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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA

O. A. NO. 350/345 OF 2017

In the matter of :

An application under Section 19
of the Administrative Tribunals
Act, 1985;

And

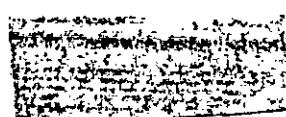
In the matter of :

Mahadev Shaw,
son of Lt. J. Shaw of Rly. Plot
No. 148 Bara drain, Dangapara,
Kanchrapara, 24 Parganas
(North), Pin - 743145.

... Applicant

- Versus -

1. Union of India, service
through the General Manager,
South Eastern Railway, 11,
Garden Reach, Kolkata-700043.



2. Chief Operation Manager,
South Eastern Railway, 11,
Garden Reach, Kolkata-700043.

3. The Additional Divisional
Railway Manager South Eastern
Railway, Kharagpur, Post Office
- Kharagpur, District- Paschim
Medinipur, Pin-721301;

4. The Sr. Divisional
Operation Manager, South
Eastern Railway, Kharagpur,
Post Office- Kharagpur, District-
Paschim Medinipur, Pin-
721301;

5. Sr. Divisional Personnel
Officer, South Eastern Railway,
Kharagpur, Post Office -
Kharagpur, District- Paschim
Medinipur, Pin-721301;

✓/d

6. The Workshop Personnel

Officer, South Eastern Railway,

Kharagpur Workshop, Post

Office -Kharagpur, District-

Paschim Medinipur, Pin-

721301.

7. The Assistant Personnel

Officer, South Eastern Railway,

Santragachi Station Building,

Post Office - Jagacha, District -

Howrah, Pin-711111.

... Respondents

W.D

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

Date of Order: 5/3/2019

Court: Hon'ble Mr. A.K Patnaik, Judicial Member

O.A./350/345/2017

Mahadev Shaw -vs- UOI & Ors.

For the Applicant(s): Mr. S.K.Bhowmik, Counsel

For the Respondent(s): Mr. A.K.Banerjee, Counsel

ORDER

A.K Patnaik, Member (J):

The relief sought by the applicant in this OA filed under section 19 of the A.T. Act, 1985 is as under:

“An order or direction do issue directing the respondent authorities to pay full pensionary benefit and gratuity to the applicant cancelling/rescinding the punishment notice (SF-5) issued wrongfully by the authority below in rank as well as modified order of respondent No.2 herein.”

2. Fact of the matter is that while the applicant was working as Senior Goods Guard vide Memorandum dated 22.12.2011, charge sheet under Rule 9 of Railway Servants (Discipline and Appeal) Rules, 1968 was issued to him for his unauthorized absence from duty from 01.12.2009 to 11.12.2009, 12.02.2010 to 10.03.2010, 13.04.2010 to 18.05.2010, 07.10.2010 to 02.01.2011, 12.08.2011 to 19.12.2011 and till date. The disciplinary proceedings concluded ex parte by affixing all communications in the notice board and, at the end, the Senior Divisional Optns. Manager, S.E.Railway, Khargpur passed the punishment notice dated 23.1.2013, last portion of which is quoted as under:

W.L

"Hence, I have decided to Remove you from Railway Service with immediate effect without any retirement benefit as per provision laid down in DR&A Rules." (emphasis added).

After being unsuccessful in the appeal preferred by him, he filed revision on 12.1.2006. The revising authority vide order dated 14.6.2016 modified the punishment of removal from service to that of compulsory retirement with 2/3rd pension and gratuity as admissible subject to completion of qualifying service as per extant rules. Thereafter, he preferred representation dated 5.9.2016 requesting release of his settlement dues as, in the meantime; he had reached the age of retirement. It has been stated that the absence of the applicant was for the reason of his illness which was neither intentional nor deliberate and, therefore, imposition of harsh punishment of removal is bad in law. The applicant has challenged the disciplinary proceedings on various grounds and in support of getting his retirement dues it has been stated that if his total period of service is taken into consideration he will be entitled to the pension and other pensionary dues as per the order of the revising authority which has not been paid to him till date.

3. Respondents have filed their counter in which it has been stated that as per service record the applicant was initially appointed in the post of Goods Guard as Fresh candidate and there is no record that the applicant had joined under the Deputy Chief Engineer (Work shop/Khargpur) prior to his joining as Goods Guard on the basis of letter under Annexure-1&2. However, he was working in open line. If any work he had done in that organisation that cannot be counted as service unless he produces any document to that effect. It has been stated the applicant had rendered total 8 years, 9 months and 19 days qualifying service as 2 years, 11 months is counted as non qualifying service. Therefore, the punishment of removal



cannot be modified to compulsory retirement and his punishment remained **unchanged as per letter of APO/SRC dated 23.6.2017.**

4. I have heard learned counsel for both sides and perused the records.

5. I find that there has been several flaw starting from initiation of disciplinary proceedings till end viz; the notice of punishment dated 23.1.2013 cannot be said to be an order imposing the punishment of removal on the applicant because the authority concerned has consciously stated that "I have decided to remove you from Railway Service with immediate effect without any retirement benefit as per provision laid down in D&A Rules" possibly because it was a notice to impose punishment. Secondly, the Appellate Authority upheld the order without looking this part of the order or observing whether the proceedings were concluded in strict observance of rules and principles of natural justice. When the letter returned unserved, affixing the same in the office notice board without publishing the same in any of the local news paper is not enough to conclude that due notice was given to the applicant. Therefore, it can safely be presumed that the punishment notice and the order of the appellate authority are non speaking to the extent stated above. However, the revising authority modified the order of punishment to that of compulsory retirement. The APO/SRC who is below in rank of the revising authority ought not to have issued order allowing the punishment of removal to stand. Therefore, viewed the matter from the above angle, this is a case where judicial interference is called for. But we refrain from doing so as the applicant by making representation has prayed for release of retiral dues treating his punishment as compulsory retirement which has been denied on the ground that the applicant did not complete the qualifying service of 10 years by treating 2 years, 11 months as non qualifying service without giving any reason for such treatment even in the counter.

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Besides, the applicant has produced copy of order dated 12.5.2000 showing his engagement in railway in 2000, the office order dated 31.5.2000 and dated 23.4.2001 in support of his stand that he joined railway much prior to his appointment as goods guard. These documents have not been doubted by the Respondents in their counter.

6. Be that as it may, taking a holistic view in the matter, I feel that ends of justice will be met if direction is issued to the Respondents to take into consideration the shortfall period of service of the applicant from non qualifying period of service so as to make the applicant eligible to receive minimum pension as per the order of the revising authority and grant the benefits to the applicant within a period of 60 (sixty) days from the date of receipt of copy of this order. Ordered accordingly.

This OA is accordingly disposed of. No costs.

(A.K.Patnaik)
Member (Judicial)

RK/PS