



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 350/208/2018

Date of order : 23.2.2018

Present: Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

NUR HOSEN DHALI

S/o Late Yusuf Dhali
Working as Chief Commercial Clerk
Under the Station Superintendent,
Ghutiari Shariff Rly. Station,
Sealdah Division,
Eastern Railway
(now under suspension)
R/o Dakshin Chhayanipara,
PO - Ramkrishna Pally,
PS - Sonarpur,
Kolkata - 700150,
Dist. - 24 Parganas (S)

...APPLICANT.

VERSUS

1. Union of India through
The General Manager,
Eastern Railway,
17 N.S.Railway,
Kolkata - 700001.
2. The Divisional Railway Manager,
Eastern Railway,
Sealdah Division,
Sealdah
Kolkata - 700014
3. The Sr. Divisional Personnel Officer,
Eastern Railway,
Sealdah Division,
Sealdah
Kolkata - 700014
4. The Divisional Commercial Manager,
Eastern Railway,
Sealdah Division,
Sealdah
Kolkata - 700014
5. The Sr. Divisional Commercial Manager
Eastern Railway,
Sealdah Division,
Sealdah
Kolkata - 700014

...RESPONDENTS

For the applicant : Mr.K.Sarkar, counsel
Ms.A.Sarkar, counsel

For the respondents: Mr.M.K.Bandyopadhyay, counsel

O R D E R (ORAL)

Per Ms. Manjula Das, Judicial Member

Mr.K.Sarkar, Id. Counsel assisted by Ms. A.Sarkar, Id. Counsel appeared for the applicant and Mr.M.K.Bandyopadhyay, Id. Counsel appeared for the respondents.

2. The brief fact the case as narrated by the Id. Counsel for the applicant is that the applicant joined Eastern Railway on 11.9.1976 and lastly he was promoted as Chief Commercial Clerk. As he was due to retire on superannuation on 30.11.2017, he submitted filled up settlement booklet, on 20.11.2017 to the Chief Welfare Inspector/(IC), Sealdah, Eastern Railway, disclosing the details of family members dependent on him. On 22.11.2017 the applicant made a representation before the respondent No.3 for post facto permission of his second marriage and declared existing family members dependent upon him. On 23.11.2017 the authorities prepared a settlement calculation sheet of the applicant before his retirement on superannuation. Suddenly on 24.11.2017, six days before his retirement on superannuation, the applicant was placed under suspension by respondent No.4 on the alleged ground of disciplinary proceeding. On 27.12.2017 the applicant made a representation to the respondent No.2 for revocation of the said order of suspension and for payment of post retirement settlement dues.

The applicant retired on superannuation on 30.11.2017 and the charge sheet was issued on 31.1.2018. The applicant has approached this Tribunal in the present OA being aggrieved by the impugned charge sheet dated 31.1.2018.

3. The Id. Counsel for the applicant submitted that the impugned order dated 31.1.2018 is bad in law as per Railway Board's circular RBE No. 199/2000 dated 20.11.2000 and hence the same should be quashed and set aside. Id. Counsel also stated that there is no allegation of serious and willful negligence and dereliction of duty resulting in considerable loss to the Railways



and the applicant was not allowed to submit any appeal for revocation. He also submitted that under Rule 69 of CCS (Pension) Rules the applicant is entitled to provisional pension on the basis of his qualifying service upto the date immediately preceding the date on which he was placed under suspension but the authorities did not grant him such provisional pension in violation of the existing rules and provisions.

4. We have heard both the Id. Counsels for the parties and perused the pleadings and materials placed on record.

5. The applicant herein was retired from his service on 30.11.2017. Prior to his retirement, he completed his formalities by filing the settlement booklet to the Chief Welfare Inspector/(IC), Sealdah, Eastern Railway disclosing the details of the family members depending on him on 22.11.2017 which appears as Annexure A/3 to the OA. Thereafter, the departmental authorities prepared the settlement calculation sheet of the applicant so as to disburse the retiral benefits. The grievance arose as and when the respondent authorities placed the applicant under suspension vide order dated 24.11.2017 and initiated disciplinary proceeding vide memorandum of charge dated 31.1.2018.

6. Id. Counsel for the applicant raised a legal issue that the impugned charge memo is in contravention with the provisions of Railway Board Estt. Circular No. 199/2000 dated 21.11.2000. RBE 199/2000 on the subject of "Continuation of departmental proceedings against retired Railway servants who were under suspension on the date of their retirement" reads as under :

"A case has come to the notice of this Ministry where a railway servant was under suspension on the date of his retirement and charge sheet was issued to him after his retirement from service by the General Manager under Rule-9 of RS(D&A) Rules. A question has arisen whether the charge sheet in the above case should have been issued under Rule-9 of RS(D&A) Rules or Rule-9 of RS(Pension) Rules and also whether the sanction of the President was not required as the charge sheet was proposed to be issued to a retired railway servant.

The matter has been examined in consultation with Finance Directorate and Legal Adviser of this Ministry. Attention of the Railways in this connection is drawn to the provisions contained in sub-rule 5(a) of Rule-9 of RS(Pension) Rules, 1993. These provisions stipulate that for the purpose of Rule-9 of these rules, the departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Railway servant or pensioner or if the railway servant has been placed under suspension from an earlier date, on such



date. In other words, in respect of a railway servant who was under suspension on the date of his retirement the departmental proceedings are deemed to be instituted on the date he was placed under suspension. Approval of the President for issued of charge sheet in such cases is therefore, not required as the departmental proceedings were already instituted before the retirement of the charged official and the charge memorandum can be issued the Disciplinary Authority who would have issued the charge memorandum had the charged official been in service. In such cases, however, the proceedings continue under Rule-9 of Pension Rules. Since the power to continue the proceedings after retirement of the charged official is drawn from Rule-9 of Pension Rules, this fact, therefore, should also find a mention the charge sheet issued in such cases."

The said circular further contained as hereunder :

"It has, therefore, been decided that in cases where the Railway servant was under suspension on the date of his retirement and departmental proceedings are continued after his retirement from service and a charge memorandum is proposed to be issued to him in this connection, the first paragraph of the charge memorandum should read as under :

"In terms of Order No. _____ dated _____ Shri _____ was suspended from service w.e.f while he was still in service. In terms of Sub-rule 2(a) read with Sub-rule 5(a) of Rule 9 of Railway Service (Pension Rules, 1993, departmental proceedings instituted before the retirement of Shri _____ are deemed to be proceeding under Rule 9 of the Railway Service(Pension) Rules, 1993."

7. For coming to a logical conclusion we first take in hand the memorandum of charge dated 31.12.2018 where the charge leveling against the applicant which reads as hereunder :


"Statement of Article of charges are proposed to be taken against Sri Nur Hosen Dhali, ex-CCC/GOF"

Sri Nur Hosen Dhali, ex-CCC/GOF while working as such failed to obtain prior permission from the competent authority about his 2nd marriage as per RSDA Rule-1966. Sri Dhali, having a living spouse entered into 2nd marriage on 27.11.2003 and registered the same on 31.7.2017 under Muslim marriage Register Act. This is highly irregular.

Thus by the above activities, Sri Nur Hosen Dhali, ex-CCC/GOF failed to maintain absolute integrity & acted in a manner unbecoming of a Railway servant in contravention to Rule 3/1(ii) & (iii) of Railway Service (Conduct) Rule 1966 amended from time to time."

The memorandum of charge dated 31.1.2018 para 6 as mentioned therein that

"Sri Nur Hosen Dhali, ex-CCC/GOF under SS/GOF is further informed that if he does not submit his written statement of defence within the period specified in para 4 or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 or the orders/directions issued in pursuance of the said rule, the Inquiring authority may hold the inquiry ex parte."



8. Thus it is crystal clear that the respondents have initiated a proceeding after retirement under the provision of Rule 9 of RS (D&A) Rules, 1968, ^WWhereas as per the guidelines of the disciplinary proceedings for a retirement ^demployee of the Railway as per RBE 199/2000. The disciplinary proceeding ought to have been continued under Rule 9 of Railway Servants (Pension) Rules, since the power to continue the proceedings after retirement of the charged official is drawn from Rule 9 of CCS (Pension) Rules. In the present case, the applicant was placed under suspension on 24.11.2017, six days prior to his retirement. Notwithstanding if the proceedings is deemed to be instituted on the date of placing the suspension of the applicant, the authority ought to have continued the said proceeding under Rule 9 of the CCS (Pension) Rules and that too should ^{have} ^{ed} mention the provision of Rule 9 of CCS (Pension) Rules in the memo of charge.

Secondly, if there is any similar circumstance i.e. that the Railway servant was under suspension on the date of his retirement and departmental proceeding are continued after retirement from service and charge memorandum is proposed to be issued, the first paragraph i.e. format has to be followed as per the guidelines. In the instant case the respondents failed to make the issue of memorandum of charge dated 31.1.2018 not in accordance with the format which appears at Annexure A/8.

9. Apparently there is a fundamental flaw in the issuance of the impugned memorandum of charge dated 31.1.2018 and hence ^{has} no legs to stand to ^{can so} continue the said memorandum of charge. After taking into entire conspectus of the case we have no hesitation to set aside the memorandum of charge dated 31.1.2018 which we hold as bad in law and cannot be sustained. Accordingly the impugned memorandum of charge dated 31.1.2018 is set aside.

10. The OA is allowed. No order as to costs.

(DR. NANDITA CHATTERJEE)

(MANJULA DAS)