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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 1069 of 1988.

Decided on 20.3.1990.

Laxman Parshad

.....Applicant.

Vs.

1. Union of India through
General Manager, Baroda House,
Northern Railway, New Delhi.

2. The Divisional Railway Manager,
Northern Railway,
Moradabad.

.....Respondents.

For the Applicant - Shri B.S. Mainee, Advocate.

For the Respondents - Ms. Shashi Kiran, Advocate.

B.S. Sekhon

Vide charge sheet dated Mary 13, 1985,
(copy Annexure A/III), departmental enquiry in
respect of the following articles of charge was
initiated against the Applicant on 28.3.85:-

- i) He showed non-cooperative attitude with the Vigilance team as he refused to record the cash held by him.
- ii) He was having an unaccounted for money of Rs. 67.60.
- iii) He failed to declare private cash on 28.3.85.

Enquiry was held under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 (for short ~~Rules~~ called the 'Rules'). The same culminated in imposition of the penalty of removal from service. The aforesaid penalty was imposed by Sr. Divn. Commercial Supdt., Northern Railway, Moradabad vide order dated August 7, 1987 (Annexure A/1).

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Applicant preferred an appeal against the aforesaid penalty. The Appellate Authority converted the penalty of removal from service into that of compulsory retirement. The order made by the Appellate Authority reads thus:-

"I have gone through the case. I have also seen his service record. The employee has been awarded a number of punishments earlier."

The charges against him are proved in the enquiry proceedings. However, on purely humanitarian grounds removal of service is converted into compulsory retirement."

2. Applicant has assailed Annexure A/1 and Annexure A/2, interalia, on the grounds that the same are non speaking, unreasoned and illegal, the Sr. Divl. Commercial Supdt. (for short the SDCS) is not competent to remove him from service, and the charges levelled against him are vague and that documents demanded from him were not furnished to him.

3. Respondents have resisted the Application. The defence as set out in the counter is that the Respondents have complied with the rules and procedure, and full opportunity of hearing was afforded to the Applicant. The S.D.C.S., Moradabad and D.R.M. Moradabad are competent to pass the order of removal from service and compulsory retirement respectively. Respondents have also controverted the grounds pleaded by the Applicant.

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4. We have heard the arguments addressed by the learned counsel for the parties and have given our earnest consideration to the entire matter.

5. During the course of arguments, the learned counsel for the Applicant submitted in the first instance that SDCS could not act as disciplinary authority inasmuch as the General Manager, is the appointing authority in case of Group-C (Class III) Railway employees. Reliance in support of the aforesaid submission was placed by the learned counsel on the dictum of the Full Bench in Gafoor Mia and Ors. Vs. Director, DMRL 1988(2) SLJ (CAT) 277 = (1988) 6 AIC 675. Banking on the decision of the Bombay High Court in Ishverlal J. Naik Vs. S.C. Arya Principal Government Arts and Science College Daman & Ors 1984(1) SLJ page 1, the learned counsel for the Respondents contended that mere signing of Annexure A/1 by the SDCS would not vitiate this order as the same should be deemed to have been passed by the competent authority. The facts and the proposition laid down in I.J. Naik (supra) do not lend support to the aforesaid contention. It would be pertinent to point out that the impugned order in that case had been issued by an order and in the name of the Administrator of Goa, Daman and Diu and the Under Secretary had signed the same in authentication. The High Court was pleased to hold that for all practical purposes, the impugned order has been passed by the Administrator and that the word 'I' occurring in the order would mean the Administrator and not the Under Secretary who had signed the order for authentication under the relevant rules. The High Court also observed in paragraph 25 of the judgment that much could have been said in favour of the petitioner had the impugned order been

not issued in the name of the Administrator, but had been signed merely by the Under Secretary and in such a case it could be possible to say that the order had been issued by the Under Secretary in his capacity as such and not by the Administrator. In the instant case Annexure A/1 has not been issued by the competent authority viz. the General Manager. In this case, the SDCS has passed the order and signed the same acting as the disciplinary authority. The decision in I.J. Naik (supra), thus, does not lend any support to the Respondents' case. The aforesaid contention urged by the learned counsel for the Respondents is, therefore, hereby repelled. Thus in line with the decision of the Full Bench in Gafoor Mia (supra), we hold that the SDCS could not act as the disciplinary authority of the Applicant. That being so, the order Annexure A/1 is unsustainable and is liable to be quashed.

6. It was next urged by the learned counsel for the Applicant that the order made by the Appellate Authority (Annexure A/2) is bad inasmuch as the same does not satisfy the requirement of rule 22(2) of the Rules. The Appellate Authority misconducted itself in placing reliance on the previous service record of the Applicant and order is hit by the dictum of the Supreme Court in Ram Chander V. Union of India & Ors AIR 1986 SC 1173. The learned counsel for the Respondents countered by submitting that the decision in Ram Chander (supra) was delivered subsequent to the making of the impugned

SC 3908

order and that the past service record of the Applicant did not weigh with the Appellate Authority for reaching the conclusion it reached. Ram Chander (supra) was decided long before the order Annexure A/2 was passed by the Appellate Authority. The arguments of the learned counsel for the Respondents for meeting the challenge on the basis of Ram Chander (supra) is, therefore, devoid of substance. Even otherwise this argument cannot be countenanced for the simple reason that the Supreme Court had merely declared/enunciated the legal position. That apart Rule 22(2) of the Rules has been in existence for quite some time. Annexure A/2 is, therefore, unsustainable for the reason that it hit by the dictum of the Supreme Court in Ram Chander (supra) and for the additional reason that it does not satisfy the requirements of Rule 22(2) of the Rules. The submission of the learned counsel for the Applicant for damages/Annexure A/2 on the ground that Appellate Authority has taken into account the past service record of the Applicant is not supportable inasmuch as an objective reading of Annexure A/2 would show that this merely forms part of the narration as rightly submitted by the learned counsel for the Respondents and does not form part of the operative portion of the appellate order. Operative portion of Annexure A/2 states that the charges against the Applicant are proved in the enquiry proceedings and that on purely humanitarian grounds removal of service is converted into compulsory retirement. This portion of Annexure A/2 leaves little doubt

on the point that the past service record of the Applicant did not weigh with the Appellate Authority while passing the appellate order.

7. It was next urged by the learned counsel for the Applicant that the impugned orders are unsustainable as a copy of the enquiry report had not been furnished to the Applicant. The learned counsel for the Respondents met this argument on the reasoning that the aforesaid ground was not specifically taken by the Applicant. The learned counsel for the Applicant, however, submitted in this behalf that this being a legal point, it was not necessary to plead this ground specifically. We are of the view that it would not be fair to the Respondents if the Applicant is permitted to raise a ground which may be having legal overtones but determination whereof also involves a question of fact. The question of fact in this case being as to whether or not a copy of the enquiry report had been furnished to the Applicant.

8. In view of what has been stated and discussed above, the impugned orders Annexures A/1 and A/2 are held to be unsustainable. Consequently, Annexures A/1 and A/2 are hereby quashed and the Respondents are directed to reinstate the Applicant within three months from today in service with all consequential benefits. In the circumstances, we make no order as to costs.

C. Jain
(P.C. Jain) 2/3/90
Administrative Member

B.S. Sekhon
(B.S. Sekhon)
Vice Chairman

MSR

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