Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No.462 of 1986 (O.Suit No.51 of 1985)

Bhim Sen ..... Plaintiff

Vs.

Union of India and another ... Defendants.

Hon.D.S.Misra, AM
Hon. G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

This original suit has been received by transfer from the Court of First Additional Munsif Saharanpur under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. It is alleged that the plaintiff had joined the railway service on 10.2.1948 and was discharging his duties sincerely and faithfully. He was served with charge sheet dated 30.6.1983 for major punishment regarding an incident taking place on 17.1.1983 when the plaintiff was working as Driver grade 'B'. The plaintiff refuted the imputation of charge in the reply filed by him and demanded relevant additional documents on 14.7.1983 but the defendants did not supply the same to him. The copies of the statements of the witnesses examined in the disciplinary proceedings were not issued to the plaintiff and he was not given proper opportunity to defend himself. The disciplinary authority vide his order dated 24.5.1984 wrongfully reverted the plaintiff to the post of Shunter. Neither the copies of the statements of the witnesses nor the copies of

the findings of the inquiry officer ware given to the plaintiff along with the order of punishment. As such, he could not prefer an effective appeal. On 13.6.1984, the plaintiff had presented his appeal clearly stating that the effective appeal could not be written for want of the necessary copies and the defendants were liable for the same. The defendants thereafter issued the copies to the plaintiff on 25.6.1984, which were of no use to him at that time. He accordingly filed the suit for setting aside the order of punishment dated 24.5.1984 and for the restoration of his status as Driver grade 'A' with all service benefits on the grounds that in conducting the inquiry, the defendants committed the breach of the mandatory provisions of the Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter referred to as the D.A.Rules) and committed serious irregularities and the charge proved against the plaintiff is different from the charge with which he was charged by the defendants. The plaintiff was promoted as Driver grade 'A' during the pendency of the disciplinary proceedings and he could not be reverted to the post of Shunter. The appellate authority did not give any reply to the appeal filed by the plaintiff and the punishment awarded to the plaintiff is illegal and without jurisdiction.

3. The suit has been contested on behalf of the defendants and in the reply filed on their behalf before us it has been stated that the plaintiff was

issued charge sheet for major penalty for passing starter signal no.20 of line no.1 of Delhi-Shahadra in a dangerous position while working as Driver of 19 Down Express Ex-New Delhi on 17.1.1983. The fact finding inquiry into this incident was conducted by 3 officers and the plaintiff was held responsible for failing to control his train and passing the starter signal in danger position and thereby endangering the safety of the travelling public. The plaintiff had obtained the extracts of all the documents relied upon by the department in the disciplinary proceedings under his signatures on 10.10.1983 and the allegations made by him to the contrary are not correct. The copy of the findings along with the statements of the witnesses and the report of the inquiry officer was supplied to the plaintiff on 29.6.1984 and he was given another opportunity to submit his fresh appeal within 45 days. He however, did not prefer the appeal in time and the appeal filed by him on 20.6.1986 was rejected as time barred. The disciplinary proceedings were conducted against the plaintiff in accordance with the D.A.Rules and every reasonable opportunity was afforded to the plaintiff to defend himself and on being found guilty of the charge levelled against him, he was rightly punished and the plaintiff is not entitled to any relief. The plaintiff was not given the necessary details of the charge levelled against him as well as of the punishment awarded to him. Annexure II to the charge sheet, a copy whereof has been filed on behalf of both the parties on the record shows that the charge against

the plaintiff was that he was the driver of 19 Dn. Express train on 17.1.1983 and " the train had stopped after passing the starter signal no.20 of DSA which clearly proves that either the driver applied brakes late or could not control the train." On this ground, it was contended on his behalf before us that the railway administration itself was not clear regarding the charge against the plaintiff and a vague charge was levelled against him. As such, the plaintiff could not defend himself properly. The impugned order of punishment shows that the plaintiff was reverted to the lower post of Shunter for a period of 3 years. On this ground, it was contended that the plaintiff is going to retire in this very month and the punishment awarded to him, therefore, cannot be executed and a punishment which is incapable of execution is illegal and is liable to be set aside on this ground alone. It was also contended that the disciplinary authority did not pass a speaking order and a printed form was used for awarding the punishment, which shows the non-application of the mind of the disciplinary authority and as such, the punishment is bad in law and cannot be sustained. It was also contended that the plaintiff was not supplied with a copy of the report of the inquiry officer containing his findings and he was also not supplied with the copies of the statements of the witnesses and as such, he could not prefer any effective appeal and the appellate

authority did not afford him an opportunity of personal hearing. Lastly, his contention was that at the time of punishment, the plaintiff was working as Driver grade 'A' and he could not be reverted as a Shunter, 3 degrees below his post on which he was working and the punishment is illegal on this ground.

4. Sri Lalji Sinha appearing on behalf of the defendants submitted before us that the alternative charge framed against the plaintiff,as above,is not illegal and there is nothing on record to show that the plaintiff is retiring before the execution of the punishment awarded to him and he did not take this plea in his plaint. He disputed the correctness of the other contentions raised on behalf of the plaintiff and urged that there was no irregularity in the disciplinary proceedings conducted against the plaintiff and he was given full opportunity and after supplying the copies of the report of the inquiry officer and the copies of the statements of the witnesses, he was given a fresh opportunity of filing an appeal within 45 days but he himself did not avail this opportunity and as such, he cannot blame the railway administration for his own laches and inaction.

5. Regarding the vagueness of the charge, we find that this point was not specifically pleaded by the plaintiff in his suit. On the other hand, his allegation in sub-paragraph (d) of paragraph 16

is that the charges on which inquiry was conducted were different from the charges contained in preliminary inquiry and those contained in the charge sheets and the charges on which the inquiry was held and the charges on which punishment was imposed are all different. In our opinion, it is permissible under the law to frame a charge in the alternative. The plaintiff being the driver of the train in question alone was in the best position to state the reason as to why the train could not stop before passing the starter signal no.20 when the signal was not down. It has not been disputed before us that his train had stopped only after passing the starter signal. In such a case, it becomes an admitted fact that the train did not stop where it ought to have stopped and it had stopped only after passing the starter signal. It has not been contended on behalf of the plaintiff before us that despite his best efforts, he could not stop the engine at the proper place on account of some mechanical defect, which could not be detected earlier. It was insignificant or even irrelevant to see whether the brakes were applied late by the plaintiff or he could not control the train otherwise. The main charge that the train did not stop at the proper place and had wrongly passed the starter signal is established against the plaintiff. Even under the provisions of Indian Penal Code, framing of alternative charges against an accused is permissible.

In the present case, only two possible causes of not stopping the train were attributed to the plaintiff in alternative and there was no vagueness in the main charge that he had not stopped the train at the proper place. In this way, we find no vagueness in the charge framed against the plaintiff and the contention raised on behalf of the plaintiff in this connection is devoid of any force.

6. After a careful perusal of the record, we find ourselves in agreement with the contention of Sri Sinha that it has nowhere been alleged or pleaded that the plaintiff is going to retire before undergoing the punishment awarded to him. In the absence of a plea and some evidence in its support on the record, we, therefore, summarily reject the objection of the plaintiff regarding the validity of the punishment on this point.

7. The plaintiff has rightly alleged that the printed form was used by the disciplinary authority in awarding the impugned punishment to him and the impugned order does not give much details of the case. The impugned order runs as follows:-

> " After careful consideration of enquiry report and other documents on record I do hereby accept the findings and the charge do stand as sustained that you did pass signal No.20 in 'ON' position. I, therefore, hold you guilty of the charge(s) viz as per SFS levelled against you and have decided to impose upon you the penalty of reduction to a lower post. You are, therefore, reduce with immediate effect to the lower post of Shunter in the scale of Rs.290-400 for a period of 3 years without postponing future increments."

8. On behalf of the defendants, reliance was placed in this connection on a decision of the Hon'ble Supreme Court in the Union of India and others Vs. K.Rajappa Menon (A.I.R.1970 SC-748). The relevant observations made in that case are reproduced below:-

> " ... Rule 1713 does not lay down any particular form or manner in which the disciplinary authority should record its findings on each charge. All that the rule requires is that the record of the enquiry should be considered and the disciplinary authority should proceed to give its findings on each charge. This does not and cannot mean that it is obligatory on the disciplinary authority to discuss the evidence and the facts and circumstances established at the departmental enquiry in details and write as if it were an order or a judgment of a judicial tribunal. The rule certainly requires the disciplinary authority to give consideration to the record of the proceedings, which as expressly stated in Exh.R.8, was done by the Chief Commercial Superintendent. When he agreed with the findings of the Enquiry Officer that all the charges mentioned in the charge sheet had been established it means that he was affirming the findings on each charge and that would certainly fulfill the requirement of the Rule. The Rule after all has to be read not in a pedantic manner but in a practical and reasonable way and so read it is difficult to escape from the conclusion that the Chief Commercial Superintendent had substantially complied with the requirements of the Rule."

9. We have carefully considered the respective contentions of the parties on this point and feel that the necessary details of the case, the evidence led and the reasons for finding the charge as established were given by the inquiry officer in

his report which was duly considered by the disciplinary authority before awarding punishment to the plaintiff and he committed no illegality in passing the order on the printed form after necessary modifications. The alterations and modifications made in the printed form by the disciplinary authority fully shows the application of his mind at the time of awarding the punishment.

10. The contention of the plaintiff that he was not supplied with the copies of the statements of the witnesses and the report of the inquiry officer appears to be correct. On receiving the order of punishment, the plaintiff sent a representation to the Divisional Mechanical Engineer (P) complaining about the non-supply of the said documents which were necessary for preferring the appeal. He had prayed for supplying the said copies to him and for extending the period of limitation for filing the appeal vide paper no.26 of the paper book of the defendants. In reply to it, the Divisional Railway Manager passed an order on 20.3.1985, paper no.27, extending the prescribed period of 45 days for preferring appeal with the observation that a copy of the D&AR inquiry report had been sent to him vide letter dated 26/29.6.1984. The receipt of this order was not disputed on behalf of the plaintiff. He, however, filed a copy of an appeal preferred by him

against the impugned punishment on 13.6.1984 in which a preliminary objection was raised to the effect that without knowing the contents of the findings, effective appeal could not be written. The plaintiff could prefer an effective appeal after the aforesaid order dated 20.3.1985 of the DRM but he did not do so. The grievance regarding the non-supply of the necessary copies to him, therefore, loses all force. The plaintiff preferred the appeal very late on 20.6.1986, paper no.28, which was rejected on 17.9.1986 on the sole ground that it was time barred. The plaintiff thus himself was not vigilant in preferring the proper appeal in time and as the appeal preferred by him on 13.6.1984 was not a proper appeal and he was given further time to prefer the proper appeal, no opportunity of hearing could be afforded to him in connection with his that appeal. We, therefore, do not find any force even on this contention of the plaintiff.

11. Now coming to the last contention regarding the nature and quantum of punishment, we feel that there is no force in the contention of the plaintiff that from the post of Driver Grade 'A', he could not be reverted 3 grades below to the post of Shunter under the law. The plaintiff has not shown any law or rules in support of his contention. He has placed his reliance on a single Judge decision of the

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Bombay High Court in C.G.Tambe Vs. Union of India & others (1984(2) All India Services Law Journal-390), in which it was held that the principles of natural justice are clearly violated by denying the supply of the copies of the inquiry report to the delinquent. In our view, as the copy of the inquiry report has already been supplied to the plaintiff, though late, the punishment awarded to him cannot be quashed on this ground alone. The contention of the defendants is that an authority, who can dismiss an employee, also can, revert him to any lower post. The post of Shunter is in the line of promotion to the post of Driver and as such, there could be no legal prohibition in reverting the plaintiff to the post of Shunter from the post of Driver in this case and the punishment awarded to him, therefore, cannot be vitiated on this ground.

12. It has been further contended that ~~the~~ a severe punishment has been awarded to the plaintiff specially in view of the fact that there was no casuality or any loss of property by this incident. The exact date of birth of the plaintiff has not ~~given~~ come on record but it appears from the allegations made in paragraph 1 of the plaint that he had joined the service on 10.2.1948 and as such, he must be at the verge of his retirement at present and in case he retires while undergoing punishment he will get more punishment than really intended by the disciplinary authority as his pension and D.C.R.G. will have to be fixed according to the salary payable to him as Shunter.

Considering all the circumstances of the case including the nature of the incident attributed to the plaintiff, we feel that in case the plaintiff retires before the execution of the punishment of reversion for 3 years, his period of punishment shall be reduced so as to expire on a date preceding the date of his retirement. There is no other point for consideration in this case and no interference with the impugned order is possible.

13. The suit is disposed of accordingly and the parties are directed to bear their own costs.

25.3.1987
MEMBER (A)

25.3.1987
MEMBER (J)

Dated 25.3.1987
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