(21)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No.524 of 1997 decided on 11.11.1998.

Name of Applicant : Shri Chander Prakash

By Advocate : Shri B.S.Mainee

Versus

Name of respondent/s Union of India & others

By Advocate : Shri B.S.Jain

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)
Hon'ble Dr. A.Vedavalli, Member(J)

1. To be referred to the reporter - Yes/No

2. Whether to be circulated to the other Benches of the Tribunal. -~~Yes~~/No

(N. Sahu)
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 524/97

New Delhi this the 11th day of November 1998

Hon'ble Shri N. Sahu, Member (A)
Hon'ble Dr. A. Vedavalli, Member (J)

Shri Chander Prakash-VII
s/o Shri Jagdish Singh
Diesel Assistant
under Locoforeman
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 Chief Operating Manager
   Northern Railway
   Headquarters office
   Baroda House
   New Delhi

3. The Divisional Railway Manager
   Northern Railway
   Moradabad.

.....Respondents

(By Advocate: Shri B.S. Jain)

ORDER

By Hon'ble Shri N. Sahu, Member (A)

The applicant prays in this O.A. for quashing the impugned order No. ML6/333T/2/5/94TA dated 19.7.96 passed by the Additional D.R.M. Northern Railway Moradabad by which the pay of the applicant has been reduced from Rs. 1030 in the scale of 950-1500 to the minimum of the scale of Rs. 950 per month. He is also aggrieved by the rejection order of Respondent No.2 on the appeal filed by him against the order of Respondent NO.3. By an order dated 11.11.94 a penalty of reducing the pay of the applicant from Rs. 1030 to Rs. 1010

for a period of two years without cumulative effect was passed. The applicant did not prefer an appeal against this order and, therefore, it had become final. Respondent No.3 by his letter dated 30.5.95 sought to enhance the penalty of reducing the pay to the initial stage in the time scale for five years with cumulative effect and, therefore, directed the applicant to file his objections against the proposed enhancement. After hearing the applicant, the impugned orders were passed.

2. The main contention of the applicant's counsel is that the notice of enhancement was issued by the Additional D.R.M. Moradabad in violation of the Rules No. 25.5(ii) which is as under:-

> "No action under this rule shall be initiated by
>
> (a) Appellate authority other than the President or
>
> (b) the revising authorities mentioned in item (v) of Sub Rule (1) :-
>
> After more than six months from the date of the order to be revised in cases where it is proposed to impose or enhance a penalty, or modify the order to the detriment of the railway servant; or more than one year after the date of the order to be revised in cases where it is proposed to reduce or cancel the penalty imposed or modify the order in favour of the railway servant.
>
> Provided that when revision is undertaken by the Railway Board or the General Manager of a Zonal Railway or an authority of the status of a G.M. in any other Railway Unit or Administration, when they are higher than the appellate authority, and by the president, even when he is the appellate authority, this can be done without restriction of any time limit."

3. According to the applicant's counsel the notice of enhacement has been issued 7 months' after the original order of punishment and as such exceeded the limitation period of six months laid down in Rule-25.5(ii) of the Railway Servants (Discipline & Appeal) Rules 1968.

4. The other grounds raised by the applicant are that the Enquiry Officer did not hold the enquiry in accordance with statutory rules and did not supply relevant documents vital to the defence of the applicant. It is stated that the driver, co-accused, under whom the applicant worked as an Assistant had been imposed the penalty of compulsory retirement only one day before his superannuation but the applicant had been imposed heavy penalty of reduction to the minimum of his pay scale for 5 years permanently which is disproportionate to the gravity of misconduct alleged. It is further pointed out that one of the four officers who held the preliminary enquiry was a subordinate to the Senior D.M.E. and was not expected to give independent judgement and this junior Class III employee did not act in a judicial manner. It is finally stated that the appeal of the applicant has been dismissed without proper application of mind.

5. As pointed out above, the applicant had accepted the first order of penalty. This order of penalty was based on the enquiry report at Annexure A-3 of the O.A. conducted by four officials. These four officials in a Committee have unanimously arrived at the conclusion as under:-

> "The enquiry committee is of the opinion that this accident took place due to the driver 4673 Up failing to stop at the gate signal in "ON" position, due to the green light of the truck standing on the Up track and driver of truck No. UTS/186 also failed to observe lawful instructions given by Coteman(Rly)on duty at level crossing gate 3434 and endangered safety of persons travelling in the truck as well as train and violated provisions laid down in Sections 159, 154 of Indian Railways Act 1989 and section 184 of Motor Vehicles Act, 1988."

6. As the first punishment order passed on the basis of this enquiry report was accepted by the applicant without appeal and as this enquiry report by four officers belonging

to four separate disciplines have come to this conclusion after evaluating the entire evidence, it is not open to the applicant to question the conclusions of this enquiry at this stage. This ground of the applicant is accordingly rejected. With regard to the ground that the appellate order was passed without application of mind in our opinion is not correct. The Revising Authority in exercise of the powers under Rule 25 of the Railway Servants (Discipline and Appeal) Rules 1968 was of the opinion that the penalty awarded to the applicant by the competent authority was not commensurate with the offence and enhanced the penalty as proposed above. The appeal order is as under:-

> "Your revision petition under Rule 25 of Railway Servants (D&A) Rules has been carefully considered.
>
> After the accident enquiry and disciplinary proceedings it has been accepted that the cause of accident was ignoring signals by the engine crew. Normally such railway employees are not retained in service but because in this matter the punishment has been enhanced at the level of ADRM. I do not feel necessary of any other action. Therefore keeping in view the gravity of the offence the punishment cannot be considered to be excess. There is no mention of any such fact in the appeal on the basis of which the decision may be altered. The appeal is therefore rejected."

7. The revision order was only the super structure; the foundation lay in the elaborate enquiry report on which the initial punishment was ordered and accepted. The enhanced penalty as well as the revision thereof have taken into account the material gathered earlier and adjudicated upon. We are satisfied that they relied upon facts earlier ~~and facts~~ gathered and the recorded reasons in the enquiry report for enhancing the punishment. We are of the view that there was proper consideration and application of mind. There was no need for these authorities to recount once again the evidence gathered and thereafter write an elaborate order. A show cause notice was given, the objections of the

applicant were considered and the impugned enhanced penalty was levied. We do not think there is any infirmity in these orders on account of lack of application of mind.

8. The only ground that survives is that of limitation. The counsel for the respondents submitted that the proceedings to enhance the penalty were initiated on 10.4.95 i.e. within six months of the penalty order dated 1.11.94. Shri Mainee learned counsel relied on the Railway instructions No. E(D&A) 63 RG-33 dated 30.9.63. It would be necessary to extract those instructions in this order because that is the most important ground of the applicant.

" Time limitation for enhancement:- (a) The appellate authority (other than the President) as mentioned in para-1(iv) above and the revising authority as mentioned in para 1(v) above cannot initiate action to revise any case:-

(i) More than 6 months after the date of the order to be revised in cases where it is proposed to impose or enhance a penalty or modify the order to the detriment of railway servant; or

(ii) More than one year after the date of the order to be reviewed in cases where it is proposed to reduce or cancel the penalty imposed or modify the order in favour of the railway servant.

(b) The action for enhancing the penalty originally imposed should not normally be initiated within the period specified for submission of appeals.

(c) The time limits for revision of cases mentioned in this proviso shall be reckoned <u>from the date of issue of the orders proposed to be revised.</u> In cases where original orders have been up-held, modified or set aside, by the appellate authority, the time limit shall be reckoned from the date of issue of the appellate orders.

(d) In cases where no appeal is preferred against the order imposing the penalty which is proposed to be revised the period of 6 months for the purpose purpose of the above rule will count from the date of issue of the order imposing the penalty; and

(e) For the purpose of the aforesaid rule the action to enhance the punishment may be considered to have been initiated from the date of issue of the notice for enhancement of punishment to the employee and not from the date of passing such orders on the file."

[R.B's. No. E (D&A)63 RG-33 dated 30.9.63].

9. Shri Mainee relies on para (e) above (emphasis supplied by us); according to him in this case the proceedings to en hance penalty were initiated on 30.5.95 at Annexure A-9. The proceedings are clearly barred by limitation.

10. We have heard the rival counsel on the subject. In the case of **Delhi Development Authority** Vs. **H.C. Khurana** **(1993) 24 ATC page-763** the Hon'ble Supreme Court interpreted the meaning of "issue of a charge sheet". That was a case where one of the instructions in Clause-(ii) of para-2 in OM dated September 14,1992 was the subject matter of interpretation. This sub-clause reads as under:-

" Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending." Para-10 of the decision is as under:-

"This plain meaning of the expression used in clause (ii) of para 2 of O.M. dated January 12, 1988 also promotes the object of the provision. The expression refers merely to the decision of the authority, and knowledge of the government servant, thereof, does not form a part of that decision. The change made in clause (ii) of para 2 in O.M. dated September 14, 1992, merely clarifies this position by using the expression 'charge sheet has been issued' to indicate that service of charge-sheet is not necessary; and issue of the charge-sheet by its despatch indicates beyond doubt that the decision to initiate disciplinary proceedings was taken. In our opinion, Jankiraman takes the same view, and it is not possible to read that decision otherwise, in the manner suggested by learned counsel for the respondent."

In Union of India Vs. Kewal Kumar (1993) 24 ATC 770 on the question of as to when the sealed cover procedure be resorted to. it was held that the decision to initiate disciplinary proceedings for imposition of major punishsment taken by the competent authority was adequate and sealed cover procedure is attracted. The charge sheet may be issued thereafter.

11. Shri Mainee learned counsel for the applicant cited the decision of the Hon'ble Supreme Court in the case of Railway Board Vs. P.R. Subramanium to the effect that the Railway Board's instructions have force of law. Learned counsel cited SLP No. 9866 of 1993 in the case of Shri R.C. Srivastava Vs. U.O.I. and others which laid down that the Railway Board has powers to supplement the rules.

12. We have carefully considered the submissions of the learned counsel for the applicant. What is important in this rule are the words: "no action under this rule shall be initiated." 'Initiate' means "to begin, set-going, originate." We have been shown the file ML6/333T/2/5/94-TA in which at page-145 it is clearly recorded by the competent authority to initiate the proceedings. His orders are as under:-

> " Show cause be issued to Diesel Assistant to revert to initial stage in present grade for a period of 5 years with cumulative effect."

It was this satisfaction/order on the basis of the elaborate notes on the file by the competent authority that led to the proceedings. We are satisfied that this order was clearly "initiation" of proceedings. The rule does not say that notice should be issued or served. This initiation requires a proper application of mind on the basis of the reasons recorded. We find that the competent authority went through enquiry report and found that the punishment recorded was not

commensurate with the enormity of the offence and, therefore, decided to enhance the penalty. We are satisfied that the above note coupled with the background material papers in this file clearly indicated full application of mind as well as proper satisfaction for "initiation" of the proceedings. We further hold that the order recorded above is organically linked up and has a causal relationship with the background material. The instructions issued: namely, that the date should be recokned from the date of issue of notice is definitely contrary to the rules and is not merely supplementing the instructions. Such an instruction which adds something new to the rule is not valid. not binding. We are only to interpret the rule framed under proviso to Article-309 of the Constitution and the departmental instructions contrary to such a rule are not binding. The instructions shown to us are more in the nature of a guidance and a caution to ensure proper care so that departmental authorities would not unduly delay the initiation of disciplinary proceedings. The scope of administrative instruction is explained **in Sant Ram Sharma Vs. State of Rajasthan AIR 1967 SC 1910**. Only if the rules framed under Article 309 of the Constitution are silent on a particular point, "the Government can fill up gaps and supplement the rules and issue instructions not inconsistent with the rules already framed." In this view of the law laid down, we find the statutory rule only enjoins a time- limit for "initiation". Recording of satisfaction and a direction to issue show cause notice clearly is "initiation". This initiation was done on 10.4.95. within the period. of limitation. The instructions that notice also should be issued within 6 month is more of a nature of guidance out of abundant caution and is not mandatory. As the rule is clear and as there is no ambiguity or "gap" in the rule, the departmental instructions cannot legislate by adding a

further condition. The said instruction being contrary to the rules is not binding on a court. There is nothing in Subramanium's case (supra) to advance the applicant's claim. The proposition laid down in Sant Ram's case (supra) is reiterated by the Apex Court in State of A.P. Vs. Chandra Mohan Nigam (1997) 4 SCC 345 Para 26.

13. In view of the above discussion the OA is dismissed. In the circumstances of this case there is no order as to costs.

A. Vedavalli
(DR. A. VEDAVALLI)
MEMBER (J)

N. Sahu
(N. SAHU)
MEMBER (A)

cc.