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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original application No: 353/91

~~XXXXXX applicationXXXXX~~

DATE OF DECISION 8 Feb - 99.

Shri R.M. Joshi

Petitioner

Shri V.V. Vidwans

Advocate for the Petitioners

Versus

Divisional Rly. Manager & 2 others Respondent

Mrs. Indira Bodade

Advocate for the Respondent(s)

CORAM:

4. The Hon'ble Shri M.Y. PRIOLKAR, MEMBER (A).

The Hon'ble Shri V.D. DESHMUKH, MEMBER (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
 2. To be referred to the Reporter or not ?
 3. Whether their Lordships wish to see the fair copy of the Judgement ?
 4. Whether it needs to be circulated to other Benches of the Tribunal ?
- } *no.*



(V.D. Deshmukh)
Member (J).

NS/

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, CAMP AT NAGPUR.

O.A.353/91.

Shri R.M. Joshi,
 R/o Harode Wada, Walkar Road,
 Mahal, Nagpur.

.. Applicant.

Vs.

1. Divisional Railway Manager,
 Central Railway,
 Nagpur.

2. General Manager,
 Central Railway, Bombay V.T.,
 Bombay.

3. Chairman,
 Railway Board, Rail Bhavan,
 New Delhi.

.. Respondents.

Coram : Hon'ble Shri M.Y. Priolkar, Member (A)
 Hon'ble Shri V.D. Deshmukh, Member (J)

Appearances :

Shri V.V. Vidwans, Counsel
 for the applicant.

Mrs. Indira Bodade, Counsel
 for the respondents.

JUDGMENT :

Date : 8 Feb. 93.

X Per : Hon'ble Shri V.D. Deshmukh, Member (J) X

The applicant was enrolled in Railways in Food & Grain Department and was thereafter absorbed in Commercial Department as Commercial Clerk. It is an admitted position that the applicant became medically unfit for all classes in Railway service on 14.11.1979 due to acute impairment of vision. The certificate dtd. 14.11.1979 issued by the Medical Superintendent is Annexure A to the application.

2. The applicant was served with a charge sheet of major penalty on 25.7.1977 and the inquiry officer was appointed to conduct the inquiry on 28.9.1979. As has been stated earlier the applicant was declared

O.A.353/91.

unfit medically and his name was struck off from the roster and muster of Railways from 14.11.1979. It appears that although the applicant was declared medically unfit, as inquiry was already initiated, the inquiry was completed and a penalty removing the applicant from service was imposed on the applicant. This order was made effective from 20.11.1980.

3. The applicant appealed ~~against~~ the order of removal from service and the appeal was decided by the order dtd. 26.10.1982. The letter dtd. 26.10.1982 informing the appellate order to the applicant is Annexure D to the application. It states that on consideration of the appeal of the applicant it was decided to impose upon the applicant the lesser punishment of compulsory retirement instead of removal from service. The letter further states that the applicant was to be treated as compulsory retired with effect from 19.11.1980 and he would become eligible for all the pensionary benefits.

4. It is the contention of the applicant that thereafter no communication was sent to him but he received from the office of the Assistant Personnel Officer, Nagpur a copy of the letter dtd. 3.5.1983 (8) Annexure F) under which letter the Chief Commercial Superintendent (C.C.S.) had ordered the ~~re~~duction of pensionary benefits to the extent of 1/3 and also reduction to the same extent in the D.C.R.G. The applicant challenges this order and contends that it be quashed and set aside.

5. After the applicant was compulsorily retired, the qualifying service was calculated and Annexure E to

O.A.353/91.

the application is the statement showing the non qualifying period during the service of the applicant. As per this statement the total period of 4 years 7 months and 18 days was found to be the period of non qualifying service. The total service put in by the applicant was 35 years 7 months and 27 days and after deducting the non qualifying period of 4 years 7 months and 18 days, the qualifying service of the applicant was calculated to be 31 years and 10 days. The applicant was awarded pension and D.C.R.G. on the basis of this qualifying service. The applicant has challenged this statement also.

6. The applicant alleges apart from the other grounds that the concerned authorities acted in malicious way from 1976 and for that reason reliefs which he claimed were justified. In his application he claims that the letter reducing the pension and gratuity by one third be quashed and set aside, that the respondents be directed to refix the pension as per the letter dtd. 26.10.1982 under which according to him he was entitled to full pension and ~~4~~ gratuity, and that the false statement showing the non qualifying period of service be quashed and the respondents be directed to calculate the pension and gratuity on full service put in by the applicant. He also claims interest from the date of the order.

7. The respondents filed their reply. They do not dispute the contentions of the applicant regarding his appointment and his being declared medically unfit. They contend that the reduction of one ~~third~~ pension and gratuity was done according to the pension Rules

O.A.353/91.

and was perfectly legal. They also contend that the ~~service and the non qualifying~~ qualifying period of service of the applicant were correctly calculated. They deny the allegations of malice made by the applicant and claim that the application is liable to be dismissed. We shall first consider the contention of the applicant that the order of reduction of pension and gratuity was illegal as it amounted to double jeopardy. The learned Advocate for the applicant heavily relied upon the letter dtd.

26.10.1982 which stated that the applicant would be liable for all pensionary benefits. The earlier order of removal from service and the appellate order by which punishment was reduced to compulsory retirement would show that the applicant did not succeed in establishing his innocence, but the appellate authority taking a lenient view reduced the punishment to compulsory retirement. Although the letter states that the applicant would be liable for all the pensionary benefits it does not mean that the respondents could not reduce the pension and gratuity of the applicant if permitted by the Rules. The learned Counsel for the respondents has relied upon Rule No.312 from Manual of Railway Pension Rules 1950 which clearly shows that such power has been vested with the Competent Authority. The Rules also show that the reduction of pension and gratuity is not a penalty in addition to the penalty or punishment of compulsory retirement but it is one of the consequences of the punishment of compulsory retirement. If therefore the pension and the gratuity are reduced under the Rules it cannot be taken as double punishment or double jeopardy. We do not find therefore any substance in this ground.

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O.A.353/91.

8. The learned Advocate for the applicant also vehemently alleged that the principles of natural justice were violated as the order of reduction of pension and gratuity was passed without giving any notice to him. He also contended that the order was liable to be quashed as it was not communicated to him and he came to know the order only after he received a copy of the letter dtd. 3.5.1983 from the office of the Assistant Personnel Officer, Nagpur. The relevant Rules did not provide that such order must be communicated to the employee, but it cannot be disputed that the order has to be communicated to the concerned employee. At the same time we are of the opinion that it would be further necessary to find out whether any prejudice was caused to the applicant as a result of the non communication of the order. During the arguments the learned Advocate for the applicant himself stated that the applicant after the received a copy of the order of reduction of pension and the gratuity, the applicant made a representation to the superior authorities but the representation was rejected. This clearly shows that the applicant had the opportunity to put up his case against the order, although his claim was rejected. We find therefore that no prejudice was caused to the applicant by non communication of the order immediately after it was passed, and the order cannot be set aside on that ground.

9. The order was also challenged on the ground that no previous notice was given to the applicant before the order was passed. The learned Advocate for the applicant relied upon certain authorities in this

O.A.353/91.

opportunity to show cause to the Government Servant was invalid. In our opinion this decision is also not applicable firstly for the reason that it dealt with the case of Government Servant who retired by superannuation and who was not found guilty of misconduct and was not compulsorily retired. Secondly the decision dealt with the interpretation of the Punjab Civil Services Rules (Pension Rules). In the present case the applicant does not challenge the punishment of compulsory retirement and as shown above the reduction in pension and gratuity was as per the powers and the procedure laid down in Rule 312 of Railway Pension Rules.

11. The applicant challenges the impugned orders on the ground of malice. According to him the incidents that he was suspended on the alleged complaint of vigilance squad on 19.2.1976, that he was dismissed from service without inquiry or show cause notice on 18.6.1976 and that the penalty was set aside after a year on 14.6.1977 by C.C.S. would show that the authorities were acting with malafide intention against him. He also relied upon the circumstances that he was again suspended on 15.6.1977 and thereafter was transferred on 18.8.1977. The reply of the respondents however shows that when a joint check was carried out by the anti fraud squad of Headquarters on 7.2.1976 at Nagpur Station it was found that the applicant was having ^a bundle of 55 platform tickets, 4 journey tickets ex. Nagpur to Khamgaon and excess amount of Rs.16.85. It was also found that the applicant did not declare private cash before commencing his duty in the register maintained and he was unable to

O.A.353/91.

connection. It must be pointed out at the outset that the Rule under which the power to reduce the pension and gratuity has been given to the competent authority does not require any such previous notice. As the Rules did not require any previous notice there was no infringement of any procedural Rules. The applicant does not challenge the validity on this rule.

10. We shall now consider the cases cited by the learned Advocate for the applicant. Reliance was placed on the decision of the Supreme Court in the case of D.V. Kapoor Vs. Union of India and Others (1990(4)S.C. case 314). The Supreme Court held that punishment on misconduct should be commensurate with the gravity of misconduct. It was further held that when pension and / gratuity was to be deprived of, it should be in accordance with the procedure prescribed by law. We do not find that the applicant can be benefited by this decision. This is not a case where the applicant has been deprived totally of pension and gratuity. The reduction in pension and gratuity in the present case was as per the powers and procedure prescribed by Rule 312 in the Railway Pension Rules, as has been shown above. In addition the applicant does not challenge the penalty of compulsory retirement in the present application. The applicant also relied upon the decision of the Supreme Court in State of Punjab Vs. K.R. Erry and Subhog Rai Mehta and State of Punjab Vs. Sh. Khushal Singh (1973 (1) SC cases 120). In this case cut in the amount of pension and gratuity was imposed under Punjab Civil Services Rules (Pension Rules) on the Government Servant reaching superannuation. The Supreme Court found that this action without giving

O.A.353/91.

explain either the possession of the tickets or the excess cash. As a result of this the applicant was suspended from duty with effect from 24.2.1976 and was dismissed from Railway Service on 18.6.1976. The Appellate Authority however, set aside the punishment imposed by the Divisional Superintendent and remitted the case back to the Divisional Superintendent for taking necessary disciplinary action. The appellate authority i.e. the Chief Commercial Superintendent, Bombay also indicated that the period from the date of the dismissal should be deemed to be the period under suspension. After this order the memorandum was issued to the applicant on 25.7.1977. He was also transferred to Ghugus and the order of suspension was revoked. Thereafter the applicant was taken on duty on 1.8.1977 and the order of transfer was issued to him. The applicant submitted his appeal against this transfer. The Divisional Superintendent however directed that he had to carry out the orders of transfer but the applicant remained unauthorisedly absent with effect from 24.8.1977. He was served with another memorandum dtd. 14.4.1978 intimating him that the inquiry for imposition of major penalty was proposed against him. It is not necessary to refer to further developments, however, it appears that only when it was intimated to the applicant that the punishment of removal from service would be imposed on him, the applicant gave his willingness to carry out the orders of transfer to Ghugus. In these circumstances the disciplinary authority imposed upon the applicant the punishment of reduction in the time scale without effecting his future increments. These facts are not disputed. The circumstances do not show that the applicant had a very clean record. We do not

O.A.353/91.

accept the plea on the malafides for yet other reasons. The malafides are alleged by the applicant, however, he has not made any concerned officer a party respondent by name. In the present application the applicant does not challenge the punishment of compulsory retirement and all the allegations of malafide intention are wholly irrelevant. The reduction of pension and gratuity was a result of punishment of compulsory retirement and was imposed as per the Rules. The grievance on the ground on the alleged malice seems to be against the Divisional Railway Manager, Nagpur, however, the order of reduction of pension and gratuity was issued by the Chief Commercial Superintendent. In view of these reasons we do not find that the impugned order can be set aside on the ground of malice.

12. We shall now consider his case regarding the period of non qualifying service. Annexure E to the application shows that the applicant was absent for different periods between 31.5.1945 to 15.6.1969 as has been mentioned in Annexure A without any authorisation. It is sufficient to point out that this unauthorised absence aggregates to more ~~than~~ ^{than} 9 months. It was contended on behalf of the applicant that this period may be treated as extra ordinary leave. We do not find any circumstances which would justify such claim. The competent authority could have considered this however, it is not obligatory on them to treat this entire period of absence without authorisation as extra ordinary leave.

13. It is stated that the applicant was under dismissal from 7.2.1976 to 31.7.1977 and the appellate authority directed that the period of dismissal may be

O.A.353/91.

treated as the period of suspension. However, ultimately the applicant was not exonerated of the charges levelled against him, and on the contrary punishment was imposed on him. In addition the period of suspension can not be taken as qualifying service unless the authority which ordered so had expressly declared at that time that the period of suspension shall be treated as of duty or leave. We do not find therefore that the applicant can get any benefit on that ground.

14. The applicant contended that the period from 3.8.1977 to 17.8.1977 had to be treated as extra ordinary leave as no order to proceed on transfer was given and the applicant was not allowed to join. We have already discussed the circumstances regarding this transfer and we do not find any justification for this claim.

15. The applicant submits that the period of suspension from 19.8.1977 to 6.1.1979 and 19.2.1980 to 18.11.1980 should also be treated as extra ordinary leave. We have already discussed the Rules¹ regarding the period of suspension and that would be applicable as regards ^{to these} this periods also. The applicant relies upon the Rules regarding commutation of qualifying service (Pension Rules) in Railways Establishment Manual. Clause (viii)(9) on page 868 is relevant. The second para of the clause lays down that absence from duty on medically declassified person in joining some alternative job or not returning to duty for want of suitable appointment may be treated as extra ordinary leave on medical certificate for the purpose of qualifying service. No doubt the applicant was declared medically unfit for all classes, however,

O.A. 353/91.

the other requirements of this para are not fulfilled in the present case. In fact, in our opinion the first para would also not benefit the applicant in the present case. The first para lays down that all period of leave with leave salary and all extra ordinary leave on medical certificate, "taken upto the date of ~~superannuation~~ superannuation or the date of extension of service, counts as qualifying service". This part deals with the terminal leave before superannuation and the applicant could get benefit only if the period of absence was upto the date of superannuation. In the present case the applicant did not retire by superannuation but was compulsorily retired, and we find that the applicant is not entitled for any benefit under the Rules relied upon by him.

16. In the result we find that there is no merit in the application and the application is dismissed.

17. No order as to the costs.


V.D. Deshmukh

(V.D. DESHMUKH)
MEMBER (J).


M.Y. PRIOLKAR
MEMBER (A).

ham/-.