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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

ORIGINAL APPLICATION NO.105 of 1987.

C.P.Gulati Vs. Sr.DOS,M.B.Div.&others

Hon'ble D.S.Misra-A.M.
Hon'ble G.S.Sharma-J.M.

(Delivered by Hon'ble D.S.Misra-A.M.)

This is an application under Section19 of the A.T. Act XIII of 1985. The applicant has challenged the order dated 23.1.1987 passed by the Sr.D.O.S. ,Northern Railway Allahabad (respondent no.1) for holding a fresh inquiry against the applicant rejecting his representation against denovo inquiry.

2. The applicant's case is that while working as Station Master, he was issued a chargesheet alleging that while appearing for a test for selection to the post of CYM/SSGrade, the petitioner had left the examination-hall at 1130 hours with answer-book and question paper and had come back at the close of the examination at 1330 hours; that the inquiry officer submitted his findings and gave a report that the charges levelled against the petitioner were not proved(copy annexure-4) ;that the disciplinary authority passed the order of punishment of removal from service without applying his mind and recording reasons for not agreeing with the findings of the inquiry officer; that he filed an appeal to the appellate authority and respondent no.1,who heard the appeal, found that the order of removal from service was void ab initio and cancelled the punishment; that respondent no.1 again reopened the case and issued a fresh chargesheet dated 24.1.85(copy annexure-3). The applicanthas challenged the issue of fresh chargesheet and the order of respondent no.1directing a fresh inquiry into the matter which had been decided finally in favour of the applicant.The applicant

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has sought permanent injunction against the respondents restraining them from holding fresh denovo inquiry on the same charges. An interim stay restraining the respondents from proceeding with the inquiry was passed by this tribunal.

3. In the reply filed on behalf of the respondents, it is stated that the order passed by respondent no.1 quashing the proceedings and punishment order was not an order passed on merit,but was on the ground of technical defect,that it is denied that the decision to hold a denovo inquiry from the stage of issuance pfa chargesheet was with malafide intention;that sri A.K.Manocho,Divisional Operating Superintendent who acted as a disciplinary authority in the instant case, was not a competent auithority, that Sri Manocha had recorded his own reasoning while passing the order of removal disagreeing with the findings of the inquiry officer; that respondent no.1,who is the correct disciplinary authority in the instant case, had passed this order in appeal after careful consideration in the light of existing rules; that the decision to initiate denovo inquiry was taken as there was technical flaw in holding the inquiry and not on the ground of merit and any allegation to the contrary is not admitted and denied;that it is well settled principle of law that where first inquiry is vitiated owing to technical defect, afresh inquiry on the same

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old charges can be held on merit; that the fresh SF-5 issued to the applicant is in order and does notinfringe any law; that the applicant had filed an appeal against the order to hold a de novo inquiry to respondent no.1, who had passed the order for ade-novo inquiry in the capacity of the disciplinary authority and not as an appellate authority; that no appeal/representation was submitted bythe applicant against the order of respondent no.1 to a higher authoirity and the instant application is not maintainable under the Administrative Tribunals Act.

4. A rejoinder affidavit was filed by the applicant in which it is stated that the reply filed by APO is not proper as it should have been filed either by respondent no.1 or respondent no.2. The applicant allegation made in the claim petition were reiterated. The applicant filed some documents which were brought on record.

5. We have heard the arguments of the learned counsel for the parties. The main point for decision in this case is whether a de-novo inquiry could be ordered against the applicant. The contention of the learned counsel for the applicant is that as the applicant was exonerated by the Inquiry Officer no fresh inquiry could be held into the matter and the order passed by the respondent no.1 holding fresh inquiry was illegal and should be quashed. Learned

counsel for the respondents contended that the DOS,who had initially ordered the holding of an inquiry and had passed the punishment order, was not competent to do so and therefore, the disciplinary proceeding was illegal from beginning to end and the order passed by the respondent no.1 was a correct order and that in law there is no prohibition for holding a fresh inquiry, if the inquiry held earlier is quashed due to some technical defect. Learned counsel for the applicant cited some case law in support of his contention which are dealt herewith.

i)**DWARIKA CHAND VS. STATE OF RAJASTHAN A.I.R. 1958 RAJASTHAN page** 38 . In this case an inquiry was held into the conduct of a clerk in Tehsil **SANCHORE** and the Collector held adepartmental inquiry and came to the conclusion that no case had been made out against the applicant. Subsequently, at the instance of the Anti Corruption Officer Jaipur the State Government ordered the Collector to hold a fresh inquiry. It was held that once a departmental inquiry is over and public servant has been exonerated, no second departmental inquiry on the same facts can be ordered unless there is a specific provision for reviving an order of exoneration in the service rules or any law.

ii)**V.D.GUPTA VS. STATE OF HARIYANA AIR 1972, S.C.,2472.**In this case it has been held that if an order affects employee financially, it must be passed after objective consideration and assessment of facts and after giving him full opportunity tomake his case.

In our opinion none of these two rulings relied-upon by the applicant are applicable to his case. In the case of Rajasthan, the inquiry against the delinquent had alredy been once concluded and he was exonerated by the competent authority. The Rajasthan High Court was fully justified in quashing the second disciplinary inquiry started against him, at the instance of Anti Corruption Officer. In the instant case the applicant was not exonerated bythe competent officer but only the charge framed against him was not found established by the inquiry officer. The disciplinary authority had not accepted the report of the inquiry officer and there was ,therefore, no exoneration of the applicant on merit. The applicant himself had preferred an appeal against the punishment awarded to him by the disciplinary authority and even on appeal, which was heard bythe Sr.D.O.S.(respondent no.1), he was not exonerated on merits as is evident from the copy of the order (annexure A-2) on record. The applicant has committed an

offence of purgery by making a wrong statement in para 6 (v) of his petition to the effect that the respondent no.1 had cancelled the punishment on merits.On the other hand the annexure A-2 shows that he had not entered into the merits of the case at all merely on the ground that the DOS,who had acted as disciplinary authority in the case was not competent authority do do so. There was,therefore, no exoneration of the applicant on merit.

The second ruling relied uponn by him has no direct application to the point in controversy,it simply lays down that before an order which may prejudice an employee is passed, he should be given an opportunity to explain his case.

On the other hand there are subsequent direct decisions of the Supreme Court. In **ANDND NARAIN SHUKLA VS. STATE OF M.P.,A.I.R. 1979 S.C. 1929**,it was held that when an earlier order was quashed on a technical ground, a second inquiry on the same charges can be held. In **STATE OF ASSAM VS. J.M.RAI BISWAS A.I.R. 1975 S.C. 2277**, it was held that no government servant can urge that if for some technical or other good ground,procedural or other, the first inquiry,or punishment,or exoneration is found bad in law, a second inquiry is permissible under the law. The contentions raised to the contrary by the applicant are,therefore, devoid of any force.

It was also vehemently argued on behalf of the applicant that the respondent no.1 ,who had heard the appeal of the applicant against the order of punishment passed by the DOS, could not himself act as a disciplinary authority,so as to order a fresh inquiry against the applicant. After careful consideration of this matter,we are of the view that neither in the Railway Servant(Discipline and Appeal) Rules 1968(hereinafter referred to as the D&A Rules, nor in any other rules, there is a prohibition that in the peculiar circumstances like the one before us, the appellate authority can not order a de novo inquiry. We will like to examine the scope of the powers and jurisdiction of an appellate authority hearing an appeal under Rule 22 of the D&A Rules. Under sub-clause(ii) of clause (c) of sub-rule (2) of Rule 22 of the D&A Rules, an appellate authority may remit the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit. This sub-clause thus presupposes an inherent power in the appellate authority to remit the case for rehearing

to any authority.Clause (iii) of the proviso to clause(c) of Rule 22(2) of the D&A Rules and sub-clause(b) of clause(iv) of the said proviso specifically lay down that in case the appellate authority decides to award major punishment in a case in which minor punishment has been awarded and the inquiry was not conducted as an inquiry for major punishment under rule 9, the appellate authority should ,itself,make the inquiry inaccordance with rule 9 of the D&A Rules. In view ofthis specific provision asking an appellate authority to do the work of thedisciplinary authority, the respondent no.1 committed no error in ordering a de novo inquiry against the applicant on comming to the conclusion that instead of the DOS, he himself was the competent authority to act as the disciplinary authority in the case against the applicant. We thus find no lack of jurisdiction or any other illegality on the part of the respondent no.1 and the impugned order passed by him is perfectly in accordnce with law and calls for no interference.

The petition is accordingly dismissed,without any order as to costs with a direction that the disciplinary authority against the applicant be concluded expeditiously. The interim stay,granted in the case stands vacated.

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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

REVIEW APPLICATION NO.29 of 1987

IN

Registration (OA) No. 105 of 1987.

C.P.Gulati ... Applicant.

Versus

Senior DOS Northern Railway,
Moradabad and another ... Respondents.

Hon'ble D.S.Mi ra,A.M.
Hon'ble G.S.Sharma,JM.

(Delivered by Hon'ble D.S.Misra)

This is a review petition against the judgment dated 26.8.1987 passed in original application no.105 of 1987 dismissing the claim petition. The review petition has been filed on the ground of incorrect appreciation of facts and the l aw applicable to the case.

2. We have heard learned counsel for the parties and have gone through the documents on record.We find that the factual and legal points raised in the review petition are the same as were taken in the original application. No new points, or any factual error, have been pointed out in the review petition. We are of the opinion that the points raised in the review petition can be urged only before the appellate court and such a plea is not admissible in a review petition.

Accordingly,we reject the review application.

A.M. 29/4/88 J.M.

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