

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

Tr. Application No.367/86

Shri Shaikh Abdul Kadir,
Beach Apartment,
Flat No.803,
J.P.Road, Varsova,
Near Dariya Mahal,
Bombay - 400 061.

... Applicant.

vs.

Union of India
through,
The General Manager,
Central Railway,
Bombay V.T.

... Respondent.

Coram: Hon'ble Member (A) S.P. Mukerji
Hon'ble Member (J) M.B. Mujumdar

Appearances:

1. Mr. D.V. Gangal
Advocate for
the Applicant.
2. Mr. J.D. Desai (for
Mr. M.I. Sethna)
for Respondent.

ORAL JUDGMENT

Date: 7-10-1987

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

The applicant Shri Shaikh Abdul Kadir had filed Regular Civil Suit No.859/82 in the Court of 5th Jt.Civil Judge, Sr.Division, Pune and it is transferred to this Tribunal under Section 29 of the Administrative Tribunals Act, 1985.

2. The applicant has retired as Executive Engineer with effect from 1st of August, 1976. After obtaining sanction of the President as required by Rule 2308 of the Indian Railway Establishment Code Volume II the applicant was served with following four charges which relate to the misconduct alleged to have ~~committed~~ ^{in 1975} been ~~conducted~~ by the applicant. The charges were as follows:

CHARGE - I

That the said Shri S.A.Kadir while working as Executive Engineer (Special Works), Dadar, North Division during the year 1975 :-

(a) recommended to CE(S&C) under his letter No. Wks.B.12/AR/150 dated 20-1-75 a higher rate of Rs.52.80 per m³ to be paid to M/s.Bhawani Construction Co., Contractors for a quantity of 2381 m³ for the work of cutting in rock on the false justification that the rock had to be chiselled and could not be blasted due to proximity of track, though the appropriate N.S. item for cutting in rock requiring blasting at a rate of Rs.7.70 per m³ was available in the original contract agreement No.A-5/72-73 of 20-5-72, vide N.S. item No.2 (c) executed by the said contractor with the Railway;

(b) deliberately recommended the above higher rate for cutting in rock with the false justification in connivance with the said contractors to give them unintended benefit, as major portion of the quantity out of 2381 m³, including the portion which had to be carried out in the proximity of the track, had already been executed in his predecessor's time and the contractors claim for extra rate for doing rock cutting had also been rejected by his predecessor after site inspection and the remaining work in his time was carried out by the said contractors by blasting wherever necessary; and

(c) caused by the above action of Shri Kadir, an overpayment to the extent of Rs.37,300/- to the contractor and corresponding loss to the Railway administration.

CHARGE - II.

(a) called for separate tenders on 7-4-75 for extra items of work which had to be carried out in connection with the new station building at Mulund and after opening these tenders on 23-4-75 (i) recommended very high rate at 150% above M.S. rate for M.S.items of work quoted by M/s. Quick Construction Co., in the brief note prepared by him for guidance of the Tender Committee as reasonable, though the rate accepted for items in the main contract by the same contractor in January, 1974 was only 39.99% above M.S. rates and (ii) recommended exorbitantly high rate for N.S. items of work quoted by M/s.Quick Construction Co., in the brief note prepared on 23-4-75 for the guidance of the Tender Committee, as reasonable, without getting the rates analysed or scrutinising the reasonableness of rates; and

(b) allowed M/s.Quick Construction Co., who were the contractors for the main work of station building at Mulund, to carry out certain extra items in the new tender referred to in item (a) above, even in anticipation of calling for tenders for the extra items and the final acceptance thereof.

CHARGE - III

(a) Placed work order No.11/74-75/1 dated 26-4-1975 on M/s. P.A.Rathod & Bros. for the supply of Rolled Steel Joist of size 150mm x 150mm totally weighing 0.50 M/Tonne for the new 60 lever cabin at Mulund at an exorbitantly high cost of Rs.7,250/- per Metric Tonne;

(b) entered into contract with M/s. P.A.Rathod & Bros. under contract agreement No.B/4-75/76/N dated 22-8-75 for supplying and fixing 40mm dia G.I.Pipe railing in the new station building at Mulund at an exorbitantly high rate of Rs.192.50 per Metre;

(c) entrusted the work of supplying and fixing of BRC Fabric in the EXR's office and 60 lever cabin building at Mulund to M/s.P.A.Rathod & Bros. before calling for quotations for the said work;

(d) awarded the work of supplying and fixing BRC fabric of size 2" x 1" opening welded to flats of size 1-1/8" x 1/8" in the new TXR's office and 60 lever cabin building at Mulund to M/s.P.A.Rathod & Bros. under contract agreement No.B/1/75-76/N dated 23-5-1975 at an exorbitantly high rate of Rs.165.00 per M2; and

(e) called for quotations for individual items of works costing less than Rs.10,000/- each and accepted exorbitantly high rate for the same offered by M/s.P.A.Rathod & Bros., on the plea that their offer was the lowest amongst the quotations received, without applying any personal scrutiny of rate analysis to verify the reasonableness of the rates offered by the said M/s. P.A.Rathod & Bros.

CHARGE - IV

(a) failed in his duties in that he did not ascertain reserved price, either in terms of para 3812 of IRW&WM or in consultation with the local state revenue authorities while considering the quotations received by him on 10-2-75 for the sale of 398 trees including 56 teak wood trees belonging to the Railway;

(b) sold 398 trees, including 56 teak wood trees, standing in the railway land between Kasara and Igatpuri to one Shri A.P.Modi of Shahapur at a throw away price of Rs.450/- as per his orders dated 12-2-1975; and

(c) sold 140 trees standing in the railway land between Kasara and Igatpuri to one Shri S.R.Chajad at a throw away price of Rs.322/- as per his orders dated 15-7-1975.

Thus, the said Shri S.A.Kadir, failed to maintain absolute integrity and devotion to duty in violation of the provisions of Rule 3 of the Railway Services(Conduct) Rules,1966.

3. The applicant pleaded not guilty to the charges. A regular departmental enquiry was held and on the basis of the Inquiry Officer's report the Disciplinary Authority on 16-10-1979 accepted the report of the Inquiry Officer that charges I, II and III were proved but Charge IV was not proved, and proposed to impose the penalty of withholding the monthly pension of the applicant by Rs.50/-

as a permanent measure. His gratuity was also proposed to be reduced by 25%. The applicant was asked to show cause as to why the above mentioned penalty should not be imposed within 15 days from the receipt of the memo. After some stages which are not relevant and after considering the representation furnished by the applicant and in consultation with the Union Public Service Commission the President finally came to the conclusion that charge I ~~against the applicant~~ was proved to the extent that he caused over payment of Rs.37,300/- to the contractor and corresponding loss to the administration but the charge of his having been in connivance with the firm to give them unintended benefit had not been established. Regarding Charge II, the President held it as proved to the extent that in respect of the tender opened on 23-4-1975, the applicant allowed the lowest tenderer to carry out the work before the formal acceptance of their offer. Regarding Charge III, it was held proved in respect of part (c) to the extent that the applicant allowed the firm to start the work before the contract was formally concluded but there was no evidence to suggest that any favour was shown to the firm. Lastly, as regards Charge IV and other allegations they were held not proved. The President therefore decided that a sum of Rs.50/- from the monthly pension otherwise admissible to the applicant should be withheld as a permanent measure. We may point out that the proposal for withholding of the 25% Gratuity was not accepted by the President.

4. The applicant has challenged the above penalty by filing the suit. The respondents registered the suit by filing their written statement. We have heard the arguments of Mr.D.V.Gangal the learned advocate for the applicant and Mr.J.D.Desai for Mr.M.I.Sethna, the learned advocate for respondents. For understanding the arguments of Mr.Gangal it is necessary to quote Rule 2308 of Indian Railway

Establishment Code Volume II which is corresponding to Rule 9 of the Central Civil Services Pension Rules.

Rule 2308 reads as follows :-

"2308.(C.S.R. 351-A) - Recoveries from Pension -

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 a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct or to have caused pecuniary loss to Government by misconduct, or negligence, during his service including service rendered on re-employment after retirement -

Provided that -

- (a) such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment,
 - (i) shall not be instituted save with the sanction of the President;
 - (ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and
 - (iii) shall be conducted by such authority and in such place or places as the President may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made;
- (b) such judicial proceedings, if not instituted while the officer was on duty either before retirement or during re-employment shall have been instituted in accordance with sub-clause(ii) of clause (a); and
- (c) ~~Max~~ the Union Public Service Commission shall be consulted before the final orders are passed.

Explanation: For the purposes of this Rule -

(a) departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him, or if the officer has been placed under suspension from an earlier date, on such date; and

(b) Judicial proceedings shall be deemed to have been instituted -

- (i) in the case of criminal proceedings, on the date on which a complaint is made, or a

charge sheet is submitted, to a criminal court; and

(ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made, to a civil court."

5. Mr. Gangal submitted that as the departmental proceedings were not started prior to the retirement of the applicant the authorities had no power to start the proceedings after the retirement of the applicant. We are not impressed by this submission in view of the unambiguous wording of the rules. The use of the word 'pensioner' in the main provision shows that the departmental proceedings could ~~have been~~ ^{be} started even after retirement. Moreover the rule nowhere says that some finding should have been given in a departmental or judicial proceedings holding the Govt. servant guilty of gross misconduct or causing some peculiar loss to the Govt. by misconduct and negligence during the service, before his retirement, in order to enable the President to impose the penalty and withholding of pension or part of it. In fact the proviso clearly lays down that if the departmental proceedings were not instituted while the Govt. servant was on duty before retirement the same shall not be instituted without the sanction of the President and in respect of any event which took place not more than 4 years before the initiation of the proceedings. In other words the proviso lays down only two pre-conditions for the starting of a departmental proceedings after the retirement. The first is that there should be sanction of the President and secondly the alleged misconduct should have arisen within four years before the initiation of the proceedings. There is no dispute that both these conditions are fulfilled in the present case. We, therefore, hold that initiation of the proceedings against the applicant even after his retirement was legal and proper.

6. Mr. Gangal has relied on a Supreme Court Judgment in State of Punjab v. Khemi Ram (AIR 1970 SC 214), Mr. Gangal relied on the first sentence of the para 11 of the judgment, which says that there can be no doubt that if disciplinary action is sought to be taken against a Government servant it must be done before he retires, as provided by the said rule. In our opinion the last words in this sentence are more important. These words are explained in para 8 of the judgment. It was contended on behalf of the appellant, State of Punjab, on the strength of Rule 3.26(d) of the Punjab Civil Service Rules, as it then stood, which provided that a Govt. servant on the verge of the retirement shall not be permitted to retire and should be retained in service till the enquiry into the charge was completed and the final order was passed therein. We find that there is no corresponding rule in the Railway Establishment Code Volume II. It is therefore clear that this authority does not help the applicant.

7. In result the application(suit) is liable to be dismissed. It appears that the applicant had requested the learned Civil Judge Sr. Division to stay the implementation of the order of penalty and by an order dtd. 4-1-1984, the learned Civil Judge had granted that request and directed the respondents to restrain from deducting the pension of Rs.50/- pm from the monthly pension of the applicant. It is necessary to vacate that order.

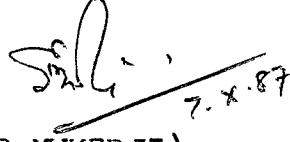
8. We, therefore, pass the following order:

(1) The application(suit) is dismissed, with no orders as to cost;

(2) The stay against the order of the penalty granted by the Civil Judge Sr.Division by the order dtd.4-1-84 is vacated.

(3) The respondent will be at liberty to recover the amount of pension which was given to the applicant in view of the stay order passed by the Civil Court.

(4) If the respondents have not given part of the Death-cum-Retirement Gratuity then ~~the~~ ^{the} same shall be paid to him forthwith in accordance with the rules, with interest @ 10% p.a. from the expiry of three months after retirement i.e. from 1-11-1976.


(S.P. MUKERJI)
Member(A)


(M.B. MAJUMDAR)
Member(J)