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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : : HYDERABAD BENCH : :

AT HYDERABAD

(Application filed Under Section 19 of the Administrative Tribunals Act, 1985).

O.A.NO. 1180 OF 1993

Between :

A. Sanjeeva Rao, S/o Sri A. VENKAIATH
aged 63 years, Resident of
Vinnamala Village and Post,
Nayudupeta Mandal, Nellore
District, Andhra Pradesh.

.. APPLICANT.

Pin Code: 524 126.

1. Union of India represented
by Secretary, Railway Board,
Ministry of Railways, Rail
Bhavan, New Delhi - 110 001.
2. General Manager, South Central
Railway, Rail Nilayam,
Secunderabad.
3. Senior Divisional Commercial
Superintendent, South Central
Railway, Vijayawada.

.. RESPONDENTS.

DETAILS OF APPLICATION.

1. DETAILS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE.

1. ORDER NO. : E(D&A)90-AE8-2.
2. DATE : 15-07-1992.
3. PASSED BY : PRESIDENT OF INDIA.
communicated through Joint
4. SUBJECT IN BRIEF : Director(Estt)D&A, Railway
Board, New Delhi.

Order cutting 15% of the Monthly Pension of
the Applicant for a period of 3 years.

2. JURISDICTION OF THE TRIBUNAL:

Applicant states that Under Section 14 of the
Administrative Tribunals Act, 1985 (Central Act 13 of 1985)
this Hon'ble Tribunal has jurisdiction to decide the
issues arising in this case. In this case, Applicant is
questioning the legality and validity of the order passed

by the President of India and communicated by the first respondent herein withholding 15% monthly pension for a period of 3 years to the Applicant and this Hon'ble Tribunal has jurisdiction to decide the issues arising out of the said claim made in this Application.

3. LIMITATION:

Applicant states that the present Application is within the period of Limitation prescribed Under Section 21 of the Administrative Tribunals Act, 1985(Central Act 13 of 1985). The impugned order dated 15.7.1992 was received by the Applicant only on 14.9.1992. On receiving the said order, applicant made a representation on 15.10.1992 to the President of India and the Applicant was informed ^{by an order D.} ^{on 31.1.1993} by the 3rd respondent that against the order made by the President of India, no further Appeal lies. The Present Application is filed within one year from the date of receipt of the impugned order and it is within time.

4. FACTS OF THE CASE.

a) Applicant was working as Train Conductor Guard in Vijayawada Division of South Central Railway. Applicant had retired from service on 31.12.1987 on attaining the age of superannuation after putting in 40 years of service in the Railways.

b) Applicant while working as Train Conductor Guard was kept under suspension pending contemplation of disciplinary proceedings against him by an order dated 30.11.1987 by the 3rd respondent herein. However, the said order of suspension was revoked with effect from 28.12.1987 by the 3rd respondent herein.

c) Applicant states that a Charge memo No.B/DCS/CON/260/87 dated 3.12.1987 was issued to the Applicant by the 3rd respondent herein with two charges (viz) that the Applicant ~~when~~ ^{while} functioning as Train Conductor Guard, Vijayawada during the period from August, 1987 to October 1987 committed serious misconduct in that he deliberately manipulated EFT No.D983326 with an intention to defraud Railways; and (2) that the Applicant while functioning as ~~Train~~ ^{Upper Class} Conductor Guard, South Central Railway, Vijayawada during August, 1987 to October, 1987 failed to maintain absolute integrity and devotion to duty in that while manning the/Coaches in Train No.53 on 26.8.1987 he prepared accounts and record files of EFT D983326 for Rs.4/- towards reservation charges for one against first class Journey No.18620 ~~Ex~~ Madras to Hyderabad which was actually an AC Two-Tier and written the receipt foil of the said EFT and manipulated the same to defraud the Railways. Applicant had submitted his explanation to the same on 16.12.1987 denying the charges levelled against him. By an order dated 23.12.1987 the 3rd respondent herein had appointed an Enquiry Officer to enquire into the charges levelled against the Applicant. But no enquiry was ~~allowed~~ ^{held} while the Applicant was in service and the Applicant was allowed to retire from service on 31.12.1987 on attaining the age of superannuation without reserving any right to proceed further with the enquiry. (Copies of the Charge-sheet; Explanation given by the Applicant to the Charge-sheet; and order of Retirement of the Applicant are filed herewith as ANNEXURES - 1, 2 & 3).

d) Applicant states that an enquiry was held into the charges levelled against the Applicant on 16.5.1989; 19.6.1989; 20.6.1989 and 4 witnesses were examined during the enquiry in support of the charges levelled against the Applicant. After completing the evidence of the

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Departmental witnesses, Applicant was put certain questions by the Enquiry Officer; but his statement was not recorded. After the enquiry is completed, Applicant had submitted his Defence Brief on 21.6.1989. Subsequently the Enquiry Officer submitted his report holding the Charge I is proved though there is no evidence to substantiate the Charge No.1. In respect of Charge No.2, the Enquiry Officer while observing that there is no evidence to come to a clear conclusion that all the EFTs have been misused to defraud the Railways and there is also no evidence even indirect that they were misused held that the Charge No.2 is partly proved. The findings of the Enquiry Officer are based on mere assumptions and surmises but not based on evidence on record. On mere suspicion the Enquiry Officer holds the Applicant guilty of charge No.1 and partly guilty of charge No.2. (Copy of the Enquiry Officer's Report is filed herewith as ANNEXURE - 4).

e) The 3rd respondent herein as per his letter dated 29.12.1989 while furnishing a copy of the Enquiry Officer's Report called upon the Applicant to make any representation or submission in writing against the findings of the Enquiry Officer. Applicant had submitted his representation on 19.1.1990. After receiving the representation of the Applicant, the 3rd respondent as Disciplinary Authority did not take any action on the same; but it appears he forwarded the case to the 1st respondent herein duly recommending 10% cut in the monthly pension payable to the Applicant. Applicant states that ultimately the first respondent under impugned proceedings dated 15.7.1992 passed orders imposing the penalty or cut of 15% in the monthly pension payable to the Applicant for a period of 3 years. Along with the same a copy of the recommendations by the Union Public Service Commission was also furnished to the Applicant. The said order was received by the Applicant on 14.9.1992. (The impugned order and a copy

of the recommendations enclosed to the impugned order are filed herewith as ANNEXURES - 5 and 6).

5. GROUNDS OF APPEAL WITH LEGAL PROVISIONS.

a) Applicant states that the impugned order withholding 15% cut in the monthly pension admissible to the Applicant for a period of 3 years is illegal, unjust and arbitrary and contrary to the mandatory provisions of Rules 2307 and 2308 of the Indian Railway Establishment Code Volume-II.

b) Applicant states that under Sub-Clause (3) of Rule 2307 of the Indian Railway Establishment Code Vol.II that before passing any order withholding any part of the pension either permanently or for a specific period, the Competent Authority shall serve on the pensioner a notice specifying the action proposed to be taken against him and the ground on which this proposed action to be taken and calling upon him to submit his explanation within 15 days after receipt of the said notice; such representation he may make against the proposed action and take the representation if any submitted by the Pensioner into consideration. It is further provided under Sub-Clause (4) Rule 2307 of the Indian Railway Establishment Code Volume-II where the authority competent to pass the order under Clause-I is the President of India, the Union Public Service Commission shall be consulted before passing the order. Applicant states that the impugned order was passed without issuing any notice to the Applicant and without giving any opportunity to the Applicant to make representation against the proposed action. The impugned proceedings are contrary to the mandatory provisions of Rule 2307 of the Indian Railway Establishment Code Volume-II and as such are illegal, void and unenforceable.

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c) Applicant states that under Rules 2307 and 2308 of the Indian Railway Establishment Code Volume-II, it is only the President of India that ~~has~~ ^{Power to} withhold~~s~~ or withdraw~~s~~ the pension or any part of it whether permanently or for a specific period and before passing any such order, the Union Public Service Commission shall be consulted. In this case, the Union Public Service Commission instead of giving its advise to the President of India had itself acted as a Disciplinary Authority and directed that 15% of the monthly pension otherwise admissible to the Applicant be withheld for a period of 3 years and the President of India surrendering his quasi-judicial ~~powers~~ ^{Powers} mechanically acted upon the findings of the Union Public Service Commission. The findings of the Union Public Service Commission holding the Applicant guilty of the charges are erroneous and perverse and they are not based on evidence on record. The findings are based on mere assumptions and suspicion.

d) Applicant states that under the provisions of Rules 2307 and 2308 of the Indian Railway Establishment Code Volume-II, the President of India while passing any order relating to the withdrawal or withholding of the pension has only to consult the Union Public Service Commission; but is not bound by the advise tendered by the Union Public Service Commission and the matter has to be independently considered by the President of India, who is only authority having ~~right~~ ^{Power} to withdraw or withhold any part of the pension of the Applicant. But the President of India under the impugned orders had acted mechanically surrendering quasi-judicial powers and imposed 15% cut in the monthly pension payable to the Applicant for a period of 3 years.

e) Applicant states that the 3rd respondent as the Disciplinary Authority had only recommended for 10% cut while the Union Public Service Commission directed 15% cut in the monthly pension payable to the Applicant and inview of the same, the President of India ought to have considered the case on the merits and the evidence and ought to have come to an independent conclusion regarding the quantum of cut in the pension or the period for which it is to be withheld. But the impugned order does not show that the matter was considered independently by the competent authority.

f) Applicant states that ~~in~~^{any} order under Rules 2307 and 2308 referred to above for withholding or withdrawing pension can be passed only after the Railway Servant is found guilty of grave misconduct. Neither the charges ~~nor charges~~ nor the allegations levelled against the Applicant would show that the misconduct alleged against ~~the applicant~~ ~~the applicant~~ according to the findings of the Enquiry Officer there is no direct evidence to establish the charges and he came to a conclusion only on the basis of mere probabilities. It is also seen from the impugned order that the President of India has noted that it is not conclusively proved during the enquiry that the Applicant actually ~~wrote the EFTs~~ ^{but erroneously held} the fact of refusal to give the samples of hand-writing when asked to do so strongly indicate that the Applicant himself had tampered the EFTs. In respect of Charge No.2, it is held that sufficient evidence also exists to show that the Applicant prepared the EFTs mentioned in Article II of the charges, though the Enquiry Officer eategorically held that there is no direct or indirect evidence to establish the charge No.2 against the Applicant. Applicant states that ~~the~~

under the impugned order the Applicant is held guilty of the charges on the basis of mere suspicion but not on the basis of evidence on record. It is now the settled Law that any amount of suspicion cannot replace the proof and the findings on the impugned order are totally without basis and any order passed on the said findings is consequentially illegal and invalid.

g) Applicant states that under the impugned order it is held that the charge No.1 is proved on the ground that the Applicant has refused to give the samples of hand writing when asked to do so. Applicant states that the Applicant was never asked to give the samples of his hand-writing during the enquiry and the said proceedings is not a part of Departmental Enquiry Proceedings against the Applicant. It is only after more than 2½ years after completion of the enquiry, the Applicant was asked to give the samples of his hand-writing by the 3rd respondent which the Applicant had rightly refused to give the same; in as much as he was not bound under any Law for the time being inforce to give such samples ^{and} ~~as~~ any such request was ^{not} made during the course of Departmental Enquiry and he no longer was an employee under the respondents. Applicant states that taking these factors into consideration while holding the charge No.1 would amount to taking ^{extreme} ~~extenuating~~ factor into consideration while passing the impugned order. The impugned order is vitiated for this reason.

h) Applicant states that his sickness on the crucial date was not accepted by the Union Public Service Commission or the President of India in the impugned orders, though the Applicant had submitted the Medical Certificate issued by the Government Hospital, Gudur. If the respondents had any doubt about the bonafides of

Medical Certificate issued by the Government Hospital, they ought to have made enquiries or the Enquiry Officer should have called upon the Applicant to prove the same by producing the authority who had issued the certificate. In the absence of the same, the Medical Certificate issued by the Government Hospital cannot be doubted and order the findings relating to the same in the impugned/ is, therefore, vitiated.

i) Applicant states that subsequently he was treated at the Railway Hospital at Gudur and he has also produced certificate issued by the Railway Hospital authorities showing his sickness and inview of the same, the respondents cannot doubt the sickness of the Applicant during the relevant period. As already stated, the findings in the impugned order are perverse and not based on the evidence on record. But on mere suspicion the Applicant is held guilty of charges that too after taking into consideration the ~~excessive~~ ^{extraneous} factors, the impugned order is liable to be set aside on this ground alone.

j) Applicant further states that the Union Public Service Commission as well as the President of India have ~~disferred~~ ^{been} with the categorical findings of the Enquiry Officer regarding the evidence on record and inview of the same, Applicant ought to have ^{been} given notice before imposing the penalty. The failure to do so is contrary to the Railway Servants(Discipline and Appeal)Rules and the established principles of the natural justice.

k) Applicant further states that under Sub-Clause(4) of Rule 2307 and Clause (d) of Rule 2308 of the Indian, Railway Establishment Code Volume-II, the Union Public Service Commission shall be consulted only before passing the final order after giving notice to the pensioner before/any order withholding or withdrawing the pension.

In this case, the first respondent ought to have given the notice to the Applicant before consulting the Union Public Service Commission and passing the final order specifying the action proposed to be taken against the Applicant on the basis of the provisional conclusion arrived at and the failure to issue such notice is contrary to the mandatory provisions of the aforesaid rules and as such it is illegal and invalid; and the impugned order is, therefore, illegal and invalid.

6. DETAILS OF REMEDIES EXHAUSTED:

Applicant states that in the above circumstances, there is no other remedy except to approach this Hon'ble Tribunal with this Original Application. Applicant states that against the impugned order no Appeal ^{lies} _{under} Rules as it is passed by the President of India. Notwithstanding the same, Applicant made a representation to the President of India to reconsider the order but it was negatived by the respondents.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER COURT.

Applicant states that he has not filed any other case claiming the same relief which is subject matter of this Original Application before this Hon'ble Tribunal or any other Bench of the Administrative Tribunals.

Applicant states that he had earlier filed a case in OA NO. 1029 of 1990 before this Hon'ble Tribunal claiming the pensionary benefits and other amounts due to the Applicant along with interest. But the said Original Application was disposed of on 28.02.1991 stating that no orders can be passed in respect of pension as the matter was pending with the President of India. In respect of claims for gratuity there was a direction to pay the amount and in respect of other claims there were some directions to the respondents.

But the said Original Application ~~has~~ nothing to do with with the present Original Application filed by the Applicant questioning the impugned order passed by the President of India imposing the penalty of 15% cut in the monthly pension payable to the Application.

8. RELIEF SOUGHT:

For the reasons mentioned in para 4 and the Grounds raised in para 5 above, the Applicant Prays that this Hon'ble Tribunal be pleased to call for the records relating to the proceedings No.E(D&A)90-AE8-2 dated 15-07-1992 on the file of the first respondent herein and quash the same with consequential direction to the respondents to pay the ^{full} pension and arrears of pension along with interest and pass such other orders as this Hon'ble Tribunal deems fit in the circumstances of the case.

9. INTERIM RELIEF SOUGHT:

Applicant states that he had retired from service on attaining the age of superannuation on 31.12.1987. Inview of the pendency of disciplinary proceedings against the Applicant even after his retirement from service, the pensionary benefits were not immediately settled. Inview of the same, the Applicant had approached this Hon'ble Tribunal earlier in OA No.1029 of 1990 and the same was disposed of by an order dated 28-02-1991 directing the respondents to release the amounts due to the Applicant towards Gratuity, ~~before~~ if the disciplinary proceedings were not concluded before 30-04-1991. Notwithstanding the same, the same was not released to the Applicant. Some amounts were paid to the Applicant, Pension, Pensionary benefits and leave salary only in the year 1992. Inview of the impugned order, the Applicant is put to loss. Applicant states that though the term of the

penalty is over, the respondents have not restored the full pension to the Applicant.

It is, therefore, prayed that pending disposal of the above Original Application direct the respondents to pay full pension to the Applicant and pass such other orders as this Hon'ble Tribunal deems fit.

10. In the event of the Application being sent by registered post, it may be stated whether the Applicant desires to have oral hearing of the admission stage and if so, he shall attach a self-addressed post card or inland letter, at which intimation regarding date of hearing could be sent to him.

.. Not Applicable ..

11. PARTICULARS OF BANK DRAFT/POSTAL ORDER IN RESPECT OF THE APPLICATION FEE.

1. No.of Indian Postal Order: 80588153

2. Name of the Issuing Post Office: G.P.O

3. Date of Issue of Postal Order: 10/9/93

4. Post Office at which payable. S.O/M
S.O/A

~~I.P.O/REC'D/D/Removed~~

12. LIST OF ENCLOSURES:

1. Vakalat.

2. Indian Postal Order for Rs.

3. Material papers:

VERIFICATION.

I, A.Sanjeeva Rao, S/o Sri A.VENKAIAH,
aged 63 years, residing at Vinnamala village and
post, Naidupet mandal, Nellore District, do hereby verify

that the contents of the above paragraphs are true to my personal knowledge and that I have not suppressed any material facts.

A. Sejjeei Rao.

Hyderabad,

Signature of the Applicant.

Date: 9 -9-1993.

To

The Registrar
Central Administrative Tribunal
Hyderabad Bench
HYDERABAD.

I. Ramamurthy

Counsel for the Applicant.