

Central Administrative Tribunal, Lucknow Bench, Lucknow

ORIGINAL APPLICATION No.176/2006

This the 19th day of August, 2009

**Hon'ble Ms. Sadhna Srivastava, Member (J)
Hon'ble Dr. A.K. Mishra, Member-A**

Puranwasi Prasad, aged about 62 years, S/o Late Dimongal Ram, R/o 244, Humayunpur Utter, Near J, Passi, Chowk, Gorakhpur.

.....Applicant

By Advocate: Sri R.C. Saxena.

Versus

1. Union of India through the General Manager, North Eastern Railway, Gorakhpur.
2. Senior Divisional Commercial Manager, North Eastern Railway, Ashok Marg, Lucknow.

.....Respondents

By Advocate: Sri Arvind Kumar.

ORDER

By Ms. Sadhna Srivastava, Member-J

The applicant seeks quashing of order dt. 12.4.2005, as contained in Annexure-A-1, passed by Senior Divisional Commercial Manager i.e. Respondent No.2 in the capacity of disciplinary authority and further prayer is to pay the arrears of pay w.e.f. 6.11.2001 to the date of superannuation i.e. 30.9.2004.

2. The facts are that the applicant did not attend the office on account of illness for 60 days in 2 spells in the year 1999. He was deemed to be un-authorizedly absent; therefore, a charge sheet was issued to him in the year 1999. On the basis of which, he was awarded punishment of compulsory retirement by order dt. 6.11.2001. O.A.No.701/2001 was filed against the



said order, which was decided on 14.3.2002 (Annexure-A-2). The operative part of the order required that the order of punishment should be passed by the competent authority i.e. Senior Divisional Commercial Manager instead of Divisional Commercial Manager, who had passed the impugned order dt. 6.11.2001. Consequently, Senior DCM passed the punishment order of compulsory retirement dt. 6.8.2008. The applicant again filed OA No.431/2002 against the said punishment order passed by the Respondent No.2 on 6.8.2002. The primary ground taken by the applicant was that the enquiry was honest because, the enquiry officer was appointed by the incompetent authority i.e. Divisional Commercial Manager while, the competent authority was the Senior Divisional Commercial Manager. The contention of the applicant found favour with the Tribunal. Consequently, the impugned punishment order was set-aside and complete relief was granted to the applicant. The relevant part of the operative order reads as follows:-

“We, accordingly, quash the impugned order with direction to the respondents i.e. competent authorities concerned to proceed against the applicant only in accordance with rules and settled position of law, within a period of two months failing which the applicant be taken back in service and paid salary from the date, he is retired prematurely.”

3. Union of India aggrieved with the above order filed a Writ Petition No.1335/2004 before High Court. The High Court, Lucknow Bench, Lucknow dismissed the writ petition by order dt. 3.09.2004; therefore, a charge sheet dt. 9.9.2004, as contained in Annexure-A-6, was served on the applicant. The enquiry officer pursuant to the said charge sheet, submitted his report on 20.2.2005 (Annexure-A-11) in favour of the

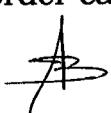


applicant holding that the applicant was not un-authorizedly absent; that he had given information about his sickness to the Station Superintendent; 'that he was shown to be on PMC (Private Medical Certificate) in the Attendance register'.

4. It is an admitted fact that the applicant had retired on 30.09.2004 reaching the age of superannuation. Therefore, by virtue of provision of Rule-9 of Railway Servants (Pension) Rules, 1993, the proceedings initiated during the course of his service automatically became Presidential proceedings after his retirement; as such, the disciplinary authority was bound by law to submit his report recording its findings to the President, if the pensioner, in his opinion, was guilty of grave misconduct and negligence. In case, it was not the case of grave misconduct or negligence, on the part of an employee, an action under Rule-9 of Railway Servants (Pension) Rules, 1993 could not be justified. In such circumstance, the disciplinary authority could drop the proceedings in view of the findings of the enquiry officer; therefore, the disciplinary authority, either had to record a finding of dis-agreement and conclude grave misconduct or negligence on the part of employee or drop the proceedings. The disciplinary authority did not choose either course. Instead he proceeded to record an order which reads as follows:-

“जांच अधिकारी की रिपोर्ट तथा उस रिपोर्ट पर कर्मचारी के प्रतिवेदन तथा कर्मचारी सेवानिवृत्त को ध्यान में रखते हुए कर्मचारी को चेतावनी दी जाती है कि उसे अपनी प्रशासनिक ड्यूटी के प्रति सतर्क रहना चाहिए था।
कर्मचारी की अनिवार्य सेवा निवृत्ति से वास्तविक सेवानिवृत्त की अवधि को Dies Non. माना जाय।”

5. We have no hesitation to say that the disciplinary authority failed to act in accordance with law. The impugned order cannot be maintained.



6. The next question is whether the applicant is entitled to salary w.e.f. 7.11.2001 to the date of his retirement i.e. 30.09.2004. We are of the opinion that the payment of salary had already been directed by the Division Bench, as quoted above. The direction of the Tribunal was to the effect to drawing proceedings in accordance with rules or else reinstate him with back salary. The proceedings initiated have resulted in exoneration of the applicant of the charge of unauthorizedly absence. Consequently, the applicant is entitled to salary for the period w.e.f. 7.11.2001 to 30.09.2004. During this period the applicant could not attend the office due to punishment order of compulsory retirement dt. 6.11.2001. It was not the fault of the applicant. Therefore, there is no reason to deny the salary to the applicant for the above period. If he were in service, he could be reinstated with back wages. Due to retirement, he is only entitled to back salary for the post he was holding on the date of punishment order i.e. 6.11.2001.

7. The Learned counsel for respondents has cited the judgment in Babu Lal Vs. Haryana State Agricultural Marketing Board (2209) 4 SCC-287. We have perused the judgment. In this case the Apex Court has laid down the law to the effect "Employer has a right to decide whether or not employee deserves any salary for the intervening period after he is exonerated from criminal/disciplinary proceedings as held in K.V. Jankiraman, (1991) 4 SCC-109". The Tribunal in O.A.No.431/2002 had taken a decision to award back wages. The High court confirmed the said order. We are also of the same opinion i.e. the applicant is entitled to back wages in the circumstances of the case as discussed above.



8. Resultantly, the OA is allowed. The respondents are directed to pay the salary for the period w.e.f. 7.11.2001 till the date of retirement. It is not appropriate to award any interest thereon. There will be no order as to costs.

Arij 2a
(Dr. A.K. Mishra) 19/08/09
Member-A

Sadhna Srivastava
(Ms. Sadhna Srivastava)
Member-J

Amit/-