

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 138/98

T.A. 21/5

199

DATE OF DECISION 02.7.2002

M.L. Grover

Petitioner

Mr. K.L. Thawani

Advocate for the Petitioner (s)

Versus

Union of India & Others

Respondent

Mr. U.D. Sharma

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. H.O. Gupta, Member (Administrative)

The Hon'ble Mr. J.K. Kaushik, Member (Judicial)

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

J.K. Kaushik
(J.K. Kaushik)
Member (Judicial)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
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O.A. No. 138/98

Date of order: 02-7-2002

Mr. M.L. Grover, Retired Station Suptd., Bharatpur,
Kota Division, Rajasthan, Presently residing at 609,
C-Wing, E-5 High Way Park, Thakur Complex Kandivili (E),
Bombay 400 0 C/o G.S. Walia, Advocate, High Court, 16,
Maharashtra Bhavan, Bora Masjid Street, Fort, Bombay 400 001.

...APPLICANT

v e r s u s

1. Union of India, through Secretary,
Railway Board, Rail Bhavan, New Delhi 110 001
2. The General Manager, Western Railway,
Churchgate, Bombay 400 020
3. Divisional Railway Manager,
Kota Junction, Western Railway,
Rajasthan.

...RESPONDENTS.

Mr. K.L. Thawani, counsel for the applicant.

Mr. U.D. Sharma, counsel for the respondents.

CORAM:

HON'BLE MR. H.O. GUPTA, ADMINISTRATIVE MEMBER.

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER.

(O R D E R)

(Per Hon'ble Mr. J.K. Kaushik, Judicial Member)

Shri M.L. Grover has filed this Original Application
under Section 19 of the Administrative Tribunals Act, 1985

.. 2 ..

and has sought the following relief:-

- "a) This Hon'ble Tribunal will be pleased to call for the records and proceedings which led to the issuance of the impugned order "Exhibit-A" hereto and after considering its legality, validity, propriety, quash and set aside the same with all consequential benefits in respect of promotion, increments, arrears etc.
- b) This Hon'ble Tribunal will be pleased to hold and declare that as a result of the quashing of the impugned order, the Applicant was in service and on duty and as such he is entitled to all the arrears of back wages, increments etc. which he would have earned, but for the charge sheet dated 22-5-1980 and the proceedings thereafter, which culminated in the passing of the impugned order.
- c) Any other or further order as to this Hon'ble Tribunal may deem fit and necessary in the circumstances of the case be passed.
- d) Cost of this application be provided for.

2. The applicant was initially appointed as a Traffic Signaller in the year 1950, in the erstwhile Bombay Baroda Central India Railway vide letter dated 21.09.1950 by the Chief Traffic Manager, Churchgate, Bombay, on behalf of the General Manager. He got an opportunity to appear for selection for the post of Traffic Apprentice in the year 1956 by the Railway Service Commission. He was selected for the same and was imparted the requisite training of 3 years. He was posted as Assistant Station Master in the grade of Rs 205-280.

3. He was having clean and meritorious service record. After passing the requisite selection he was promoted to the post of Station Master in the year 1965 in the scale of Rs 250-380 and subsequently in the grade of Rs 325-425. The later post was based on seniority-cum-suitability and controlled by the Headquarter Office and the promotion was given by the order of General Manager. In the year 1976, the applicant was further

subjected to a selection to the post of Station Superintendent grade of Rs 700-900 by a selection Board at Headquarter Office. The applicant was empaneled in the panel dated 20.10.1976 for the post of Station Superintendent in the grade of Rs 700-900 which was approved by General Manager.

4. During the year 1976 to 1978 he worked at Phulera Junction and thereafter transferred to Bharatpur on the post of Station Superintendent. At Phulera Junction, he was the Vice Chairman of Western Railway Employees Union, Phulera Branch and he also continued to remain the Vice Chairman of said Employees Union at Bharatpur Branch till passing of the impugned order. However, he remained very sincere and honest person while carrying out the Trade Union activities but on the other side certain officers and developed ill-will towards him & took recourse to victimisation, may be curb the union activities/movements. In work side, he was considered to be in outstanding and of a very high merit and he earned appreciations from Shri S.S. Rana, R.C. Sethi and Shri Jagdish Chandra, the then Divisional Superintendents, Jaipur. The applicant has further submitted that in the year 1977 one Shri I.D. Ameen, Divisional Superintendent came on visit on 02.12.1977 to Phulera Junction and asked the application not to participate in the Trade Union activities. The applicant not was/inclined to adhear to the same and expressed his inability to betray the confidence of the members of the union reposed him. It is submitted that the answer given by the applicant annoyed the said Shri Ameen and perhaps hurt his ego for unknown reasons. The applicant was warned by him and it was told that he should be prepared to face the consequence of his action.

5. The applicant was issued with a charge-sheet SF-5 vide

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Memo dated 22.05.1980 alleging the following charges:-

Statement of articles of charge framed against Shri M.L. Grover, SS-BTE.

Shri M.L. Grover while working as SS-BTE during August, 79 failed to maintain absolute integrity devotion to duty and committed serious misconduct in as much as -

"On 1.8.1979 Shri M.L. Grover, SS-BTE permitted loading of wagons to stations reached via AH-KIR east of CPR (N.F. Railway) governed by quota limitations without any specific allotment orders from Jaipur Control and in contravention to standing instructions issued by DOS-JP vide his wire No.T 215/3/4 dated 26.5.79 and confirmed under DRA No. 98/79 dated 27.5.79.

The above act of the suspect constitute a great offence unbecoming of a Railway servant. He is, therefore, charged for contravening Rule No. 808 (10) & (II) of Manual of Station Accounts and Rule No. 3 (I) (i) (ii) of Railway Services (Conduct) Rules, 1966.

He denied the same and an oral inquiry was ordered to be conducted into the said charges.

6. The inquiry proceedings were concluded and finally an order dated 11.10.1985 imposing the penalty of removal from service was passed. The applicant preferred an appeal which was also rejected vide order dated 18.9.1986.

7. It is further case of the applicant that he filed an O.A. No. 27 of 1987 before the Jodhpur Bench of this Tribunal and vide judgement dated 23.05.1988 the impugned order of removal from service was set-aside. The para 8, 9 and 10 are relevant and the same are extracted as under:-

"8. Another ground urged by the learned counsel for the applicant was that the order of removal has not been passed by the competent authority. According to the learned counsel the competent authority in this case is the General Manager. This ground is also valid and renders the impugned orders infirm.

9. In view of the foregoing, the impugned orders are unsustainable. In view of the order, we propose to make, it is neither necessary nor appropriate to go into the validity or otherwise of the other contentions raised by the parties.

10. In the premises, the impugned orders are hereby quashed. The respondents are directed to proceed in



accordance with law and thereafter to make fresh orders in accordance with law within a period of six months from today. It is scarcely necessary to say that the respondents shall keep in view the other pleas raised by the applicant as also such other pleas and contentions as he may like to raise before the competent authority. No order as to costs."

8. Thereafter an order dated 05.10.1988 was issued by DRM, Kota by which the applicant was communicated with the decision to hold fresh inquiry into the allegations against the ~~applicant~~ applicant and also he was deemed to have been placed under suspension from the date of his removal till further order. The applicant stranously opposed the action of the respondents and submitted that new chargesheet and allegations ought to have been issued/served by the Competent Authority i.e. General Manager and then only the fresh inquiry should have been conducted. He also should have been paid the subsistence allowance with effect from 12.10.1985 to 11.10.1988. He also demanded that he should be given an opportunity to have the relevant documents and no further inquiry should be held until of these have been done.

9. It has also been submitted that a reply was given to the applicant on 31.10.1988 that the DRM was competent to initiate disciplinary action against the Group 'C' and 'D' Staff, suspension of the said group and therefore DRM was disciplinary authority in the case and the contention of the applicant that General Manager was to function as disciplinary proceeding was turned down. It has also been submitted that the respondents were to proceed according to law and the provisions of deemed suspension were applicable only where further inquiry is required to be conducted and not when disciplinary authority's orders for fresh inquiry. Even as per the judgement of the Jodhpur Bench it was the General Manager who could proceed in accordance with the law as a competent disciplinary authority. The applican

therefore cannot submit to the jurisdiction of the incompetent authority and did not participate in the inquiry. The competence of the General Manager to act as disciplinary authority is also said to be admitted in one of the reply filed to Miscellaneous Application No. 18 of 1989, therefore inquiry conducted in the matter was illegal, unsustainable, unconstitutional, ultra-vires and without jurisdiction.

10. The applicant was supplied with a copy of inquiry report dated 18.10.1991. By the time, he had crossed the age of superannuation i.e. on 31.08.1990 and he was being paid provisionally pension by order dated 14/30.01.1991. He was served with an order dated 12.10.1992 and 50% of his monthly pension has been ordered to be with-held for a period of 5 years. The extract of the same is reproduced as under:-

"ORDER"

The President has considered the report of the denovo enquiry conducted arising out of the charges framed against Shri M.L. Grover vide Western Railway's Memorandum No. E 161/3/1671 dated 22.5.90. The President has considered the representation dated 12.2.91 submitted by Shri Grover in respect of the findings reached by the Inquiry Officer and has also consulted the UPSC as is required under the Rules. A copy of the UPSC's letter no. F.3/138/92-SI dated 9.10.92 is enclosed.

Evidence adduced during the enquiry proved that Shri Grover had initially given instructions to his subordinates that as per the existing instructions no allotment of wagons was to be made. The evidence also shown that subsequently Shri Grover countermanded his own order without any corresponding instructions from his superiors as per the existing instructions and allotted certain wagons to be loaded in contravention of restrictions. In these circumstances, the President has held that the charges against Shri Grover are adequately proved. The President has therefore decided that 50 (Fifty) percent of the monthly pension otherwise admissible to Shri Grover may be with-held for a period of 5 (Five) years. This is hereby communicated.

BY ORDER AND IN THE NAME OF THE PRESIDENT."

11. Alongwith the aforesaid order a copy of the advice of UPSC



in the matter has also been supplied to the applicant. However, the applicant has submitted that the copy of the report of the UPSC was not served to him prior to the passing of the impugned order i.e. Exhibit-A. And no opportunity to make any submission or raise any objection against the said report was given to the applicant. The report was taken into consideration while withholding the pension of the applicant. It has been averred in very specific words that there was no reasons or grounds which could constitute the mis-conduct as alleged and the very issuance of the charge-sheet was false and fabricated. The order for holding fresh inquiry could only be issued by General Manager and nobody else and therefore the second inquiry conducted is liable to be quashed and set-aside. The impugned order has been passed on the basis of the findings in the second inquiry. The second inquiry was based on new ex-parte inquiry and there has been in the violation of Article 311 of the Constitution of India. Once the removal order has been set-aside, the charge-sheet issued earlier under letter dated 22.05.1980 is deemed to have been set-aside inasmuch as once the final order of punishment is set-aside the other proceedings including the charge-sheet are deemed to have been set-aside. Thus the second inquiry was without any basis otherwise also the respondents could not conduct a fresh inquiry on the basis of charge-sheet which has been issued by DRM, Kota and which is deemed to have been set-aside. The details regarding the charges, evidences and proceedings thereof have been narrated in para 4.10 A to 4.19. We skip up these details for timing /and would deal in the later part of the judgement in case ~~they~~ ^{being} considered relevant and essential for resolving the controversy involved in this case.

12. The O.A. has been filed on multiple grounds e.g. the DRM,

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12. The O.A. has been filed on multiple grounds e.g. the DRM,

Kota did not have any authority to proceed on the basis of old charge-sheet and as such the second inquiry conducted against the applicant was without jurisdiction. The only competent authority in the matter was General Manager, the ex-parte inquiry have been conducted against the applicant and the orders based on such ex-parte inquiry are bad in law, there has been clear violation of Article 311 of the Constitution of India and inasmuch as the applicant was not given reasonable opportunity to defend his case, the earlier charge-sheet is deemed to have been set-aside on the principle of doctrine of merger, the UPSC report was relied upon without giving any opportunity of hearing to the applicant and lastly it has been submitted that the President ^{except} has power to with-hold the pensionary benefits ~~only~~ in cases of grave mis-conduct and negligence and/or pecuniary loss of the Government. There was no such grave mis-conduct and there was no charge against the applicant that he committed alleged irregularities with a view of gaining financial benefits or otherwise. It was at the best without admitting the case of irregularities which has been blown down ~~xxx~~ out of proportion, however, the applicant is said to have been faced with certain domestic/physical problems, hence, this Original Application.

13. The respondents have filed counter reply ~~xxx~~ to the O.A. and have controverted the facts and grounds raised in the O.A. It has been submitted that appointing authority for various group 'C' staff is not the General Manager but depending upon the grades the appointing authority can be any Officer from the senior scale. The applicant was under the administrative control of Divisional Railway Manager, Kota and the panel for Station Superintendent is approved by the Additional Chief Personnel Officer and not the General Manager

and therefore the appointing authority of the applicant is the Divisional Railway Manager. Shri I.D. Ameen has not been impleaded as Respondent to the O.A. so the allegations against him cannot be taken any cognizance of. The Tribunal while passing the order dated 23.05.1988 did not dispute the disciplinary order as well as appellate order and only directed to proceed in accordance with the law and only the punishment order & order of Appellate Authority has been quashed but the charge-sheet was not quashed and orders were given to make fresh orders in accordance with law meaning thereby that fresh proceedings were required to be taken on the basis of charge-sheet issued to the applicant vide Memo dated 22.05.1980 and there was no requirement of issuing fresh charge-sheet and to conduct fresh disciplinary proceedings on the basis of said fresh charge-sheet. Tribunal has held that the order of removal had not been passed by the competent authority and it has not been held that only the General Manager could function as disciplinary authority. The deemed suspension has been ordered in accordance with the rules inforce. In the rules the expression fresh inquiry read with the further expression "on the allegation on which the penalty of removal from service was originally imposed" clearly indicate that it was a case of further inquiry it was conducted as per provisions of disciplinary rules, thus, the respondents acted in accordance with the law. The definition of the disciplinary authority has been given under Rule 2 (c) of the Railway Servant (Disciplinary Appeal) Rules, 1968. The applicant himself did not participate in the inquiry and there was no illegality in proceedings and conducting the ex-parte inquiry. The pension cut has been imposed in accordance with the Rule-9 of Railway Servant Pension Rules and there was no requirement to supply

a copy of UPSC advice in advance to the applicant. The allegation that there was no mis-conduct committed by the applicant is not acceptable and this Hon'ble Tribunal will not carry out the exercise of reappreciation of evidence and would also not act as an appellate authority in the matter of disciplinary proceedings. Regarding conducting the inquiry it has been submitted that there has not been any illegality. Further mis-conduct committed by the applicant was certainly of grave nature and falls with the ambit of expression grave mis-conduct. It is not necessary that there should be pecuniary loss to the Govt. or the applicant had committed the alleged act with a view to gain some financial benefits. Charge alleged against him has been held as proved. In the facts and circumstances the O.A. deserves to be dismissed with costs.

14. We have heard the learned counsel for the parties and have carefully perused the pleadings and the records of this case.

15. The learned counsel for the applicant has banked upon the issue relating to the conducting of inquiry on the charge-sheet which was issued in the year 1980. And that to by the Divisional Railway Manager who was not competent to act as Disciplinary Authority as per the verdict of this Tribunal in his earlier case. The learned counsel for the respondents has reiterated his stand taken in the O.A. and has averred that the Tribunal has nowhere held that DRM was not competent to act of this Disciplinary Authority but it quashed the impugned orders only on the grounds that order of removal has not been passed by the Competent Authority.

16. Para 8 of the Judgement dated 23 May, 1988, Exhibit-D to the OA is relevant, for resolving the above controversy and is extrated as under:-

"8. Another ground urged by the learned counsel for the applicant was that the order of removal has not been

passed by the competent authority. According to the learned counsel the competent authority in this case is the General Manager. This ground is also valid and renders the impugned orders infirm.

17. It is clear from the above that the order of removal could have been passed only by the General Manager and on this ground the impugned order were held to be infirm by the Tribunal. As regards the competence of DRM to act as a disciplinary authority and to proceed on the basis of the earlier charge-sheet, Rule 2 (c) (iii) defines the disciplinary authority and it has been prescribed that "Disciplinary Authority means in relation to Rule-9 in case of any non-railway Gazetted Servant, an authority competent to impose any of the major penalties satisfied in Rule-6". Rule-6 of the Rules prescribes various penalties which can be imposed on a Railway Servant. Rule-7 provides a schedule I, II and III wherein what penalty is can be imposed by a particular authority have been prescribed and rule 8 prescribes for the authority who can institute the proceedings. The provisions of Rule-8 are subject to the provisions of clause 'C' of sub-Rule-1 of Rule-2. Reading of these rules together we find that DRM is competent to impose some of the major penalties i.e. except that of removal, dismissal and compulsory retirement which could be imposed only by the General Manager being appointing authority in respect of the applicant. In this view of the matter the contention of the applicant that DRM was not competent to act a disciplinary authority and also the charge-sheet issued by him was without jurisdiction and stood quashed is not sustainable in law. The Tribunal has only quashed the impugned order issued by the DRM as well as appellate authority and not anything else, thus, the charge-sheet as well as all subsequent proceedings thereof prior to the passing of the final order remained alive.

18. The second contention argued by the applicant is that conducting the fresh inquiry on the same charge-sheet by the DRM was not in order and even the suspension order was not in accordance with the rules inforce inasmuch as one could be deemed to be under suspension in cases when further inquiry has been ordered and not the fresh inquiry as in the instant case. On the other hand the learned counsel ~~for~~ for the respondents have submitted that there was no illegality in conducting the fresh inquiry and drawn our attention to the reply para-8 wherein it has been mentioned that the expression fresh inquiry read with further expression on the allegation on which the penalty of removal from service was originally imposed clearly indicates that it was a case of further inquiry.

19. In our considered opinion the version put forward for both the sides are misconceived and confusing. The actual position as merges out from the order passed by the Tribunal on 23 May, 1998, Exhibit-D clearly directed the respondents to proceed in accordance with law and thereafter to make fresh order in accordance with law. The inquiry proceedings have not been quashed and in this view of the matter the Disciplinary Authority was required to move in accordance with Rule-10 of the said rules. In Rule-10 of the said rules, there is no provision of conducting de-novo inquiry by the Disciplinary Authority. Rule-10 and its sub rule (1), (2) & (3) of the Railway Servants (D&A) Rules, 1968 which are relevant in the present controversy. The power of the disciplinary authority while acting on enquiry reports has been envisaged in the said rule. Abstract of the said rules reproduced as under:

"(1) If the disciplinary authority, having regard to its own findings where it is itself the inquiring authority,

or having regard to its decision on all or any of the findings of the inquiring authority, is of the opinion that the penalty warrant is such as is within its competence, that authority may act on evidence on the record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, recall the witnesses and examine, cross-examine and re-examine the witnesses and may impose on the Railway servant such penalty as ~~is~~ is within its competence, in accordance with these rules. Where such disciplinary authority is of the opinion that the penalty warranted is such as is not within its competence, that authority shall forward the records of the inquiry to the appropriate disciplinary authority who shall act in the manner as hereinafter provided.

(2) The disciplinary authority, if it is not itself the inquiry authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold further inquiry according to the provisions of Rule-9 as far as may be.

(3) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any articles of charge, record its reasons for such dis-agreement and record its own findings on such charge, if the evidence on record, is sufficient for the purpose.

A mere perusal of the aforesaid provision clearly indicates that the disciplinary authority for the reason to be recorded in writing can remit the case back to the enquiry authority for further enquiry. Two things are evidence as per the rule, one is the reason is to be record in writing and other is that it can only order further enquiry.

position

20. As per the established legal/once enquiry has been completed, de novo enquiry in the charges can not be held. In the instant case it is seen that the disciplinary authority has ordered for holding fresh inquiry into the charges vide order dated 05.10.1988 (Exhibit-E) and such proceedings are liable to be quashed. In this connection, we find support of the verdict of the Hon'ble Apex Court in Parkash Nath Saidha vs. The Financial Commissioner (Revenue), Punjab, Chandigarh and Ors. (1972 SLR 601), R. Rama Rao vs. A.P. State Agro Industries Development Corporation Ltd., and Anr. (1997 (5) SLR 508) and Mohinder Paul vs. The Secretary Health Department, Punjab Government, Chandigarh and

Ors., (2000 (5) SLR 561). A similar controversy came for adjudication before the Jaipur Bench of this Tribunal in OA 428/2000, Ramji Lal Verma Vs. Union of India & Ors. wherein one of us Mr. J.K. Kaushik, Member (J) was a party and the same has been allowed vide order dated 5.4.2002 on the similar lines, we have no hesitation to follow the ratio laid down therein, to this case. Therefore the fresh proceedings held in the matter and all subsequent orders thereof are not sustainable in law and the impugned order deserves to be quashed on this ground alone. In normal cases a liberty to proceed in the matter for passing a final order on the basis of the earlier inquiry report would have been given but in the peculiar facts and circumstances of the case and in view of our subsequent discussions and finding thereof we are not inclined to give such liberty in this matter. However, since we have held that there was no question for resorting to fresh inquiry and the matter was only of further Inquiry passing the final order by the competent authority on the basis of earlier inquiry report, the order of deemed suspension could not be faulted with.

21. The next ground argued by the learned counsel for the applicant is that the applicant has not committed any mis-conduct at all and he was not given any opportunity to make any representation against the findings of the UPSC. We are of the opinion that it is not a case of no evidence and the Tribunal would not go to reappreciate the evidence or to go into the details regarding sufficiency or otherwise of the evidence or regarding the legality of evidence. As regards findings of the UPSC once we have come to the conclusion that the second inquiry was without jurisdiction and the complete finding of the UPSC are based on the second inquiry the fate of the advice of the UPSC can very well be understood and the same could not be the basis of passing the final order.

22. The learned counsel for the applicant has lastly submitted that the President is empowered to with-hold the pension only in case the finding of grave mis-conduct or negligence or pecuniary loss caused to the Government. In the present case there is no such finding.

23. The learned counsel for the applicant has further submitted that the specific findings that he has been held guilty or grave misconduct are necessary. We find that the contention of the applicant is factually untrue, inasmuch as the impugned order dated 12.10.1992 as well as the recommendation of the UPSC dated 09.10.1992 do not find any word like grave mis-conduct similarly in the position in the charge-sheet. It has not been shown that any loss has been caused to the State or there was no wrongful gain to any one. In this connection, we find support of the verdict of the Hon'ble Supreme Court in D.V. Kapoor Vs. Union of India & Ors. ((1990) 14 ATC 906). The extract of relevant portion from para 5, 6, 7, 8 and 9 reproduced as under:-

"5. Therefore, it is clear that the President reserves to himself the right to withhold or withdraw the whole pension or a part thereof whether permanently or for specified period. The President also is empowered to order recovery from a pensioner of the whole or part of any pecuniary loss caused to the government, if ~~xx~~ in any proceeding in the ~~xx~~ departmental enquiry or judicial proceedings the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement.

6. Rule 8(5), explanation (b) defines 'grave misconduct' thus:

"The expression 'grave misconduct' includes the communication or disclosure of any secret official code or password or any sketch, plan, model, article, note, document or information, such as is mentioned in Section 5 of the Official Secrets Act, 1923 (19 of 1923) (which was obtained while holding office under the government) so as to prejudicially affect the interests of the general public of the security of the State".

7. In one of the decisions of the government as compiled by Swamy's Pension Compilation, (1987 edn.) it is stated that:

"Pensions are not in the nature of reward but there is a binding obligation on government which can be claimed

as a right. Their forfeiture is only on resignation, removal or dismissal from service. After a pension is sanctioned its continuance depends on future good conduct, but it cannot be stopped or reduced for other reasons."

8. It is seen that the President has reserved to himself the right to withhold pension in whole or in part thereof whether permanently or for a specified period or he can recover from pension of the whole or part of any pecuniary loss caused by the government employee to the government subject to the minimum. The condition precedent is that in any departmental enquiry or the judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service of the original or on re-employment. The condition precedent thereto is that there should be a finding that the delinquent is guilty of grave misconduct or negligence in the discharge of public duty in office, as defined in Rule 8(5), Explanation (b) which is an inclusive definition, i.e. the scope is wide of the mark dependent on the facts and circumstances in a given case.

9. As seen the exercise of the power by the President is hedged with a condition precedent that a finding should be recorded either in departmental enquiry or judicial proceedings that the pensioner committed grave misconduct or negligence in the discharge of his duty while in office, subject of the charge. In the absence of such a finding the President is without authority of law to impose penalty of withholding pension as a measure of punishment either in whole or in part permanently or for a specified period, or to order recovery of the pecuniary loss in whole or in part from the pension of the employee, subject to minimum of Rs 60.

24. On the other side the learned counsel for the respondents have submitted that the very charge-sheet contained the word that the applicant has committed of grave misconduct. The enquiry officer has held the charge as proved and that should be sufficient to satisfy the requirement of findings require to be given under Rule-9 of the Railway Pension Rules. In this connection, he has taken support of the judgement of Hon'ble the Supreme Court/C.A.T. Union of India and Ors. Vs. B. Dev (1999 SCC (L&S), 57) In this case, Shri B. Dev was holding the post of Assistant Director Grade-in the Directorate General of Supplies and Disposals. He was sent on deputation and posted as High Commissioner of India in London for a period of 3 years. After expiry of the period of the deputation he was asked to come back to India but he did not come back and was charged for grave misconduct w.e.f. 10.02.1979 upto

09.02.1981 and disobeying the government orders he was held guilty of grave misconduct. There is no such finding of grave misconduct in the present case and the said case is distinguishable from the present ratio of that case does not apply to the present case since no finding of grave misconduct was given in respect of the applicant. State of Punjab and Ors. Vs. Sukhvinder Singh (1999 SCC (L&S) 1234), This was a case of Police Constable who absented for 65 days and 14 hours on earlier occasion also he indulge in similar absentism he was ordered to be dismissed from service. The order imposing the penalty of dismissal from service was justified in Police Force. The said case has also no application to the present controversy to the instant case.

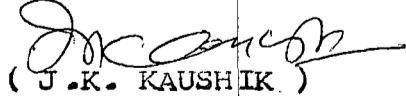
Govind Ram L. Methwan Vs. Union of India and Anr. (1979 (2) SLR, 106, Bombay High Court), In this case the pension was ordered to be withheld from a retrospective date and it was held that the pension can be withheld only ~~prospectively~~. In the present case such is not in the situation and this judgement has got no application to the present case. Hari Ram Vs. Delhi Administration and Ors. (1993 (5) SLR, CAT, FB, 254), In this case matter relates to Police Official i.e. Constable who was removed from service on the ground of habitual absence and in-correctible type, the finding to the effect was that the petitioner was unworthy and unfit for retention his service. The Court held that there is no hesitation in holding the disciplinary authority was satisfied that petitioner was guilty grave of misconduct was necessary since the relevant rule provided that the punishment ~~of~~ of dismissal from removal from service shall be connected only of the act of grave misconduct rendering him unfit for the Police Service. The ratio of the said case is also no application in the present case.

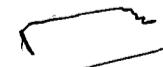
25. We have considered the rival contentions submitted on behalf of both the parties in regard to the finding of grave mis-conduct.

Averred by the respondents, the charge-sheet does not contain the word grave misconduct and holding ~~knowing~~ the charge proved by the enquiry officer cannot be improve the stand of the respondents. O.A. there is no finding regarding the position that the applicant was held guilty of grave misconduct in the recommendation letter of the UPSC or the impugned penalty order wherein 50% of the pension ordered to be withheld for a period of 5 years.

26. In our considered opinion since there has been no loss to the State no wrongful gain to the applicant or any other person by the act of the applicant, the act of the applicant cannot be said to be falling in the category of grave misconduct. We have seen that in charge-sheet at one place serious misconduct word has been used but the very perusal of the charges would indicate otherwise the charges are not of such a grave nature that the provisions of Rule-9 would have been invoked. In this view of the matter, we left with no option except to hold that the requirement of Rule-9 of the pension rule/as per the verdict of Hon'ble the Supreme Court in D.V. Kumar's case (Supra), the impugned order is not sustainable in law and the same deserves to be quashed.

27. In view of the foregoing discussions, the law laid down by the Hon'ble Apex Court in D.V. Kumar's case (Supra) and the reasons recorded above, we find much force in the Original Application and the same is hereby allowed. The impugned order dated 12.10.1992 (Exhibit-A) is hereby quashed. The applicant shall be entitled for all consequential benefits. This order shall be complied with within a period of three months from the date of receipt of this order. No order as to costs.


(J.K. KAUSHIK)
Judl. Member


(H.O. GUPTA)
Adm. Member