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O.A.No.1871/2001

Hon'ble Shri V.K.Majotra, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

Tuesday, this the 16th day of April, 2002

Harvinder Singh Bindra
s/o Shri A.S.Bindra
Ticket Collector
Railway Station Hazzrat Nizamuddin
New Delhi.
r/o 20-E, Bengali Market Railway Colony
New Delhi. ... Applicant

(By Advocate: Shri G.D.Bhandari)

Vs.

1. Union of India through
The General Manager
Northern Railway
Baroda House
New Delhi.
 2. The Divisional Railway Manager
Northern Railway
State Entry Road
New Delhi.
 3. The Chief Traffic Manager
N.Rly. Divisional Office
State Entry Road
New Delhi.
- ... Respondents

(By Advocate: Shri Rajinder Khatter)

ORDER (Oral)

By Shanker Raju, M(J):

Applicant impugns respondents' revision order dated 28.3.2001 (Annexure-A1) wherein the punishment of dismissal has been reduced to reduction to the initial grade for a period of 10 years with cumulative effect as well as an order of penalty of dismissal ~~in~~^{by} ~~the~~^{by} ~~order~~^{by} dated 22.8.2000 and appellate order dated 7.11.2000 and has sought all consequential benefits.

2. Applicant, whose category from Tele Communication Maintainer (TCM) has been changed to Ticket Collector in the commercial Department in the

year 1991 promoted as Head Travelling Ticket Examiner. On a raid conducted by CBI, the applicant was allegedly being found collecting illegal money from the passengers for allowing them to enter the Platform of the Shivaji Bridge Railway Station along with their unauthorised goods. It was also noticed that the applicant, at that time, was not in his proper uniform. An amount of Rs.1821/- was recovered from him, out of which Rs.1000/- were found unaccounted for. It is also observed that his special Checking Authority had already expired on 31.12.1995 and was not renewed by the competent authority.

3. Applicant was served with a Memorandum for a major penalty under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 on 30.4.1997 and the same was withdrawn and a fresh chargesheet was issued on 3.10.1997 on the same charges without recording any reasons.

4. Disciplinary proceedings were conducted and the Inquiry Officer through his finding, proved the charge against the applicant of being found in possession of excess cash of Rs.1000/- and failed to declare his private cash but other parts of the charges mainly collecting illegal money from the passengers; and not in proper uniform have not been proved due to lack of positive evidence.

5. The disciplinary authority on the basis of the findings of the Inquiry Officer imposed a major punishment of dismissal from service upon the applicant by an order passed on 22.8.2000 which was

challenged in appeal and the punishment was maintained by an order passed on 7.11.2000. Applicant preferred a revision petition and by an order dated 28.3.2001, the punishment was reduced to that of reduction to the initial grade of TCR Grade Rs.3050-4590 (RPS) for a period of 10 years with cumulative effect and the intervening period from dismissal to reinstatement is treated as leave due, which gives rise to the present OA.

6. Though the applicant has raised several contentions to assail the impugned orders but at the outset, by referring to Railway Board's circular No.171/93 dated 1.12.1993, it is contended that the fresh charge Memorandum issued to the applicant on 3.10.1997 is not legally sustainable. Initiation of the subsequent proceedings is not sustainable. As per the decision of Mumbai Bench of this Tribunal, Deputy Director (Establishment) D&A Railway Board has issued instructions holding that "once the proceedings initiated under Rule or Rule 11 of RS (D&A) Rules, 1968, are dropped, the Disciplinary Authorities would be debarred from initiating fresh proceedings against the delinquent officers unless the reasons for cancellation of the original charge Memorandum or for dropping the proceedings are appropriately mentioned and it is duly stated in the order that the proceedings were being dropped without prejudice to further action which may be considered in the circumstances of the case. It is, therefore, necessary that when the intention is to issue a fresh chargesheet subsequently, the order cancelling the original one or dropping the proceedings should be

carefully worded so as to mention the reasons for such an action indicating the intention of issuing chargesheet afresh appropriate to the nature of the charges."

7. In this background, by referring to the decision of the respondents taken vide their letter dated 3.10.1997, it is contended that the same does not confirm to the decision of the Railway Board as no reasons have been recorded therein. It is also stated that the Railway Board's Circulars are having force of law and are statutory in nature as such the same is binding on the respondents. Failure to comply with amounts to non-compliance of substantive provision of the procedure laid down under Railway Servants (Discipline & Appeal) Rules, 1968. Applicant has been prejudiced as there has been a non-compliance of the mandatory provision initiating the second chargesheet also vitiating the consequent orders.

8. On the other hand, respondents have strongly denied the contentions of the applicant and in reply to Para 5.10 where the aforesaid contention has been raised stated that the Chargesheet has been re-issued for ensuring natural justice and fair trial in the departmental proceedings. Learned counsel for the respondents has stated that the reasons have been recorded in the departmental file and the applicant has not been prejudiced by issuance of a second charge sheet as he has been afforded an opportunity to defend which is in consonance with the principles of natural justice. To substantiate his pleas, he has placed reliance on State of U.P. Vs. Harendra Arora and Another, (2001) 6 SCC 392.

9. We have carefully considered the rival contentions of the parties and perused the material on record. In our considered view and having regard to the respondents' Circular dated 1.12.1993, it was incumbent upon the respondents cancelling the earlier chargesheet and issuing a fresh to have recorded reasons for their action and the same should have been incorporated in the order itself. From the perusal of order dated 3.10.1997, we do not find any reasons recorded in support which is non-compliance of the Railway Board's Circular, which is statutory in nature. As regards the plea of the respondents that the applicant has not been prejudiced, Larger Bench of the Apex Court in State Bank of Patiala Vs. S.K.Sharma, JT 1997 SC 722 has ruled that a substantive provision has normally to be complied with and the test of prejudice would not be applicable in such a case. As the procedural provisions are generally made for affording a reasonable and adequate opportunity to the delinquent official, and in the instance case, as to keep of the element of bias or malafide the Board's Circular has been issued in compliance of the directions of the Mumbai Bench of the CAT which was binding upon the disciplinary authority. Not following the same has vitiated the proceedings causing prejudice to the applicant.

10. Recording of reasons, on files, would not be a sufficient compliance of the statutory circular of the Railway Board and the reasons are to be mentioned in the order itself. Having failed to record any reasons for withdrawing the earlier charges

and issuing a fresh one on same charges for which no provision exists in the rules clearly, is not legally sustainable.

11. In the result and having regard to the reasons recorded above, OA is allowed. Impugned orders of penalty and reduced penalty as well as the appellate authority are quashed and set-aside giving liberty to the respondents to resume the proceedings, if so advised, strictly in accordance with their Circular dated 1.12.1993 from the stage of issuing the proper orders and charge sheet within a period of three months from the date of receipt of a copy of this order. As regards the consequential benefits, respondents are directed to decide the same in accordance with rules and instructions on the subject.

S. Raju
(Shanker Raju)
Member(J)

V.K. Majotra
(V.K. Majotra)
Member (A)

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