

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A.No. 4
T.A.No.

1993

(9)

DATE OF DECISION 13-08-93

Sh. S.P. Sharma

Applicant(s)

Versus.

Union of India

Respondent(s)

(For Instructions)

1. Whether it be referred to the Reporter or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

Yes

S.D.
(B.N.DHOUNDIYAL)
MEMBER(A)

S.K.D.
(S.K.DHAON)
VICE-CHAIRMAN(J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

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Regn.No.OA 4/93

Date of decision: 13-08-93

Shri S.P.Sharma

...

Petitioner

vs.

Union of India through
through Secretary,
Ministry of Railways,
New Delhi

...

Respondents

For the Petitioner .. Sh.J.K.Bali, Counsel.

For the Respondents .. None

CORAM:

THE HON'BLE MR. JUSTICE S.K. DHAON, VICE CHAIRMAN
THE HON'BLE MR. B.N. DHOUNDIYAL, MEMBER (A)

JUDGEMENT

(By Hon'ble Mr. Justice S.K.
Dhaon, Vice Chairman)

Disciplinary proceedings were initiated against the petitioner, an Additional General Manager, Northern Railway. On 20.9.1991, he was served with a chargesheet along with a memorandum. The memorandum was issued under Rule 9 of the Railway Servants(Discipline and Appeal) Rules, 1968(hereinafter referred to as the Rules). On 30.12.1992, the petitioner filed this OA. The prayers, in main, are:

- (1) the memorandum dated 20.9.1991 may be quashed;
- (2) the respondents may be directed to pay to the petitioner regular pension instead of provisional pension;
- (3) the respondents may be directed to pay to the petitioner all the retirement benefits.

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2. On 30.9.1991, the petitioner retired from service. On 9.4.1992, he submitted a reply to the memorandum as well as to the charges annexed thereto. On 8.1.1993, an Inquiry Officer was appointed. It appears that the matter rests there.

3. The primary question to be decided is whether the memorandum along with the charges was issued to the petitioner in accordance with law.

4. In the counter-affidavit filed on behalf of the respondents, the material averments are these. Vide its meeting held on 27.2.87, the Railway Board resolved that individual cases involving application of Discipline & Appeal Rules shall be put up to the "Functional Member" only. The disciplinary authority qua the petitioner, on the relevant date, was the Railway Board. The written statement submitted by the petitioner was examined by the Member (Traffic) and orders for holding an enquiry were passed by him alone.

5. In Rule 2(1)(c) of the Rules, "disciplinary authority" has been defined. The expression has been given different meanings to meet different situations. It will be profitable to extract all the meanings:

"(c) 'disciplinary authority' means-

- "(i) in relation to the imposition of a penalty on a Railway servant, the authority competent, under these rules, to impose on him that penalty;
- "(ii) in relation to Rule 9 and clauses (a) and (b) of subrule(1) of Rule 11 in the case of any Gazetted Railway servant, an authority competent to impose any of the penalties specified in Rule 6;

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- (iii) in relation to Rule 9 in the case of any non-gazetted railway servant, an authority competent to impose any of the major penalties specified in Rule 6;
- (iv) in relation to clauses (a) and (b) of sub rule(1) of Rule 11, in the case of non-gazetted Railway servant, an authority competent to impose any of the penalties specified in Rule 6."

We are not, at this stage, concerned with the authority competent under the Rules to impose a penalty on a Railway servant as that stage has not arrived as yet. The second meaning is really relevant. We may indicate at once that, admittedly, the petitioner is a gazetted Railway servant and is, therefore, not a non-gazetted Railway servant. We are also not concerned at this stage with Rule 11 as apparently it is recited in the memorandum that the Railway Board proposes to hold an enquiry against the petitioner under Rule 9 of the Rules which deals with the procedure for imposing major penalties.

6. Rule 6 may now be considered. It talks of minor penalties as well as major penalties. Items (i) to (iv) fall under the head "Minor Penalties" whereas items (v) to (ix) are placed under the head "Major Penalties".

7. We have next to examine whether in the case of a gazetted Railway servant, the Railway Board is competent to impose any of the penalties specified in Rule 6. Obviously the expression "any penalty" will include either "Minor Penalty" or "Major Penalty".

8. In Rule 7(1) of the Rules, it is provided that the President may impose any of the penalties

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specified in Rule 6 on any Railway servant.

It is thus clear that power has been reserved for the President to impose either minor or major penalty on a Railway servant whether gazetted or non-gazetted. Sub rule(2) of Rule 7 of the Rules is relevant and may be extracted:-

"Without prejudice to the provisions of sub rule(1), any of the penalties specified in Rule 6 may be imposed on a Railway servant by the authorities specified in Schedules I, II and III."

Sub-rule(2) clarifies that in spite of the fact that the President is clothed with the power to impose any penalty under Rule 6 on any Railway servant, power has also been conferred on authorities subordinate to the President to impose the penalties specified in Rule 6 and those authorities are specified in Schedules I, II and III. We may now travel to the said Schedules. We are not concerned with Schedule I or Schedule II. We may focus on Schedule III. The first item under the said Schedule is the Railway Servants Group 'A' (admittedly, the petitioner belongs to that class of Railway servants which is known as Railway Servants Group 'A'). Col.3 of Schedule III shows that with respect to Railway Servants Group 'A', the President exercises full powers. However, the Railway Board too has been conferred the power of imposing penalties specified in clauses (i), (iii), (iii a) and (iv) of Rule 6 of/ Rules and an appeal is preferable to the President from the orders passed by the Railway Board. Coming back to Rule 2(1)(c)(ii), there can be no difficulty in taking the view that

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the Railway Board is empowered to impose on a gazetted Railway servant falling in the category of Railway Servants Group 'A' some penalty under Rule 6 of the Rules. Thus, the conclusion is inevitable that the Railway Board, in the case of any gazetted Railway servant, is the "disciplinary authority".

9. Rule 8(2) of the Rules provides inter alia that a disciplinary authority competent under the 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 latter penalties. This sub-rule in plain words means that the disciplinary authority competent to impose penalties under the head "Minor Penalties" is empowered to institute disciplinary proceedings against any Railway servant for the imposition of any of the penalties falling under the head "Major Penalties" in spite of the fact that such a disciplinary authority is not competent to award a punishment falling under the head "Major Penalties". The only requirement is that such a disciplinary authority should be so empowered under Rule 2(1)(c). The words "subject to provisions of clause (c) of sub rule(1) of Rule 2" in Rule 8(2) signify that the power conferred upon a disciplinary authority, not competent to impose major penalties, to institute disciplinary proceedings against

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a Railway servant for the imposition of major penalties is conditional upon the fulfilment of any of the conditions enumerated in Rule 2(1)(c) of the Rules. There can be no escape from the conclusion that the requirements of Rule 8(2) of the Rules are fulfilled in the situation contemplated in Rule 2(1)(c)(ii) of the Rules. Rule 8(2), therefore, strengthens our interpretation that in the instant case, the Railway Board is the disciplinary authority within the meaning of Rule 2(1)(c)(ii).

10. We may note that in the OA one of the grounds taken is that Rule 2(1)(c)(ii) is hit by Article 14 of the Constitution, though yet, no argument was addressed to us at the Bar on the said question. In our opinion, the learned counsel for the petitioner very rightly did not consider it worthwhile to make any submission on the vires of the said provision as on the face of it, a gazetted Railway servant and a non-gazetted Railway servant fall in two different categories and they constitute two distinct classes.

11. Heavy reliance is placed by the counsel appearing on behalf of the petitioner upon a communication dated 18.6.69 issued by the Assistant Director, Establishment, Railway Board to the General Managers of All Indian Railways and the heads of all attached and subordinate offices of the Railway Board. The subject is :- "Discipline and Appeal Rules Clarification regarding ". It is recited in the said communication that with reference

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to the Central Civil Services (Classification, Control and Appeal) Rules, 1965, the Ministry of Home Affairs has clarified certain points. The Railway Servants (D&A) Rules, 1968, correspond to these rules are clarified as under:-

<u>" Points raised</u>	<u>Clarification</u>
1.(a) In cases where the disciplinary authority is the President, whether the case should be shown to the Minister before disciplinary proceedings are initiated.	(a) Having regard to the transaction of Business Rules, it is necessary that in cases where the disciplinary authority is the President, the initiation of the disciplinary proceedings should be approved by the Minister. "
12. It is an admitted position that, in the instant case, disciplinary proceedings were initiated by the Railway Board and no approval of the Minister concerned was taken. The question still is whether the aforesaid clarification has any application to the petitioner's case. We have already indicated that under Rule 2(1)(c) (ii), the Railway Board is the disciplinary authority. Ex - facie, the clarification is applicable to a situation where the President is the sole disciplinary authority and not one of the disciplinary authorities.	
13. We may read Rules 7 & 8 again for the purpose of interpreting the aforequoted clarification. In Rule 7(1), the President is empowered to impose any of the penalties specified in Rule 6 on any Railway servant. In Rule 8, it is provided, inter alia, that the President or any other authority empowered by him, by general or special order, may institute disciplinary proceedings against any Railway servant. The President may direct a disciplinary authority to institute disciplinary proceedings against	

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any Railway servant on whom that disciplinary authority is competent to impose, under the rules, any of the penalties specified in Rule 6. A combined reading of Rules 7 & 8 of the Rules shows that the clarification can have no application to a situation where, under the relevant rules, the President or any other authority subordinate to him is the disciplinary authority and disciplinary proceedings have been initiated by the subordinate authority. The clarification will apply only to a situation where the President alone is the disciplinary authority. The clarification will also apply to a situation where the President alone is not the disciplinary authority and an authority subordinate to him is also the disciplinary authority but the disciplinary proceedings are initiated by the President. Under Article 74 of our Constitution, as it stood on 18.6.1969, the President was required to act on the advice of the Council of the Ministers. In substance, the clarification under reference merely highlighted the then existing constitutional provisions.

14. Having taken the view that the clarification aforementioned is not applicable to the case of the petitioner, we do not consider it necessary to examine the contentions advanced on behalf of the petitioner that the Legislative power under proviso to Article 309 of the Constitution (under which provisions the rules have been framed) is subject to Article 77 which deals with the conduct of Government Business and the further contention that the Rules of

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Business have the force of law. As at present advised, both the contentions are untenable.

15. Sub rule (6) of Rule 9 of the Rules provides inter-alia that where it is proposed to hold an inquiry against a Railway servant under Rule 9 and Rule 10, the disciplinary authority shall draw up or cause to be drawn the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge. Sub-rule (6) of Rule 9 clearly permits the disciplinary authority to depute someone else to draw up the substance of the imputations etc. It leaves no room for the argument that the disciplinary authority should itself draw up the substance of the imputations. Of course, under sub rule(6) of Rule 9, the disciplinary authority cannot act arbitrarily and direct someone ~~to~~ incompetent or unconnected with it to draw up the charges etc. On the face of it, a reading of sub rule (6) is enough to repel the contention ~~on behalf~~ of the petitioner that since the memorandum was not issued by the Railway Board but by one of its members it was a void document and, therefore, in the eye of law, disciplinary proceedings against the petitioner have not been initiated so far.

16. In the aforesaid backdrop, we may now consider the resolution of the Railway Board dated 27.2.87, a true copy of which has been

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filed as Annexure I to the reply filed on behalf of the respondents. The document purports to be a true copy of the minutes of the 3rd Board meeting held on 27.2.1987. It shows that apart from the Chairman, Financial Commissioner, Member Engineering, Member Mechanical, Member Staff, Member Traffic and the Secretary were present in that meeting. Item No.5 of the agenda of that meeting is: "disposal of cases concerning action under Discipline & Appeal Rules". The resolution is :- " individual cases involving application of Discipline and Appeal Rules shall be put up to the 'Functional Member' only". In case a policy issue is involved, the case shall be put up to 'Member Staff' and then to the 'Functional Member' ". In view of the aforequoted resolution, we find no infirmity whatsoever in the action of the 'Functional Member' in issuing the impugned memorandum along with the statement of imputations etc. to the petitioner.

17. Let us now consider whether the examination of the written statement of the petitioner by the 'Functional Member'/Member Traffic of the Railway Board alone was legally permissible. Sub rule (9) of Rule 9 of the Rules is sub divided into parts (a),(b) & (c). The substance of sub-rule(9), as material, is that the disciplinary authority shall consider the written statement of defence and decide whether the inquiry should be proceeded with under Rule 9. If the disciplinary authority decides to proceed with the inquiry it may

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itself inquire into such of the articles of charges as are not admitted or appoint under sub-rule(2), a Board of Inquiry or other authority for the purpose. If the disciplinary authority, after consideration of the written statement of defence, is of the opinion that the imposition of a major penalty is not necessary, it may drop the proceedings already initiated by it for the imposition of major penalty, without prejudice to its right to impose any of the minor penalties, not attracting the provisions of sub-rule(2) of Rule 11. Where the disciplinary authority so drops the proceedings but considers it appropriate to impose any of the minor penalties, not attracting the provisions of sub-rule(2) of Rule 11, it may make an order imposing such penalty and it will not be necessary to give the Railway servant any further opportunity of making representation before the penalty is imposed.

18. The important expressions used in sub-rule(9) as a whole are "consider" and "decide". Consideration, as contemplated, is an objective one. Consideration and decision involve application of mind. The statement of defence has, therefore, to be weighed and considered carefully and a conscious decision taken whether it will be appropriate to continue with the disciplinary proceedings. A judicious consideration of the written statement of defence is implicit. Before the disciplinary authority, there is imputations of charges against a Railway servant

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and before it is also, the written statement of defence given by the Railway servant denying the charges. The disciplinary authority at that stage, is made the final arbiter of the crucial question as to whether circumstances exist for either continuing with the disciplinary proceedings or dropping the same or converting the proceedings for imposing a minor penalty. There is a lis before the disciplinary authority. Therefore, the disciplinary authority acts in a quasi-judicial capacity. If that be so, there has to be a provision either express or implied authorising the disciplinary authority to delegate its powers of consideration and decision.

19. Sub-rule(6) & sub-rule(9) of Rule 9 of the Rules, if read together, bring out the intention of the rules Making Authority. In sub-rule(6) of Rule 9, as already indicated, the crucial words are "shall draw up or cause to be drawn up" whereas in sub-rule(9) of Rule 9 the disciplinary authority is enjoined to "consider" and "decide". We, therefore, come to the conclusion that, in the absence of any provision, the disciplinary authority could not and cannot delegate the powers conferred upon it in sub-rule(9). Indeed, the respondents have not shown any provision where delegation of power is provided for but have contented to rely solely upon the aforequoted resolution of the Railway Board dated 27.2.1987.

20. We are satisfied that the resolution of the Railway Board dated 27.2.1987 in so far as it relates to the delegation of power

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contained in sub-rule(9) of Rule 9 was and
is without jurisdiction.

21. The resolution is an interesting reading. It says that individual cases involving application of Discipline and Appeal Rules shall be put up to the 'Functional Member' only. In case a policy issue is involved, the case shall be put up to the 'Member Staff' and then to the 'Functional Member'. Even policy decisions have been left to be decided by two members only. Otherwise, one member alone has been authorised to decide the fate of a delinquent Railway servant and take a decision which is of moment to him. We, therefore, hold that it shall be presumed that the written statement of defence submitted by the petitioner has so far not been considered and no decision has been taken upon it. The appointment of an Inquiry Officer on 8.1.1993 by an individual Member of the Railway Board is void and inoperative.

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22. Admittedly, the petitioner retired from service on 30.9.1991 and on that day disciplinary proceedings were pending against him. Compliance of Rule 9(2) of the CCS(Pension) Rules, 1972 or analogous provisions in the Railway Rules has to be made. There is no indication in the

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reply filed on behalf of the respondents that such an action has, in fact, been taken so far. The President has now to take a decision as to whether the disciplinary proceedings initiated against the petitioner and pending on the date of his retirement should or should not be allowed to continue. We have no doubt that the President, while taking such a decision will give due consideration to the detailed written statement of defence filed by the petitioner before the disciplinary authority in compliance with Rule 9 of the Rules. If the President takes the view that the disciplinary proceedings should continue, the disciplinary authority shall appoint an Inquiry Officer.

20. With these directions, this petition is disposed of finally. There shall be no order as to costs.

B. N. Dholiyal.
(B.N.DHOUNDIYAL)
MEMBER(A)

S.K.Dhaon
(S.K.DHAON)
VICE CHAIRMAN(J)

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