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Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No.827 of 1986.

(Civil Appeal No.434 of 1979)

Om Prakash Jaiswal Appellant

Vs.

Union of India and
two others Respondents.

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

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

This civil appeal against the judgment and decree dated 30.7.1979 passed by the IV Additional Munsif Lucknow dismissing suit no.133 of 1977 has been received by transfer from the Court of VII Additional District Judge, Allahabad under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The plaintiff-appellant while working as a Fitter Khalasi in N.E.Railway at Lucknow was served with a charge sheet dated 10.11.1972 for being found in unlawful possession of some railway property on 20.10.1972 by his fellow workers and in that connection he was also suspended w.e.f. 22.10.1972 by Sri J.S.Grewal, Assistant Mechanical Engineer (C&W) Lucknow, (in short AME). The Divisional Mechanical Engineer- respondent no.2 had entrusted the inquiry to the said Sri Grewal AME, who after holding the disciplinary proceedings

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against the plaintiff, found him guilty of the charge and submitted his report to the respondent no.2, who issued a ^{proposed} notice dated 30.4.1983 of the / punishment to the plaintiff. After considering the representation submitted by the plaintiff in reply to the said notice, the respondent no.2 quashed the report of Sri Grewal and after ordering a fresh inquiry appointed Sri M.L.Gill, AME as inquiry officer. Sri Gill fixed 22.7.1974 for holding the inquiry and on the same day, he concluded the inquiry and prepared his report holding the plaintiff guilty of the charge. On the basis of his report, again a show cause notice was issued to the plaintiff before awarding punishment to him according to then prevailing law and after examining the representation of the plaintiff, he was removed from service by the respondent no.2 on 9.9.1974 w.e.f.11.9.1974.

3. The plaintiff-appellant had challenged the said order dated 9.9.1974 of his removal from service on the ground that his statement was recorded by both the inquiry officers before taking any evidence of the prosecution. Only one witness was cited in the charge sheet but four witnesses were examined by the prosecution and he was not given an opportunity to cross-examine them and despite request made by the plaintiff for adjournment, the

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entire disciplinary proceedings were concluded in a day against the law and the inquiry was not made according to law and the provisions of the Railway Servants (Discipline and Appeal)Rules, 1968 (hereinafter referred to as the D.A.Rules).

4. The suit was contested on behalf of the defendants and in the written statement filed on their behalf, it was stated that the report of the inquiry officer was quashed by the disciplinary authority after considering the representation of the plaintiff and the fresh inquiry was ordered to be made by Sri Gill. The plaintiff appeared on the date fixed for inquiry before Sri Gill and did not express any dissatisfaction on any ground and he was given full opportunity to cross-examine the witnesses and defend himself according to law. The plaintiff was aware of the witnesses going to be examined against him and there was no irregularity of any kind in the disciplinary proceedings held against him and no prejudice of any kind was caused to him in any manner. The suit of the plaintiff is barred by principle of estoppel and acquiescence and the order of removal passed against the plaintiff is valid having been passed in accordance with law.

5. The trial Court held that the plaintiff was fully aware of the witnesses going to be produced against him. He did not seek any adjournment before the inquiry officer on the date of inquiry. The

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plaintiff was given full opportunity to defend himself and the inquiry held against him was in accordance with law. It was further held that the suit of the plaintiff was barred by the principles of estoppel and acquiescence. The suit was accordingly dismissed with costs.

6. Aggrieved by the findings recorded against him, the plaintiff preferred this appeal, which has come before us by operation of law. By way of amendment in his plaint, the plaintiff wanted to raise one more plea to the effect that after quashing the first inquiry proceedings the direction for a fresh inquiry and the second inquiry on the same set of facts and on the old charge-sheet was illegal, without jurisdiction and the punishment awarded to the plaintiff in the second inquiry is illegal and unconstitutional in the eye of law. Considering the fact that it is an old case and the amendment can delay the matter further, we permitted the plaintiff-appellant to raise the aforesaid legal point in his argument, without seeking any amendment in the plaint and memo of appeal. The appeal has been contested on behalf of the respondents and their contention is that the findings recorded by the trial Court are based on the evidence on record and they are legally sound and no interference is called for in this appeal.

7. We will first like to consider the new point which the appellant has been allowed to raise orally before us. According to his contention, there cannot be a second inquiry on the basis of the old charge-

sheet after quashing the first inquiry report. Ex. A-11 is the copy of order dated 27.4.1974 of the respondent no.2 under which the second inquiry was ordered. It speaks that on consideration of the representation dated 15.10.1973 of the plaintiff and his interview on 1.3.1974, the proceeding of inquiry conducted by Sri J.S.Grewal AME was quashed and a fresh disciplinary proceeding will be conducted by Sri Gill. The plaintiff was required to give 3 names of his defence counsel in order of priority within 7 days and the inquiry was to be held on 10.5.1974 at 10 hrs. The order also speaks that the attendance of the plaintiff, Kisan Lal, Nand Lal, Kali Charan and Ram Kishan (witnesses) be ensured on that date. This order nowhere speaks that the plaintiff was not found guilty in the first report. On the other hand, it is clear from this order that the report of the inquiry officer was quashed on the representation and interview of the plaintiff himself. The charge sheet was not quashed and as such, a second or fresh inquiry on the same charge sheet by a different inquiry officer could be ordered under the law and there was no prohibition to do so. We find support in coming to this conclusion from K.R.Deb Vs. Collector Central Exise (A.I.R. 1971 SC-1444) and Anand Narain Shukla Vs. State of M.P. (A.I.R.1979 S.C.-1923). The plaintiff could not show anything to the contrary in support of his contention.

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8. We are, therefore, of the view that there is no force in this contention of the plaintiff and as the procedure adopted by the first inquiry officer was not correct and the proceedings conducted by him were not valid for the various reasons, alleged by the plaintiff himself in his plaint, the disciplinary authority was fully competent to quash his report and direct a fresh inquiry by a different inquiry officer on the basis of the same charge sheet.

9. Now coming to certain irregularities in conducting the inquiry against the plaintiff by the second inquiry officer, we find that one of his objections is that in the charge sheet, copy Ex.A-7, only one witness Sri Kisan Khalasi was cited but four witnesses were examined by the inquiry officer against him. The statement of imputation, Annexure 2 to the charge sheet, shows that on 20.10.1972 the plaintiff was caught by Sri Kisan along with two Khalasis with the railway material. In the order dated 27.4.1974, Ex.A-11 of the second inquiry, it has been ordered that Sri Kishan, Nand Lal, Kali Charan and Ram Kishore be summoned. The plaintiff, thus, had full opportunity on the date of the second inquiry that these four persons were likely to appear against him in the inquiry. His contention to the contrary is not correct.

10. Regarding the objection that the plaintiff was examined first and the prosecution witnesses were examined after him by the inquiry officer, it appears

from the copy of the statement of the plaintiff, paper nos.23/4,23/5 and 23/6 C on record that the plaintiff was required by the inquiry officer to state his own case and not to give his statement as a witness. No doubt, after he concluded his statement, he was also cross-examined on behalf of the department and it was stated by him that he had no witness to produce in support of his defence. It appears from the copies of statements of Ram Kishore, Sri Kisan, Kali Charan and Nand Lal on record that the first 3 witnesses were duly cross-examined by or on behalf of the plaintiff. The fourth witness Nand Lal turned hostile and as he did not support the prosecution and showed his ignorance about the whole matter, he was not cross-examined. It is, therefore, not correct to say that the plaintiff did not have the opportunity to cross-examine the witnesses. The fact that the delinquent (the plaintiff) was examined first, is established from record and has not been disputed in the written statement or otherwise. According to rule 9(17) of the D.A.Rules, on the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved, shall be produced and the witnesses shall be examined by or on behalf of the presenting officer. According to sub-rule (19) of rule 9, when the case for the disciplinary authority ~~shall~~ ^{is} be closed, the railway servant shall be required to state his defence orally or in writing and he may then produce his own defence.

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The procedure adopted by the inquiry officer in examining and cross-examining the plaintiff-delinquent first, is, therefore, clearly in contravention of the D.A.Rules.

11. There are some other glaring irregularities which appear on the record of the inquiry proceedings. Annexure 3 to the charge sheet relating to the list of documents to be produced in support of the charge mentions only report dated 20.10.1972 of the CTXR Lucknow. However, for establishing the charge against the plaintiff, the inquiry officer placed reliance on the alleged written apology dated 20.10.1972 of the plaintiff as appears from the copy of the reasons and findings paper no.23/2 C on record. This written apology dated 20.10.1972 of the plaintiff was neither cited as an evidence in Annexure 3 nor was the plaintiff given an opportunity to explain the same in his cross-examination. This is against the principle of natural justice.

12. It further appears from the statement of imputation, Annexure 1 to the charge sheet, that the charge against the plaintiff was that on 20.10.1972, he was caught with the railway material which shows serious misconduct on his part. There was no charge of direct theft against him. However, the finding of the inquiry officer, copy Ex.A-12, shows that the plaintiff was held responsible for removing the railway material with the intention of theft and he was caught red-handed by Carriage

Depot staff while carrying in bag on a bicycle during lunch hours on 20.10.1972. As already pointed out above, there was no charge of removing the railway material from any place against the plaintiff and the plaintiff was found guilty of something more than the actual charge levelled against him. This would have naturally affected the mind of the disciplinary authority in awarding the punishment of removal from service and as such, we are unable to uphold the order of removal passed by the respondent no.2 against the appellant in this case. In our opinion, the procedure adopted even by the second inquiry officer was not correct as pointed out above. He ^{and I} further placed reliance on a document which was not cited in the charge sheet and the plaintiff was found guilty of some bigger charge than the charge actually levelled against him. In case, such evidence had come on record, the charge could be amended and necessary additional evidence could be cited for the notice of the plaintiff. In the absence of the same, the plaintiff has been prejudiced.

13. The appeal is accordingly allowed and the judgment and decree passed by the trial Court are hereby set-aside. The impugned order of removal of the plaintiff from service is set aside. The defendant-respondents will, however, ^{be at liberty} free to restart the disciplinary proceedings against the

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plaintiff from the stage the prosecution had closed its case according to the provisions of the D.A.

Rules. In case the charge is amended or any additional evidence is cited, the plaintiff will have to be given adequate opportunity to meet the same as required under the rules. The parties are directed to bear their own costs.

[Signature]

9.4.1987
MEMBER (A)

Dated 9.4.1987
kkb

[Signature]

9.4.1987
MEMBER (J)

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