

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. NO.1024 OF 1997

Calcutta, this the 9th day of June, 2004

HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER
HON'BLE SHRI J.K. KAUSHIK, JUDICIAL MEMBER

Tapodhir Biswas, Son of Late Birendra Ch. Biswas,
aged about 62 years, worked for gain as Chief Commercial
Supdt. (G), S.E. Railway, residing at 178, Regent Estate,
Calcutta-92.Applicant

(By Advocate : Shri S. K. Dutta)

Versus

1. Union of India service through The General Manager,
S.E. Rly., Garden Reach, Calcutta-43.
2. Railway Board service through the Secretary,
Rail Bhawan, New Delhi.
3. Union Public Service Commission service through
the Secretary, New Delhi.
4. The General Manager, S.E. Rly.,
Garden Reach, Calcutta-43.
5. The Chief Personnel Officer,
S.E. Rly., Garden Reach, Calcutta-43.
6. The Financial Adviser & Chief Accounts Officer (Pension),
S.E. Rly., Garden Reach, Calcutta-43.
7. Shri Chandy Andrews, Commissioner for Departmental Inquiries,
Central Vigilance Commission and Inquiry Officer,
New Delhi.Respondents

(By Advocate : Shri S. Chowdhury)

ORDER (ORAL)

SHRI J.K. KAUSHIK, JUDICIAL MEMBER :

Shri Tapodhir Biswas has filed this Original
Application under Section 19 of the Administrative Tribunals Act,
1985 and has sought the following reliefs:-

(i) to direct the respondents to cancel,
withdraw and/or rescind the Chargesheet,
enquiry report and the order of punishment
as contained in Annexure-A, B & D;

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- q(ii) to direct the respondents to pay all the retiral benefits including DCRG and commutation of pension from the date of retirement from service of the applicant and pay interest for the unauthorised delay;
- (iii) to direct the respondents to declare that the departmental proceeding initiated against the applicant is illegal.
- (iv) to direct the respondents to produce the entire records of the case before this Hon'ble Tribunal including the Chargesheet, enquiry report and order of punishment for adjudication of the issues involved herein;
- (v) And to pass such further order or orders as to this Hon'ble Tribunal may seem fit and proper."

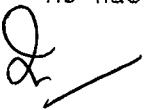
2. The abridged facts of the case considered to be material in resolving the controversy are that the applicant while working on the post of Chief Managing Superintendent in the year 1989-90 a notice came to be issued to him regarding certain irregularities from the Vigilance. After a period of three years, he was served with a chargesheet SF 5 under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 vide Memo dated 6.3.1992 alleging four Article of Charges whereby he was said to have violated the Rule 3 (i) (ii) (iii) of the Railway Servants (Conduct) Rules, 1966. Thereafter the applicant denied the allegations and confronted inquiry was conducted. The applicant has averred that certain relied upon documents were not furnished to him. It has been further averred that the inquiry officer has given the findings on the charges in a peculiar manner. Finally, on the advice of the Union Public Service Commission, the penalty of 20% cut in the pension was imposed upon the applicant. The original Application has been filed on diverse grounds as mentioned in para 5 of the OA and the same shall be dealt with a little later in this order with a restriction that we shall be dealing with the grounds which have been addressed and argued during the course of the arguments on behalf of the applicant.

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3. The respondents have contested the case and have resisted the claim of the applicant by filing an exhaustive and detailed counter reply. It has been asserted that after careful consideration of the provisions, act, Inquiry Report and the representation of the applicant and also keeping in view all the facts of the case, the President in agreement with the Union Public Service Commission has passed the impugned order whereby a cut of 20% in the monthly pension of the applicant has been imposed for a period of five years. The other facts and grounds are generally being denied.

4. The rejoinder has been filed on behalf of the applicant rebutting the averments made in the reply as well as reiterating and also elaborating the facts, which are mentioned in reply.

5. We have heard the elaborate arguments advanced on behalf of both the parties and have carefully considered the submissions, pleadings and records of this case. The learned counsel of the applicant has tried persuade to us that there was an inordinate delay in finalising the disciplinary proceedings inasmuch as the incident relates to the year 1989-90 and the respondents issued the chargesheet only in the year 1992. It has taken further five years to finalise the same. During the intervening period, the applicant was not paid any pensionary benefits. He has also submitted that the applicant did not contribute to the delay in finalising the disciplinary proceedings but the delay is solely attributable to the respondents. On this ground alone, it is prayed that the disciplinary proceedings should be quashed. Learned counsel for the applicant has further endeavoured to say that the applicant was denied the reasonable opportunity to defend the case inasmuch as two of the listed documents were not made available to him and his defence was accordingly prejudiced. He has also submitted that certain documents which were relevant



to the case of the applicant in support of his defence were specifically asked by the applicant but the same were denied to the applicant, besides the fact that they were specifically permitted by the Inquiry Officer. It was specifically pointed as to whether there is pleading to this effect. Learned counsel for the applicant after perusing the pleadings expressed inability to point out the same. It was also inquired from him as to whether two documents, which are said to be documents of the prosecution, relied upon have at all been relied upon by the inquiry officer. To this also, the learned counsel for the applicant replied in negative. The learned counsel for the applicant further submitted that the cut in the pension to the extent of 20% is too harsh. He has also contended that the act/conduct, which was said to be misconduct, was not a misconduct at all. However, he was still pressing the same. There is no pleading to this effect per centra.

6. Learned counsel for the respondents while reiterating the findings as set out in the reply has submitted that the applicant was supplied with all the documents which were relied upon for this purpose. He has also invited our attention and made us to travel to page 73 of the paper-book wherein in para 3 (c), it has been mentioned that the applicant received all the documents which have been relied upon for the prosecution. The learned counsel for the respondents has strived hard to submit that the scope of judicial review by the Tribunal or the Court is very limited and for that purpose, he has placed reliance on a number of judgments specially The Govt. of Andhra Pradesh Vs. B. Ashok Kumar reported in 1997(2) AISLJ 238, R.S. Saini Vs. State of Punjab & Ors. reported in 1992(2) SC SLJ 212 etc. and has submitted that in the facts and circumstances of the instant case this Tribunal would not like to interfere with

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the order, which has been passed after due application of mind. He has also submitted that there was no denial of reasonable opportunity to the applicant while conducting the inquiry.

7. We have considered the rival submissions put forth on behalf of both the parties. As far as scope of judicial review of the disciplinary proceedings case is concerned, it is very limited. This Tribunal cannot act as an appellate authority. The adequacy or reliability of evidences is not a matter which can be permitted to be canvassed before the Court in these proceedings. It is also settled legal position that strict rules of evidences are not applicable to the departmental inquiries and every violation of procedure does not vitiate the inquiry. In addition to the decision referred to by the learned counsel for respondents, the decision in cases of R.S. Saini Vs. State of Punjab 1999 SCC (L&S) 1424, K.C. Shinde Vs. State of Mysore AIR 1976 SC 1080, Rao Bareli Cshetriya Grami Bank Vs. Bhola Nath Singh and Others AIR 1997 SC 1908, Bank of India & Anr. Vs. Dagala Suryanaryana 1999 SCC (L&S) 1036 and Inspector General of Police Vs. Thavasiappan JT 1996 (6) SC 450, may be referred.

8. In the instant case, we find that the applicant has been allowed to access all the relied upon documents as per the records of this case. As far as the defence documents are concerned, there is no mention that which documents were allowed to him by the inquiry officer and not provided. Thus, it would

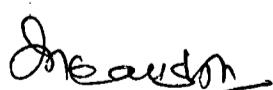
safe to conclude that there was no prejudice which could be

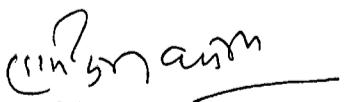
applicant to defend his case.

ground of inordinate delay simpliciter. The balance has to be struck between two extremes. One is the dropping of the proceedings and another is misconduct. There are catena of judgements wherein the Hon'ble Supreme Court have held that each case has to be examined on his own facts and circumstances. In the instant case, we find that there is a specific finding by the disciplinary authority that the applicant committed a grave misconduct and that would be enough justification for continuance of disciplinary proceedings. We cannot agree to the submissions of the learned counsel of the applicant that the case should be allowed only on the ground of delay. Otherwise also the matter relates to vigilance and also the applicant was holding a Gazetted post and there was involvement of lot of offices from top to bottom. If at all a little more time is taken that would not be a sufficient ground to quash the disciplinary proceeding.

10. Lastly, regard the imposition of penalty of withholding of pension, there are two requisite conditions to be fulfilled, as per the Rule 9 of the Railway Servants (Conduct) Rules that either there should be a finding of the grave misconduct or there should loss to the state. In the instant case, the findings that the applicant has committed a grave misconduct and that would suffice the imposition of the penalty of cut in pension. Thus, we find no impropriety, illegality or irregularity in the orders which are challenged in this case.

11. Resultantly, for the reasons mentioned in the foregoing paragraphs, we are left with no option except to dismiss the present Original Application. We do so accordingly. However, there shall be no order as to costs.


(J.K. KAUSHIK)
JUDICIAL MEMBER


(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER