



**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No. 765/2017

This the 18th day of December, 2019

Hon'ble Mr. S.N. Terdal, Member(J)
Hon'ble Mr. A.K. Bishnoi, Member (A)

Shri Vijay Masih
S/o Shri Prakash Masih
Retd. as Chief Booking
Supervisor, (Group-C)
R/o House No. 421, Rama Apartments
Sector – 11, Dwarka, New Delhi – 110 075.

...Applicant

(By Advocate : Mr. Manjeet Singh Reen)

Versus

Union of India & Other

1. The General Manager
Northern Railway, Baroda House
New Delhi.
2. The Divisional Railway Manager
Northern Railway
Ferozpur Division, Ferozpur (Punjab).

...Respondents

(By Advocate: Mr. Shailendra Tiwary)

ORDER (ORAL)

Mr. S.N. Terdal :

Heard Mr. Manjeet Singh Reen, counsel for applicant and Mr. Shailendra Tiwary, counsel for respondents, perused the pleadings and all document produced by both the parties.

2. This OA has been filed seeking the following reliefs :

- “8.1 That this Hon'ble Tribunal may graciously be pleased to allow this Original application and set-aside the impugned order dt. 31.12.2013 & 03.08.2016 with all consequential benefits.
- 8.2 That this Hon'ble Tribunal may graciously be pleased to direct the respondent no. 2 to release the withheld amount i.e. Gratuity & restore the full pension of the applicant alongwith 18% simple interest in the interest of justice.
- 8.3 That this Hon'ble Tribunal may graciously be pleased to direct the respondents to produce all relevant records before this Hon'ble Tribunal in the interest of justice.

8.4 That any other or further relief which this Hon'ble Tribunal may be deem fit and proper under the circumstances of the case may also be granted in favour of the applicants.

8.5 That the cost of the proceedings may also be awarded in favour to the applicants."

3. The counsel for the applicant submits that Annexures A-1 & A-2 orders regarding imposition of punishment and recovery of Rs. 3,38,787/- have been passed without the approval of the President as required under Rule 11 of the Railway Servants (Discipline & Appeal) Rules, 1968. The said Rule 11 is extracted below :

"11. Disciplinary proceedings after retirement :

Initiating disciplinary cases after retirement requires the sanction of the President. A duly authorized officer of the Railway Board signs the charge sheet in such cases, on behalf of President This is done under Rule 9 of the Railway Service Pension Rules 1993)

Note : Here President means Minister of Railways acting in the name of President.

If an employee was under suspension on the date of his retirement and Charge Sheet is issued at a later date, sanction of the President is not necessary. The departmental proceedings are deemed to be instituted on the date he was suspended and in such cases, the Charge Memorandum had the charged employee been in service. And in the same way, if a charge memorandum was already issued before the retirement of the charged official and continued till the retirement, the same will continue after the retirement also by the same Disciplinary Authority. **But no penalty can be imposed by any authority except the President in such cases."**

As per above Rule, **no penalty can be imposed by the Disciplinary Authority without the approval of the President.**

(Emphasis supplied)

4. In the counter filed by the respondents in response to para 4.23, they have stated that the approval of the President is under process. The said para 4.23 of counter affidavit is extracted below :

"4.23 That the respondents without referred the matter before the President which is mandatory as per Rule 9 of Railway Service Pension Rules, 1993, impose the penalty vide their letter dated 31.12.2013 of recovery the amount of Rs. 3,38,787/- outstanding against the applicant which has been recovered from the DCRG of the applicant."



5. In view of the fact that the approval of the President is under process and in view of the provision of Rule 11 extracted above, the impugned orders are bad in law. Hence, both the orders are set aside.

6. Accordingly, OA is allowed. However, the respondents are at liberty to take action as per law within two months from the date of receipt of certified copy of this order. The applicant shall be entitled to all consequential benefits.

There shall be no order as to costs.

(A.K. Bishnoi)
Member (A)

(S.N. Terdal)
Member (J)

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