

Reserved
(On 20.07.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD

Dated: This the 31st day of July 2018

Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Rakesh Sagar Jain, Member (J)

Original Application Number. 330/00636 of 2006

1/1 Ajazy Kumar Jaiswal, S/o Late Ram Chandra Jaiswal

1/2 Sanjay, S/o Late Ram Chandra Jaiswal

1/3 Nalay Kumar Jaiswal, S/o Late Ram Chandra Jaiswal

1/4 Smt. Seena Jaiswal, D/o Late Ram Chandra Jaiswal

1/5 Smt. Chamma Jaiswal, D/o Late Ram Chandra Jaiswal

LR/S 1 to 4 Residence of 33/47/30-B, Allahpur, Allahabad
LR/5 Dhanbad (Bihar)
LR/6 Lucknow

.....Applicants.

By Adv: Shri S.S. Sharma

VE R S U S

1. Union of India through The General Manager, North Central Railway, Headquarters Office, Allahabad.
2. The General Manager, North Central Railway, Headquarters Office, Allahabad.
3. The Chief Engineer/Construction/North, North Central Railway, Headquarters Office, Allahabad.
4. The Dy. Chief Engineer/Construction, North Central Railway, DRM Office Complex, Allahabad.
5. The Divisional Railway Manager, Northern Railway, DRM Office, Lucknow.
6. Shri Surendra Kumar, The Chief Engineer/Construction (North), North Central Railway, Headquarters Office, Allahabad.
7. Shri Ravi Kapoor, The then Dy. Chief Engineer (Construction), North Central Railway, Allahabad.

.....Respondents

By Adv: Shri A. Tripathi.

O R D E R

By Hon'ble Mr. Gokul Chandra Pati, Member (A)

This OA has been filed under section 19 of the Administrative Act, 1985 with prayer for following reliefs:-

- "8.1 That the Hon'ble Tribunal may graciously be pleased to set aside / to quash the impugned Minor Penalty Charge Sheet (SF-11) issued vide letter No. SF/CC/Constn./ALD dated: 23.6.95 by the Dy. Chief Engineer (Construction) / Northern Railway, Allahabad, the Disciplinary Authority, Respondent No. 4 (Annexure-A-1, Compilation No. I to this O.A.).*
- 8.2 That the Hon'ble Tribunal may graciously be pleased to set aside/to quash the impugned penalty order issued vide letter No. SF/CC/Const/ALD dated 10.2.2005 by the Chief Engineer (Constn.) / North Central Railway, Allahabad, the Disciplinary Authority, Respondent No. 4 (Annexure-A-2, Compilation No. I to this application).*
- 8.3 That this Hon'ble Tribunal may graciously be pleased to set-aside / to quash the Appellate Order issued vide letter No. 136-W/CE/C/N/N/N.C. Railway/ALD dt. 31.1.2006 by Chief Engineer/ Construction/North, North Central Railway, Allahabad the Appellate Authority, Respondent No. 3 (Annexure-A-3, Compilation No. I) to this O.A.*
- 8.4 That The Hon'ble Tribunal may graciously be pleased to decide the matter regarding alleged recovery of Rs. 11,48,908/- finally as the Respondent No. 2 and 4 are intentionally and deliberately avoiding to decide the same despite applicant's letter dat. 13.4.2004 and 17.6.2005 to them (Annexure-A-6, A-8 & A-13 of the O.A.)*
- 8.5 That the Hon'ble Tribunal may graciously be pleased to direct the Respondents to make payment of all retiral dues and pensionary benefits to the applicant that is Gratuity, Leave Encashment, commutation of pension and other dies as mentioned against Para 4.19 of this O.A. with interest @ 12% per annum compounded annually from 1..7.1995 to the date of payment to the applicant.*
- 8.6 That the Hon'ble Tribunal may graciously be pleased to direct the Respondents to make payment of compensation damages Rs. 5 Lakh or as decided by the Hon'ble Tribunal for constant harassmt and mental torture and financial loss to the applicant under the facts and circumstances of the case.*
- 8.7 That the Hon'ble Tribunal may graciously be pleased to direct the General Manager, N.C. Railway, Allahabad Respondent No. 2 to take strict action against the Officer and staff who is responsible for with-holding all pensionary benefits and retiral dues of the applicant since 30.6.1995 to till this date without any reason.*
- 8.8 This Hon'ble Tribunal may graciously be pleased to award heavy cost of application and legal fee in favour of the applicant for compelling the applicant to file O.A. third time in this case.*
- 8.9 That the Hon'ble Tribunal may graciously be pleased to pass any other order or direction as may deem fit and proper in the facts and circumstances of the case."*

2. The facts in brief as stated in the OA are as below:-

- The deceased employee (referred hereinafter as 'applicant') as was working as Chief Permanent Way Inspector under the Railways when he retired from service on 30.06.1995 from the office of the respondent no. 4. He was issued a minor penalty chargesheet dated 23.06.1995 (Annexure A-1 to the OA) just before retirement mentioning certain irregularities.
- The applicant received the chargesheet on 16.8.1995 after retirement through a registered letter delivered in his village. He submitted his representation dated 20.8.1995 (Annexure A-4) explaining the charges, stating that there is no evidence to prove the allegations.
- But no action was taken by the disciplinary authority (in short DA) although as per the order dated 24.4.1995 of the Railway Board fixed 20 days for the DA to take a decision for minor penalty chargesheet. But no decision was taken within the stipulated time.
- The respondents withheld all retiral dues as listed in para 4.19 of the OA, except the provisional pension which has been sanctioned. Applicant filed OA No. 1106/1997 in which the respondents in their Counter alleged about recovery of Rs. 11,48,908/- from him. Vide order dated 16.3.2004 (Annexure A-7), this Tribunal disposed of the OA No. 1106/1997 directing the respondents to conclude the proceedings against the applicant.
- The applicant submitted a representation dated 13.4.2004 (Annexure A-8) stating that no loss has been sustained by the Railways as the discrepancy was due to stocks relating to the deposit works which were completed with satisfaction of the depositor. The DA failed to conclude the proceedings within six months time allowed by the Tribunal even after allowing extension of time by another four months vide order dated 27.9.2004. The applicant submitted a representation dated 4.10.2004 (Annexure A-10) stating that no recovery proceeding for the alleged amount was initiated against the applicant before his retirement and that these items were pertaining to years 1984-1992 and the applicant has

been informed about these through counter after 4 years of his retirement.

- Finally, the DA passed the order dated 10.2.2005 (Annexure A-2) imposing the penalty of recovery of Rs. 11,49,208/- from the applicant.
- The applicant filed appeal dated 17.6.2005 (Annexure A-13) before the Appellate Authority (in short AA), who did not dispose of the appeal in time. Applicant filed second OA No. 221/2005 and vide order dated 4.1.2006, the AA was directed to dispose of the appeal within 3 months. AA passed the order dated 31.1.2006 (Annexure A-3) which is non-speaking and cryptic and the said order is not in accordance with the rule 22 of the Railway Servants (Discipline and Appeal) Rules, 1968 (in short DAR, 1968). The AA ignored the points mentioned by the applicant in his appeal petition.
- The overhauling report dated 28.6.1995 based on which the recovery has been ordered, was duly replied by the applicant vide his letter dated 31.7.1995 (Annexure A-16) and the DA in his letter dated 27.6.1997 (Annexure A-17/A-17a) submitted final report on the overhauling report, in which no recovery from the applicant was shown.
- Under the rule 10(c) of the Railway Services (Pension) Rules, 1993 (in short Pension Rules), it is provided that if the chargesheet against the railway servant is for minor penalty, then payment of gratuity would be authorized. (para 4.57 of the OA).
- As per some of the judgments of CAT, minor penalty proceedings if not completed, end with the retirement of the employee and orders not passed within time limit fixed by the Tribunal would be null and void. In judgment of Hon'ble Apex Court in the cases of State of Andhra Pradesh vs. N. Radhakrishnan 1998 ATJ(2) 559 and Bhagat Singh vs. Union of India and others 1994 ATC-28-398, delay in concluding departmental proceedings is stated to be causing prejudice to the charged employee.

- Minor penalty chargesheet dated 23.6.1995 does not contain any allegation regarding overhauling report dated 28.6.1995 and alleged recovery from the applicant. Hence, the impugned penalty order is illegal and is liable to be set aside (para 4.63 of the OA).

3. The respondents filed Counter Reply, admitting the factual position by and large. It is mentioned that in earlier OAs filed by the applicant, the Tribunal had not accepted the reliefs prayed for by the applicant for quashing the chargesheet, penalty order and for releasing the pensionary dues. But this Tribunal passed orders for disposal of the proceedings or appeal by the respondents. The applicant was custodian of the stores and delayed submission of the returns. He did not handover the charge to Sri P.C. Shukla to ensure early finalization of his settlement dues. The applicant had been adopting negative attitude and failed to comply with the direction given by the administration to handover the charge of store, for which minor penalty chargesheet was issued and it was sent through registered post as the applicant was not present in his office before his retirement on 30.6.1995. It was stated that the overhauling report dated 28.6.1995 detected misappropriation of serious nature by the applicant who was asked to explain vide letter dated 17.7.1995 alongwith the report dated 28.6.1995 (annexure no.CA-5 to the Counter). The applicant replied vide letter dated 27.7.1995 (Annexure no. CA-6), which was placed before the competent authority who submitted final report dated 11.9.1997 (Annexure no. CA-7) showing the government dues of Rs. 11,48,908/- recoverable from the applicant. **Based on this report, the disciplinary authority imposed a penalty of recovery of Rs. 11,49,208/- from the applicant vide order dated 10.2.2005, which was upheld by the AA. The impugned orders are as per the rules and Railway Board letter dated 20.9.1985 (Annexure CA-10). It is stated in para 16 of the Counter that this amount can be recovered from the retiral dues of the applicant without prior sanction of the President as per the rule 15 of the Pension Rules.**

4. The applicant filed the Rejoinder, reiterating the stand taken in the OA. Regarding the averments in the Counter regarding overhauling report, it is stated in para 12 of the Rejoinder that the applicant furnished the reply dated 27.7.1995 (Annexure A-16) to the overhauling accounts report dated

28.6.1995 (Annexure A-15) and vide letter dated 28.7.1996 (Annexure A-17a), it was stated that no action is to be taken against the applicant who had retired.

5. Heard learned counsel for the applicant who vehemently stressed the following points:-

- The chargesheet for minor penalty was issued just before the applicant's retirement and instead of serving it on the applicant in office, it was sent by post to his village and the applicant received the chargesheet on 16.8.1995 after his date of retirement.
- Vide the impugned penalty order dated 10.2.2005, penalty of recovery of Rs. 11,49,208/- from the applicant's retiral dues was passed while exonerating him from the charges framed against him. The penalty was imposed for recovery of an amount which was not included in the chargesheet. Hence, it is against the rules.
- The penalty order has been passed almost 10 years after retirement of the applicant and entire retiral dues of the applicant (except provisional pension) have been withheld illegally by the respondents.

6. Shri Avnish Tripathy, learned counsel for the respondents in his oral submissions countered the averments made on behalf of the applicant and stated that the applicant had already filed two OAs prior to filing this OA challenging the action taken by the respondents. First OA was filed to challenge the chargesheet and it was dismissed. This OA was disposed of vide order dated 16.3.2004 in which it was observed that the chargesheet was served on the applicant before retirement and the OA was disposed of with direction to the respondents to conclude the proceedings within six months. It was submitted that the ground of non-service of the chargesheet before retirement has already been rejected by this Tribunal earlier. Regarding recovery of the amount, it was argued that the applicant was in charge of store and during his incumbency, he did not file quarterly returns in time and committed various irregularities, which were detected by audit, which found the total amount of irregularity/misappropriation of rs. 11,48,908 was found as per the overhauling report dated 28.6.1995 as per the details in the Annexure No. CA-5 and CA-7 to the Counter Affidavit

and submitted that the said amount is recoverable from the applicant as per the rules since the applicant being the custodian of the store was responsible for loss of the amount in question. It was submitted that the applicant was duly notified and copy of the report dated 28.6.1995 was intimated to him for his reply vide Annexure CA-5. Applicant's reply was received (Annexure CA-6) and it was duly considered before imposing the impugned penalty. Regarding the point of delay raised by the counsel for the applicant, it was submitted that the delay in passing the penalty order was due to litigations and legal disputes raised by the applicant and finally, this Tribunal vide order dated 16.3.2004 directed the respondents to conclude the proceedings within six months and time of further four months was also allowed. He also referred to the averments in various paragraphs of the Counter to argue that the impugned orders have been correctly passed by the competent authorities as per the rules.

7. We have carefully considered the submissions and pleadings and also perused the documents placed before us by the parties. The issue of service of the chargesheet on the applicant has been already settled vide order dated 16.3.2004 of this Tribunal in OA No. 1106/1997 filed by the applicant earlier (Annexure A-7), where it was held that the chargesheet was served on the applicant before retirement. This observation was not challenged by the applicant, who cannot raise the issue again by averring in this OA that the chargesheet was served on him by registered post after date of his retirement.

8. One of the grounds taken in the OA and during oral submissions by the applicant's counsel is that the order of recovery of Rs. 11,49,208/- from the applicant vide the impugned order dated 10.2.2005 was not included in the chargesheet issued to the applicant. The chargesheet dated 23.6.1995 for minor penalty had specified the charges against the applicant, which do not include the charge of recovery of the said amount due to loss or otherwise has not been included in the said chargesheet. The charges mentioned in the chargesheet are as under:-

"23-06-1995
STATEMENT OF IMPUTATION OF CHARGES AGAINST SH. R.C.
JAIHWAL, CPWI(C)PLG/ALD

That the said Sri R.C. Jaiswal, while working as PWI/C/ALD and CPWI(C)/Plg/ALD during the period from 1991 to 1995 has violated the extant rules in discharge of his duties.

1. *He has not submitted quarterly store timely vis return for quarter ending December, 1991 submitted 28.9.94, return from January' 92 to December' 92 for one year on 19.10.94, from Jan' 93 on 2.12.94, quarter ending March' 94 on 16.12.94 quarter ending June' 94 on 7.1.95, quarter ending Sept' m94 on 20.1.96 from October' 94 to Jan.' 95 on 27.4.95, which too have not been supported by MA Note Book.*
2. *He has issued P. Way materials worth Rs. 26 lacs approx. to open line during the above period without permission from the competent authority and without submitting the list of surplus to this office.*
3. *He has converted a huge quantity of P. Way materials including Rails and Steel Sleepers and M.S. Steel and taken in weight = 81.00 M.Ts for handing over the same to T.P.S./Tunda and other Stores without the authority for doing so and in contravention with the extant rules.*
4. *He was asked vide this office letter No. 4-S/Dy. CE(C)ALD dt. 29.6.95 for getting overhauling of store ledger and also for handling over of all relevant records including ledgers to ISA/C/ALD dt. 2.6.95 but he failed to produce the once to I.S.A. till date, due to this the actual position of losses and discrepancies could not worked out.*
5. *He was asked to hand over all the official records to PWI/C-II/ALD vide this office letter No. 4-S/Dy. CE(C)ALD dt. 16.06.96 but he could not do so as yet hence violating the orders.*
6. *He has not submitted the details of materials of stores pout in the temporary structure for keeping of stores. So he has not submitted the final store return to this office for valuation and carrying out adjustment.*

Thus by this act of omission and commission the said Sh. R.C. Jaiswal failed to maintain devotion to duty contravening rule 3.1 (ii) of Railway Servant Conduct Rules, 1968.

Sd/-
(R.N. Agrawal)
DY CHIEF ENGINEER (CONSTRUCTION)
N. RAILWAY, ALLAHABAD"

On the chargesheet dated 23.6.1995, vide the impugned penalty order dated 10.2.2005 held that the applicant was responsible for the charges under serial no. 1,2,3,4 and 5 and finally, following penalty order was passed:-

".....
However, the losses caused to the Railways to the extent of Rs. 11,49,208/- (Eleven lakh forty nine thousand two hundred eight) has been established on the basis of irregularities detected in the final overhauling accounts reports. The losses thus caused will be recovered from your retirement gratuity under rules 15 of Railway Services (Pension) Rules, 1993 leave encashment and dearness relief admissible on pension in terms of railway Board's letter No. (E)III/85PNI/13 DT 20.9.85 (NR PS No. 8344) till final adjustment of outstanding amount. In case the amount recoverable from above falls short of loss caused to Railways, you will be liable to deposit the balance amount to Railways.
....."

From above, it is clear that the disciplinary authority has found the applicant guilty of losses on the basis of the overhauling accounts reports without incorporating the same in the chargesheet.

9. The respondents have not stated anything in their counter against the specific pleadings in para 4.63 of the OA about non-inclusion of the recovery of the amount on account of loss or overhauling report in the chargesheet dated 23.6.1995. Although a copy of the overhauling report dated 28.6.1995 was communicated to the applicant, who had submitted a reply, which was considered by the disciplinary authority while passing the impugned order dated 10.2.2005. Clearly, there is a mix up by the respondents while passing order on the chargesheet, which also included the order passed on the final report on the overhauling report dated 28.6.1995. Para 37 of the Counter Reply states that the impugned orders are as per the rule 6 of the DAR, 1968 and the rule 16 of the Pension Rules and the Railway Board letter dated 20.9.85, copy of which is stated to have been enclosed in Annexure CA-10 of the Counter. Reference to the rule 15 of the Pension Rules has also been made in the Counter Reply. On perusal of the Annexure to the Counter Reply, it is seen that there is no Annexure CA-10, hence, we are not able to refer to the Railway Board circular dated 20.9.85 referred in para 37 of the Counter Reply.

10. We now proceed to examine whether the impugned action is in accordance with the rule 15/16 of the Pension Rules and the rule 6 of the DAR, 1968. The rule 16 of the Pension Rules is on the subject of recovery of dues relating to Government or Railway accommodation. Hence, the rule 16 is not applicable in this case. The rule 15 of the Pension Rules states as under:-

"15. Recovery and adjustment of Government or railway dues from pensionary benefits- (1) For the dues other than the dues pertaining to occupation of Government or Railway accommodation, the Head of Office shall take steps to assess the dues "one year" before the date on which a railway servant is due to retire on superannuation.

(1A) The assessment of Government or Railway dues in sub-rule (1) shall be completed by the Head of Office eight months prior to the date of retirement of the railway servant.

(Authority: File No. 2015/F(E)III/1(1)/4 dt. 17.06.16RB NO.70

(2) The railway or Government dues as ascertained and assessed, which remain outstanding till the date of retirement or death of the railway servant, shall be adjusted against the amount of the retirement gratuity or death gratuity or terminal gratuity and recovery of the dues against the retiring railway servant shall be regulated in accordance with the provisions of sub-rule (4).

(3) For the purposes of this rule, the expression "railway or Government dues" includes-

(a) dues pertaining to railway or Government accommodation including arrears of license fee, as well as damages (for the occupation of the Railway or Government accommodation beyond the permissible period after the date of retirement of allottee),.

if any; . (Authority: Railway Board letter No. F(E)III/2010/PNI/4 dated 28.03.12)

(b) dues other than those pertaining to railway or Government accommodation, namely balance of house-building or conveyance or any other advance, overpayment of pay and allowances, leave salary or other dues such as Post Office or Life Insurance premia, losses (including short collection in freight charges shortage in stores) caused to the Government or the railway as a result of negligence or fraud on the part of the railway servant while he was in service.

(4) (i) A claim against the railway servant may be on account of all or any of the following: -

(a) losses (including short collection in freight charges, shortage in stores) caused to the Government or the railway as a result of negligence or fraud on the part of the railway servant while he was in service;

(b) other Government dues such as over-payment on account of pay and allowances or other dues such as house rent, Post Office or Life Insurance Premia, or outstanding advance,

(c) non-Government dues.

(ii) Recovery of losses specified in sub-clause (a) of clause (i) of this sub-rule shall be made subject to the conditions laid down in rule 8 being satisfied from recurring pensions and also commuted value thereof, which are governed by the Pension Act, 1871 (23 of 1871). A recovery on account of item (a) of sub-para (i) which cannot be made in terms of rule 8, and any recovery on account of sub-clauses items (b) and (c) of clause (i) that cannot be made from these even with the consent of the railway servant, the same shall be recovered from retirement, death, terminal or service gratuity which are not subject to the Pensions Act, 1871 (23 of 1871). It is permissible to make recovery of Government dues from the retirement, death, terminal or service gratuity even without obtaining his consent, or without obtaining the consent of the member of his family in the case of a deceased railway servant.

(iii) Sanction to pensionary benefits shall not be delayed pending recovery of any outstanding Government dues. If at the time of sanction, any dues remain unassessed or unrealised the following courses should be adopted:

(a) In respect of the dues as mentioned in sub-clause (a) of clause (i) of this sub-rule. A suitable cash deposit may be taken from the railway servant or only such portion of the gratuity as may be considered sufficient, may be held over till the outstanding dues are assessed and adjusted.

(b) In respect if the dues as mentioned in sub-clause (b) of clause (i) of this sub-rule- (1) The retiring railway servant may be asked to furnish a surety of a suitable permanent railway servant. If the surety furnished by him is found acceptable, the payment of his pension or gratuity or his last claim for pay, etc. should not be with held and the surety shall sign a bond in Form 2.

(2) If the retiring railway servant is unable or nor willing to furnish a surety, then action shall be taken as specified in sub-clause (a) of sub-clause (iii).

(3) The authority-sanctioning pension in each case shall be competent to accept the surety bond in Form 2 on behalf of the President.

(c) In respect of the dues as mentioned in sub-clause (c) of clause (i) The Quasi- Government and non-Government dues, such as amounts payable by a railway servant to Consumer Cooperative Societies, Consumer Credit Societies or the dues payable to an autonomous organisation by a railway servant while on deputation may be recovered from the retirement gratuity which has become payable to the retiring railway servant provided he gives his consent for doing so in writing to the administration.

(iv) In all cases referred to in sub-clauses (a) and (b) of clause (i) of this sub-rule, the amounts which the retiring railway servants are required to deposit or those which are with held from the gratuity payable to them

shall not be disproportionately large and that such amount are not withheld or the sureties furnished are not bound over for unduly long periods. To achieve this the following principles should be observed by all the concerned authorities:-

(a) The cash deposit to be taken or the amount of gratuity to be withheld should not exceed the estimated amount of the outstanding dues plus twenty-five per centum thereof.

(b) Dues mentioned in clause (I) of this sub-rule should be assessed and adjusted within a period of three months from the date of retirement of the railway servant concerned.

(c) Steps should be taken to see that there is no loss to Government on account of negligence on the part of the officials concerned while intimating and processing of a demand. The officials concerned shall be liable to disciplinary action in not assessing the Government dues in time and the question whether the recovery of the irrecoverable amount shall be waived or the recovery made from the officials held responsible for not assessing the Government dues in time should be considered on merits.

(d) As soon as proceeding of the nature referred to in rule 8 are instituted, the authority which instituted the proceedings should without delay intimate the fact to the Account Officer."

11. From above, it is clear that under the rule 15(1) and 15(1A), the amount to be recovered towards the dues of the Government are required to be assessed before one year of the retirement of the employee and must be completed eight months before the retirement. In respect of a retired railway servant, the loss to the Railways on account of store or otherwise can be assessed under the sub rule 4(i) of the above rule and such dues have to be assessed and adjusted within three months of retirement under the sub rule 4(iv) clause (b) of the rule 15. In other words, in case of the applicant in this OA, the respondents should have assessed the dues to be recovered from the applicant on account of the store on or before 30.9.1995 as he retired on 30.6.1995. The loss on account of the overhauling report in this case was first intimated to the applicant for his reply vide letter dated 17.7.1995 (Annexure CA-5) which was after retirement of the applicant on 30.6.1995. The final report on the reply of the applicant was finalized vide letter dated 11.9.1997 (Annexure CA-7), which was after more than two years after the applicant's retirement. Finally, the order of recovery was passed by the DA on 10.2.2005 i.e after more than 9 years of the applicant's retirement. It is noted that although the applicant had submitted his reply on the overhauling report on 27.7.1995 (Annexure CA-6), but the respondents sat over it and did not finalize the dues, if any, recoverable from the applicant within 30.9.1995 as required under the rule 15 of the Pension Rules. Hence, the impugned order dated 10.2.2005 violates the provisions under the rule 15 of the Pension Rules. Since the respondents have stated about default of the applicant in submission of timely returns and reports relating to store

since 1991, it is not understood why the overhauling report prepared by the accounts department was not finalized and the amount to be recovered towards loss could not be assessed within the time stipulated under the rule 15 of the Pension Rules and for not taking suitable action against the applicant as per the rules if he was found negligent in timely submission of the reports of the store as stated in the Counter Reply.

12. Further, before determining the dues to be recovered from the applicant, the details of the dues are required to be assessed after giving opportunity of hearing to the applicant. In this case, if after considering the reply of the applicant on overhauling report, the competent authority would have found him responsible for loss to the Railways, then a reasoned and speaking order was required to be passed on the overhauling report, mentioning why the replies given by the applicant could not be accepted and a copy of the order should have been informed to the applicant before the time limit under the rule 15 i.e. before 30.6.1995. Instead of assessing the dues recoverable from the applicant within the time stipulated under the rule 15, the respondents chose to include the findings on the overhauling report in the minor penalty chargesheet dated 23.6.1995, without specifying the reasons for not accepting the replies of the applicant vide his letter dated 27.7.1995 (Annexure CA-6 to the Counter). Clearly, it has caused prejudice to the applicant.

13. We then proceed to test the averment in the Counter Reply that the impugned orders are in accordance with the rule of the DAR, 1968. The rule 6 of the DAR, 1968 specifies the penalties. Since we are concerned with minor penalty here, the rule 6, in respect of minor penalty` states as under:-

"6. Penalties : The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Railway servant, namely:-

Minor Penalties -

(i) Censure;

(ii) Withholding of his promotion for a specified period;

(iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government or Railway Administration by negligence or breach of orders;

(iii-a) Withholding of the Privilege Passes or Privilege Ticket Orders or both;

(iii-b) Reduction to a lower stage in the time scale of pay by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting his pension;

(iv) 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;"

The sub rule (iii) permits recovery of losses caused to Government on account of negligence of the employee. But before ordering recovery of such loss, the procedure of imposing minor penalty as specified in the rule 11 of the DAR, 1968 needs to be followed. The rule 11 states as under:-

"11. Procedure for imposing minor penalties -

(1) Subject to the provisions of sub-clause (iv) of clause (a) of sub-rule (9) of Rule 9 and of sub-rule (4) of Rule 10, no order imposing on a Railway servant any of the penalties specified in clauses (i) to (iv) of Rule 6 shall be made except after -

(a) informing the Railway servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal;

(b) holding an inquiry in the manner laid down in sub-rules (6) to (25) of Rule 9, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;

(c) taking the representation, if any, submitted by the Railway servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;

(d) recording a finding on each imputation of misconduct or misbehaviour; and

(e) consulting the Commission where such consultation is necessary.

(2) Notwithstanding anything contained in clause (b) of 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 Rule 9, before making any order imposing on the Railway servant any such penalty.

....."

From the rule 11 as quoted above, it is necessary to inform the imputations of misconduct on the part of the employee which caused loss are required to be informed. In the chargesheet dated 23.6.1995 as quoted in para 8 of this order, there was no mention of any loss that might have been caused to the Railways due to misconduct of the applicant. Hence, the contentions of the applicant in para 4.63 of the OA are correct. As

discussed in para 8 of this order, The proceedings relating to the overhauling accounts report dated 28.6.1995 were taken up by the respondents without including in the minor penalty chargesheet or without informing the applicant that the respondents have fixed responsibility on the applicant for the losses based on the report and the applicant's reply on the report has not been accepted by the respondents. Hence, inclusion of the findings based on the overhauling report in the penalty order dated 10.2.1995 disposing of the minor penalty chargesheet, without including the allegations in the chargesheet dated 23.6.1995, is violative of the rule 11 of the DAR, 1968 and the impugned order dated 10.2.1995 clearly violates the provisions of the rule 11 of the DAR, 1968.

14. There is a plea in para 4.45 and 4.46 of the OA that the order dated 31.1.2006 (Annexure A-3) passed by the Appellate Authority violated the rule 22 of the DAR, 1968 the rule 22(2) states as under:-

"(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider :-
(a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and
(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders:-
(i) confirming, enhancing, reducing or setting aside the penalty; or
(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case:
Provided that"

Nothing has been stated in the Counter Reply to specifically deny this averment about the order dated 31.1.2006 passed by the Appellate Authority, which states as under:-

"Dated: 31-01-2006

***No. 136/W/CE/C/N/NG
 Shri R.C. Jaiswal,
 23/47, 30-B,
 Allahpur, Allahabad.***

***Sub: Disciplinary action against Shri R.C. Jaiswal.
 Ref:1 Your appeal dated 17-06-2005 & 23-01-2006.***

***2. Hon'ble CAT/ALD's order 04-01-2006 in OA No. 221 of 2005
 R.C. Jaiswal vs. and others.***

The competent authority i.e. Chief Engineer/Construction, North Central Railway, Allahabad has carefully considered your appeal dated 17-06-2005 submitted by you in the light of the direction/judgment dated 04-01-2006 of Hon'ble CAT/ALD against the disciplinary action order dated 10-02-2005 passed by Dy. CE/C/ALD and passed the under noted orders.

"The penalty imposed vide Dy.CE/C/ALD letter No. SF/CC/Const./ALD dated 10-02-2005 for recovery of Rs. 11,48,908 (Eleven lakh forty eight thousand Nine hundred & eight) from Shri R.C. Jaiswal Ex CPW/C/ALD can not be set aside."

*Sd/-
Chief Engineer/C/North,
North Central Railway,
Allahabad."*

It is clear that the order dated 31.1.2006 is not in accordance with the rule 22(2) of the DAR, 1968 as it has not examined the points as stated in the rule 22(2) of the DAR, 1968. Hence, we have no hesitation to hold that the order dated 31.1.2006 of the Appellate Authority, being a non-speaking order, is not in accordance with the provisions of the DAR, 1968.

15. It is seen that the Railway Board's Letter No. 55 Ac. II/25/5 dated 23.4.1962 (reproduced from the Book "The Railway Servants (Discipline & Appeal) Rules" by M.L. Jand (12th Edition, 2011), page 183, has specified the guidelines on how the losses on account of negligence of Railway servants will be assessed. The said letter of the Railway Board states as under:-

"Infestation of losses, thefts, irregularities, negligence, fraud, etc by Departmental Inquiry Committee

- 1. The Board have repeatedly emphasised the necessity of avoiding setting up Inquiry Committees to investigate into cases of shortage or loss due to theft, negligence, financial irregularity, etc.*
- 2. A case has, however, come to the Board's notice in which shortage of stores occurred in as Loco Shed during the period between October 1949 and May 1951. An Inquiry Committee to investigate the reasons for the loss, composed of a representative each of the Mechanical, Accounts and Watch and Ward Departments was appointed only in July 1953. The Committee could not come to any agreed conclusion, as the representative of the Mechanical Department held the Watch and Ward Departmental responsible while the Watch and Ward Departmental representative considered that the staff of the Mechanical Departmental did not take enough precaution to prevent the losses. The Inquiry thus served no purpose, no staff responsibility could be fixed and the loss was eventually written off. Thus, not only there was delay in setting up the Committee, but the Committee itself filed in its objectives.*
- 3. The principal objectives of an inquiry are to be find out:*
 - (i) who is responsible for the loss or shortage of stores or cash, irregularity, negligence or fraud etc.;*
 - (ii) how the loss, shortage, etc. occurred;*
 - (iii) what rule or standing instructions to prevent or guard against such loss, shortage, etc. were violated;*

- (iv) *whether there is any defect or lacuna in the extant rules or instructions or the procedure for proper accountal and periodical check and supervision and if so, how such defect or lacuna should be removed.*

The Committee should confine itself to the above objectives without wasting time in pursuit of matters that are not relevant to the subject under inquiry. The Committee should arrive at a clear and unequivocal findings on the staff directly or indirectly responsible through negligence or lack of supervision for the loss or shortage. The Committee should also clearly recommend what steps should be taken to remove the defects or lacunae which have come to light or to improve the existing procedure so as to avoid future losses of the type.

4. *The Inquiry Committee should apply themselves to the prompt and expeditious finalisation of the inquiry and present a clear report without any undue delay. The authority constituting the Committee should specify target dates by which the report should be drawn up and recommendations contained in the report implemented. Care should also be taken to ensure that the Inquiry Committee is composed of officers of adequate level appropriate to the nature of the irregularity or the shortage of loss which they are called upon to investigate.*
5. *The Board desire that adequate steps should be taken to ensure that the broad principles outlined in this as well as Board's earlier directives are correctly observed."*

We see from the pleadings of the respondents that there is no averment to show that the procedure as laid down in the above letter dated 23.4.62 dated 23.4.62 of the Railway Board has been followed by the authorities. There is no mention of any Inquiry Committee constituted for inquiring into the observations against the applicant in the overhauling report.

16. The applicant has cited the Full Bench Judgment of Principal Bench this Tribunal in the case of **Chiranji Lal vs. Union of India and others** reported in **1997-2001 A.T. Full Bench Judgments page 52**. It is held that although this proceedings for minor penalty can be continued technically after retirement of the charged officer, but it becomes meaningless. Learned counsel for the applicant has also cited another judgment of Chennai Bench of this Tribunal in the case of **K.V. Gnanasampandan vs. Union of India and others** reported in **2001 (2) ATJ 64**. The facts of this case are distinguishable from the present case. He has also referred another case of Calcutta Bench of this Tribunal in the case of **Panchu Gopal Bannerjee** reported in **(1992) 20 ATC 595**. In this case there was an order of Hon'ble Calcutta High Court directing the authorities to complete the inquiry proceedings by a specific date. It was

held that if the date specified by Hon'ble High Court could not be adhered to and the inquiry continued beyond the specified date, then it will be invalid. Although there may be a valid reason for not concluding the inquiry. No extension of date was applied by the Hon'ble High Court. Accordingly, the punishment order of reversion was quashed by the Tribunal. In the instant OA, this Tribunal had given direction to the respondents vide order dated 16.3.2004 to conclude the disciplinary proceedings against the applicant within the dateline which was extended by the respondents once, but still the disciplinary proceedings could not be concluded in time and punishment order could not be passed within the dateline stipulated by the Tribunal. Hence, the impugned order dated 10.02.2005 is not in accordance with the order dated 16.03.2004 of this Tribunal in OA No. 1106/97 (Annexure A-7). At the time of oral submissions, learned counsel for the respondents, on a query from the Bench, also conceded that the respondents could not adhere to the time limit fixed by this Tribunal to dispose of proceedings against the applicant.

17. Another ground taken by the learned counsel for the applicant is the delay in finalizing the minor penalty proceedings, which took about 10 years after retirement of the applicant due to which the settlement dues of the applicant have not been released by the respondents except the provisional pension. The purpose of having a time-limit of three months from the date of retirement for determining the loss amount recoverable from the Railway servant under the rule 15(4)(iv)(b) of the Pension Rules is not to delay the finalization of the proceedings against a retired employee on the this ground. But in this case, there has been abnormal delay on the part of the respondents to finalize the minor penalty proceedings against the applicant, which did not involve any departmental enquiry. The explanation given by the learned counsel for the respondents that the delay was due to the fact that the applicant had challenged the action taken against him in the Tribunal, is not very satisfactory, since there was no order of the Tribunal to stop or stay the proceedings in question. In fact, the direction of the Tribunal was to conclude the proceedings within a reasonable time. Hence, there is no logical explanation for the abnormal delay that has occurred in concluding the minor penalty proceedings. The applicant, in para 4.60 of the OA has referred to the judgment of Hon'ble

Apex Court in the case of State of Andhra Pradesh vs. N. Radhakrishnan 1998 ATJ(2) 559, in which it was held as under:-

"It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. the essence of the matter is that the court has to take into consideration all relevant factors and to balance and weight them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. if the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse consideration."

18 As per the ratio of above judgment, if the delay in concluding the disciplinary proceedings is unexplained, then there is prejudice to the delinquent employee. In the instant OA before us, the delay of more than nine years from the date of retirement of the applicant to finalize the disciplinary proceedings against the applicant for minor charges is not explained satisfactorily as discussed in para 16 of this order. Hence, applying the ratio of the judgment of Hon'ble Apex Court to the OA before us, the impugned penalty order cannot be sustained on the ground of delay. Even after this Tribunal directed the respondents vide order dated 16.3.2004 to conclude the disciplinary proceedings within six months, the respondents could not dispose of the same and approached the Tribunal for extension of the time. This Tribunal vide order dated 27.09.2004 (Annexure A-9) disposed of the prayer for extension of time with the following observations:-

".....The respondents failed to take the Disciplinary proceedings to its logical end. The applicant being the retired Government servant is facing hardship due to non-settlement of retiral benefits. There seems no justification for not taking final decision in the disciplinary proceedings relating to minor penalty pending since 1995. However, the respondents are directed to take the disciplinary proceedings to a logical end within a further period of four months failing which the applicant shall be at liberty to approach the Tribunal for quashing the disciplinary proceedings....."

Even if four month time is counted from the date of the order dated 27.09.2004, then the disciplinary authority should have disposed of the departmental proceedings by 27.1.2005. Instead, the impugned penalty order was issued on 10.02.2005 after the dateline given by the Tribunal was over. Hence, the impugned order of punishment dated 10.2.2005 was

passed not only with a delay of about more than nine years from the date of the applicant's retirement, but also beyond the dateline given by this Tribunal as per the order dated 27.9.2004. Hence, as per the observations made by the Tribunal in order dated 27.9.2004, the applicant has liberty to move the Tribunal for quashing the disciplinary proceedings.

19. In the circumstances and for the reasons mentioned above, the impugned orders are not sustainable under law as these orders were passed in violation of the rule 15 of the Pension Rules and the rule 11 and 22 of the DAR, 1968 and also passed after substantial delay from the date of initiation of the proceedings. Therefore, the impugned orders dated 10.2.2005 (Annexure A-2), dated 31.1.2006 (Annexure A-3) of the Appellate Authority upholding the order dated 10.2.2005 are set aside and quashed. The respondents are directed to release the applicant's retiral dues withheld by them in full, including the final pension and arrears of pension as per the rules alongwith an interest at the rate of 9% per annum to the legal heirs of the applicant within three months from the date of receipt of a certified copy of this order.

20. In case there is a loss to the Railways on account of the overhauling accounts reports as mentioned in the order dated 10.02.2005, the respondent no. 1 is directed to recover the same from the officials concerned, who are liable for disciplinary action for not assessing the Government dues in this case within the time stipulated under the rule 15(4)(iv)(b) of the Railway Services (Pension) Rules, 1993 in terms of the rule 15(4)(iv)(c) of the aforesaid rules, which states as under:-

"(c) Steps should be taken to see that there is no loss to Government on account of negligence on the part of the officials concerned while intimating and processing of a demand. The officials concerned shall be liable to disciplinary action in not assessing the Government dues in time and the question whether the recovery of the irrecoverable amount shall be waived or the recovery made from the officials held responsible for not assessing the Government dues in time should be considered on merits."

21. The OA is allowed in terms of the directions in para 19 and 20 above. There shall be no order as to the costs.

(Rakesh Sagar Jain)
Member (J)

(Gokul Chandra Pati)
Member (A)