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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.361/86

Dr. Anil Kumar G. Saha,
C/o. Mr. K.D. Naik,
Advocate, High Court,
57F, Bhupen Chambers,
Dalal Street, Fort,
Bombay - 400 023.

.. Applicant

vs.

1. Union of India
2. General Manager,
Western Railway,
Head Quarters,
Churchgate,
Bombay - 400 020.

.. Respondents

Coram: Hon'ble Member(A) Shri J.G. Rajadhyaksha
Hon'ble Member(J) Shri M.B. Mujumdar

Appearances:

1. Shri K.D. Naik
Advocate for the
Applicant.
2. Shri A.L. Kasturey,
Advocate for the
Respondents.

JUDGMENT

Date: 29-4-88

(Per M.B. Mujumdar, Member(J))

By an order dated 30-4-1986 the President has withheld 25% of the monthly pension of the applicant on permanent basis. The applicant has challenged that order by filing this application under Section 19 of the Administrative Tribunals Act, 1985.

2. In 1958 the applicant was appointed as Medical Officer of the Western Railway and he retired as Assistant Divisional Medical Officer on 1-3-1985. On 6-1-1981 a statement of four

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articles of charge was served on him along with the memorandum. The memorandum was signed by Shri M.V. Basrur, General Manager of Western Railway, Bombay. The first charge was that he demanded a bribe of Rs.10/- from Shri N.J.Pandya, Hindi Sahayak, Western Railway, Bhavnagar on 13-2-1980 as a motive or reward for issuing unfit certificate on the strength of a private doctor's certificate. The second charge was that in pursuance of the demand he demanded and accepted a bribe of Rs.7/- from Shri N.J.Pandya on 19-2-1980 at his residence at Bhavnagar in presence of ^a panch, a witness and some officers. The third charge was that he demanded and accepted a bribe of Rs.40/- from one Shri Girish Jayashankar Trivedi, Clerk, in the office of the Divisional Railway Manager, Estt. Section, Western Railway, Bhavnagar division as a motive or reward as visit fee, for issuing unfit certificate on the strength of a private Doctor's certificate on or about 13-11-1979, 13-12-1979 and 11-1-1980. The last charge was that in February, 1980 he demanded and accepted a bribe of Rs.5/- from Mange Jiva Khalasi for issuing unfit certificate on the strength of a private Doctor's certificate. In view of these acts of the applicant, it was alleged, that he contravened Rule 3 of Railway Service (Conduct) Rules, 1966 and committed gross misconduct.

3. Regarding the first two charges it may be pointed out that Pandya had lodged his complaint on 18-2-1980 against the applicant with Police Inspector, CBI/SPE, Ahmedabad at Bhavnagar and the Police Inspector had arranged a trap with

9

the assistance of two panch witnesses and his officers. On 19-2-1980 Pandya in the presence of panch witnesses^a gave a note of Rs.10/- to the applicant and the applicant returned three one rupee notes to him. It appears that the Police did not file any chargesheet against the applicant in the Court of the Special Judge but they recommended for initiating a departmental proceeding against the applicant.

4. In due course Shri D.G.Gupta, Commissioner for Departmental Inquiries was appointed as Inquiry Officer. Before the Inquiry Officer about 10 witnesses were examined. After considering the evidence and defence of the applicant the Inquiry Officer in his report dtd. 17-9-1982 held that none of the charges was proved against the applicant. A copy of the Inquiry Officer's report was forwarded to the Railway Board who advised that since the disciplinary proceedings were initiated by the General Manager as the Disciplinary authority the inquiry report may be processed by the General Manager taking into consideration the Central Vigilance Commission's advice. After obtaining their advice the General Manager found that the evidence was such that it was difficult to establish the offence against the applicant. Hence the General Manager by his letter dtd. 26-2-1983 informed the Railway Board that the case may be closed by dropping the charges.

5. Along with the memorandum dtd. 16-6-1984 from the Joint Secretary(E), Railway Board, a copy of the Inquiry Officer's report was sent to the applicant

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point out that the President did not agree with the finding of the Inquiry Officer that the charge relating to the demand of illegal gratification from N.G. Pandya on 13-2-1980 and acceptance of Rs.7/- from him on 19-2-1980 was not proved. The applicant was further informed that the President had provisionally decided in terms of Rule 2308 of the Indian Railway Establishment Code, Volume II (IRE Code) that the pension normally admissible to him should be reduced by Rs.30/- per month permanently. The applicant was given 15 days time for submitting his representation. The said memorandum was sent to the applicant by the General Manager of the Western Railway along with his letter dtd. 12-7-1984. The applicant replied to that memorandum on 3-8-1984 and denied the charge giving his own explanation. Again another memorandum dtd. 24-5-1985 from the Joint Secretary(E) Railway Board was served upon the applicant along with letter dtd. 4-6-1985 from the General Manager of the Western Railway. By that memorandum the applicant was informed that the President had provisionally decided that in view of the gravity of the charge a fresh notice should be served on him requiring him to show cause why 50% of the monthly pension admissible to him should not be withheld on permanent basis. The applicant was asked to submit his representation against the proposed action within 15 days of receipt of the memorandum. By his letter dtd. 18-7-1985 the applicant requested for a copy of Rule 2308 of the Indian Railway Establishment Code, Vol. II. The General Manager with his letter dtd. 13-9-1985 sent a copy of that rule to the applicant. The rule which is very material in this case will be quoted at a later stage.

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The applicant replied to the memorandum on 23-9-1985. The Union Public Service Commission(UPSC) in its report dtd. 19-3-1986 came to the conclusion that the charge of accepting Rs.7/- as bribe on 19-2-1980 from Shri Pandya had been established against the applicant. In the next paragraph it is pointed out that the Commission did not see any reason to disagree with the findings of the Inquiry Officer and the Disciplinary Authority regarding the other charges of demanding and accepting bribes of Rs.10/- and Rs-5/- from Shri G.J.Trivedi and Shri Manga Jiva Khalasi, respectively. The Commission recommended that ends of justice would be met if 25% of the monthly pension otherwise admissible to the applicant should be withheld on a permanent basis. Thereafter the General Manager(E) by his letter dtd. 30-4-1986 informed the following order of the President to the applicant:

"The President has, in consultation with the Union Public Service Commission, carefully considered your representation in reply to Memorandum No.E(O)I-83 U2/34 dtd. 24-5-1985 asking you to show cause why 50% of the monthly pension admissible to you should not be withheld on a permanent basis. A copy of the Commission's letter containing their findings and advice on the case is enclosed. The President has come to the conclusion that the charge of failure to maintain absolute integrity and devotion to duty has been established against you in that it has been proved that you demanded and accepted bribe of Rs.7/- from Shri N.J.Pandya on 19-2-1980 and that the other charges of demand and acceptance of Rs.10/- from Shri Girish Jayashankar Trivedi and Rs.5/- from Shri Manga Jiva have not been established, with regard to

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the charge held as established against you, the President has decided, after taking all relevant aspects of the case into consideration, that the ends of justice would be met if 25%(Twenty five per cent) of the monthly pension otherwise admissible to you is withheld on a permanent basis"

It appears that the above order is not implemented so far though no stay was granted by this Tribunal.

6. The respondents have filed their written statement on 10-3-1987 and justified the order passed by the President.

7. The main point which was urged by Mr.K.D.Naik, the learned advocate for the applicant, was that in view of the facts of this case the President has no power under Rule 2308 of the Indian Railway Establishment Code, Vol.II to pass the impugned order withholding 25% of the pension of the applicant on permanent basis. For appreciating this point it will be necessary to quote the said rule. The rule reads as under:

"2308.(C.S.R.351-A)-The President further reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from the pension of the whole or part of any pecuniary loss caused to Government, if, in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement-

Provided that -

(a) such departmental proceeding, 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 Article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service.

(b) such departmental proceeding, if not instituted while the Railway servant was in service, whether before his retirement or during his re-employment -

(i) shall not be instituted save with the sanction of the President;

(ii) shall not be in respect of any event which took place more than 4 years before such institution; and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Railway servant during his service;

(c) no such judicial proceeding, if not instituted while the Railway servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or an event which took place more than 4 years before such institution; and

(d) the Union Public Service Commission shall be consulted before final orders are passed.

Explanation: For the purpose of this article -

(a) a departmental proceeding shall be deemed to be instituted on the date on which the statement of charges is issued to the Railway servant or pensioner, or if the Railway servant has been placed under suspension from an earlier date, on such date; and

(b) a judicial proceeding shall be deemed to be instituted -

(i) in the case of a criminal proceeding, on the date on which the complaint or report of police officer, on which the Magistrate takes cognizance, is made, and

(ii) in the case of a civil proceeding, on the date of presentation of the plaint in the court."

8. Though the above rule is analogous to the main provision of Rule 9 of Central Civil Services Pension Rules, Rule 9 is more exhaustive and detailed in nature. But in this case only Rule 2308 of the Indian Railway Establishment Code is relevant.

9. Rule 2308 is in Chapter 22 of the Indian Railway Establishment Code Vol.II. That chapter is regarding Railway Pension Rules. According to that rule the President is given the right of withholding the pension or part of it permanently or for a specified

period, if, in a departmental or judicial proceeding the pensioner is found guilty of grave misconduct or negligence during the period of his service including the service rendered after his retirement. Proviso(a) is regarding departmental proceedings instituted while the railway servant was in service while proviso (b) is regarding departmental proceeding not instituted while the railway servant was in service. As the charge in this case was served on the applicant on 6-1-1981 i.e. when the applicant was in service, proviso(a) will apply to this case. According to that proviso such departmental proceeding even after the retirement of the railway servant shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer was continued in service. Proviso (c) and the explanations are not relevant in this case. However, according to proviso (d) it is made mandatory to consult the Union Public Service Commission before passing any order.

10. In this case it was the General Manager of the Western Railway who had initiated the departmental enquiry against the applicant under Rule 9 of the Railway Servants(Discipline and Appeal)Rules,1968. This is clear from his memorandum dtd. 6-1-1981. It was along with this memorandum that a statement of articles of charge and other statements were served on the applicant. It was the General Manager as the Disciplinary Authority who had appointed Shri D.C.Gupta, Commissioner of Departmental Enquiry as the Inquiry Officer. Hence in view of the proviso(a) of Rule 2308 the departmental proceedings were required to be continued and concluded by the Disciplinary Authority i.e. General Manager as if the applicant had continued in service.

11. After examining about 10 witnesses the Inquiry Officer submitted his report dtd. 17-9-1982. The report is of 14 pages. After considering the evidences and the circumstances on record and in the light of the defence of the applicant, the Inquiry Officer held that none of the charges was established. After considering the report the General Manager agreed with the findings of the Inquiry Officer and wrote ~~the~~ letter dtd. 26-2-1983 to the Railway Board informing that in his assessment the evidence was such that it was difficult to establish the charges against the applicant. He therefore recommended that the charges may be dropped and the case may be closed. If the applicant would have been in service nothing more would have happened in view of the concurrent findings of the Inquiry Officer and the Disciplinary Authority.

12. The main provision of Rule 2308 shows that the President will have a right of withholding pension or any part of it only if the pensioner is found guilty of grave misconduct ^{or} ~~and~~ negligence in a departmental or judicial proceedings. In this case the Inquiry Officer as well as the Disciplinary Authority i.e. the General Manager of the Western Railway had come to the unanimous conclusion that the charges against ~~the~~ applicant were not established. According to proviso(a) of Rule 2308, as the departmental proceedings were started against the applicant prior to his retirement by the General Manager of the Western Railway as the Disciplinary Authority it was he who was to continue and conclude the same in the same manner as if the applicant had continued in service. If the applicant would have been still in service it was the General Manager who would have concluded the departmental

proceedings. As he had agreed with the report of the Inquiry Officer that the charges framed against the applicant were not established, the President had no right to withhold part of the pension due to the applicant. Consultation with the Union Public Service Commission by the President would have been necessary if the applicant would have been found guilty in the departmental proceeding. Till then the Commission had no right whatsoever in the matter.

13. Though the President is given full powers to institute departmental proceedings against any railway servant or to impose any penalty on any railway servant (under Rule 8(1) and Rule 7(1) of the Railway Servants Discipline and Appeal Rules, 1968), in the present case it was not the President who had commenced the departmental proceedings against the applicant. The departmental proceedings were ~~were~~ commenced by the General Manager. Hence the finding of the General Manager that the applicant was not guilty of any charge is the only finding relevant in this case. Therefore under the main provision of Rule 2308 quoted above the President had no power to withhold the pension of the applicant. The question of consulting the UPSC under proviso (d) of that rule would have arisen if the applicant would have been held guilty in the departmental proceedings by the General Manager. Hence the impugned order dtd. 30-4-1986 passed by the General Manager shall have to be quashed and set aside.

14. The other point which was urged by the learned Advocate for the applicant was that the President was not justified in holding that the charges 1&2 framed

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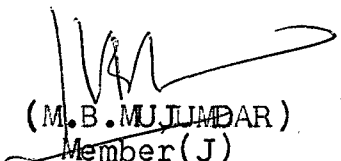
against the applicant were established. It has to be noted that the Disciplinary Authority had agreed with the findings of the Inquiry Officer that none of the charges framed against the applicant was established. Even the President has agreed with the findings that the charges 3 & 4 were not established.

15. The case of the respondents regarding charges Nos.1&2 was that on 13-2-1980 the applicant demanded a bribe of Rs.10/- from Shri N.J.Pandya and had accepted a bribe of Rs.7/- from him on 19-2-1980 as a motive or reward for issuing unfit certificate on the strength of a private Doctor's certificate. The applicant was given a Rs.10/- note by Pandya in the presence of officers ^{and a panda witness} on 19-2-1980 but the applicant returned Rs.3/- to him. It was the case of the applicant that he had taken Rs.7/- from Pandya because Pandya owed him that amount. According to him he had engaged Pandya for teaching his two children. He had paid Rs.25/- as advance to him. However, as his performance was not found satisfactory he had asked Pandya to return Rs.15/- out of the advance. Pandya had returned Rs.8/- earlier promising to return remaining Rs.7/- later. According to the applicant it was this amount which he had paid to him on 19-2-1980. The Inquiry Officer has pointed out that the applicant had made a statement to that effect to the concerned Police Officer immediately after the trap. He has also pointed out that if the applicant had really demanded Rs.10/- as bribe then he would ^{not} have ~~not~~ returned Rs.3/- to Pandya immediately. He had taken the same defence before the Inquiry Officer. The Inquiry Officer had discussed in his report all the relevant evidence in the light of

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defence of the applicant The Disciplinary Authority agreed with the report. It is true that the Union Public Service Commission has disagreed with the finding of the Inquiry Officer regarding charges 1&2 i.e. regarding demand and acceptance of bribe from Pandya. But there is no provision in the rules which authorises the President to reconsider the findings of the Disciplinary Authority which were arrived at the conclusion of the departmental proceedings. In a departmental proceedings like this, the Union Public Service Commission has no role to play and its finding cannot be treated as a finding in a departmental proceeding. Ordinarily the Tribunal is averse to appreciate the evidence laid in a departmental enquiry. But in this case both the Inquiry Officer and the Disciplinary Authority had exonerated the applicant of the charges framed against him. If the Disciplinary Authority had held him guilty the applicant would have ^{got} ~~obtained~~ a right to challenge that finding by filing an appeal before the Appellate Authority and the Appellate Authority would have been justified in considering and appreciating the evidence. That right was not available to the applicant in this case. That is why the applicant was justified in this case to ask the Tribunal to reconsider the evidence as the President on the basis of the report of the UPSC has held him guilty of charges 1 & 2. Even after reconsidering the evidence I feel that the view taken by the Inquiry Officer and the Disciplinary Authority, viz. that the evidences and circumstances are not sufficient to hold the applicant guilty of any charges was justified.

16. In result the impugned order dtd. 30th April, 1986 passed by the President withholding 25% of the monthly pension otherwise admissible to the applicant on permanent basis is hereby quashed and set aside. There will be no order as to costs.


(M.B. MUJUMDAR)
Member(J)