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RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No.1169 of 1986.

Madan Gopal Singh (since deceased) Plaintiff-Applicant.
and ~~thereafter his legal representatives~~

Versus

Union of India & others Defendant-Respondents.

Hon'ble Ajay Johri, A.M.
Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. Ajay Johri, A.M.)

This suit has been received on transfer from the court of Civil Judge, Gorakhpur under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. Briefly the facts of the case are that the plaintiff, Madan Gopal Singh, (since deceased) a guard of the North Eastern Railway was taken up for short delivery of some consignments while working in 67 UP train on 9.10.1969. A charge-sheet was issued to him on 17.3.1973 and a punishment for the recovery of Rs.5,683/- was imposed on him on 11.4.1975. His appeal, submitted on 18.5.1975, was rejected by the Divisional Superintendent (DS), Varanasi vide order dated 29.8.1977. His review petition submitted on 27.9.1977 was also rejected on 25.1.1978. The plaintiff has challenged these orders on the grounds that he being an Operating Department employee could not be taken up by a Commercial Department Officer, that he was not given reasonable opportunity to defend his case as no enquiry was held in terms of Rule 11(i)(b) and sub-rules (3) to (19) of Rule 9, and that the authorities have not applied their mind before issuing the orders. He has prayed for a declaration to be issued in his favour against the defendants that the impugned order

of Assistant Commercial Superintendent imposing the punishment, the order of the Divisional Superintendent rejecting the appeal and the order of the Chief Claims Officer, Gorakhpur rejecting the review petition be declared illegal and unconstitutional and that he should be entitled to receive back the amount which has been recovered from his salary on the basis of the impugned order.

3. In their written statement the respondents have challenged the suit on the grounds that it is time barred. It is also barred by Section 22 of the Payment of Wages Act and Section 34 of the Specific Relief Act. They have further said that only 97 packages were taken over by defendant no.3 from the deceased plaintiff and thus the charge-sheet was correctly issued for the loss of balance of the packages out of a total of 136 in the charge of the deceased plaintiff. Since it was described that one bale of clothe booked Ex. Pandaul to Poona, ^{3/4} which ^{3/4} was taken over by the deceased plaintiff ^{3/4} of Muzaffarpur was not handed over to defendants no.2 & 3 and the Railway Administration had to pay claim of Rs.5,683/- for the loss of the said bale, a charge-sheet for recovery of the amount was issued to the plaintiff and the punishment of recovery of the amount was imposed on him in instalment of Rs.100/- per month. He was given all reasonable opportunities and his appeals and review petition were duly considered.

4. We have heard the learned counsel for the parties. The learned counsel for the deceased plaintiff contended that since no enquiry was held and the penalty of recovery was imposed on the deceased plaintiff the imposition of the penalty was illegal. He also contended that since the deceased plaintiff belonging to the Operating Department in terms of the circular of 1962 the Disciplinary Authority had to be of the Operating

Department and the Assistant Commercial Superintendent, who belong to the Commercial Department, had no authority to issue him a charge-sheet or to impose a punishment. The learned counsel for the deceased plaintiff also contended that for any recovery beyond Rs.150/- in terms of the circular letter of 23.5.75 a proper enquiry should have been held but the same was not held. These contentions have been opposed by the learned counsel for the respondents on the grounds that the Railway Board's circular of 23.5.1975 did not apply in this case as the charge-sheet was issued in 1973 and a punishment was imposed on 11.4.75 i.e. before the circular came into operation. He further submitted that the appellate order was rejected in August, 1977 and since the matter pertained to a charge-sheet issued in March, 1973 the suit filed in 1979 is barred by time. In regard to the Operating and Commercial Departments, he submitted that the principle of merger of authority becomes applicable as soon as the appellate authority considers the appeal and gives its decision on the same. Therefore, whether the plaintiff belonged to the Operating Department or the Commercial Department did not materially effect the punishment imposed on the deceased plaintiff.

31 5. The plaintiff has relied on a letter issued by the Railway Board No.E(D&A) 72 RG 6-13, dated 16.10.1973 addressed to all General Managers on the subject of disciplinary authorities for imposition of penalties which is placed at paper no.30-Ka of the suit file. The Railway Board after having considered the matter had clarified to the Railways that the Railway servant~~s~~ essentially belongs to only one department even though in the course of the performance of his day to day duties, he may violate certain rules/regulations administered by some other department. The Assistant Station Masters and Station Masters belong to the Operating Department even though they may have to perform the duties pertaining to the Commercial Department.

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The disciplinary authorities in their case would thus belong only to the Operating Department and none else. If any other practice was being followed that was irregular and should be stopped. The disciplinary action should be initiated and finalised by the authorities under whose administrative control the delinquent employees may be working. However, in supersession of this letter of 16.10.1973 the Railway Board issued another letter no. E(D&A) 72 BG6-13, dated 19.4.1974. This letter states as follows :-

"Reference Board's letter of even number dated 16th October, 1973 on the above subject. In partial supersession of the instructions contained in para 3 thereof it is clarified that the Station Masters/Asstt Station Masters belong to Transportation (Traffic) and Commercial Department and not to Operating Department as mentioned therein. The Station Masters/Asstt. Station Masters, in the course of their day-to-day functioning, may violate instructions administered by different wings of that department, such as Commercial or Operating. In these circumstances, there is no objection for the authorities in Commercial or Operating wing or that department to initiate and finalise disciplinary action against the concerned Station Master/ Assistant Station Master according as the irregularity for which the action is initiated, relates to Commercial or Operating wing. These instructions equally apply to other categories who work in one Department having different wings and in the course of their day-to-day functioning, violate rules/instructions administered by those wings."

By this letter disciplinary action against the plaintiff, who was working as a Guard and belonged to the Operating Department could be taken by the Commercial Department as well, as he had violated rules which were administered by the Commercial Department. In 1979 the Railway Board cancelled this letter by their letter no. E(D&A) 78 RG6-15 of 10.1.1979 and reiterated their earlier instructions of 16.10.1973. The plaintiff was issued the punishment order on 11.4.1975. His appeal was rejected on 29.8.1977 and Review Petition was rejected on 25.1.78.

We made a further petition to the General Manager which was withheld

He made a further petition to the General Manager which was withheld. Thus at the material time the Railway Board's letter of 19.4.1974 was current and in accordance with the stipulations of this letter there was nothing wrong in the orders. There was no illegality.

6. Rule 11 deals with the procedure for imposing minor penalties. Reasonable opportunity is to be given to the delinquent for making a representation, as he may wish to make, against the proposal to take action against him. On receipt of the representation the disciplinary authority may record his findings on each imputations of misconduct or misbehaviour or decide to hold an oral enquiry in terms of Rule 11(i)(b). Holding the oral enquiry is, however, optional, i.e. entirely according to the discretion of disciplinary authority. It is only if the disciplinary authority decides that an oral enquiry is necessary, such an enquiry is to be held in the manner laid down in sub-rules (6) to (25) of Rule 9 of the Railway Servants Discipline & Appeal Rules, 1968. In the case of the plaintiff he was given a charge-sheet on 17.3.1973 and on receipt of his explanation the disciplinary authority passed the punishment order. A reading of the punishment order shows that it is a speaking order and has been passed after considering the explanation given by the deceased plaintiff and a tally of his rough journal entries. The appellate order mentions of the confronted enquiry held by C.I. special of the Claim Prevention Cell. The appellate order can also not be termed as non-speaking order. As far as the merit of the case is concerned the same cannot be appraised by this Tribunal. The said confronted enquiry gave him reasonable opportunity to defend his case.

7. In his replication the plaintiff has said that the punishment is based on no evidence as it has not been proved that the cloth bail was not handed over to the defendant and since the amount of recovery was more than Rs.150/- he should have been given full opportunity to defend himself. Railway Board's letter no. E(D&A) RG6-18 of 23.5.1975 lays down the procedure to be followed

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when deductions are made in excess of Rs.150/- for value of goods not delivered. It was submitted by the learned counsel for the defendants that this letter is not applicable to the plaintiff's case as the case pertained to 1973 and the punishment was imposed on 11.4.1975. We do not agree to this contention. However, we find from the proceedings of the confronted enquiry that the plaintiff had been given all opportunity to question and cross examine the other concerned persons, e.g. the Guard and Brakesman who received the consignments when the plaintiff signed off. Thus the spirit of the Board's letter has been substantially followed.

8. On the above considerations we reject the plaint and dismiss the suit. We make no order as to costs.

Sharma

MEMBER (J).

Sharma

MEMBER (A).

Dated: March 25, 1988.

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