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Central Administrative Tribunal, Principal Bench

Original Application No.2419 of 2001

New Delhi, this the 13th day of September, 2001

Hon'ble Mr. Justice Ashok Agarwal, Chairman
Hon'ble Mr. V.K. Majotra, Member (A)

Shri R.K. Sethi
s/o Shri Devi Dass
Junior Inspector Tickets
Northern Railway
Moradabad

- Applicant

(By Advocate: Shri B.S. Mainee)

Versus

Union of India : Through

1. The General Manager
Northern Railway
Baroda House, New Delhi
2. The Divisional Railway Manager
Northern Railway,
Moradabad
3. Shri R.C. Sharma
CEI/HQ
Northern Railway,
4th Floor, DRM Office
New Delhi

- Respondents

O R D E R (ORAL)

By Mr. V.K. Majotra, Member (A)

We have heard Shri B.S. Mainee, learned counsel of the applicant.

2. The applicant has assailed order dated 16.11.2000 (Annexure A-1), appointing Shri R.C. Sharma, CEI/HQ/NDLS as enquiry officer to inquire into charges framed against the applicant. Annexure A-2 dated 20.2.2001 has also been challenged by the applicant alleging that the de novo enquiry has been ordered to be held against him. Learned counsel stated that whereas enquiry had been completed against the applicant and only a report was to be submitted to the disciplinary
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authority, the enquiry was closed and it was ordered that a fresh enquiry should be held against the applicant. The learned counsel, drawing our attention to annexure A-14 dated 3.10.96, contended that the disciplinary authority is empowered to remit the case back to the same inquiry authority for further inquiry and that a fresh inquiry cannot be held. He also referred to AISLJ 1998 (1) CAT 295, Shri Kartar Singh vs. Union of India & ors. stating that a fresh inquiry cannot be entrusted to a new enquiry officer. To a pointed query, learned counsel stated that no fresh chargesheet has been issued against the applicant ^{lb} however, the witnesses who have been examined earlier, have been cited in the list of witnesses in the fresh inquiry as well. On the basis of the grounds explained above, learned counsel submitted that the impugned orders should be quashed.

3. A perusal of the case of Shri Kartar Singh (supra) makes it clear that when the enquiry officer did not hold the charges proved against the charged officer, the disciplinary authority remitted the case for fresh inquiry to a new enquiry officer on the plea that material witnesses had not been examined. The facts in the present case are entirely different as the enquiry officer had not submitted any report and, therefore, the question of disagreement of the disciplinary authority with the enquiry officer does not arise at all. Therefore, the ratio of Kartar Singh's case is not applicable to the facts of the present case.

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4. The clarification made in Annexure A-14 reads as follows:

"Ordinarily, the Disciplinary Authority should remit the case back to the same inquiry Authority for further inquiry. However, if the same inquiry officer is not available the case may be remitted to another Inquiry Officer."

5. The above clarification states that ordinarily the case has to be remitted to same enquiry officer for further inquiry. But it is not obligatory that it must be entrusted to the same enquiry officer. This provision, in our view, is only directory and not mandatory. Therefore in the present case if a new enquiry officer has been appointed by the disciplinary authority against him, there is no bias or malafide. No fault can be found in entrusting the inquiry to a new enquiry officer. Possibly as all the prosecution witnesses had not been examined by the enquiry officer, it may have been found that the previous enquiry officer was not affective enough to carry on with the inquiry and, therefore, the enquiry was entrusted to the new enquiry officer. The learned counsel contended that whereas the previous enquiry officer was a gazetted officer, the new enquiry officer was non-gazetted. However, he did not deny that the new enquiry officer was senior to the applicant. In this view of the matter, it is immaterial that the previous enquiry officer was a gazetted officer. Basically the enquiry officer has to be senior to the charged officer which the present enquiry officer is.

6. As to the objection that a fresh de novo inquiry has been ordered as per Annexure A-2 dated 20.2.2001, it is true that this memo is not happily worded. It is capable of both interpretations i.e. the fresh

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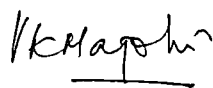
inquiry has been ordered or the inquiry has been ordered from the stage of examining PWs. However, in our view, this is not a very serious anomaly as to render the proceedings vitiated.

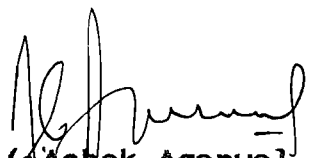
7. Learned counsel also relied on AIR 1971 SCC 1447, K.R.Deb vs. The Collector of Central Excise, Shillong. In this case, it was observed as follows:

"13. It seems to us that Rule 15, on the fact of, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the enquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under rule 9."

8. In the light of the discussion made above, whereas we find that there is no illegality or irregularity in appointing Shri R.C.Sharma as a new enquiry officer in the matter, the respondents and the enquiry officer are directed to hold a further inquiry from the stage where it was left off by the previous enquiry officer. O.A. is disposed of in the above terms.

Issue DASTI.


(V.K. Majotra)
Member (A)


(Ashok Agarwal)
Chairman

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