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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1618/2002

This the 20th day of January, 2003

Hon'ble Shri Govindan S. Tampi, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

Shri Chaman Lal
s/o Shri Gopi Ram
Sr. Chief Health Inspector
Northern Railway
Delhi Kishan Ganj, Delhi

..Applicant

(By Advocates: Shri B.S.Mainee & Smt. Meenu Mainee)

Versus

1. The General Manager
Northern Railway
Baroda House, New Delhi
2. The Divisional Railway Manager
Northern Railway
State Entry Road, New Delhi
3. The Sr.Divl. Commercial Manager
Northern Railway
State Entry Road
4. Shri B.P.Singh
Inquiry Officer (CEI)
HQ - DRM Office
State Entry Road, New Delhi

..Respondents

(By Advocate: Shri Rajinder Khatter)

O R D E R (ORAL)

Shri Govindan S.Tampi:

Chaman Lal, the applicant in this OA is aggrieved that the respondents have initiated a fresh inquiry against him after his retirement on superannuation.

2. During the oral submissions, S/Shri B.S. Mainee with Smt. Meenu Mainee and Rajinder Khatter represented the applicant and the respondents respectively.

3. The applicant, who was working as Senior Chief Health Inspector (SCHI) under the Senior Medical Superintendent, Railway Health Unit, Delhi Kishanganj, was charge-sheeted

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for major penalty on 2.11.1999 on the allegation that he had demanded and accepted Rs.400/- as illegal gratification from one Shri Dharmender Kumar, Safaiwala for regularising his period of absence. At the culmination of the proceedings, the Inquiry Officer, after carefully considering both the oral and documentary evidence brought on record, held that the charge against the applicant was not proved, whereupon the Medical Superintendent, Northern Railway, who was the Disciplinary Authority, exonerated the applicant of the charges levelled against him vide order dated 28.9.2000. One and half years later on 31.5.2002, the applicant retired on superannuation, following which on 2.6.2002, he received a confidential letter dated 27.5.2002 issued by the Senior Divisional Commercial Manager, Northern Railway, New Delhi indicating that the General Manager under Rule 25 of the Railway Servants (Discipline & Appeal) Rules, 1968 had set aside the DE proceedings and remitted the case back to the appropriate disciplinary authority for holding a fresh inquiry. It was also indicated that another inquiry officer was appointed to hold the de-novo inquiry. The inquiry officer, in terms of his letter dated 27.5.2002, fixed 6.6.2002 as the date for holding the first sitting of the de-novo inquiry, which was received by the applicant on 8.6.2002 after the said date was over. His appearing on 6.6.2002 for the de-novo inquiry, therefore, did not arise. The law did not permit the respondents to reject the previous inquiry and order a fresh inquiry but they only provided for a further inquiry by the same very officer if the disciplinary authority found that some

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shortcomings had occurred in the previous inquiry. The fact that against the statutory prescriptions the proceedings have been initiated would give an impression that the respondents were in undue haste to penalise a superannuated employee, like him, on account of pressure from the Vigilance Branch. Hence, the present OA.

4. The grounds raised in the OA are that:

- i) the charges levelled against the applicant were found to be false and baseless, and as such the first inquiry officer had held them to be not proved;
- ii) the action of the General manager in rejecting the previous inquiry report and appointing another inquiry officer (while the earlier inquiry officer was still in service) and holding a fresh inquiry/de-novo inquiry was contrary to the rules. while Rule 10 (2) of Railway Servants (Discipline & Appeal) Rules, 1968 provided for the disciplinary authority to remit the case to the inquiry officer for further inquiry, the same did not permit the disciplinary authority or even the reviewing authority to totally reject the previous inquiry officer's report and order fresh inquiry and that by a new inquiry officer. The decision of the Hon'ble Supreme Court in the case of K.C. Deb Vs. Union of India & Ors., 1971 (2) SCC 102 is relevant in this regard;
- iii) the Senior Divisional Commercial Manager has not only ordered the de-novo inquiry, but has also changed the Inquiry Officer;
- iv) the applicant having retired on superannuation on 31.5.2002, the Senior Divisional Commercial Manager could not have acted as the Disciplinary authority;
- v) the directions to hold fresh inquiry/de-novo inquiry had been passed more than a year and half after his exoneration; and
- vi) the impugned orders were illegal, arbitrary and unconstitutional.

All the above pleadings were strongly reiterated by Shri B.S.Maine, learned counsel for applicant.

6. In the counter affidavit filed on behalf of the respondents through Shri Rajinder Khatter, learned counsel, they point out that the applicant had been served with a major penalty charge-sheet, as he was found responsible for demanding and accepting Rs.400/- as illegal money from Shri Dharmender Kumar, Safaiwala/DKZ for regularising his absence on 2.5.1999, 13.5.1999, 30.5.1999 and 31.5.1999 without even obtaining the leave application from the person concerned. As this action amounted to gross misconduct and even involved an element of corruption, proceedings were initiated against him. While the inquiry officer had held that the charge was not proved and accordingly submitted his report to the Disciplinary Authority. On the date when the Disciplinary Authority took the decision for exoneration, Senior Medical Superintendent/Delhi Kishan Ganj was no longer the controlling authority for the applicant, who had since been transferred to jurisdiction of Senior DCM/NDLS. Therefore, the Senior Medical Superintendent could not have exonerated the applicant. It is incorrect to state that the letter dated 27.5.2002 was issued after the superannuation of the applicant on 31.5.2002 but in fact it has been issued through the controlling authority on 27.5.2002 and the applicant had been directed to collect the same from the office on 27.5.2002 which he did not so as to avoid the receipt of the letter. The reviewing authority/General Manager, Northern Railway, on his own motion, exercised the revisionary powers and set aside the D&AR proceedings as the action of the disciplinary authority was procedurally wrong. This was the correct step to have been taken in the interest of Administration. The applicant had not exhausted any departmental remedies

and, therefore, the OA should be treated as pre-mature. Learned counsel for respondents also prayed that the interim relief by way of stay granted to the applicant should be vacated.

7. We have carefully considered the matter. The impugned order dated 27.5.2002 reads as follows:-

"The General manager/N.Rly. under Rule-25 of Railway Servant's (Discipline & Appeal) Rules-1968 has set aside the D&AR proceedings from the stage of Nomination of the Inquiry Officer and has decided to remit back the case to appropriate Disciplinary Authority to proceed a fresh inquiry.

You are therefore, required to appear before the Inquiry Officer for 'DENOVA INQUIRY' in the subject matter. SF-7 regarding nomination of Inquiry Officer is enclosed herewith.

Please acknowledge receipt of this letter."

8. The crux of the matter is that the applicant, who was chargesheeted on the allegation of having received illegal gratification amounting to Rs.400/- for regularising the leave of Shri Dharmender, Safaiwala, has been found to be not guilty of the charge by the Inquiry Officer, which was duly endorsed by the disciplinary authority, Senior Medical Superintendent on 28.9.2000. However, a year and half later, the impugned order as above has been issued directing that a de-novo inquiry be held. It is seen from the perusal of Rule 25 of the Railway Servants (Discipline & Appeal) Rules, 1968 that President or the Railway Board or the General Manager of the Railway Administration, or the Appellate Authority or any other Authority can "remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case". The Rule, therefore, only

permits the holding a further inquiry from the stage it was stopped and it does not at all provide for any de-novo inquiry. In the instant case, it is clear from the impugned order that what has been ordered is "de-novo inquiry" which has no sanction in law. It is also found that this order has been served on the applicant six days after his retirement on superannuation on 31.5.2002. The above orders do not have the sanction in law and cannot be endorsed.

9. The OA, in the circumstances succeeds and is accordingly allowed. The impugned order dated 27.5.2002 is quashed and set aside with full consequential benefits to the applicant. No costs.

(The operative portion was pronounced in the Court at the conclusion of the oral submissions.)

S. Raju
(Shanker Raju)
Member (J)

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(Govindan S. Tampi)
Member (A)