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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 1399/92

DECIDED ON : 30.9.1992

Arun Kant Chaturvedi

... Applicant

Vs.

Union of India & Ors.

... Respondents

CORAM : THE HON'BLE MR. T. S. OBEROI, MEMBER (J)
THE HON'BLE MR. P. C. JAIN, MEMBER (A)

Shri B. S. Mainee, Counsel for the Applicant

Shri B. K. Aggarwal, Counsel for the Respondents

J U D G M E N T (CRAL)

Hon'ble Shri P. C. Jain, Member (A) :

At the time the applicant was working as a Head Clerk in the Indian Railway Conference Association (for short IRCA) he was issued a memorandum of chargesheet dated 19.5.1989 under rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968, under the signature of Assistant Director Wagon Incharge, IRCA, New Delhi, which post admittedly is a Group 'B' post. The article of charge related to not attending to his work fully/partially on the days mentioned therein and also for giving false progress. An inquiry was conducted and the General Secretary of the IRCA imposed on the applicant the punishment of reversion to the post of Senior Clerk in the grade of Rs.1200-2040 on a basic pay of Rs.1200/- and this reversion was to be effective for three years but was not to affect his future seniority. A copy of the inquiry officer's report was also given to the applicant along with the aforesaid punishment order. The applicant preferred an appeal and vide order dated 6.3.1991 (A-12) the President/IRCA (G.M./N.Rly.) quashed the aforesaid punishment on the ground that the copy

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9

of the inquiry officer's report should have been given to the charged officer before the disciplinary authority passed its order imposing the punishment. The appellate authority also stated that the disciplinary authority may take de-novo action from the stage of considering representation on the inquiry report before passing final order. In pursuance of the above order, by communication dated 12.3.1991 the order of punishment dated 28.9.1990 was withdrawn without prejudice, and the applicant was asked to make his representation on the inquiry officer's report, a copy of which had already been supplied to him along with the initial punishment order. In his representation the applicant took the ground that the memorandum of chargesheet has been issued by an authority which is not competent under the rules to issue the same. No decision on this representation is said to have been taken so far.

2. In the meantime, a written test for selection for the post of Office Superintendent Grade-II in the scale of Rs.1600-2660 was scheduled to be held on 28.5.1992 and for this purpose the applicant was shown to be eligible for taking the written test and he was shown to be a Senior Clerk. It is in this background that the applicant filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985 praying for a direction to the respondents to restore the applicant to the post of Head Clerk before holding the selection, and for quashing the memorandum of chargesheet.

3. The respondents have contested the O.A. by filing their reply to which a rejoinder has also been filed by the applicant. We have perused the material on record and also heard the learned counsel for the parties.

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4. The first contention raised by the learned counsel for the applicant is that the punishment of reduction from the post of Head Clerk to that of Senior Clerk having been quashed by the appellate authority, the applicant should have been restored from the date he was reverted to the post of Head Clerk with all consequential benefits. This contention need not detain us any further as the learned counsel for the respondents made available to us a copy of office order No. I/28/92 dated 18.8.1992 by which office order dated 10.10.1992^e reverting the applicant from the post of Head Clerk to Senior Clerk w.e.f. 24.9.1990 has been cancelled and the applicant stands restored as Head Clerk in Wagon Int. (B.G.) on pay of Rs.1400/- per month in grade Rs.1400-2300 (RP) from that date. Learned counsel for the applicant submitted that though the aforesaid order has been issued, no payment in pursuance of that order has yet been made to the applicant. He also submitted that on the day of reversion from the post of Head Clerk to the Senior Clerk in pursuance of the punishment imposed on him he was drawing a pay of more than Rs.1400/- per month in the scale of Rs.1400-2300. Needless to state that if the applicant was drawing, in accordance with the rules, pay more than the initial of the pay in the scale of Rs.1400-2300 on the date on which he was reverted in pursuance of the aforesaid disciplinary proceedings, on restoration he shall be entitled to be fixed at the same stage, and that whatever amount becomes due to him in pursuance of the order dated 18.8.1992 (supra) it shall be paid to him within a period of two months from the date of receipt of a copy of the same.

5. The other contention of the learned counsel for the applicant is that the memorandum of chargesheet dated

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11

19.5.1989 (Annexure A-2) was under rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 which deals with disciplinary proceedings for imposing a major penalty, but it has been issued by an officer who was not competent to issue a chargesheet for a major penalty proceedings. In support of his contention he submitted that ~~as per~~ⁱⁿ the provisions of sub-Rule (2) of Rule 8 of the aforesaid Rules, as is mentioned in the sub-Rule itself, ~~is~~^{are} subject to the provisions of clause (c) of sub-Rule (1) of Rule 2 of the Rules *ibid* in which it is *inter alia* provided as below :-

"(c) 'disciplinary authority' means —

- (iii) in relation to Rule 9 in the case of non-gazetted railway servant, an authority competent to impose any of the major penalties specified in Rule 6."

He also drew our attention to ~~sub-Rule (2) of Rule 7~~^{Schedule II} of the Railway Servants (Discipline & Appeal) Rules, 1968 according to which Assistant Officers (junior scale and Group 'B') are competent to impose a major penalty only on a member of Group 'D' staff. It was, therefore, argued that as the applicant belongs to Group 'C' staff and as the proceedings were initiated for imposing a major penalty, it was only the authority who was competent to impose a major penalty who could issue the chargesheet, and as it has not been done the memorandum of chargesheet dated 19.5.1989 (A-2) cannot be sustained. The case of the respondents, however, is that in accordance with the provisions of sub-Rule (2) of Rule 8 of the aforesaid Rules an authority who is competent to impose any of the minor penalties is competent to institute disciplinary proceedings for imposition of any of the major penalties. Sub-Rule (2) of Rule 8 is extracted as below :-

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12

"(2) A disciplinary authority competent under these rules to impose any of the penalties specified in Clauses (i) to (iv) of Rule 6 may; subject to the provisions of clause (c) of sub-Rule (1) of Rule 2, institute disciplinary proceedings against any Railway servant for the imposition of any of the penalties specified in Clauses (v) to (ix) of Rule 6, notwithstanding that such disciplinary authority is not competent under these rules, to impose any of the penalties."

From a perusal of the above sub-Rule it is clear that it is subject to the provisions of clause (c) of sub-Rule (1) of Rule 2. We have already noticed above that as per the provisions of sub-clause (iii) of clause (c) of sub-Rule (1) of Rule 2, the disciplinary authority in case of a non-gazetted Railway servant, which the applicant admittedly is, the disciplinary authority in relation to Rule 9 is that authority who is competent to impose any of the major penalties specified in Rule 6. Thus, it is clear that the memorandum of chargesheet dated 19.5.1989 having not been issued by an authority who was competent to impose a major punishment on the applicant, is not in accordance with the provisions of the relevant rules. We inquired from the learned counsel for the respondents whether after the restoration of the applicant to the post of Head Clerk, the disciplinary proceedings are still pending and he answered in affirmative. This means the disciplinary proceedings on the basis of the aforesaid memorandum of chargesheet, are still pending. As stated earlier, learned counsel for the applicant submitted that the representation of the applicant on this point was still pending consideration with the higher authorities and no decision has been taken.

6. In the light of the foregoing discussion, this O.A. is disposed of in terms of the following directions :-

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13

- (1) The applicant shall be allowed with effect from 24.9.1990 pay in the scale of Rs.1400-2300 on the post of Head Clerk at the same stage at which he was drawing pay, in accordance with the rules, in the above scale on 23.9.1990 and the payment due to the applicant on this account in the light of office order dated 18.8.1992 issued by the General Secretary, IRCA shall be made to the applicant within a period of two months from the date of receipt of a copy of this order.
- (2) The memorandum of chargesheet dated 19.5.1989 issued to the applicant under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 by an Assistant Officer, i.e., a Group 'B' officer in junior scale, is quashed as being violative of the provisions of the Rules. However, the respondents shall be free to issue a fresh memorandum of chargesheet, if they so desire, to the applicant in accordance with the rules without any undue delay and the inquiry can be proceeded with further in accordance with law and the relevant rules.

7. On the facts and in the circumstances of the case, we leave the parties to bear their own costs.

P. C. Jain
(P. C. Jain)
Member (A)

T. S. Oberoi
(T. S. Oberoi)
Member (J)