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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD

REGISTRATION T.A. NO. 695/1987

(W.P.2690/80)

G.M.Tripathi Applicant

Versus

Union of India & Others Respondents

Hon'ble Mr. Justice K. Nath, V.C.
Hon'ble Mr. A.B. Gorthi, A.M.

(By Hon'ble Mr. A.B. Gorthi, A.M.)

Writ Petition No. 2696 of 1980 filed by Sri G.M.Tripathi, having been transferred to this Tribunal under Section 29 of the Administrative Tribunal Act 1985 is listed before us as the Transferred Application cited above. The petitioner seeks a Writ of Certiorari quashing the disciplinary proceedings against him and the punishment awarded reverting him from the post of Asstt. Station Master (A.S.M. for short) to Signaller A-II for 5 years with cumulative effect.

2. The petitioner joined Railway Service as Signaller A-II in October 1954 and was promoted as A.S.M. in January, 1961. On 16.12.1977 while the petitioner was the A.S.M. at Tulsipur Railway Station, a team of vigilance officers raided the station, on a complaint that the petitioner was in the habit of over-charging passengers while issuing tickets. On checking, four Nepali passengers complained

A3
2

that they were overcharged to the tune of Rs. 30/- on 15 tickets purchased by them. These passengers were taken to the petitioner, whom they identified as the culprit. A check of the cash revealed that the petitioner had Rs. 11.50 p excess.

3. Based on the vigilance report, the Senior Divisional Commercial Superintendent (Sr.D.C.S. for short) issued a charge-sheet and ordered an enquiry to be held. During the enquiry the main witness examined was one of the vigilance officers who gave a detailed account of all that happened on 16.12.1977. The other witness who deposed was another A.S.M. who stated that he was present when the cash in the possession of the petitioner was checked and that he accordingly signed the document prepared by the vigilance staff regarding the said surprise check. None of the four Nepali passengers ^{was} ~~were~~ examined. Their statements recorded on the date of incident were adduced in evidence.

4. Armed with the aforesaid facts, which are not in dispute, the petitioner contended that firstly, he being an A.S.M. belonging to the operating Department, the Sr. D.C.S. of the Commercial Department could not have signed the charge-sheet and ordered the enquiry, and secondly, the enquiry failed to establish the charges against him as the principal witnesses were not examined.

5. On the first issue, the learned counsel for the respondents drew our attention to Rule 103(2)

of Indian Railway Commercial Manual, Volume I and Railway Boards' letter no. E(D&A)72 RG-6-13 dated 19.4.1974 (Annexure A/1 to the Counter Affidavit). We may first examine Rule 103(2) which reads as under:-

103(2) "Commercial Staff" includes joint staff employed on both Commercial and transportation duties.

A plain reading of the above reveals that it is a definition of 'Commercial Staff' and it ^{belongs} ~~belongs~~ within its fold even 'Joint Staff' employed on both Commercial and Transportation duties. The petitioner here is a member of the operating staff. Rule 103(2) does not therefore, cover the case in hand.

6. As regards the Railway Boards' letter dated 19.4.1974, it lays down, in partial modification of an earlier policy decision dated 16.10.1973, that "Station Master^s/Asstt. Station Master^s belong to Transportation (Traffic) and Commercial Department and not to Operating Department as mentioned therein". It further says that the Station Masters/Asstt. S.M. may violate instructions administered by different wings such as Commercial or operating and in such circumstances there is no objection for the authorities in Commercial or Operating Wings to initiate and finalise disciplinary action depending upon whether the irregularity pertains to commercial or operating wing. That this letter does not stand legal scrutiny

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-4-

will be obvious, if we keep in view Rules 7 and 8 of the Railway Servants (Disciplinary and Appeal) Rules 1968. Rule 7 specifies the 'disciplinary authorities' whereas Rule 8 lays down as to who are the authorities who can institute disciplinary proceedings. These Rules do not authorise the head of one Department to initiate disciplinary proceedings against a person belonging to another department. Statutory status cannot be altered or modified by administrative instructions. The non-maintainability of the view taken in the Railway Boards' letter dated 19.4.1974 was detected by none else than the Railway Board itself, which vide its letter dated 10.1.1979 (Annexure-9) cancelled its earlier letter dated 19.4.1974. Thus the original policy letter dated 16.10.1973 (Annexure-10) has been restored. The relevant paragraph of Annexure-10 is reproduced below:-

"The matter has been carefully considered by the Board and in consultation with their Legal Adviser, it is clarified that a Railway Servant 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 the Station Masters, belong to the operating department even though they may have to perform the duties pertaining to the Commercial Department and none else. If any other practice is being followed that is irregular and should be stopped forthwith."

7. Although at the time when the disciplinary proceedings were initiated in this case, i.e.

A2/5

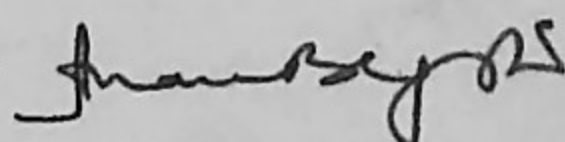
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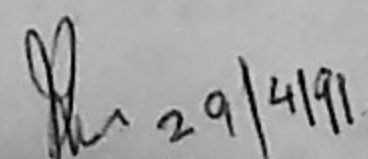
30.6.1978, the policy letter dated 19.4.1974 was yet to be cancelled, it makes no difference to the merits of the case, as we hold the said policy letter as illegal, being contrary to Rules 6 and 7 of the Railway Servants (Discipline and Appeal) Rules 1968. In the circumstances, it is apparent that the charge memo issued by the Sr. D.C.S., as also his order to hold the enquiry, would be null and void in the eye of law. It was so held by this Bench also in T.A. No. 359 of 1986, M.L.Gupta Vs. Union of India & Others decided on 10.8.1988.

8. In view of the above position we consider it hardly relevant to go into the question of sufficiency or otherwise of the evidence adduced at the enquiry.

9. In the result, we quash the disciplinary proceedings and the resultant punishment awarded to the petitioner, and order that the petitioner be relieved of all consequences of the said punishment and given all consequential benefits within three months from the date of receipt of a copy of the judgment.

Parties to bear their own costs. The service record be returned to the Department.


MEMBER(A)


VICE-CHAIRMAN

DATED: 29-4-1991

ALLAHABAD

(ss)