

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

TRANSFER APPLICATION NO.811 of 1986

Union of India
(GM) N.Railway

.... Defendant
appellant.

Versus

Jamil Ahmad

.... Plaintiff-
Respondent

Hon'ble D.S.Misra-AM
Hon'ble G.S.Sharma-JM

(Hon'ble D.S.Misra-AM)

This is an appeal no. 365 of 1978 filed in the court of District Judge, Lucknow against the judgment and decree passed by II Addl. Munsif Lucknow in suit no.176 of 1973 which has come on transfer under Section 29 of the A.T.Act XIII of 1985.

2. In the original suit, the plaintiff respondent had prayed that the order of his removal from service dated 3.10.1969 passed by the General Manager, Northern Railway and the appellate order dated 25.7.1970 of the Railway Board be declared null and void. A disciplinary inquiry under the Railway Servants(Discipline and Appeal) Rules was held against the plaintiff respondent on the alleged charge that he had committed theft of Government property from the Loco Workshop, Charbagh Lucknow on 25.7.66 and that he was caught redhanded and found guilty of the charge.

3. The plaintiff-respondent has challenged the validity of the inquiry on the

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ground that the Work Manager, Loco N R. Charbagh was not competent to appoint an inquiry officer and to institute inquiry against him as the General Manager, N.R. being his appointing authority alone was the competent disciplinary authority authorised to institute inquiry against him.

4. In the written statement filed on behalf of the defendants, the allegations made in the plaint were denied and it was asserted that there was no deficiency or irregularity in holding the enquiry and the order of removal was legal. Learned trial court decreed the suit of the plaintiff on the ground that the work Manager Loco Workshop was not competent to institute the inquiry against the plaintiff, that the plaintiff was not given a list of witnesses and the copies of documents relied upon 3 days before the date of holding inquiry and held that the disciplinary proceedings were irregular and malafide. Learned trial court has also held that the plaintiff was alleged to have committed theft of railway property but no criminal case on this account was instituted against the plaintiff-respondent. Learned trial court had held the order of removal dated 3.10.1969 irregular, and null & void.

5. We have heard the arguments of the learned counsel for the parties. Learned counsel for the appellant contended that the Works Manager Loco Workshop Charbagh, being a superior authority was competent to institute disciplinary proceedings against the plaintiff-respondent. Learned trial court has held that under Rule 1702(ii) of the Railway Establishment Code the appointin

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authority alone could function as disciplinary authority and he alone could have appointed the inquiry officer. Rule 1702(ii) reads as follows:

(ii) 'Disciplinary Authority' in relation to the procedure for imposition of penalty on a Railway Servant means the authority competent to impose on him that penalty, provided that imposing penalties of compulsory retirement, removal or dismissal that authority shall be the "Appointing Authority".

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(a)....

(b) ...

(c) 'Disciplinary authority' in relation to consideration of written statement of defence in reply to the charge-sheet and appointment of Board of Inquiry or Inquiry Officer, etc. under Rules 1710 and 1712 means , so far as cases of non-gazetted & staff are concerned, the authority competent to impose the lowest of the major penalties specified in Clauses(iv) to(Vii) of sub-rule(1) of Rule 1707, provided that such authority shall not be lower in status than the members of the Board of Inquiry or Inquiring Officer."

Rule 1707 reads as follows:

" Nature of penalties.- (1) The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a railway servant, namely--

(i) censure;

(ii) with-holding of increments or promotions:

(iii) recovery from pay of the whole or part of any pecuniary loss caused to the Government by negligence or breach of orders:

(iv) reduction to a lower service, grade or post or to a lower time scale, or to a lower stage in a time scale;

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- (v) compulsory retirement;
- (vi) removal from service which shall not be a disqualification for future employment;
- (vii) dismissal from service which shall ordinarily be a disqualification for future employment."

Among the penalties specified in sub clauses(iv) to (vii) of sub-rule(1), penalty at sub clause(iv) viz. reduction to a lower service, grade or post etc. is the lowest penalty. Under schedule-II of the then Discipline and Appeal Rules, 1961 Sr. Scale Officers and Asstt. Officers (Junior Scale and Class II Officers) holding independent charge were competent to impose the penalty specified in sub clause(iv) above on Class-IV, Artisans and Class III staff except in the grade of Rs. 335-425. It would thus be seen that the Works Manager, who was holding independent charge of the Loco Workshop, was competent to initiate disciplinary proceedings and to appoint an inquiry-Officer. We are of the opinion that the learned trial court had misinterpreted the provisions of sub-clause(ii) of Rule 1702 quoted earlier.

6. The other finding of the learned trial court that the disciplinary proceedings were vitiated due to the fact that the plaintiff was not given a list of witnesses and the copies of documents relied-upon before holding the inquiry. We have examined this matter and we find that the plaintiff had neither raised this plea in the appeal filed before the appellate authority nor in the notice under Section 80 CPC. Learned trial court has observed that such an allegation made in para 27(g) of the plaint was not denied by the respondent. This observation is not in-

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accordance with the facts on record as in the written statement filed by the defendants such an allegation has been denied. The copy of the proceedings of the inquiry conducted into the matter is available on the file and it is noticed that the plaintiff participated in the inquiry, cross-examined the witnesses and was given reasonable opportunity to defend himself before the inquiry officer. There is nothing on record to show that during the course of inquiry the plaintiff ever raised the plea of not being supplied with the list of witnesses and copies of any documents required by him to defend himself. In his reply to the show cause notice also he did not raise this plea, although he challenged the memo of the chargesheet alleging that it did not contain definite charges on the basis of allegations. We are of the opinion that the trial court's finding that the inquiry was irregular and mala fide is not based on proper appreciation of the evidence on record and the rules applicable to this case. Similarly, the observation of the trial court that even though the charge against the plaintiff was regarding committing theft of railway property, the plaintiff was not tried for a criminal charge, is not material or relevant to the disciplinary proceedings conducted by a competent authority. We are therefore, of the opinion that the inquiry against ~~the plaintiff~~ the plaintiff was conducted in accordance with the rules on the subject and the findings of the inquiry officer were in accordance with the facts on record. Similarly, there is no illegality in the order passed by the appointing

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authority . The appellate order is also a speaking order and there is no justification for interfering with this order.

7. For the reasons mentioned above, the appeal is allowed and the judgment and decree passed by the learned trial court is set aside and the suit of the plaintiff is dismissed. We make no order as to costs.

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5.3.87
A.M.

J.M.
5/3/87
J.M.

Dt. 5.3.1987.

JSingh