8...2005

CORAM:

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER

HON'BLE MR. G.R. PATWARDHAN, ADMINISTRATIVE MEMBER

R.B. Saxena S/o Shri Kishori Lal Saxena, aged 62 years, R/o 669 Bhagat Singh Colony, Opp. Pandit Dhara Kanta, Gajner road, lallgarh, Bikaner.

...Applicant.

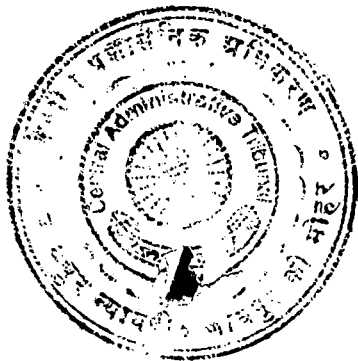
Applicant present in person.

VERSUS

1. Union of India through General Manager, North Western Railway, Head Qurs. Office, Jaipur (Raj.).
2. Divisional Railway Manager, North Western Railway, Bikaner (Raj.)
3. Divisional Electrical Engineer, North Western Railway, Bikaner (Raj.).

...Respondents.

Mr. Manoj Bhandari, counsel for the respondents.



ORDER

[Per Mr. G.R. Patwardhan, Adm. Member]

O.A. No.235/2004 has been filed by Mr. R.B. Saxena against three respondents - The Union of India, represented through the General Manager, North Western Railway, Jaipur, the Divisional Railway Manager, North Western Railway, Bikaner and the Divisional Electrical Engineer, North Western Railway, Bikaner. Through para 3 of the O.A. two orders dated 22.01.2003 passed by Mr. L.C. Majumdar, Divisional Railway Manager and Disciplinary Authority imposing punishment of

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compulsory retirement, and the other dated 21.07.2004 passed by Mr. R.M. Agarwal, General Manager, the first respondent rejecting revision have been challenged. The O.A. has been filed on 27.08.2004, its reply under the signature of Senior Divisional Electrical Engineer, North Western Railway, Bikaner on 07.02.2005, a rejoinder by the applicant on 18.03.2005 and a reply to the rejoinder on 10.05.2005.

2. Briefly stated, the O.A. would like us to believe that

- (i) The applicant was allotted Railway Quarter No.206/A on 30.04.1988 by Dy. CME Workshop, Bikaner.
- (ii) An action under D & A rules 1968 was initiated vide letter No.CA/DEE/Vig/RBS.99 dated 25.06.1999 by respondent No.3 without statement of imputations of misconduct/misbehaviour and beyond his jurisdiction because the unauthorized occupation of Railway Quarter, raising additional structure or fixture and erecting additional instruments like dish antenna etc. do not fall under rule 3 of the Railway Services conduct rules 1968 but under PPE Act hence void ab-initio.
- (iii) The process of departmental enquiry was started by appointing Sh. S.P. Sethi EO/HQ, New Delhi as enquiry Officer. The applicant raised objections to initiate and deal with the case, which was accepted by E.O.
- (iv) The respondents arbitrarily declined the suggestion of E.O. and referred back the case to E.O. for further processing of the Departmental Enquiry, as respondents no.2 & 3 were bent upon to make the applicant victim of their malafide intentions having decided to penalise him.
- (v) The Enquiry Officer ultimately completed the enquiry and submitted his equivocal and ambiguous report with findings which was given to the applicant on 13.09.2001 and the applicant submitted reply on 24.09.2001 against E.O.'s report, but no action was taken

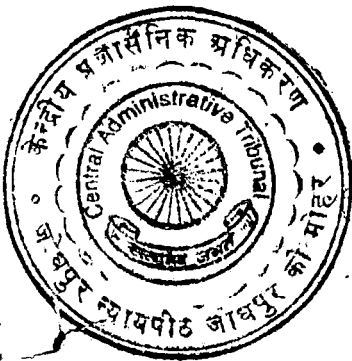


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by the respondent no.2 & 3 upto January, 2003.

- (vi) The respondents no.2 & 3, under collusion & connivance and as a measure of cover-up exercise, projected a plan to penalize the applicant by imposing a harsh penalty of compulsory retirement w.e.f. 22.01.2003 vide NIP, dt. 22.01.2003 but did not serve it on the applicant upto 31.12.2003.
- (vii) The entire action is illegal, unconstitutional and void ab-initio.
- (Viii) The applicant constructed no additional room in his Qur. No.206/A. The accommodation i.e., rooms, kitchen, bath room and court yard, etc., is one and the same as provided by Railway in hundreds of quarters in the Rly Colony at Lallgarh, Bikaner.
- (ix) As regards erection of dish antennae respondent no.3 had given permission for operation of cable dish connection in the Rly. Colony when applied by Sh. Anoop Kumar Saxena S/o the applicant. Hence, there is no concealment of fact or any material.
- (x) An appeal was preferred to the appellate authority on 24.02.2003 which has been rejected without giving the opportunity of personal hearing and without reasoning - vitiating the entire proceedings.
- (xi) The revision petition was submitted to respondent no.1 on 25.11.2003 but the same has also been dismissed by upholding the decision of respondent no.2 as on Annexure A/1 without going through the revision petition properly and over ruling the P.P.E. Act 1971.



3. The relief sought from the Tribunal as contained in para 7 of O.A. is as follows:

- (i) The charge sheet dt. 25.06.1999 as on Annex. A/4, Disciplinary authority's order dt. 22.01.2003 as on Annex. A/1 and the revision/appellate authority's order dated 21.07.2004 as on Annex. A/2 be quashed and set aside.
- (ii) The applicant be granted all the consequential benefits.

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[Signature]

4. The O.A. has eight annexures and they are serially numbered from A/1 to A/8. These are as follows:-

A/1= Order of disciplinary authority imposing punishment of compulsory retirement - 22.01.2003.

A/2= Order of Revisional Authority rejecting revision - dated 21.07.2004.

A/3= List of officers retiring in calendar year 2003.

A/4= Charge sheet issued by Divisional Electrical Engineer dated 25.06.1999.

A/5= D.A.R. enquiry proceedings of 09.02.2000 indicating that the applicant sought an adjournment and so the enquiry was adjourned to 10.02.2000.

A/6= Letter issued by Divisional Electrical Engineer, Bikaner to Sr. Section Electrical Engineer (Power) informing that the request of one Anoop Kumar dated 22.04.1997 to provide separate meter for commercial purpose in Railway Quarter No.206/A, New Railway Colony, Lalgarh has been accepted by the competent authority - dated 10.06.1997.

A/7= Order passed in appeal by the appellate authority - dated 02.07.2003.

A/8= Revision petition to the General Manager dated 25.11.2003.



It is noteworthy that the applicant has not enclosed copy of the full text of the enquiry report that was made available to him by letter no.CA/DEE/vig/R.B.S./99 of 06.08.2001 - he has chosen to enclose copy of only one day's proceeding as A/5.

[Signature]

Rejoinder to the reply of respondents contains three annexures. These are as follows: -

A/9= Extracts of I.R. Code of Engineering Department 1982
- paragraph 1049 to 1059 - all dealing with eviction etc. from public premises.

A/10=Applicant's letter to the Divisional Electrical Engineer, Bikaner informing him of reporting for duty on 30.01.2003 after remaining sick between 22.01.2003 and 24.01.2003 and being under treatment of Private Medical Practitioner.

A/11=Note dated 30.01.2003 by applicant that the attendance register of his branch is missing and that it needs to be located.

5. In order to show that the charge sheet is misconceived and therefore all subsequent actions of the respondents illegal, the applicant has taken the following grounds to attack the impugned orders:



- (i) Because the subject matter, "Construction of additional room/raising unauthorized additional structure and temporary erection", exclusively pertains to P.P.E. Act hence beyond the competent jurisdiction of respondents.
- (ii) Because any alleged additional construction, raising additional structure or erecting disc and unauthorized occupation of Government accommodation does not fall within rule 3 of Railway Service conduct rules 1966 hence no disciplinary action can be taken.
- (iii) Because the Estate Officer (DSE (C)) is only the competent authority to deal with the matter under P.P.E. Act.
- (iv) Because the matter has not been dealt with by the competent authority under proper rules &

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Act but arbitrarily hence illegal and void ab-initio.

- (v) Because keeping the matter pending w.e.f. Sept. 2001 to January, 2003 for hard 17 months by respondents No.2 & 3 is not free from doubts.
- (vi) Because the applicant received notice Annexure A/1 through postal dak on 31.01.2003 at 15.00 hrs. when retiring on that very day on superannuation hence not applicable and having no effect. It is ipso-facto infructuous and hence void ab-initio.
- (vii) Because the appeal and the revision petition both have been rejected without reasoning and taking into account the procedure, rules & Act in this regard.
- (viii) Because unauthorized occupation of Govt. accommodation - Non vacation - raising unauthorized structure or any erection is not a misconduct and no disciplinary action could be taken under Railway D & AR 1968.
- (ix) Because the only way is to have recourse under Public Premises Eviction Act 1971.

6. We may now have a look at the impugned orders. The first one is the charge sheet; foundation of the case and therefore we quote it in extenso:



Article - I:

He processed the application of Sh. Anoop Kumar Saxena (his son) residing with him in the quarter allotted to him, on 23.04.1997 for a separate electric connection for running the cable dish for commercial purpose concealing the facts and not mentioning regarding extant rules/policy to mislead the administration.

Article - II:

He got constructed unauthorizedly a room in the quarter no.206/A, allotted to him for his residential purpose, without any authority.

Article - III:

Got installed a cable dish connection in this room and

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using the same for running cable dish connection for commercial purpose from this room in the name of his son Sh. Anoop Kumar Saxena.

Article - IV:

On directive of Vigilance, DEE/Bikaner spared Sh. Saxena twice to report to vigilance for certain clarifications but Sh. Saxena did not attend vigilance thereby not co-operating with the vigilance and causing avoidable delay in investigation.



By the above act of omission and commission Sh. R.B. Saxena OS/Elect./BKN failed to maintain absolute integrity exhibited lack of devotion towards his duties and acted in a manner unbecoming of a Rly. Servant and thus contravened Rule no.3.1(i) (ii) & (iii) of Rly. Service Conduct Rule 1966.

7. These are the documents with the original application and the case of the applicant challenging the charge sheet and the two impugned orders therefore needs to be examined with reference to these and what has been relied upon by the respondents. The applicant has not raised any issue relating to the conduct of inquiry or lack of opportunity to defend himself. He has mainly raised the issue of the applicability of PPE Act, 1971 permission for commercial use of premises, joint check conducted by the Divisional Electrical Engineer, denial of constructing a room in his official quarter and lastly allegations of malafide.

On the last date the applicant pleaded his case in person. Mr. Manoj Bhandari appeared for respondents and has been heard.

8. Through the reply referred to above, the respondents have raised the following points to meet the challenge to the charge sheet and the two other orders passed in appeal and revision -

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- (i) Rule 3 of the Railway Servants Conduct Rules insists on every Railway servant to maintain absolute integrity, devotion to duty and do nothing which is unbecoming of a Railway servant.
- (ii) The allotment of quarter No.206/A to the applicant was held to be irregular after he got transferred to Bikaner Division on 21.09.1999 and therefore from October 1999 to January 2003 he was liable to pay something more than the normal rent.
- (iii) However he not only continued to occupy the quarter, but also constructed one room and installed a cable network which resulted in cancellation of allotment of the quarter on 25.06.1999.
- (iv) Despite this cancellation the applicant did not vacate the same and thus became liable to pay damage charges.
- (v) This cancellation order dated 25.06.1999 of the Divisional Electrical Engineer was challenged by the applicant in Central Administrative Tribunal, Jodhpur and the Hon'ble Tribunal came to the conclusion that the applicant should have been afforded an opportunity before issuing notice by the competent authority.
- (vi) Thereafter a show-cause notice was issued (this time by the Divisional Mechanical Engineer on 25.09.2001) where after the applicant presented an application which after consideration was disposed on 21.07.2002.

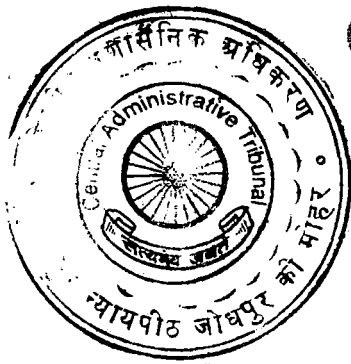


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(vii) Another representation to Divisional Railway Manager was made by the applicant on 11.03.2002 which also got disposed off on 31.05.2002.

(viii) Thus it is clear that the applicant should accept to have over-stayed in the quarter allotted by them and was liable to pay penal rent.

(ix) The Senior Scale Officers holding independent charge in the Department, as appear in the classifications given in Schedule 2 of the Railway Servants (D & A) Rules, 1968 are fully competent to take disciplinary action and thus the order issued by the Divisional Railway Manager as Disciplinary Authority is legal.



(x) It was not proper for the applicant to process application of his son for commercial use of the quarter and by such conduct he has exhibited lack of devotion to duty because he did not mention the extant rule or policy while processing the case.

9. A rejoinder to the reply was filed by the applicant which has mainly dealt with the issue of the occupation of the government quarter. He has highlighted that even if it was an unauthorized occupation, it could not be construed as misconduct. He has summed up his arguments in paragraph 2(e) of his rejoinder by raising a point which he considers very vital - "whether the provision laid down in the rule has been complied with and if not whether it has resulted in the violation of any provision of the Constitution of India or any failure of justice." In paragraph 4 of the rejoinder he further goes on to say that "the conduct of the

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respondents is not above jurisdiction and tantamounts to misleading the Tribunal to malafide intentions." About running of commercial activity in the quarter, he observes that " As far as to say whatever was being done in that quarter for the commercial purpose was with due permission of the competent authority, in the interest of the dwellers of the colony."

However, beyond these averments he has not quoted the rules or the logic under which his actions are to be treated as bonafide and those of respondents as misleading the Tribunal to malafide intentions.

10. The reply to the rejoinder highlights the following:



O.A. No.98/2003 filed by the applicant against the respondents challenging cancellation of allotment of quarter No.206/A has been dismissed by a Division Bench of this Tribunal on 02.03.2005. Besides, the fact of unauthorized construction of a room and erection of three dish-antennae has been proved by a joint inspection and the report of the team also bears the signature of the applicant. To quote " All this was found during the joint check conducted by an authorized official team headed by the Chief Vigilance Inspector, Headquarters Office, Northern Railway, Baroda House, New Delhi on 02.12.1998 and the applicant was called from office and remained present during the joint check and in his presence the check was conducted. The applicant signed the report of the joint check."

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11. Alongwith the reply, the respondents have enclosed copies of joint check on 02.12.1998. This is annexure R-II and shows the signature of four members of the team as also of the applicant who signed on the same date. Below the signature it is mentioned that he was called from office on telephone and remained present during check. There is a specific mention that the additional room constructed in the court yard of the quarter was being used as operating room for cable distribution. It is therefore a bit surprising to find the following comment in the rejoinder -- " There was neither any joint check nor the applicant was present therein. However the Vigilance officials came in the office of the applicant on 02.12.1998 and asked the applicant to sign a plain paper which was already containing the signatures of four persons. No matter or no reason was told by the Vigilance officials. The fictitiousness and the manipulations are obviously apparent from the note below the signature of the applicant." Nothing more has been said by the applicant to contradict the report or his signature on it. The only presumption that can be drawn therefore is that these two imputations are correct. This is confirmed by the observations of the Bench of the Tribunal in O.A. 200/1999 in their order of 14.02.2001 - not challenged by the applicant. Here also the contesting parties were the same - the observations are as follows: -



While the applicant was in occupation of the said quarter, the applicant's son moved an application before the Senior Electrical Engineer (Power), for providing a separate electric connection for

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commercial purposes i.e., for dish connections, etc. The same was sanctioned vide order dated 30.06.1997. Thereafter, there has been a vigilance inspection on 02.12.1998 and a report was prepared by the vigilance team, and consequent thereto, the allotment of quarter to the applicant was cancelled which is the subject matter of challenge. During the course of arguments, it was stated by the learned counsel for the applicant that no notice prior to cancellation of allotment was given to the applicant. The applicant in fact had removed all his dish establishments in the month of December 1998 itself.

12. We are conscious of the fact that we are dealing with the outcome of a disciplinary proceeding and we are not sitting in appeal. The powers of the Tribunal in cases of this nature have come to be defined through a series of judgments of the Hon'ble Supreme Court. Our job is not to appraise the evidence or go behind each and every aspect of the matter except the following:

- (a) Did the concerned authority have jurisdiction to pass orders?
- (b) Were the rules of natural justice followed by affording adequate opportunity to the charged officer? and (c) Is the punishment inflicted so outrageous as to shock the conscience of a reasonable and prudent man?

We will therefore examine the case within these paramaters.

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13. We find that essentially there are two charges -- one relating to unauthorized construction of a room without permission and the second dealing with commercial activity in the said premises. In so far as issue of unauthorized occupation and cancellation of allotment is concerned, we find that a Bench of this Tribunal in another O.A. has already held that the cancellation was justified. Existence of a room in an unauthorized way and installation of dish antennae with connections as mentioned above is the outcome of a check by the Vigilance Section and the report bears the signature of the applicant. Through his pleadings and arguments, the applicant has repeatedly drawn attention to such additional rooms being in existence in number of other quarters. But he has not made any categorical statement that he had nothing to do with it and that he was prepared to have it removed. He even goes to say that the alleged construction of an additional room does not constitute misconduct and this cannot be taken up under DA rules.



14. In so far as running of cable connection from the premises is concerned, the applicant admits that his son had applied for a commercial connection and that it was sanctioned and therefore this cannot be treated as a misconduct on his part.

15. We may therefore have a look at Railway Services Conduct Rules 1966 in order to see if an activity like erection of dish antenna could have been carried out in the quarter allotted and occupied by the applicant. Rule 15 of these rules relating to private trade or employment and Rule 2 relating to definitions are

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the relevant ones and are reproduced below in that order.

(Emphasis supplied)

Rule - [15] Private trade or employment:--

(1) Subject to the provisions of sub-rule (2), no railway servant shall, except with the previous sanction of the Government --

- (a) engage directly or indirectly in any trade or business, or
- (b) negotiate for, or undertake, any other employment, or
- (c) hold an elective office, or canvass for a candidate or candidates for an elective office, in any body, whether incorporated or not, or
- (d) canvass in support of any business of insurance agency, commission agency, etc., owned or managed by any member of his family, or
- (e) take part except in the discharge of his official duties, in the registration, promotion or management of any bank or other company registered or required to be registered, under the Companies Act, 1956 (i of 1956) or any other law for the time being in force, or of any co-operative society for commercial purposes.
- (f) participate in or associate himself in any manner in the making of --
 - (i) a sponsored media (radio or television) programme; or
 - (ii) a media programme commissioned by Government media but produced by a private agency; or
 - (iii) a privately produced media programme including video magazine;



Provided that no previous permission shall be necessary in case where the railway servant participates in a programme produced or commissioned by Government media in his official capacity.

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(2) A railway servant may, without the previous sanction of the Government --

- (a) undertake honorary work of a social or charitable nature, or
- (b) undertake occasional work of literary, artistic or scientific character, or
- (c) participate in sports activities as an amateur, or
- (d) take part in the registration, promotion or management (not involving the holding of an elective office) of a literary, scientific or charitable society or of a club or similar organisation, the aims or objects of which relate to promotion of sports, cultural or recreational activities, registered under the Societies Registration Act, 1860 (21 of 1860), or any other law for the time being in force, or
- (e) take part in the registration, promotion or management (not involving the holding of an elective office) of a co-operative society substantially for the benefit of railway servants, registered under the Co-operative Societies Act, 1912 (2 of 1912), or any other law for the time being in force:



Provided that--

- (i) he shall discontinue taking part in such activities, if so directed by the Government; and
- (ii) in a case falling under clause (d) or clause (e) of this sub-rule, his official duties shall not suffer thereby and he shall, within a period of one month of his taking part in such activity, report to the Government giving details of the nature of his participation.

(3) Every railway servant shall report to the Government if any member of his family is engaged in a trade or business or owns or manages an insurance agency or commission agency.

(4) Unless otherwise provided by general or special orders of the Government, no railway servant may accept any fee for any work done by him for any

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private or public body or any private person without the sanction of the prescribed authority.

Rule - [2] Definitions:-- In these rules, unless the context otherwise requires:--



- (a) "Government" means, in relation to --
 - (i) gazetted officers holding posts in the Railway Board, the President;
 - (ii) other gazetted officers, the Railway Board;
 - (iii) non-gazetted officers in the Railway Board, the Secretary, Railway Board;
 - (iv) other non-gazetted officers in offices directly under the administrative control of the Railway Board, the Heads of the offices concerned; and
 - (v) other non-gazetted officers, the General Managers of the Railway administrations concerned.

Provided that for purposes of Sub-rules (2) and (3) of Rule 5, Sub-rule (1) of Rule 8 Sub-rule (1) of Rule 10, Rule 14, Sub-rules (1) and (3) of Rule 15, Sub-rule (3) of Rule 16, Sub-rule (1) of Rule 19 and Rule 21, 'Government' means the Railway Board in the case of all non-gazetted Railway servants.

16. In the instant case, on the basis of the pleadings i.e., the O.A., its enclosures, the rejoinder and its enclosures as also the arguments of the applicant in person, it is absolutely clear that --

- (a) the occupier of the quarter (applicant) had not taken any permission under Rule 15, nor had informed the Railway Board
- (b) such permission, if any, in his case could have been granted only by the Railway Board and (c) the so called permission granted to Anoop Kumar, son of the applicant has no relevance in the matter since the quarter was allotted to the applicant.

It can therefore be safely concluded that this particular behaviour of the applicant, which has been mentioned in article

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III of the charge sheet is definitely contrary to Railway Services Conduct Rules 1966 and that being so can be justifiably treated as misconduct. -- and unbecoming of a railway servant. In so far as the article I of the charge is concerned, the applicant has not explained to us how it is misplaced. He has also not enclosed a copy of I.O.'s report which could have disclosed something more.

Therefore, in totality, both these articles stand proved.



There is no allegation of opportunity not having been offered in the proceeding. That being the case, it has to be held that adequate opportunity was offered.

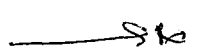
18. One of the grounds taken to attack the impugned orders is delay on the part of respondents - vide para 5-(v) above. The applicant says that from September 2001 to January 2003 it remained pending. But we find that much of this was consumed by litigation. The applicant had filed an O.A. - No.200/1999 decided on 14.02.2001 which required the respondents to issue a fresh notice and hear the matter. There was no end to it as another O.A. No.98/2003 soon followed. This ground of delay therefore is not very material.

19. Though allegations were raised of malafide, not a word has been mentioned about the bias or prejudice that coloured the proceeding or the impugned orders. We cannot therefore presume any. The orders passed in appeal and revision are detailed. They also disclose that the respondents have shown leniency in awarding punishment.

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10. In the result, conscious of the powers of the Tribunal in matters of this nature, we do not find any reason to interfere with the impugned orders. The respondents have already taken into consideration long years of service rendered by the applicant when they chose to inflict the punishment of compulsory retirement and not dismissal from service. O.A. dismissed without any orders as to costs.


(G. R. Patwardhan)
Administrative Member


(J. K. Kaushik)
Judicial Member

Anu

Recd. Reportable performance

W. H. H. H.

6/9/05
R. B. Saxena

Copy of order sent
to pet by Speed post

Recd AD vide

H. 280

dt 25/8/05

Part II and III destroyed
in my presence on 17-1-14
under the supervision of
Section officer () as per
order dated 18/1/13

Section officer (Record)

R/ Reportable performance
G. H. H. H.
08/9/05
for M. H. H. H.
12-9

R/c
G. H. H. H.
17-08-05
for M. H. H. H. H.