

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Transfer Application No. 1779 of 1987

Mahendra Vir Saxena Applicant

Versus

Union of India and Others Respondents

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. K. Chayya, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

This is a transferred application under section 29 of the Administrative Tribunals Act. The applicant filed a writ petition before the High Court challenging the orders of suspension dated 20.6.1984 with retrospective effect and the order decreasing the subsistence allowance fixing at 25% of the total wages instead of 75% with retrospective effect i.e. w.e.f. 21.9.1984, ~~xxxxxxxxxx~~ as illegal, arbitrary, against the provisions of law.

2. The applicant was working as Asstt. Station Master (Cash), North Eastern Railway, Izat Nagar. He was placed under suspension vide order dated 14th October, 1981 later on this order was revoked by the same authority vide order dated 12.2.82 and an enquiry against him started and in the enquiry proceedings which ultimately culminated in the order of removal dated 17th Oct. 1983 which was served upon the applicant on 29.10.83.

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2. The applicant filed an appeal against the same which was also dismissed on 2.2.1984. Thereafter he filed a writ petition before the High Court on 21.2.84. During the pendency of the writ petition respondent no.4 who himself passed the order of removal from the service cancelled the entire disciplinary proceedings and the order of removal from service alongwith the order of rejection of appeal by the superior authority and intimated the applicant regarding the same vide order dated 11.6.1984. The order reads as under:-

"Without prejudice to any D.A.R action that may be taken in the matter, the entire proceedings from the issue of Memorandum of Major penalty no. C/129/MBCT/O/81 dt. 12.2.82 to the decision on your appeal dated 2.12.83 against the removal from service communicated to you under this office letter dated 2.2.84, are hereby cancelled."

3. From the pleadings of the parties it appears that this order that the entire proceedings be recalled as the applicant belonged to Operative side and the proceedings against him were initiated and taken by the Commercial side which has no jurisdiction. Meaning thereby the entire proceedings were void and the same be recalled by the Competent Authority. With the result that the entire proceedings stood washed of. The result of washing of the entire proceedings the applicant become entitled for the

full salary and allowances without any deduction what so ever till the date of his reinstatement. One of the grievance of the applicant is that the entire amount has not been given. The respondents are duty bound to pay the entire amount to the applicant as he continued to be in service. In view of the fact that the proceedings against him meant to be void by the Disciplinary Authority concerned thereafter the applicant was placed under suspension on 20.4.84 with retrospective effect and the departmental proceedings started against him. In the departmental proceeding the applicant was punished with a deduction of Rs.500/- to Rs.488/- from his pay be made. The applicant filed an appeal against the same. It was for a period 2 years. In appeal it was reduced to a period of 6 months. Feeling dissatisfied with the same the applicant filed the writ petition.

4. We have already taken the view here in the proceedings that the applicant was entitled to full salary, he could not have been suspended with retrospective effect and a suspension order having been revoked by the Disciplinary Authority themselves before the departmental proceedings would come to an end earlier the same could not have been passed unless the circumstances for the same is existed.

5. On behalf of the respondents a reference has been made to Rule 5(3) of the Railway Servants (Discipline & Appeal) Rules 1968 which reads as under:-

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"Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Railway Servant under suspension, is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have been continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders."

In the instant case the entire proceedings were found to be void and the statement in the proceedings which were given before the High Court were recalled and become infructuous. Meaning thereby that there are no legal proceedings against the applicant nor he was punished as such in the proceedings which were void. The Rule 5(3) has no applicability what so ever and the suspension order which was thus passed was not with the legal provisions.

6. The learned counsel contended that the proceedings which have been taken against him subsequently were without jurisdiction as once the applicant was exonerated and reinstated the proceedings could not have been reopened as it amounts jeopardy, meaning thereby that it was in violation of Article 20 to 22 of the Constitution of India and in this connection a reference has been made to the case of A.I.R 1975 Supreme Court

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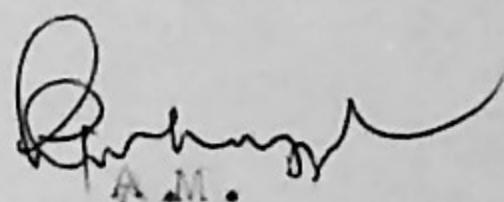
In that case the person concerned was exonerated and reinstated but again the proceedings on the same charges started. However in the said case it was observed, we may however make it clear that no Government Servant can urge that if for some technical or other good ground, procedural or other, the first enquiry or punishment or exonerations is found bad in law that a second inquiry cannot be launched. It can be; but once a disciplinary case has closed and the official reinstated, presumably on full exonerations, Govt. cannot re-start the exercise in the absence of specific power to review or revise, vested by rules in some authority. The basics of the rule of law cannot be breached without legal provision or other vitiating factor invalidating the earlier inquiry. In the said case itself these observations in this behalf ~~has~~ ^{have been} made and the applicant's case is coloured by the said observation.

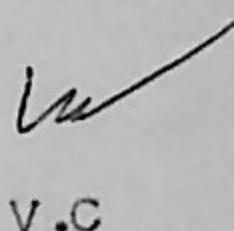
7. In the end the learned counsel contended that a charge against the applicant was with ultimate findings against him was that of negligence in as much as that one bag was not found and he contended that negligence will not tantamount to misconduct and the punishment which has been given to him is not a minor punishment but ^a to the major penalty. In this connection he made reference in a case "A.I.R 1979 Supreme Court, 1022 Union of India and Others Vs. J. Ahmed where in it has been held that " Disciplinary proceeding can be held against a member of the service for any act or omission which renders him liable to a penalty can be imposed for good and sufficient reasons. All India

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Services (Conduct) Rules, 1954 prescribe a Code of conduct for members of service. Discipline and Appeal Rules provide for disciplinary action and imposition of penalties. The inhibitions in the Conduct Rules clearly provide that an act or omission contrary thereto so as run counter to the expected code of conduct would certainly constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high.

8. In the instant case it was only a case of negligence or some lapses but it was not a case of misconduct and the respondents wrongly took the plea that the case was of misconduct and that is why they awarded punishment of reduction in rank. The charges of misconduct having been proved and rather minor penalty imposed, as such major penalty could not have been awarded. Accordingly this application deserves to be allowed. The punishment order dated 23.10.1979 is hereby quashed. However, it is open for the respondents to proceed in accordance with law incase they desire but we will not make any observation in this behalf. No order as to the costs.


A.M.


V.C

Dated: 29th July, 1992 :

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