

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

O.A.No.2259/96

New Delhi, this 4th day of December, 1998.

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE SHRI R.K.AHOOJA, MEMBER(A)

Shri M.C.Gupta,
S/o Shri Suraj Prakash,
Retired Inspector of Works, Delhi Queens Road,
Northern Railway, Bikaner Division,
R/o A-46, Vivek Vihar,
Delhi.Applicant

(By Shri S.K.Sawhney)

vs.

1. Union of India through
General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Divisional Supdg. Engineer(C),
Northern Railway,
Bikaner.Respondents

(By Sri R.L.Dhawan)

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The applicant who retired while working as the Inspector of Works, Delhi Queens Road, Northern Railway on 31 March 1996 was on 4.4.96 served with the impugned Memorandum of Charges with date 28.3.96 proposing to hold an enquiry against the applicant for certain alleged misconducts. The statement of the Articles of Charge attached to the memorandum as Annexure-I read as follows:

"Shri M.C.Gupta, IOW-II/DE while working as IOW/SOG as such during the years 19.04.90 to 02.04.92 committed the serious irregularities as much as:-

- i) On transfer from SOG to HMH said Shri M.C.Gupta removed sink, wash hand basin, electric fan and fittings from Railway Bungalow No.E-32.
- ii) He paid Rs.48932/- in MB No.4063 page 94-95 for the work of earth fillilng in Gypsum siding at APH.

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iii) against annual repair and white washing of staff quarters at SOG station MB No.4897 page 53 to 65 bogus entries for item No.5 to 11 for boundary wall.

iv) In MB No.4898 he had given false payment of earth filling in C-94 gate lodge work at SOG for Rs.40,000/- with load of 5 kms.

v) In connection with improvement to station building at SOG, he has cut already paid items and test checked by AEN/SOG with malafide intention.

By the above acts of omission and commission, he failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Railway servant and thereby contravened rule No.3.1(i),(ii) and (iii) of Railway Service (Conduct),Rules,1966."

According to the applicant the second respondent had on 4.4.96 called the applicant to his office , put the date on the charge-sheet as 28.3.96 which was objected to by him and served on him on that date with a view to harass the applicant and to deny him his retiral benefits. As the applicant had retired on 31.3.96 the memorandum of charge which was issued to him only on 4.4.96, is unsustainable as the same has been issued in breach of the provisions of Chapter 1 of the Railway Services(Pension) Rules,1993. The applicant therefore has filed this application seeking to have the impugned memorandum of charge set aside and for a direction to the respondents to release DCRG, commutation of pension etc. to the applicant.

2. In the reply statement the respondents denied the allegation that the chargesheet was signed on 4.4.96 putting the date as 28.3.96 as stated in the application. The chargesheet was signed by the DSE/C on 28.3.96 and sent through special messenger on the same date could not be served on the applicant either on that date or on the next date . As the applicant refused to receive the same, it could be served only on 4.4.96. As the chargesheet has been issued to the applicant on 28.3.96, though the service

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was delayed for the reasons aforesaid the respondents contend that the contention of the applicant that the chargesheet has been issued in violation of Rule 9 of the Railway Services Pension Rules has no force at all.

3. The applicant has filed a rejoinder in which he has contended that the allegation that the chargesheet was sent by the DSE/C on 28.3.96 is incorrect as that day was a closed holiday and has reiterated the contentions raised in the application.

4. We have heard the learned counsel on either side and have perused the pleadings and the documents on record.

5. That the impugned chargesheet was served on the applicant only on 4.4.96 after the date of his superannuation on 31.3.96 is not in dispute. The case of the applicant is that the second respondent has out of malafides with a view to delay and deny the pensionary claims of the applicant put the date on the chargesheet as 28.3.96 on 4.4.94 and served the same on the applicant on that date and that therefore in view of the provisions contained in Rule 9 of the Railway Services Pension Rules, the issue of the chargesheet is incompetent. As the respondents have denied the allegation that the chargesheet was really signed on 4.4.96 though the date 28.3.96 was put and have contended that the chargesheet after framing on 28.3.96 was put in transit to the applicant through special messenger, but could be served only on 4.4.96. The question is whether the case of the applicant that the second respondent put the date 28.3.96 in the chargesheet only on 4.4.96, as contended by the applicant. To establish this contention, the applicant has stated in the application that 28.3.96 being a holiday,

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in the normal course the second respondent would not have attended the office only for the purpose of signing the chargesheet. Learned counsel of the applicant argued that the second respondent who had malafides against the applicant had antedated the chargesheet just to harass the ~~outself~~ applicant. We are not able to persuade to agree to this argument in the absence of any acceptable evidence in that regard. Apart from the allegation of the applicant that the second respondent had illwill towards him and that the date 28.3.96 was a closed holiday, there is nothing on record to establish that the allegation is true. If the case of the applicant was that the issue of the chargesheet was out of malafides of the second respondent, then the applicant should have impleaded the incumbent in the office of the second respondent in his personal name. That has not been done. Therefore the allegation of malafides cannot be taken serious note of. On the basis of the allegation and counter allegation, it cannot be held that the case of the applicant that the chargesheet was signed by the second respondent only on 4.4.96 instead of 28.3.96 because the presumption is that the official acts are deemed to have been done properly. It is not uncommon that the senior officers go to the office on holidays to clear pending work. Therefore that 28.3.96 was a holiday cannot be held out to be a reason for holding that the chargesheet was really antedated. We are therefore not able to accept the contention of the applicant that the chargesheet was signed by the disciplinary authority on 4.4.96 putting an anterior date of 28.3.96.

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6. Sri Sawhney the learned counsel of the applicant argued that even if it is accepted that the chargesheet was drawn up and signed on 28.3.96 as it was admittedly served on the applicant only on 4.4.96, according to the provisions of Rule 9 of the Railway Services(Pension)Rules, the disciplinary authority is incompetent to hold the disciplinary proceedings as the chargesheet could have been served only with the approval of the President as on the date of receipt of the chargesheet the applicant had already retired from service. According to sub-cause (i) of clause (b) of sub-rule(2) of Rule 9 of the Railway Services Pension Rules if the disciplinary proceedings were not intituted while the railway servant was in service, it should not be instituted save with the sanction of the President and as the service of the chargesheet on the applicant was after his retirement without the approval of the President, no proceedings against him could have been instituted. Learned counsel argued that a departmental proceedings can be said to have been instituted only if the charges have been served on the applicant quoting clause (a) of sub-rule 5 of Rule 9 of the Railway Services Pension Rules, which reads as follows:

"(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the railway servant or pensioner, or if the railway servant has been placed under suspension from an earlier date, on such date; and "

and laying stress on the words 'issued' to the Railway servant, learned counsel argued that the words only mean actual service on the railway servant. In support of this argument Shri Sawhney referred us to the ruling of the

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Supreme Court in Commissioner of Wealth Tax, U.P. and another vs. Kundan Lal Behari Lal, (1975) 4 SCC 844. The Apex Court considered the question whether the word 'issued' according to Section 18(2A) of the Wealth Tax Act means 'served'. Surveying the authorities on the question, the Court observed as follows:

" 2. The main question on which the High Court decided and which is only question urged before us for admitting the petition is that the word "issued" occurring in Section 18(2A) of the Wealth Tax Act means "served". This decision is well supported not only by the decisions of the High Court but also of this Court. In Banarsi Debi v. I.T.O., Calcutta, (1964) 7 SCR 539, this Court observed that the expressions "issued" and "served" are used as interchangeable terms and in the legislative practice of our country they are sometimes used to convey the same idea. Accordingly, it was held that the word "issued" was not used in the narrow sense of "sent" but that the said expression had received, before the Indian Income-tax (Amendment) Act, 1959, a clear judicial interpretation. Subba Rao, J., as he then was, dealing with the purpose which the word "issued" was intended to serve, after referring to Sri Niwas v. I.T.O., (1956) 30 ITR 381(All) cited in the judgment under attack and a Bombay decision, observed at page 108:

The intention would be effectuated if the wider meaning is given to the expression 'issued'. The dictionary meaning of the expression 'issued' takes in the entire process of sending notices as well as service thereof. The said word used in Section 34(1) of the Act itself was interpreted by courts to mean 'served'.

3. In our view any other conclusion would lead to incongruous and unjust results. The legal position being clear, this petition has to be dismissed and we accordingly do so."

The above interpretation of the word 'served' would apply to the words 'issued to' employed in clause (a) of sub-rule(5) of Rule 9 of the Railway Services Pension Rules, argued the learned counsel. But in a more recent ruling of the Apex Court in Delhi Development Authority vs. H.C. Khurana reported in 1993(2) SLR 509, the Apex Court had occasion to consider the meaning of the word 'issued'

in relation to institution of disciplinary proceedings.

The Court observed in paragraphs 14 and 15 of the judgment as follows:

"14. 'Issue' of the chargesheet in the context of a decision taken to initiate the disciplinary proceedings must mean, as it does, the framing of the chargesheet and taking of the necessary action to despatch the chargesheet to the employee to inform him of the charges framed against him requiring his explanation, and not also the further fact of service of the chargesheet on the employee. It is so, because knowledge to the employee of the charges framed against him, on the basis of the decision taken to initiate disciplinary proceedings, does not form a part of the decision taken to initiate disciplinary proceedings, does not form a part of the decision making process of the authorities to initiate the disciplinary proceedings, even if framing the charges forms a part of that process in certain situations. The conclusions of the Tribunal quoted at the end of para 16 of the decision in Jankiraman which have been accepted thereafter in para 17 in the manner indicated above, do use the word 'served' in conclusion No.(4), but the fact of 'issue' of the chargesheet to the employee is emphasised in para 17 of the decision. Conclusion No.(4) of the tribunal has to be deemed to be accepted in Jankiraman only in this manner.

15. The meaning of the word 'issued', on which considerable stress was laid by learned counsel for the respondent, has to be gathered from the context in which it is used. Meanings of the word 'issue' given in the shorter Oxford English dictionary include: 'to give exit to; to send forth, or allow to pass out; to let out;... to give or send out authoritatively or officially; to send forth or deal out formally or publicly; to emit, put into circulation'. The issue of a chargesheet, therefore, means its despatch to the government servant, and this act is complete the moment steps are taken for the purposes, by framing the chargesheet and despatching it to the government servant, the further fact of its actual service on the government servant not being a necessary part of its requirement. This is the sense in which the word 'issue' was used in the expression 'chargesheet has already been issued to the employee', in para 17 of the decision in Jankiraman."

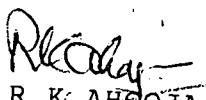
This being a more recent ruling and the interpretation of the word 'issued' was in relation specifically to the institution of the departmental proceedings, we are of the considered view that it is proper to accept the interpretation made by the Apex Court in this ruling of the word 'issued' to mean the despatch to the Government

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servant of the chargesheet and not necessarily service on the government servant. Shri Sawhney argued that the Apex Court was considering in the case of H.C. Khurana as also in the case of Jankiraman the question when can the departmental proceedings be said to have been instituted for the purpose of adopting sealed cover procedure by the Departmental Promotion Committee and that this would not apply to the case of institution of proceedings against a pensioner. We find no force in this argument.

Whether for the purpose of adopting the sealed cover procedure or continuance of the disciplinary proceedings against a retired employee the interpretation of the word 'issued to' can only mean the same thing. The interpretation in Commissioner of Wealth Tax, U.P. vs. Kundan Lal Behari Lal being with specific reference to Section 18(2A) of the Wealth Tax Act, we are of the considered view that the dictum laid down in Delhi Development Authority's case would apply to the case on hand.

7. In the light of what is stated above as the Memorandum of Charges (Annexure-1) has been issued to the applicant before the date of his superannuation, we are of the considered view that the challenge that the chargesheet is unsustainable and incompetent, has no force at all. In the result in the light of what is stated above, the application fails and the same is dismissed, leaving the parties to bear their own costs.


R.K. AHOOJA
MEMBER (A)


A.V. HARIDASAN
VICE CHAIRMAN