

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
CALCUTTA

No.O.A.607 of 1997

Date of order : 24.7.2007

Present : Hon'ble Dr. A.R. Basu, Administrative Member

Hon'ble Dr. D.K. Sahu, Judicial Member

Tuskar Kanti Guha,
S/o Late D.C. Guha, aged
about 60 and a half years,
Retd. CWI(Spl), S.E. Railway,
Calcutta - 43 at present residing at
6/1, WIB(R), Phase IVA, Golf Green
Urban Complex, Calcutta.

.....Applicant

- Vs. -

1. Union of India, service through Secretary,
Ministry of Railways, Railway Board,
New Delhi -1;
2. Joint Director Establishment(D&A), Railway
Board, New Delhi -1;
3. Executive Director Mech. Engg.(Freight),
Railway Board, New Delhi-1
4. General Manager, S.E. Railway, Garden Reach,
Calcutta - 43;
5. Chief Rolling Stock Engineer (F), S.E. Rly.,
Garden Reach, Calcutta-43

.....Respondents

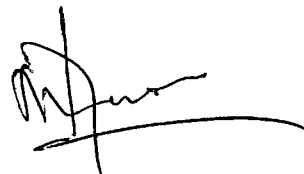
For the applicant : Mr. B.C. Sinha, counsel

For the respondents : Mr. K. Chakraborty, counsel

ORDER

Per Dr. D.K. Sahu, J.M.

The applicant retired on 31.12.1994 as CWI from respondent Railway's organisation. Pensionary benefits have been released in his favour. However, he was issued with a chargesheet on 2.5.1997 vide Annexure A-1 wherein it is imputed that



while serving as CWI, he was found negligent in certification of Railway articles on 30.6.1993. The applicant has thus filed application to set aside the chargesheet with a prayer to grant any other relief as deemed fit and proper. It is submitted that chargesheet issued at such a belated stage is not sustainable.

2. The respondents in the written reply submit that the applicant was negligent in performance of duty and within the stipulated period chargesheet has been issued against him. An inquiry was held, but the applicant preferred not to appear before the Inquiry Officer. Thereafter the President in consultation with the Union Public Service Commission has imposed penalty of reduction of 20% of pension. He filed a Petition before the President of India, but the concerned General Manager has turned down the petition.

3. We have gone through the chargesheet and the allegations/imputations. The chargesheet has been issued within 4 years from the date of alleged misconduct. After careful consideration we do not find any material to quash the chargesheet.

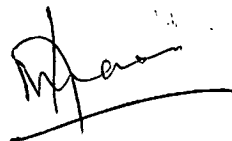
4. To reiterate, the report of Union Public Service Commission at Annexure R-1 is exhaustive and analytical. The Union Public Service Commission held that all reasonable opportunities of being heard has been given to the applicant.

5. During the course of hearing the petition of the applicant addressed to the President of India, Annexure R-3 and the letter of Deputy Director, Establishment(D&A) of the Railway Board forwarding the same to the General Manager, South Eastern Railway, Kolkata vide Annexure R-4 have been referred to by both the parties, so also the order of the General Manager, Annexure R-5 dated 2.4.2006 wherein he withheld the said application from forwarding that to the President for his consideration.

6. Ld. counsel for the respondent Railway Administration submits that the General Manager has been authorized to deal with such an application. So, he dealt with the application.

7. Rule 31 of the Railway Servants(D& A) Rules, 1968 reads as follows:-

“ Nothing in these rules shall operate to deprive a Railway servant from exercising his right of submitting a petition to the President in accordance with



the instructions contained in Appendix 'II' to the Indian Railway Establishment Code, Volume I(Fifth Edition, 1985)."

The Rule contains a non-obstinate clause, as such, it is manifest that irrespective of any order passed in accordance with the Rule, Railway servant can exercise his right for submitting a petition to the President.

8. The petition should be filed and dealt with in accordance with the instruction contained in Appendix-II of the IREC. Perusal of said Appendix reveals that the authorized officer can withhold the application without being sent for presidential order or he may send the same for the purpose. The Schedule containing the list of the authorized officers reveals that the General Managers are one of such authorized officers.

9. The petition filed by the applicant, Annexure R-3 has been forwarded by the Railway Board to the General Manager to act in accordance with the aforesaid instruction of IREC. The order of the General Manager in Para 5 of Annexure R-5 reads :-

" Nothing new has been brought out in Shri Guha's appeal dt.12.7.2002 meriting reconsideration of the case. The petition is withheld from Presidential consideration."

It is manifest from the said paragraph and other paragraphs of Annexure R-5 that General Manager has acted as an appellate authority and dealt with the application in a manner as if it was an appeal to him.

10. Clause 6 of Appendix-II enumerates circumstances under which a petition may be withheld from being sent to the President for consideration. It contains 10 clauses. If any application falls within any of these 10 clauses, then only the authorized officer can withhold the application. In his order at Annexure R-5 the General Manager has not stated in which of these clauses the petition of the applicant, Annexure R-3 falls. He is not to sit as an appellate authority and to consider whether the enquiry report and order are proper or otherwise.

11. To reiterate, we do not find any material to interfere with the charge sheet or in the enquiry proceeding. However, in the application the applicant has also prayed to give him any relief as deemed fit.



12. The Presidential order of reduction of pension , the petition of the applicant under Rule 31 , so also the order of the General Manager, Annexure R-5 are consequence to the chargesheet. These actions were taken after filing of this application and the respondents have brought the documents, R-1 to R-5 to record. We find the order of General Manager, Annexure R-5 has not been passed in accordance with the Appendix-II of IREC. So, it is not sustainable. Under the prayer to grant any other relief as deem fit, the order of General Manager, Annexure R-5 is quashed. He is directed to consider the application, Annexure R-3 in accordance with Appendix-II of IREC. This exercise be completed within 3 months from communication of this order. Other reliefs sought for by the applicant stand rejected.

13. The O.A. is disposed of with the aforesaid direction. No order as to cost.



MEMBER(J)



MEMBER(A)