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CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH :
AT HYDERABAD.

O.A.No.497/99 DATE OF ORDER: 28 -1-2000.

BETWEEN:

N. Rama Rao, s/o Venkata Ramaiah,
aged 53 years, H.No.1-3-25-5-8/A,
Quary Street, Vidhayadharpuram,
Vijayawada-12, Krishna District,
Andhra Pradesh. ... APPLICANT

(By Advocate Mr. G. Sanyasi Rao)

A N D

1. Joint Director Establishment
(D & A) Railway Board,
New Delhi.

2. General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.

3. Divisional Railway Manager,
South Central Railway,
Vijayawada. ... RESPONDENTS

(By Standing Counsel Mr. V.Siva Reddy)

Coram :

The Honourable Mr.Justice D. H. Nasir, Vice-Chairman.

The Honourable Mr.S.Manickavasagam, Member(Admn.)

Contd ... 2.

O R D E R.

Justice D.H. Nasir, VC :

1. Stoppage of increments of the applicant by Respondents 1, 2 and 3 is sought to be declared illegal and void.

2. The applicant was appointed as Ticket Collector during the year 1966. After working in Railways in various capacities, he was eventually promoted to the post of Chief Ticket Inspector in the grade of Rs.2000-3200 (now revised to Rs.6500-10,500). While working as Coach Conductor, BZA on 23/24.10.1995 in Train No.6059 from Madras to Vijayawada, the Vigilance Inspector alleged that the applicant was having an excess railway cash of Rs.51/- and private cash of Rs.978/- when the applicant was checked between Ongole and Vijayawada. Charge sheet was therefore issued by the Senior Divisional Commercial Manager, Vijayawada (R-3) dated 9.1.1995. The applicant pleaded innocence. However, according to the applicant, Respondent No.3 imposed punishment of stoppage of increments for a period of one year (12 months) non-recurring from 1.8.1995 in the grade of Rs.2000-3200/- vide his letter dated 3.5.1995. Subsequently Respondent No.2 enhanced the penalty of stoppage of increments from one year period to three years vide his order dated 12.11.1997. The applicant therefore preferred an appeal before the Chairman, Railway Board against the said order contending that the charges against him were baseless. However, the Railway Board confirmed the punishment vide

letter dated 30.11.1998 allegedly without exercising his discretionary powers and merely confirmed the decision of Respondent No.2.

3. According to the applicant, the enhancement of penalty of stopping the increments from one year to three years was violative of Rule 25 of the Railway Servants (Disciplinary & Appeal) Rules, 1968 and in view of the rule position, according to the applicant, the decision of Respondent No.2 and Respondent No.1 deserved to be quashed and set aside.

4. On behalf of respondents, it is contended that t he O.A. is filed without any cause of action. It is also contended by the respondents that the O.A. was liable to be dismissed on account of non-joinder of necessary parties. According to the respondents, Senior Divisional Commercial Manager, Vijayawada was a necessary party as he was the Disciplinary Authority originally. But Respondent No.3 was not a necessary party as he had played no role in the disciplinary action against the applicant. In para-3 of the counter affidavit, the respondents have reproduced several punishments suffered by the applicant in the past which are as follows :

(i) Annual increment withheld for 6 months Non-recurring for poor performance from 1.6.68 to 10.6.1968 vide penalty advice No.B/C. 570/TC/BZA/74 of 31.7.1968.

(ii) Censured for failure to declare personal cash of Rs.3-=41 ps. on 26.7.1969 vide penalty advice No.B/DCScon 386/69 dt. 24.12.1969.

(iii) Annual increment with held for 3 months Non-recurring irregular working as TC at Vijayawada Railway Station vide advice No.B/C 570/TC/BZA dt. 19.9.1970.

(iv) Annual increment withheld for 6 months Non-recurring for irregular working as Ticket Collector at Vijayawada Railway Station on 8.9.1970 vide penalty advice No.B/C 568/CTI/1/70 dt.14.5.1970.

(v) Censured for poor performance in duty in October,1999 vide penalty advice No.B/C 570/TC/NLR dated 28.1.1972.

(vi) Annual increment withheld for a period of six months Non-recurring for failure to hand over the original chart of second sleeper coach No.7134 by Train No.141 of 23.1.1981 to his reliever at Vijayawada Railway Station vide B/DCS Con/59/81 dated 20.10.1981.

(vii) Censured for failure to give ICC particulars while working as Train Conductor Guard by Train No.20 Express on 13.5.1989 Ex. BZA to VSKP vide advice No.B/C 568/Staff/Misc/ICC/20 Exp. dated 29.8.1989.

(viii) Annual increment withheld for a period of 18 months non-recurring for having excess of Rs.27/- in railway cash and Rs.980/- undeclared private cash vide advice No.B/C Con.31/96 dated 12.9.96.

(ix) Annual increment withheld for a period of two years recurring for carrying passengers holding IInd M/E tickets in Upper Class manned by him, found in possession of Rs.9/- excess in Railway Cash and resorted to non-cooperation with the Vigilance Inspector/Secunderabad and tried to prevent him from conducting the check vide advice No.B/C Con/75/95 dated 21.3.1998.

5. As far as the incident in question is concerned, it is stated in the counter affidavit in para-4 that on receipt of information from the Vigilance Branch of South Central Railway, the Senior Divisional Commercial Manager,Vijayawada issued a minor penalty charge sheet alleging that the Vigilance Inspector during his check

found the applicant having an excess cash of Rs.51 which was supposed to be the change to be returned to the passenger and which was subsequently returned as a consequence of vigilance check. It is also alleged against the applicant that he allowed two passengers holding IInd Mail/Express tickets without collecting the difference of fare and reservation fee between II/Express and IInd A/C which was also realised under EFT No.309495 dated 24.10.1994 at the instance of Vigilance check.

6. It was incorrect, according to the respondents, to say that Respondent No.3 (DRM/BZA) imposed the punishment of stoppage of increments for a period of one year and in fact the said order was passed and communicated by the Senior Divisional Commercial Manager, Vijayawada by Memorandum dated 3.5.1995 after carefully considering the representation dated 16.1.1995 submitted by the applicant.

7. An important contention raised by the respondents which is required to be carefully examined is that the penalty imposed by the Disciplinary Authority was not commensurate with the misconduct committed by the applicant and therefore, the penalty was required to be enhanced. Respondent No.2 therefore issued a Memorandum dated 2.7.1997 to the applicant asking him to make representation,if any, against the proposed penalty within 15 days. The applicant made a represesentation dated 6.8.1997 to the General Manager stating that he was not guilty of any offence. The applicant was also informed about the provisions of appeal against the orders of the General Manager. The applicant made a further representation dated 16.1.1998 to the Railway Board, New

Delhi against the order passed by the General Manager, South Central Railway but the same was rejected by the Railway Board by their order dated 30.11.1998.

8. It is submitted by the learned Standing Counsel on behalf of the respondents that Rule 25 of the Railway Servants (Disciplinary and Appeal) Rules,1968 empowers the General Manager, South Central Railway to make revision in the DAR cases without any time limit and that there was no time restriction for exercising the revisional power by the General Manager or the President of India.

9. We have carefully examined this aspect of the case. Sub-Rule (5) of Rule 25 of the Railway Servants (Disciplinary and Appeal) Rules, 1968 with which we are mainly concerned is reproduced below :

> (5) No action under this rule shall be initiated by -
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> (a) an appellate authority other than the President; or
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> (b) the revising authorities mentioned in (v) of sub-rule (1) after more than six months from the date of the order to be revised in cases where it is proposed to impose or enhance a penalty or modify the order to the detriment of the Railway servant; or more than one year after the date of the order to be revised in cases where it is proposed to reduce or cancel the penalty imposed or modify the order in favour of the Railway servant.
>
> Provided that when revision is undertaken by the Railway Board or the GeneralManager of a Zonal Railway or an authority of the status of a General Manager in any other Railway Unit or Administration when they are higher than the appellate authority, and by the President even when he is the appellate authority, this can be done without restriction of any time limit.
>
> **Explanation** - For the purposes of this

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> sub-rule the time limits for revision of cases shall be reckoned from the date of issue of the orders proposed to be revised. In cases where original order has been upheld by the appellate authority, the time limit shall be reckoned from the date of issue of the appellate orders.

10. The proviso to sub-rule extracted above takes the wind out of the sail of the applicant as it was his main prong of attack. We are saying so because it becomes evident from what is stated in the said proviso that the time limit as set out in sub-rule (5) (b) of Rule 25 releases the Railway Board from the General Manager of a Zonal Railway from its purview and therefore, on that ground it cannot be said as propounded by the counsel Mr. Sanyasi Rao for the applicant that the revision exercise undertaken by Respondent No.2 was barred by limitation.

11. We are also not impressed by the submission made by Mr. Sanyasi Rao that the aforesaid "proviso" incorporated in the Rule was a mere executive exercise and not a legislative exercise as set out in Article 309 of the Constitution of India. This submission is not only not properly framed but no material is placed before us to give credence to such proposition.

12. In view of what is stated above, the bar of limitation urged by the applicant does not produce any fatal effect or even adverse effect on the authority of Respondent No.2 to take recourse to the provision of Rule 25 of the aforesaid Rules for the purpose of enhancement of penalty.

13. It was also urged by the learned counsel Mr. Sanyasi Rao as stated earlier that it was incumbent upon the respondents to conduct a full-fledged enquiry

before awarding any punishment to the charged employee. The principles of natural justice, according to Mr. Sanyasi Rao, were seriously violated by the respondents by not affording the opportunity of hearing to the applicant. However, we agree with the learned Standing Counsel Mr. Siva Reddy for the respondents ~~that~~ when he makes a submission that regular enquiry was not required to be conducted in view of the fact that only minor penalty as contemplated in Rule 6(iv) of the Railway Servants (Disciplinary and Appeal) Rules,1968 was imposed, the learned counsel Mr. Sanyasi Rao for the applicant fails to convince us to take a contrary view under the facts and circumstances of the present case.

14. However, this question of not conducting a full-fledged enquiry is required to be examined from a different angle also. Under Clause (b) of the Proviso to sub-rule (1) of Rule 25 of the Rules it becomes necessary to follow the procedure for enquiry in the manner laid down in Rule 9 unless such enquiry had already been held and also except after consultation with the Commission,, where such consultation is necessary. Under the following circumstances the requirement of enquiry to be made under Rule 9 may fall for consideration :-

(i) Where it is proposed to impose any of the penalties specified in Clauses (v) to (ix) of Rule 6, or

(ii) the penalty specified in Clause (iv) of Rule 6 which falls within the scope of the provisions contained in sub-rule (2) of Rule 11; or

(iii) to enhance the penalty imposed by the order under revision to any of the penalties specified in this sub-clause.

15. The first requirement as stated above is out of question in view of the fact that the penalty proposed to be imposed in the review proceedings did not fall within the ambit of Clauses (v) to (ix) of Rule 6. However, the same ~~thus~~ does lie within the scope of Clause (iv) of Rule 6 in which the penalty of withholding of increments of pay for a specified period with further directions as to whether on the expiry of such period this will or will not have the effect of postponing the future increments of his pay is imposed. However, it is also to be ensured that the proposed enhancement of penalty falls within the scope of the provisions contained in sub-rule (2) of Rule 11 which provides as under :

> "(2) Notwithstanding anything contained in Clause (b) or sub-rule (1), if in a case, it is proposed, after considering the representation, if any, made by the Railway servant under Clause (a) of that sub-rule to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension or special contribution to Provident Fund payable to the Railway servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (6) to (25) of Ru le 9, before making any ordfer imposing on the Railway servant any such penalty."

16. From the above provision it emerges that withholding of increments if likely to affect adversely the amount of pension special contribution to Provident Fund payable to the Railway servant or to withhold increments of pay for a period of exceeding three years or withhold increments of pay with cumulative effect for any period, an inquiry is required to be held in the manner laid down in sub-rules (6) to (25) of Rule 9. However, in

the instant case it is not urged before us that any adverse affect was likely to be produced on the applicant's pension or special contribution to Provident Fund.

17. The proposed imposition of penalty did not exceed a period of three years nor withholding of increments of pay was proposed to be made with cumulative effect for any period and the said punishment not having been imposed with cumulative effect for a period of exceeding three years, it is not necessary for the respondents to hold an enquiry in the manner laid down in sub-rules (6) to (25) of Rule 9 before making any order imposing on the Railway servant any such penalty.

18. It is also pertinent to note that such enquiry under Rule 9 is also required to be made in the event of enhancement of penalties specified in that sub-clause meaning thereby the penalties specified in Clause (b) or Proviso to sub-rule (1) of Rule 25. The penalties so specified are those specified in Clauses (v) to (ix) of Rule 6 or the penalties specified in Clause (iv) of Rule 6 falling within the scope of the provisions contained in sub-rule (2) of Rule 11. Since the proposed and actually imposed penalty does not fall within the scope and ambit of the above penalties as specified in clause (b), the enhancement of penalty awarded by Respondent No.2 does not stand vitiated and therefore, we do not find any reasons to interfere with the impugned penalty.

19. The learned counsel for the applicant pressed into service the decision of the Supreme Court in AWADH KISHORE TIWARI v. DAMODAR VALLEY CORPORATION, CALCUTTA (AIR 1994 SC 482) in which, in a similar

situation, the Supreme Court took note of the fact that without holding an inquiry in accordance with the rules of the Respondent Corporation it was held that the charge was well established. Accordingly, an order stopping three increments of pay with cumulative effect was passed and he was asked to refund the amount drawn under the Leave Travel Concession Bill. The said order was challenged in a civil suit which was decreed by the trial Court. An appeal filed by the State was allowed by the Additional District Judge, Dhanbad and the suit was dismissed.

20. The counsel for the appellants in the above case before the Supreme Court contended that the learned Additional District Judge erroneously assumed in paragraph-9 of his judgment that the increments of the plaintiff were not stopped with cumulative effect and on that basis held that Regulation 98(1) requiring holding of an inquiry was not applicable. The Supreme Court further took note of the fact that Mr. Mukherjee appearing on behalf of the respondent-State did not dispute the fact that by the order impugned in the suit, the plaintiff's three increments had been stopped with cumulative effect and therefore, the Supreme Court observed that if that was so, then Regulation 98(1) was clearly attracted and that since no inquiry was held where the plaintiff could have led evidence in support of his explanation mentioned in the show cause, it followed that the trial Court was right in decreeing the suit and the first appellate court as well as the High Court were misled by the assumption of wrong facts in dismissing the suit.

21. It is evident from the above observations made by the Supreme Court that the increments of the

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plaintiff were ~~not~~ stopped with cumulative effect and even on behalf of the State it was not disputed before the Supreme Court that the fact that by the order impugned in the suit the plaintiff's three increments had been stopped with cumulative effect. In the case before us, however, there can be no dispute about the fact that the stoppage of increments for three years by way of enhancement of penalty is not given a cumulative effect and therefore, the judgment of the Supreme Court cited by the learned counsel for the applicant does not go to the rescue of the applicant.

22. The misconduct committed and the punishment suffered by the applicant in the past have been pointed out in para-3 of the counter affidavit and the same are reproduced in para-4 of this judgment. If the earlier punishments were taken into consideration by the authorities for imposing the impugned penalty, we would have refrained ourselves from upholding the decision of the respondents. However, there is nothing on the record of the case to show that the authorities were influenced by the fact that the applicant had committed certain misconduct and suffered penalties. There is, therefore, no reason why on that ground also any findings could be recorded that the penalty was vitiated or that the applicant was required to be exonerated.

23. In view of what is stated above, we do not find any case to interfere with the impugned penalty imposed by Respondent No.2. The O.A. is accordingly dismissed; however, with no order as to costs.

(S. MANICKAVASAGAM)
MEMBER(ADMN.)

(D.H.NASIR)
VICE-CHAIRMAN.

Dated the 28th January, 2000.

DJ/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD.

IST AND IIND COURT

COPY TO:

1. HDHNJ
2. HRRN M (ADMN.)
3. HBSJP M (JUDL.)
4. D.R. A(DMN.)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE HON'BLE MR.JUSTICE D.H.NASIR
VICE CHAIRMAN

THE HON'BLE MR.R.RANGARAJAN
MEMBER (ADMN.)

THE HON'BLE MR.B.S.JAI PARAMESWAR
MEMBER (JUDL.)

* * *

DATE OF ORDER: 28/1/2000

MA/RA/CP.NO.

IN

OA. NO. 497/99

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

CP CLOSED

RA CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS