

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

O. A. No.291/00356/2014

... **Date of decision: 23.08.2016**

(Reserved on: 28.07.2016)

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MS. MEENAKSHI HOOJA, MEMBER (A).**

Hakim Singh S/o Sh. Nathi Singh aged about 56 years R/o Vill. Kharwa
PO Ria, Distt. Mathura U.P. Ex. Chowkidar Shymgadh, Kota Divn.
Western Railway.

...**APPLICANT**

VERSUS

1. The Union of India through General Manager, West Central Railway, Jabalpur.
2. Divisional Rail Manager, West Central Railway, Kota Division, Kota.
3. Divisional Electrical Engineer (TRD) West Central Railway, Kota Division, Kota.

...**RESPONDENTS**

PRESENT: Mr. S. K. Bhargava, counsel for the applicant.
Mr. Tanveer Ahmad, counsel for the respondents.

ORDER

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):-

1. The present O.A. is directed against an order dated 28.07.2000, inflicting the punishment of compulsory retirement upon the applicant. Further direction has been sought to command the respondents to treat him on duty from 01.08.2000 and thereafter release consequential benefits arising therefrom.
2. Facts, which led to filing of the O.A., are that the applicant who was working as Chowkidar under Senior Section Engineer, TRD West Central Railway, Kota Division, Kota, was served with a charge sheet dated 15.10.1996 for the alleged theft for the period 13.07.1996 to 30.07.1996 when the applicant was working on the post of Chowkidar. Simultaneously, an FIR u/s 406, 409, 120B of IPC was also registered at

GRP police station Gangapur City. The applicant thereafter submitted a representation to the competent authority not to proceed with the departmental proceedings till criminal case is decided. When respondents did not pay any heed, applicant approached this Tribunal by filing O.A. No.355 of 2000 and vide order dated 20.09.2000 this Tribunal allowed the O.A. and directed that departmental proceedings against the applicant be stayed for six months only from the date of passing of that order and thereafter the respondents would be at liberty to proceed further with departmental proceedings after expiry of six months irrespective of fact whether criminal case against the applicant is disposed of or not. Thereafter, the respondents proceeded in the matter and ultimately disciplinary authority, vide its order dated 28.07.2000, inflicted punishment of compulsory retirement from service which also became subject matter before this Tribunal in O.A. No.300/2001 which was disposed of vide order dated 16.12.2003 after noticing the contention made by learned counsel for the applicant that he is not challenging the order of punishment awarded to the applicant and he would be satisfied if a direction is issued to release admissible dues/pensionary benefits to the applicant as per rules. Based upon his statement, this Court directed the respondents to release all admissible benefits to the applicant within three months from receipt of copy of the order. Despite the fact that the order dated 28.07.2000 of compulsory retirement has already been challenged by the applicant in the earlier round of litigation, the applicant has again filed the present O.A., on same cause of action.

3. Sh. S. K. Bhargava, learned counsel for the applicant vehemently argued that once the applicant has been acquitted by criminal Court on

28.06.2012, then it is incumbent upon the respondents to reconsider the entire matter and take the applicant back in service.

4. Respondents have contested the claim of the applicant by filing a detailed written statement wherein they have taken preliminary objection of res-judicata stating that once the proceedings have already been settled in the earlier round of litigation then applicant cannot be allowed to file another O.A. to re-agitate the matter. They have also commented upon merits of the case.

5. Sh. Tanveer Ahmad learned counsel for the Railways vehemently argued that services of the applicant were not dispensed with only on the ground of criminal case registered against him. Order of punishment was passed after serving a charge sheet and conducting proper inquiry as prescribed under the rules and thereafter considering inquiry report, the competent authority inflicted punishment of compulsory retirement, which applicant has accepted therefore, the petition may be dismissed.

6. We have given our thoughtful consideration to the entire matter and have perused pleadings with able assistance of counsel for respective parties.

7. A conjunctive perusal of the pleadings makes it clear that the order of punishment dated 28.07.2000 was subject matter in O.A. No.3000/2001 before this Tribunal, which was disposed of vide order dated 16.12.2003, wherein the applicant had accepted that he was not challenging order of punishment and based upon his statement, the O.A. was disposed of. Relevant paras of the order read as under:

"5. Learned counsel for the applicant has submitted that he is not challenging the order of punishment awarded to the applicant and he will be satisfied if a direction is given to the respondents, at this stage, to give pensionary benefits

pursuant to the passing of the order of the compulsory retirement.

6. In view of what as has been contended by the learned counsel for the applicant, this O.A. does not survive and is accordingly, disposed of. So far as the contention of the learned counsel for the applicant that he is entitled to pensionary benefits which has not been paid to him has considerable force. It was incumbent upon the respondents to pay the pensionary benefits in terms of Rule which was admissible to the applicant. Accordingly, the respondents are directed to settle the pensionary claim of the applicant in view of the order dated 01.08.2000 whereby the applicant has been compulsory retired from service and pay all admissible dues/pensionary benefits as per rules within a period of 8 months from the date of receipt of a copy of the order."

Once the applicant himself has accepted the punishment inflicted by the respondents way back in 2003 before a Court of law then he cannot be allowed to re-adjudicate the matter by filing a fresh O.A., as it is barred by principle of res-judicata. Secondly, perusal of order of compulsory retirement does not suggest that he was imposed penalty solely on the basis that a criminal case was registered against him. It is a settled proposition of law that both criminal and departmental proceedings are independent and can go simultaneously. Reliance in this regard is placed upon judgment dated 18.11.2011 in case of Divisional Controller, K.S.R.T.C. Vs. M. G. Vittal Rao, reported as 2012 vol.1 All India Service Law Journal. Therefore, we find no reason to entertain this petition and dismiss the same.


(MS. MEENAKSHI HOOJA)
MEMBER (A)


(SANJEEV KAUSHIK)
MEMBER (J)

Date:

Place:

'KR'