

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH

CIRCUIT COURT SITTING AT BILASPUR

Original Application No. 627 of 2005

Bilaspur, this the 9th day of March, 2006

Hon'ble Shri Justice B. Panigrahi, Chairman
Hon'ble Shri Shankar Prasad, Administrative Member

P.N. Chattpadhyaya, S/o. late
Satish Chandra Chattpadhyaya,
aged about 65 years, R/o. Colonel
Gola, P.O. Midnapur, District
Midnapur (W.B.).

... Applicant

(By Advocate - Shri S. Paul)

V E R S U S

1. Union of India, through its
Secretary, Ministry of Railway,
Rail Bhavan, New Delhi.
2. General Manager, South Eastern
Central Railway, Bilaspur.
3. Divisional Railway Manager,
South Eastern Central Railway,
Raipur Division, Raipur (CG).
4. Sr. Divisional Operating Manager,
South Eastern Central Railway,
Raipur Division, Raipur (CG). ... Respondents

(By Advocate - Shri S.P. Shrivastava)

O R D E R

By Shankar Prasad, Administrative Member -

Aggrieved by the order dated 15.7.2004 passed by Senior
DOM, Raipur, the applicant has preferred the present OA. He
has sought for quashing of the same and for a direction to
the respondents to release all the valid dues to the
applicant with 18% interest.

2. The case of the applicant in brief is that he was
served with a major penalty charge sheet dated 24.11.1988
on the articles of charges enclosed therewith. An enquiry
officer had been appointed and the applicant had submitted
his representation dated 16.1.1993 (Annexure A-5) to the
aforesaid report.

2.1 The disciplinary authority did not pass proper order and decided to hold ~~disciplinary~~ ^{de-novo} enquiry. During the pendency of the enquiry the applicant retired from service on 28.2.1998. He accordingly, filed OA No. 287/1998 for closing the disciplinary proceedings and for making the payment of the retiral dues. During the pendency of the aforesaid OA the order dated 17.8.2001 was issued indicating therein that the President has decided that a cut of 25% in the monthly pension of Shri Chattopadhyay be passed on a permanent basis. The Tribunal set aside the orders relating to conducting the enquiry ^{directed &} ~~de-novo~~ and ~~directing~~ the respondents to proceed from the stage of submission of representation by the applicant against the first enquiry report.

2.2 The further case of the applicant is that pursuant to this order the respondent No. 4 appointed an enquiry officer to conduct a fresh enquiry against the applicant. The applicant objected to the conduct of fresh enquiry as the same was contrary to the order of the Tribunal. Yet the respondent No. 4 has without any authority passed the order that the punishment imposed earlier stands good. He has accordingly sought for quashing of this order.

3. The respondents have filed a cryptic reply. They have not stated anything about the contentions raised in the OA regarding conduct of further enquiry. They have further stated that 25% cut on the pension is as per rules and the matter has been referred to Railway Board through UPSC to President of India for confirmation/ratification.

3.1 They have stated that ratification is still awaited.

4. We have heard learned counsel.

5. The operative portion of the order dated 7.5.2003 in OA No. 287/1998 is as under :

"6. In view of the settled principles of law as crystallised by various judgments of the Hon'ble Supreme Court and the mandatory provisions of Rule 10 ibid and its sub-rules, the impugned order cannot be sustained. The OA is allowed. The order relating to conducting de novo enquiry and also subsequent proceedings thereof are hereby quashed. However, the respondents will be at liberty to proceed against the applicant as per law from the stage of submission of representation by the applicant against the first enquiry report. But, keeping in view the fact that the applicant has already retired from service in the year 1998, the final order in the matter shall be passed within a period of four months from the date of receipt of a copy of this order. No costs."

Aggrieved by the non-implementation of the above order the applicant had moved CCP No. 87/2003. The said CCP has been disposed of vide the following order dated 20.1.2004 :

"The learned counsel for the applicant in OA No. 287/98 has filed C.C.P. No. 87/03 for non-compliance of the Tribunal's order dated 7.5.2003 in OA No. 87/98. The learned counsel for the respondents states that he has already moved MA seeking extension of time to implement the said order. He now undertakes to implement the direction given by the Tribunal on 7.5.03 in OA No. 287/98 within 2 months from today. In view of the undertaking given by the learned counsel for the respondents. The CCP No. 87/03 is disposed of."

5.1 It appears that the respondent administration has also moved a MA No. 567/2004 seeking extension of time by six months for implementing the order. The Tribunal held as under :

"The action on the part of the Original respondents is very much deplorated. It appears that they are not serious for implementing the Tribunal's direction. The original respondents have already been granted enough time to implement the Tribunal's direction. They had to only consider the representation of the applicant against the first enquiry report and pass the order. More than one year has already elapsed and the respondents have not complied with the Tribunal's order. The learned counsel for the original respondents had given assurance on 20.1.2004 that the order of the Tribunal will be implemented within two months but the original respondents have not yet implemented the Tribunal's order. In this circumstances no further time is granted to them. Accordingly, MA No. 567/04 is rejected."

5.2 The applicant thereafter preferred a CCP No. 31/2005.

for wilful disobedience of the orders passed by the Tribunal. Considering the fact that the learned counsel for the Railways has produced a copy of order dated 15.7.2004 the Tribunal passed the following order :

"In the interest of justice, we are of the view that this CCP can be disposed of as the order passed by the Tribunal have already been complied with. Accordingly, the CCP is dismissed as infructuous. However, the applicant can approach the Tribunal if he still feels aggrieved and so advised."

6. We further note that subsequent to the disposal of the CCP No. 87/2003, the respondents had issued the following notice to the applicant :

"You have filed this case, for quashing the punishment order for imposing cut in 25% pension imposed by president of India.

The Hon'ble Court, while delivering the judgment, directed as under.

"The respondent will be at liberty to proceed against the applicant as per law from the stage of submission of representation by the applicant against the first enquiry report."

Since, this division is newly formed within new zone SECR headquartered at Bilaspur, after bifurcation of old S E Railway Zone. All the records pertaining to your case have been linked and on filling MA for extension of time, Hon'ble CAT/JBP directed to finalize the enquiry within two months. Therefore, it has been decided to hold enquiry from the stage of submission of first enquiry report.

You are hereby advised to attend the enquiry on 4th March 2004 at 11 hrs in the chamber of DCM/ Raipur. You are also requested to nominate defense council to defend the case and advised him to accompany with you.

A first class passes bearing No. 035493 Dt. 26.02.04. Is issued in your favour and defence council Ex. Midnapur to Raipur Via Kharagpur and back to cover your journey, valid upto 10th March.

Please acknowledge receipt.

Sd/-
Sr. Divl Operation Manager
S.E.C.Rly/R

Copy to :-

1. DPO/SECR Raipur for information. He is requested to issue necessary pass in favour of Shri P.N. Chatopaddhaya and his defence council Ex midnapur to Raipur via Kharagpur and back valid upto 10th March.
2. Shri N.K. Verma commercial inspector DCM/Raipur and enquiry officer. Full case file is enclosed herewith for conducting the enquiry.".

6.1 The Sr. DGM, Raipur in the impugned order ^{has} stated that having regard to the enquiry report and contents of your representation, it had been decided to call for fresh enquiry vide letter dated 22.2.1994 and the fresh enquiry was commenced and concluded with the statement of Shri Gendlal at Pendra Road. It is further stated that the applicant did not attend the enquiry on 5.4.2004 and also on 25.4.2004. The impugned order ends with the following observation :

"It is observed from the enquiry held subsequently, that the documentary/personal evidence has gone against you, which proves your guiltiness and refraining from examining the witnesses. It leaves no option to conclude that the defendant has evaded to face the witness and, as such, he is indirectly confessing the misconduct, which deserves punishment. Hence, the punishment imposed stands good and justified."

It appears from Annexure-IV of charge sheet that one Shri Gendlal, S/o Ghasi, Gangman, No. 26 under PWI/PND has been cited as one of the four prosecution witnesses. The order does not say as to on what date the said Shri Gendlal has been examined.

7. Further it appears from para 3(ii) and (v) of his representation dated 16.1.1993 against EO's report that three of the four prosecution witnesses had not been examined in his presence. They had not attended the enquiry on the five dates mentioned in the said paragraph.

8. The notice of February, 2004 directs the applicant to appear before a newly appointed enquiry officer. Even this notice does not show that having regard to the representation submitted against EO's report the disciplinary authority has decided to examine the witnesses not examined earlier. The date on which the disciplinary authority had taken the decision is also not mentioned. Whether the earlier de-novo enquiry was itself in pursuance of this further enquiry is also not clear.

9. In view of the above, we are clearly of the view that ^{& could} no further witnesses have been examined by the respondents and they had to take decision on the basis of the report of the enquiry officer and the representation dated 16.1.1993 submitted by the applicant. As the applicant has retired from service, the orders in the instant case have to be passed only by the President in consultation with UPSC. The respondents have stated that the matter have been referred to the Railway Board for obtaining the orders of the President.

10. The learned counsel for the applicant has requested that in view of the decision of the Lucknow Bench of the Tribunal in K.B. Bharadwaj Vs. UOI, 2002(2) ATJ 477, a declaration should be given by the Tribunal that the earlier enquiry has come to an end as the final orders have not been passed within the stipulated period.

10.1 In the aforesaid case the Hon'ble High Court had in an earlier round of litigation directed completion of the disciplinary proceedings within a period of two months from 30.4.2001. The order of compulsory retirement have been actually passed on 21.11.2001. It had been submitted before the Tribunal that no extension of time have ever been applied for finalising the disciplinary proceedings and hence entire disciplinary proceedings were vitiated. The Tribunal held that "the delay in finalising the disciplinary proceedings in our opinion not explained at all and what is more important is that no application praying for extension of time in finalising the disciplinary proceedings was ever made by the respondents before the Hon'ble High Court.

10.2 In view of the above findings the Tribunal accepted the contention of the applicant that the enquiry had not been

finalised in the time limit said by the respondents. The proceedings are deemed to have been quashed.

11. Coming to the facts of this case, we notice that the Tribunal vide its order dated 7th May, 2003 had directed passing of final orders within four months from the date of the order. This Tribunal in CCP No. 31/2005 has already held that the respondents have already complied with the orders of the Tribunal.

12. In view of the above, this case is distinguishable and therefore, the applicant is not entitled of any declaration that proceedings have automatically come to an end.

13. Having regard to what has been discussed in para 9 above, we direct respondent No. 1 to impress upon Railway Board that the orders of the President in consultation with UPSC should be passed within three months of the receipt of the order. The respondents shall not take into account the evidence of the said Shri Gendlal at Pendra Road which appears to have been subsequently recorded. In case these orders are not passed within three months of the date of receipt of this order, the proceedings initiated ^{& pursuant} to the said charge sheet dated 24.11.1988 shall stand dropped.

14. The OA is disposed of accordingly, with no order as to costs.

Shankar Prasad
(Shankar Prasad)
Administrative Member

B. Panigrahi
(B. Panigrahi)
Chairman

"SA दिक्षिका सं. अ/व्या..... लखनऊ, दि.....
पतिलिपि दिनोंभित्र:-

- (1) सचिव, उचित विभाग वार एकाम्बरनग, लखनऊ
- (2) अधिदत्ता विभाग, लखनऊ
- (3) पत्त्वारी विभाग, लखनऊ
- (4) ग्रंथालय, लखनऊ, लखनऊ

S. Paul, Adv. BP
J. P. Jaiswal, Adv.
ANDBP

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