

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1512/98

New Delhi this the 6th day of October, 1999

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE CHAIRMAN
HON'BLE MRS. SHANTA SHAstry, MEMBER (A)

B.K. Dass,
Son of Shri N.M. Dass,
Retired Divisional Personnel Inspector,
Under DRM,
Northern Railway,
Moradabad. Applicant

(By Advocate: Shri B.S. Mainee)

-Versus-

Union of India,

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Moradabad. ... Respondents

(By Advocate: Shri R.L. Dhawan)

O. R D E R (Oral)

By Reddy, J.

In this OA, the applicant challenges the decision of the respondents to hold a fresh enquiry into the allegations that have already been enquired into and the report was submitted in 1993.

2. The facts leading to the relief sought are as follows:

3. While the applicant was working in Divisional Railway Manager's office Northern Railway, a chargesheet was issued on 7.11.1989 alleging that the working period of some casual labourers had not been properly verified by the applicant, and that people could secure employment on the

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basis of the wrong report of the applicant. An Enquiry Officer was appointed and the Enquiry Officer after holding the enquiry submitted the enquiry report on 10.2.1993. Meanwhile, the applicant after attaining the age of superannuation retired on 30.5.1990. The disciplinary authority asked the applicant to submit his explanation to the Enquiry Officer. The applicant had submitted his explanation on 10.3.1993. After the applicant had submitted his explanation, neither any action was taken nor any order was passed by the disciplinary authority for about four years. The applicant was under the impression that the enquiry was dropped. The applicant had therefore repeatedly requested the respondents to release his retiral benefits. On 10.4.1997, he received a letter stating that his case has been forwarded to the General Manager, Northern Railway for decision and after the decision was taken the benefits would be released. Even, thereafter no decision has been taken for releasing the benefits. But on 15.7.1998, the impugned order was passed stating that fresh Enquiry officer was being appointed and the applicant would be informed as to the next date of enquiry. The applicant questions the holding of a fresh enquiry. It is contended that under Rule 10(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, it was not permissible to hold a fresh enquiry after the enquiry has been completed and the report has been submitted by the Enquiry Officer to the disciplinary authority. It is further contended that in view of the inordinate delay of about 9 years from the date of charge memo and more than 5 years from the date of completion of the enquiry, the proceedings are liable to be dropped.

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4. The learned counsel for the respondents placed before ^{us} the order of the Railway Board dated 27.11.1997 which is marked as 'confidential' which was addressed by the Deputy Director Establishment to the General Manager, Northern Railway stating that in view of the representation made by the applicant representing that the ~~applicant~~ ^{is suffered} ~~was~~ prejudiced in the inquiry as the notices have not been properly served upon him by the Enquiry Officer, the Railway Board has held that the entire inquiry was vitiated and directed to hold a fresh inquiry.

5. It is strenuously contended by the learned counsel for the respondents that the applicant was himself responsible for the delay as he was not attending the enquiry promptly. Hence, delay cannot be put against the respondents to make out a case for dropping the proceedings. It is also contended that the charges were very serious, they should be enquired into and the applicant should be penalised, if he was found guilty. It was lastly contended that the decision was taken to quash the enquiry only in pursuance of the representation made by the applicant, hence the respondents are entitled to hold a fresh enquiry.

6.. The first question that has to be considered is whether a fresh enquiry is permissible under the rules. The disciplinary enquiry was initiated against the applicant under the Railway Servants (Discipline & Appeal) Rules, 1968. Procedure for imposing major penalties is dealt with in Part V of the said rules. As per the procedure, in the present case, the enquiry was held by an Enquiry Officer appointed by the disciplinary authority. The Enquiring Authority, after the enquiry was completed forwarded to the disciplinary

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authority the record of the enquiry along with his findings. Under Rule 10(1), if the disciplinary authority, after considering the findings given by the Enquiry Officer is of the opinion that further examination of any of the witnesses is necessary in the interest of justice, he may himself recall the witness or witnesses and examine them and may pass final order, either imposing the punishment or exonerating the officer. Under Rule 10(2), the disciplinary authority, for reasons to be recorded in writing ^{may} remit the case to the Enquiry Officer for further enquiry and report and thereupon, the Enquiring Authority will proceed to hold further enquiry according to the provisions ~~of~~ Rule 9 and send his report. If the disciplinary authority, disagrees with the findings of the enquiry authority, he may consider the evidence on record and pass such order as ~~he~~ consider fit or if ~~he~~ agrees that with the finding of the disciplinary authority, ~~he~~ shall make an order imposing such penalty as warranted. Thus under Rule 10(2), the disciplinary authority can only remit the case to ^{inquiry} to the Enquiry Officer for 'further' in the case, either to examine other witness or to recall a witness and further examination or cross examination. Sub rule (2) does not vest any right in the disciplinary authority to quash the enquiry already conducted and remit the case for a fresh enquiry. He can only direct to hold further enquiry into the matter. Under Rule 10(1) also the disciplinary authority, after receiving the report of the Enquiry Officer, can only hold further enquiry by himself. It, therefore, appears from the language of sub-rule (1) and (2) that the disciplinary authority has no right to quash the entire enquiry proceedings and to direct the Enquiring authority to hold a fresh enquiry on the same charges for any reason whatsoever. We are fortified in our view by the decisions in K.R. Dev

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Vs. Collector of Central Excise, Shillong, AIR 1971 SC 1447 and 1996 (2) SLJ P.150. The Supreme Court in both the cases had dealt with ~~whether~~ the question of holding a fresh enquiry on remitting the case to the Enquiring authority under Rule 15 of the CCS (CCA) Rules. After dealing with the provisions of Rule 15, it was observed at Para 13 as follows:

It seems to us that Rule 15, on the face of it, 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 inquiry 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".

In the case of Prem Hassanand Gidwani Vs. Union of India reported in SLJ 1996(2) SLJ P.150, ~~in this case~~ also Rule 15 of the CCS (CCA) rules have come for discussion. The Supreme Court ~~had~~ held under Rule 15 that ~~it was not permissible there was no rule~~ to completely quash the previous enquiry. The Court directed quashing the order of holding fresh enquiry.

7. The Supreme Court thus held that if there has been no proper inquiry because of some serious defect which crept into the inquiry or some important witnesses were not available during the inquiry or were not examined, the disciplinary authority can only ask the authority to produce further evidence but the court categorically held that there was no provision to set aside the previous inquiry for any reason. The same position in our view is obtaining under

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Rule 10. Sub-rule (1) and (2) of Rule 10 make it manifest that the disciplinary authority can only remit the case to the inquiry authority "for" further enquiry" and submit the report. In our view, therefore, the procedure under Rule 10 contemplates only one inquiry hence the question of holding a fresh enquiry is alien to the rules of enquiry.

8. In the present case, the inquiry was admittedly completed on 10.2.1993. The disciplinary authority asked the applicant to submit his explanation to the inquiry officer's report and the applicant submitted his explanation on 10.3.1993. In the impugned notices the applicant is now informed that the fresh inquiry officer was appointed to hold fresh inquiry into the matter.

9. In pursuance of the above decision, the applicant has received the impugned intimation. The learned counsel for the respondents further submits that the above decision was taken by the Railway Board only on consideration of the applicant's representation that the enquiry was not properly conducted and he ~~was~~ suffered prejudice by the enquiry. Hence the decision was taken only in order to help the applicant. But it should be noticed that the entire ~~case~~ ^{fault} was placed ~~on~~ by the enquiry officer. It was found that the enquiry was not conducted by the enquiry officer which vitiated the entire enquiry. Thus, what emerges from the findings of the Railway Board was that the entire enquiry conducted by the enquiry Officer had been vitiated resulting in the order to hold a fresh enquiry. In view of the ratio of the Supreme Court in the above decisions and in view of the fact that under the rules, the disciplinary authority under whose direction the enquiry is now being held has no jurisdiction

or power to cause further enquiry, we hold that the action of the respondents in holding a fresh enquiry is not permissible. The fresh enquiry is therefore quashed.

10. In view of the above findings, it is not necessary to consider the remaining question raised by the learned counsel for the applicant.

11. The impugned notice and fresh proceedings are therefore quashed.

12. Learned counsel for the applicant submits that though the applicant has been superannuated in 1990, his pensionary benefits and gratuity have not been released so far in view of the pendency of the enquiry. Since the enquiry has been quashed, we direct the respondents to release all the pensionary benefits expeditiously in accordance with law. The question of payment and interest, if the applicant is entitled under rule, it will be considered at the time of releasing of the pension. The OA is accordingly allowed. No costs.

Shanta S.
(Mrs. Shanta Shastry)
M(A)

Reddy
(V. Rajagopala Reddy)
VC (J)

Mittal