

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH: PATNA

Registration No.OA-484 of 1996

Date of order

3.2.99

Madan Ram,

S/o Late Govind Ram, Ex TTE, Eastern Railway, Gaya,

Resident of Village P.T.C.Road, Korrah,

P.S.Korrah, P.S.Hazaribagh, District Hazaribagh,

Biher

.....Applicant

By Advocate: Mr. M.P.Dixit.

Versus

1. The Union of India through G.M.

Eastern Railway, N.S.Road, Calcutta-1.

2. The Divisional Railway Manager,

Eastern Railway, Mugalsarai.

3. The Divisional Commercial Manager,

Eastern Railway, Mugalsarai.

4. The Divisional Accounts Officer,

Eastern Railway, Mugalsarai

..... Respondents

By Advocate: Mr. Gautam Bose.

Coram: Hon'ble Mr. L.R.K.Prasad, Member (A)

Hon'ble Mr. Lakshman Jha, Member (J)

O R D E R

Hon'ble Mr. Lakshman Jha, Member (J):

This is an application under Section 19 of the Central Administrative Tribunals Act, 1985 (for short, A.T.Act) with prayer for quashing the charge-sheet as at Annexure-A/1 and for direction to release the entire D.C.R.G, amount, commuted value of pension and also for

final fixation of pension after commutation.

Interest @ 25% on the amount of aforesaid dues has also been prayed for.

2. The applicant was appointed as a Train Clerk in the year 1963. He was promoted as a Travelling Ticket Examiner in 1985 and retired from the service of the respondents on 31.3.1996 in the grade of Rs.1400-2300. He was served with major penalty charge-sheet dated 29/30.11.1994 by respondent No.3, the Divisional Commercial Manager, Eastern Railway, Mugalsarai, on the advice of the CBI/ Vigilance as at Annexure-A/1. The charges related to 19.7.1993 is at Annexure-A/1 which reads as follows:-

"That Sri Madan Ram, TTE/Gaya, Eastern Railway while manning the Coach No.S-7 of Train No.3009 UP on 19.7.1993 Ex.Howrah to Gaya committed gross misconduct and manifested lack of devotion to duty inasmuch as he was found carrying excess cash to the tune of Rs.161.00 than what he has declared in the Personal Cash Declaration register.

That in addition to above excess cash, he threw some money through the window in the running train noticing the CBI team in action on 19.7.93.

That he refused to sign the memorandum prepared by the CBI team on 19.7.93.

That he also did not sign the attendance register kept at Howrah Station on 19.7.93.

That by his above action he violated Rule 3(1)(i), (ii) (iii) of Railway Service Conduct Rules of 1966."

3. The applicant prayed for supply of papers to the respondent no.3 vide Annexures-A/2, A/3, A/4, A/5, A/6 and A/7 during the period from 7.12.1994 to 26.10.1995 but he was not supplied with the papers/documents relied upon by the respondents for enabling him to shape his defence. He (the applicant) also prayed for retention

of quarter one day before his retirement for 8 months to the Divisional Railway Manager(respondent no.2) vide Annexure-A/8 but it was also not responded to. The applicant retired on 31.3.1996 but the departmental proceeding could not be finalised even after two years of the alleged date of occurrence/year of issue of charge-sheet. He has not been paid his dues on account of D.C.R.G and commuted value of pension and the provisional pension after commutation has also not been finalised. He filed petition to the D.R.M. for recalling charge-sheet on 17.6.1996 as at Annexure-A/9 but of no avail. It is stated that the disciplinary proceedings could not be finalised within the time schedule as fixed by department and the withholding of the retirement dues like D.C.R.G. etc. is against the judicial verdict. Accordingly prayer is made for the reliefs as stated above.

4. The respondents have countered the claim on the general grounds of non-joinder misjoinder of necessary parties, principles of resjudicata, stoppel, waival and acquiescence and limitation under section 21 of the A.T.Act.

5. It is the case of the respondents that the applicant while serving as a T.T.Guard was incharge of Coach No.S-72-73 Up Train No.3009 Up Doon Express on 19.7.1993. During the course a CBI raid was conducted on the aforesaid date which recovered a sum of Rs.161/- in excess from him than what he had declared in the personal cash declaration register. Allegedly he also threw away some cash through the window of the train and refused to sign the memorandum prepared by the CBI. He also denied that the aforesaid excess amount had been recovered from him. However, the excess amount recovered from his possession was deposited at Burdwan Booking Office in the Sundry accounts vide receipt No.389854. He also did not sign the attendance

register for the T.T.E. at the Howrah Railway Station on 19.7.1993. Thereafter he was issued charge-sheet by the Divisional Commercial Manager, Eastern Railway, Mugalsarai on 29/30/11/1994. He retired from the services of the respondents Railways on 31.3.1996 ((AN)).

6. It is the case of the respondents that the D.C.R.G. Pension and other dues have not been paid to the applicant. The D.C.R.G. amount can be withheld under Railway Pension Rules, 1993 if any departmental/judicial proceeding is pending even after retirement of the delinquent employee. Regarding the delay in issuing major penalty charge-sheet against the applicant it is stated that the matter was in the custody of the Vigilance Department. The allegations/charge-sheet against him are based on the findings of the CBI/Vigilance report. The delay was caused mainly due to non-receipt of documents from CBI, Calcutta which has been requested by the Divisional Authority at Mugalsarai for necessary action in this regard vide letter No.CS/Com/Vij/180/MGS/94 dated 5.8.1996 and 28.10.1996. Hence the respondents are not responsible for the delay. The receipt of application as at Annexure-A/8 is also denied. Accordingly prayer is made to reject the O.A..

7. Heard Mr. M.P.Dixit, the learned counsel for applicant and Mr. Gautam Bose, the learned standing counsel of the respondents. Perused the record.

8. The admitted position is that the applicant was issued a memo on 29/30.11.1994 for the alleged acts of misconduct dated 19.7.1993 as at Annexure-A/1. It is also admitted position that he (the applicant) retired on 31.3.1996 and till the date of his retirement he was

not supplied the documents relied upon by the respondents. It also appears that the respondents have not appointed the inquiry officer and the presenting officer till date. It is also admitted position that the applicant has not been paid D.C.R.G. amount and the commuted value of the pension and consequently the finalisation of pension after commutation. It is the contention of the learned counsel for the applicant that D.C.R.G. and the commuted value of pension cannot be withheld after retirement of the incumbent. He referred to Section 9 of the Railway Services Pension Rules and submitted that it is only the President of India who is competent to withhold the retiral benefits for the acts of grave misconduct and for realisation of Government dues. The learned Standing Counsel of respondents on the other hand submitted that the departmental proceedings can be continued against Railway servants even after his retirement and the retiral benefits can be withheld for realisation of Government dues and independently for proved acts of misconduct. We may profitably extract sub-rule (1)(a) of Rule 9 of the Railway Servants Pension Rules which is applicable in the facts and circumstances of the case:-

Rule 9 (1) (a)

"The departmental proceedings referred to in sub-rule (1) if instituted while the Railway servant was in service whether before his retirement or during his re-employment, shall after the final retirement of the Railway servant, be deemed to be proceeding under this rule and shall be continued and concluded by the authority by which they were commenced in the same

manner as if the Railway servant had continued in service, provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report regarding its findings to the President."

9. The aforesaid provision under rules leaves no room for ambiguity or any doubt to show that the departmental proceedings, if initiated before retirement can be continued even after retirement but a duty is cast upon the authority to submit to the President of India a report regarding its finding if the Proceedings is instituted by an authority subordinate to the President. It is also settled by the Hon'ble Supreme Court that the retiral benefits such as D.C.R.G. and commutation value of pension may be withheld by the President of India in case of proved act of misconduct against the Railway servant and also for causing loss to the Government. We may refer to the decision of the Hon'ble Supreme Court on these points in Union of India & Others vs. B.Dev reported in 1998 AIR SCW Page 2758 and in State of Orissa and Others vs. Kalicharan Mohapatra and Others as reported in 1996 (4) All India Services Law Journal Page 142. The Hon'ble Supreme Court while clarifying the provisions under Rule 9 and 10 of the Pension Rules and Rule 5 of the Commutation Rule have clearly postulated in these Rules that the Rule 9 gives to the President the right of withholding or withdrawing a pension or part thereof either permanently or for a specified period and for ordering recovery from a pension of the whole or part of any pecuniary loss cause to the Government. This power can be exercised if in any departmental proceeding or

judicial proceeding.

judicial proceedings the pensioner is found guilty of gross misconduct or negligence during the period of his service. It is further held that causing of pecuniary loss to the Government is not a sine qua non for exercise of his power and this power can be invoked in case of proved act of grave misconduct irrespective of causing pecuniary loss to the Government. (vide 1998 AIR SCW 2758 (supra)).

10. The Hon'ble Supreme Court while considering a similar matter in State of Orissa & Others Vs. Kalicharam Mohapatra and Another as reported in 1996 (4) All India Services Law Journal 142 held that the payment of Gratuity can be withheld and only a provisional pension could be granted even though the charge did not relate to causing pecuniary loss to the Government. It may be pointed out that Patna Bench of the Tribunal in OA No.153 of 1995 and in OA 223 of 1996 relying upon the aforesaid Kalicharan Mohapatra's case declined the prayer for releasing the withheld amount of Gratuity and commuted value of the pension. However, the amount due on leave encashment was allowed during the pendency of the inquiry.

11. Thus, on the aforesaid point in controversy we are of the firm opinion that under Rule 9 and 10 of the pension rules as explained by the apex court in the rulings referred to above, the departmental proceedings, if initiated during service period, can be continued and the President of India is fully empowered to withhold the D.C.R.G. and/or commuted value of pension for realisation of Government dues and/or for an approved act of misconduct. However, in case of inquiry having been initiated before retirement, the inquiry finding is required to be submitted to the President of India.

11. In the next place the learned counsel for the applicant seriously contended that the charge memo was issued against the applicant on 29/30.11.1994 for an alleged act of misconduct dated 19.7.1993. The alleged act of misconduct as at Annexure-A/1 is not grave on the face of it. The applicant has not been supplied with papers in spite of several requests. In this connection it is admitted position that the papers relied upon could not be supplied as the charge memo was issued at the behest of CBI authority. The respondents have made several correspondences for making the papers available to the applicant and therefore, they (the respondents) are not responsible for the same. Learned counsel for the applicant further submitted that even after a lapse of about more than 4 years of the issue of charge-sheet the departmental proceeding has not been concluded. The applicant retired from service as far back as with effect from 31.3.1996 that is to say for more than 3 years but till date no inquiry officer or presenting officer have been appointed. This inordinate delay on the part of respondents is fatal to the continuance of the departmental inquiry and therefore the charge memo as at Annexure-A/1 be quashed. Learned counsel for the applicant further contended that the departmental inquiry should have been concluded within 60 days of the issue of charge memo and in any case before the retirement of the applicant, as per the time schedule prescribed in the D.A rules. Learned counsel for the respondents contended that the applicant has been issued charge memo at the instance of the CBI authority and therefore, the respondents are not responsible for the delay. The contention of the learned Standing Counsel of respondents does not appear to be sound and convincing. It is the settled

law on the point that speedy disposal of departmental inquiry like criminal trial is the fundamental right of the delinquent Government servant under Article 21 of the Constitution of India. The Hon'ble Supreme Court in the case of Board of Trustees, Port of Bombay Vs. Dilip Kumar Raghuvendra Nath Nadkarni as reported in 1973(1) SCC Page 124, dealing with Article 21 of the Constitution of India held as follows:-

"And this view was taken as flowing from Article 21 which mandates that no one shall ~~shall~~ be deprived of his life or liberty except in accordance with the procedure prescribed by law the expression 'life' does not merely connote animal existence or a continued drudgery. Therefore, the expression 'life' has a much wider meaning. Where therefore outcome of departmental inquiry is likely to adversely affect reputation or livelihood of a person, some of the final grace of human civilization which make worth living would be jeopardised and the same can be put in jeopardy only by law and inheres fair procedure."

12. Subsequently also the Hon'ble Supreme Court in the case of State of Punjab Vs. Chaman Lal Goyal as reported in 1995 SCC (L&S) Page 541 in paragraph 11 commenting upon the delay in serving the charge-sheet laid down as follows:-

"The principles to be borne in mind in this behalf have been set out by a Constitution Bench of this Court in A.R. Antulay v. R.S. Nayak. Though the said case pertained to criminal prosecution, the principles enunciated therein are broadly applicable to a plea of delay in taking the disciplinary proceedings as well.

In para 86 of the judgment, this Court mentioned the propositions emerging from the several decisions considered therein and observed that "ultimately the court has to balance and weigh the several relevant factors - balancing test or balancing process - and determine in each case whether the right to speedy trial has been denied in a given case". It has also been held that, ordinarily speaking, where the court comes to the conclusion that right to speedy trial of the accused has been infringed, the charges or the conviction, as the case may be, will be quashed. At the same time it has been observed that that is not the only course open to the court and that in a given case, the nature of the offence and other circumstances may be such that quashing of the proceedings may not be in the interest of justice. In such a case, it has been observed, it is open to the court to make such other appropriate order as it finds just and equitable in the circumstances of the case."

13. If we put the facts and circumstances of the case on the touch stone of the aforesaid principles as enunciated by the Hon'ble Supreme Court, we find that the respondents department is responsible for the snail's speed in which the departmental inquiry is being pursued against the applicant. The disciplinary authority i.e. respondents cannot escape the responsibility of concluding the departmental inquiry by saying that the inquiry was initiated at the behest of CVC. If the respondent department has taken such a stand it is the sheer non-application of mind. Moreover, under Railway rules

time schedule has been prescribed according to which departmental proceedings have got to be concluded within 60 days of the communication of the charge memo. It is a fact that the rule is not mandatory. Nevertheless, a duty is enjoined upon the respondent railways to adhere to it in letter and spirit. As said above, the charge memo was submitted as far back as on 30.11.1994. The applicant retired on 31.3.1996, and till date even the inquiry officer and the presenting officer have not been appointed. This callous attitude of the respondent department is difficult to be ignored. However, the learned counsel for the respondents has filed an order of the Hon'ble Patna High Court passed in CWJC No.7934 of 1997, (Dr. Shri Ram Ojha Vs. Union of India & Others) in which the Hon'ble High Court, while dealing Rule 9(1) of the Railway Service Pension Rules directed the departmental proceedings, if any, to be concluded within a period of 3 months from the date of producing a certified copy of the order subject to the co-operation by the petitioner with the inquiry.

14. Considering all the aspects of the matter in their ramification, we are of the considered opinion that the respondents department should be given an opportunity to conclude the departmental proceedings within a period of three months from the date of receipt of a copy of the order and submit the findings to the President of India for necessary order under the rules referred to above. The applicant is at liberty to take action in accordance with law thereafter.

Lakshman Jha
(LAKSHMAN JHA)
MEMBER (J)
3.2.99

No. 3.2.99
(L.R.K. PRASAD)
MEMBER (A)