

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH  
CIRCUIT BENCH : BILASPUR

Original Application No.103 of 2001

Bilaspur, this the 10th day of December, 2003

Hon'ble Shri M.P.Singh - Vice Chairman  
Hon'ble Shri G.Shanthappa - Judicial Member

Ajit Kumar Das, S/o Shri Sharat Chandra Das,  
aged about 61 years, R/o House No.6, Vijaya  
Bank Colony, RN Nagar, Main Road, Bangalore -  
560033 (Karnataka)

- APPLICANT

(By Advocate - Shri S.Paul)

Versus

1. Union of India, through its Secretary,  
Ministry of Railway, Railway Board, New Delhi.
2. The General Manager, South Eastern Railway,  
Garden Reach, Calcutta.
3. Divisional Railway Manager, South Eastern  
Railway, Bilaspur.

4. The Sr.Divisional Engineer(North), South  
Eastern Railway, Bilaspur

- RESPONDENTS

(By Advocate - Shri M.N.Banerji)

O R D E R (Oral)

By M.P.Singh, Vice Chairman -

By filing this Original Application, the applicant has sought a direction to set aside the orders dated 5.10.1999 and 19.5.2000 (Annexures-A-1 & A-2 respectively). He has also sought a direction to the respondents to pay him all retiral dues with 18% interest per annum thereon.

2. The brief facts of the case are that the applicant was working as Permanent Way Inspector in the Railways. He retired from service on 31.10.1997. A charge-sheet dated 22.10.1997 under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 (hereinafter referred to as 'the D&A Rules') was served on the applicant on 26.10.1997. An enquiry officer was appointed to investigate into the charges. The enquiry officer concluded the enquiry and has given the following findings:

"6.FINDINGS

The charge levelled against Shri A.K.Das is not established."

6.Findings:-

Only oral evidences are available for transaction and receipt of 30,000 Nos Keys Two

Contd...2/-

:: 2 ::

Way. Sri A.K.Das could not produce any written evidence in support of the above transaction. Crossings of sorts= 2 Nos were sent from RPD to APR by Sri B.K.Chattopadhyay the then PWI/III/ Rupond when Sri A.K.Das was on leave. No written evidence could be produced by either by Sri A.K. Das or by Sri B.K.Chattopadhyay".

The enquiry officer in one finding has held that charge is not established and in another finding the enquiry officer has not given its categorical finding but the finding is very vague in which neither the charge is established nor rebutted. The disciplinary authority has sent a copy of the enquiry officer's report to the applicant on 24.6.1999. The applicant has made his representation to the disciplinary authority on 3.7.1999 (Annexure-A-11). The disciplinary authority after taking into consideration the representation and other materials on record has passed the order on 5.10.1999 (Annexure-A-1) imposing the penalty of "recovery of Rs.1,84,865/- towards cost of 30000 Nos.of keys(N) (two way) and 2 Nos of x-ing of sorts U/S from settlement dues of Sri A.K.Das,the then PWI/UMR". The applicant submitted an appeal against the order of the disciplinary authority on 27.11.1999. The appellate authority vide its order dated 19.5.2000 (Annexure-A-2) has rejected the appeal of the applicant. Aggrieved by these orders, the applicant has filed this Original Application claiming the aforementioned reliefs.

3. Heard both the learned counsel and perused the records.

4. The learned counsel for the applicant has submitted that the enquiry officer has exonerated the applicant as the finding of the enquiry officer is that the charge is not established. The disciplinary authority has not recorded his reasons for disagreement with the findings of the enquiry officer and communicated the same to the applicant along with a copy of the enquiry report to afford him an opportunity to submit a representation as required under Rule 10 of the D&A Rules and the settled legal position in this regard.

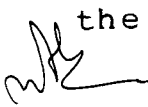
4.1 The learned counsel for the applicant has also submitted that the charge sheet was issued to the applicant when he was in service but the disciplinary proceedings have been concluded and orders imposing the penalty have been passed by the disciplinary authority after the retirement of the applicant. According to him no recovery can be made from the retiral dues of the applicant unless the orders of the President of India are obtained. In this connection he has drawn our attention to Rule 9(2)(a) of the Railway Services (Pension) Rules, 1993. He has submitted that the disciplinary authority has not submitted a report recording its findings to the President and thus the respondents have violated the provisions of Rule 9(2)(a) ibid.

4.2 The learned counsel for the applicant has further submitted that the order passed by the disciplinary authority does not indicate that any charge was established against the applicant and on the other hand the disciplinary authority has placed the burden of onus of the charge on the applicant instead of deciding the same on the basis of the evidence adduced in the enquiry.

4.3 The learned counsel for the applicant has also submitted that in view of the decision of the Principal Bench of the Tribunal in the case of Shri K.C. Brahmachary Vs. The Chief Secretary & others, 1998(1) SLJ(CAT) 383, the charge sheet issued to the applicant just a few days before his retirement for the misconduct committed by him prior to four years of his retirement is not sustainable.

4.4 For the reasons mentioned above, the learned counsel for the applicant contended that the orders passed by the disciplinary and appellate authorities are not sustainable in law and are liable to be quashed.

5. On the other hand the learned counsel for the respondents has submitted that the findings given by the enquiry officer do not indicate that the charge levelled against the applicant was not proved. He has referred to the finding of the enquiry officer at page 14 of the MA 262/01,



and has submitted that the charge against the applicant was proved, by the enquiry officer. According to him, no evidence has been given by the applicant against the charge and the same finding has been given by the disciplinary authority while imposing the penalty on the applicant. According to him, it is not a case of disagreement with the findings of the enquiry officer and as such the disciplinary authority was not required to give any dissenting note before passing the penalty order. He has also submitted that it is not a case of no evidence and, therefore, the penalty imposed by the disciplinary authority is justified.

6. We have carefully considered the pleadings available on record, and the arguments advanced by the learned counsel for both the parties.

7. As regards the contention of the applicant that no recovery can be made from the retiral dues of the applicant unless the orders of the President of India are obtained, in this context we may reproduce the <sup>relevant</sup> provisions of Rule 9 of the Railway Services (Pension) Rules, 1993 -

- "9. Right of the President to withhold or withdrawn pension. - (1) The President reserves to himself the right of withholding or withdrawing a pension or gratuity, or both either full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Railway, if, in any departmental 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:
- " " " "
- (2) The departmental proceedings referred to in sub-rule (1) -
- (a) if instituted while the railway servant was in service whether before his retirement or during his re-employment, shall after the final retirement of the railway servant, be deemed to be proceeding under this rule and shall be continued by the authority by which they were commenced in the same manner as if the railway servant had continued in service :
- Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President
- (emphasis supplied)

From the above rule it is clear that it is the President who has the power to withhold or withdraw a pension or gratuity if in any departmental enquiry the pensioner is found guilty of

grave misconduct or negligence; and where the departmental proceedings are instituted by an authority subordinate to the President, that authority is required to submit a report recording its findings to the President. In the instant case we find that the disciplinary authority of the applicant was not the President of India and, therefore, the respondents were required to submit their report recording the findings to the President of India for passing orders. Obviously, in this case, the respondents have failed to follow the procedure as required under Rule 9(2)(a) *ibid.* and on this ground alone the impugned orders passed by the disciplinary & appellate authorities are not sustainable and liable to be quashed.

8. We also find that the enquiry officer in his <sup>first part of</sup> finding has stated that the charge is not established, <sup>in</sup> ~~in the first~~ <sup>part of the finding</sup> and in the other part of the finding also the enquiry officer has neither established the charge nor rebutted the charge. Therefore, in such circumstances, the disciplinary authority was required to record the reasons for disagreement while disagreeing with the findings of the enquiry officer, before imposing the penalty on the applicant. This has not been done by the disciplinary authority. The Hon'ble Supreme Court in the case of Punjab National Bank and others Vs. Kunj Behari Misra, (1998) 7 SCC 84 has specifically held as under on this aspect -

"Whenever the disciplinary authority disagrees with the enquiring authority on any article of charge then before it records its findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer".

In view of the above legal position, the order passed by the disciplinary authority without affording the <sup>afore-mentioned</sup> opportunity to the applicant, is not sustainable and liable to be quashed.


9. We also find that the order passed by the disciplinary authority is a cryptic order.

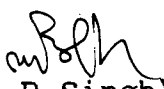
10. For the reasons recorded above, we find that the procedure followed by the respondents and the penalty imposed by them while passing the impugned orders dated 5.10.1999 and 19.5.2000 are not sustainable in the eye of law.

11. In the result, the Original Application is allowed. The impugned orders dated 5.10.1999 (Annexure-A-1) and 19.5.2000 (Annexure-A-2) passed by the disciplinary and appellate authorities are quashed and set aside.

12. Before we may part, it is observed that on 1.4.2002 this Tribunal has passed an interim order to the effect that "the respondents are directed to release the undisputed claims of retiral dues to the applicant within one month". The learned counsel for the respondents has not denied that these dues have not been released to the applicant. We, therefore, direct the respondents to release the undisputed claim of all retiral benefits immediately, in any case within a period of two months from the date of receipt of a copy of this order, along with the interest at the rate as provided in the GPF Rules, from the date of retirement till the date of actual payment. The respondents are, however, at liberty to proceed in the matter, if so advised, in accordance with rules and law, within a period of six months.

In the facts and circumstances of the case, the parties are directed to bear their own costs of this litigation.

  
(G. Shanthappa)  
Judicial Member

  
(M.P. Singh)  
Vice Chairman.

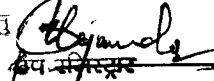
rkv.

पृष्ठांकन सं ओ/न्या.....जलपुर, दि.....

पतिवित्तिय वाच्य विवर:-

- (1) जलपुर, दि.....
- (2) जलपुर, दि.....
- (3) जलपुर, दि.....
- (4) जलपुर, दि.....

सूचना एवं आवेदन कार्यवाही हेतु

  
पतिवित्तिय

Representy  
S. Paul, Adv.  
MN Banerjee, Adv.

Filed  
17-12-03