

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

ORIGINAL APPLICATION NO. 19 OF 1998

Allahabad, this the 26th day of April, 1999.

CORAM : Hon'ble Mr.S.K.Agrawal, J.M.
Hon'ble Mr.G.Ramakrishnan, A.M.

Arjun Prasad,
S/o. Late Sri Murli Dhar,
Sr. Typist, office of Chief
Personnel Officer,
N.E. Railway, Gorakhpur.

.....Applicant

(By Shri S.K.Om, Advocate)

Versus

1. Union of India through
General Manager, N.E. Railway,
Gorakhpur..
2. Chief Personnel Officer,
N.E. Rly. Gorakhpur.
3. Dy. Chief Personnel Officer,
(Head Quarter), N.E. Railway,
Gorakhpur.
4. Sri Pramod Kumar Srivastava,
working as Enquiry Officer in
the office of General Manager,
N.E. Railway, Gorakhpur.

.....Respondents

(By Shri S.K.Anwar)

ORDER

(By Hon'ble Mr.S.K.Agrawal, Member(J))

In this original application the applicant makes
a prayer to quash the letter dated 16-5-97 passed by
respondent No.3 and to direct the respondents not to
conduct any denovo enquiry against the applicant.

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2. In brief facts of the case as stated by the applicant are that the applicant was initially engaged as Junior Typist in North Eastern Railway, Gorakhpur on 17-9-1983. He was promoted as Senior Typist in the year 1989 and was transferred to Chief Personnel Office in 1991. It is stated that a charge sheet was served upon the applicant on 23-9-92. The allegations in brief against the applicant are that he admitted one lady in Railway Hospital alleging her to be his wife. Applicant denied the charges. Enquiry was conducted and after enquiry, the enquiry officer held the applicant not guilty. The Disciplinary Authority accepted the enquiry report, but applicant was shocked to know later on that respondent No.3 has appointed another Enquiry Officer Shri P.K.Srivastava to conduct the denovo enquiry with reference to charge sheet dated 23-9-92. It is stated that the order for conducting the fresh denovo enquiry dated 16-5-97 is wholly arbitrary and against the provisions of rule 10 (2) Railway Servants (Discipline and Appeal) Rules, 1968. It is stated that enquiry officer appointed by respondent No.3 is prejudiced and bias against the applicant and there is no hope of justice from him. Therefore applicant sought the relief as prayed for.

3. Counter was filed. It is stated in the counter that the order for denovo enquiry was issued by the Disciplinary Authority on the ground that enquiry officer failed to secure the attendance of handwriting expert which was an important evidence in that enquiry. It is stated that the matter was investigated by vigilance, and prima-facie the allegations against the applicant proved to the extent that he admitted a lady in Railway Hospital, Gorakhpur treating her as his wife. After

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receiving the enquiry report disciplinary authority called for the remarks of vigilance who advised for denovo enquiry, therefore respondent No.3 ordered for fresh enquiry vide impugned letter/order dated 16-5-97 which was in accordance with the rules/instructions. Respondents therefore stated that this original application is devoid of any merit and liable to be dismissed.

4. Rejoinder was filed reiterating the facts stated in the original application.

5. By the order dated 5-2-98 of this Tribunal conducting the enquiry as per order dated 16-5-97 was stayed.

6. Heard the learned lawyer for the parties and perused the case file thoroughly.

7. It appears that initially the enquiry was conducted by Shri Sayed Rafat Hussain, Personnel Inspector against the applicant and he found the applicant not guilty. The enquiry report was sent to Disciplinary Authority Smt. Renu Sharma, who agreed with the enquiry report. It also appears that only vigilance department did not agree with the enquiry report and after discussion directed to conduct the denovo enquiry and also nominated the Enquiry Officer to Shri P.K.Srivastava. Rule 10(2) of Railway Servants (Discipline & Appeal) Rules, 1968 provides -

"The Disciplinary Authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold further inquiry according to the provisions of Rule 9 as far as may be."

On the perusal of the provisions given under this rule, the order for fresh enquiry by another Officer on the advice of Vigilance Department is contrary to the provisions of Rule 10 (2) of Railway Servants (Discipline & Appeal) Rules, 1968.

8. In Kartar Singh Vs. UOI 2717 (93) decided on 30-6-97 by Central Administrative Tribunal, Principal Bench, New Delhi, the similar question has come for consideration and it was held that merely because enquiry officer did not held the delinquent guilty of the charges new enquiry officer cannot be appointed and denovo enquiry cannot be ordered where a particular witness was not examined.

9. Our attention was also drawn by the learned lawyer for the applicant towards annexure-IV regarding clarification on Railway Servants (Discipline and Appeal) Rules, 1968 and following clarification was given by the department :-

Whether Disciplinary Authority can order de novo inquiry on same charges.

Ordinarily, the Disciplinary Authority should remit the case back to the same inquiry Authority for further inquiry. However, if the same inquiry officer is not available, the case may be remitted to another Inquiry Officer.

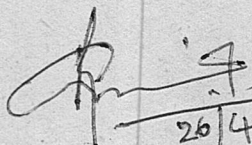
On the perusal of this clarification it was clearly evident that if the same Inquiry Officer is not available then only the case may be remitted to the another Inquiry Officer. In the instant case vide impugned letter/order dated 16-5-97 the provisions given in rule 10(2) of Railway Servants (Discipline and Appeal) Rules, 1968 have been grossly violated, and in view of

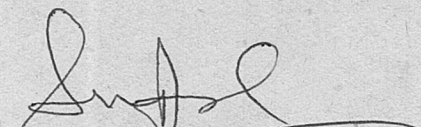
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the above legal position and facts & circumstances of this case we are of the considered view that the fresh inquiry to be conducted vide letter dated 16-5-97 is not in accordance with the provisions as given in rule 10(2) of Railway Servants (Discipline & Appeal) Rules, 1968.

10. We therefore, allow this original application partly and quash the order dated 16-5-97 passed by respondent No.3.

11. No order as to costs.


26/4/99.
MEMBER(A)


MEMBER(J)

satya/