

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,  
ALLAHABAD

Dated : Allahabad the 31<sup>st</sup> July 1995.

Original Application No. 819 of 1992.

Hon'ble S. Des Gupta (Administrative Member)  
Hon'ble Mr. T. L. Verma (Judicial Member)  
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R. D. Nigam, son of late Shri Mewa Ram,  
resident of 276, Company Bagh, LF/Tundla,  
LF/Tundla, Northern Railway, Tundla Jn. District  
Firozabad. .... applicant.  
(by Advocate Sri P. K. Kashyap)

Versus

1. Union of India through General Manager,  
Northern Railway, Baroda House, New Delhi.
2. Senior Divisional Mechanical Engineer,  
Northern Railway, Allahabad.
3. Additional Divisional Railway Manager,  
Northern Railway, Allahabad.

... respondents.

(By Advocate Shri Bharat Bhushan)

(BY HON'BLE MR. T. L. VERMA, J.M.)

O R D E R

1. The subject matter of challenge in this Original Application are punishment order dated 3.10.1991 and appellate order dated 18.2.1992. The applicant while working as FOM/TDL Tundla was in occupation of Railway

Quarter No. 51 ABC at Tundla. After his transfer to Chunar he was granted <sup>permission</sup> to retain the above quarter for a period of two months from 29.8.84 to 28.10.84 on normal rent and there after for 6 months from 29.10.84 to 31.5.85 on payment of double the assessed rent on ground of his children's education. He, however, it is stated, did not vacate the said railway quarter although, he was asked to do so by letter No. 99/M/Retention/TDL/85 dated 29.10.1985. A departmental proceeding, therefore, was initiated against him and <sup>a</sup> ~~the~~ charge-sheet was served upon him on 18.4. 1988 (Annexure-A-4). It is stated that the applicant submitted his written statement denying the charges. The written statement was considered by the then disciplinary authority who, closed the same finding the explanation submitted by the applicant satisfactory. The grievance of the applicant is that after 14 months another charge-sheet on the same allegation was issued to the applicant on 12.7.1988. Although the 2nd charge-sheet was against the provisions of Rule 9 of the Disciplinary Rules, the applicant submitted his written statement of defence denying the charges. The Inquiry Officer, after holding enquiry, submitted his report (Annexure-A-19). According to ~~the~~ finding recorded by the Enquiry Officer, the charge framed against the applicant had not been proved. The disciplinary authority, however, recorded finding to the effect that the applicant remained in unauthorised occupation of the Government Quarter from June, 1985 to June 1988 and accordingly held <sup>him</sup> ~~the applicant~~ guilty of the charges framed ~~against the applicant~~ and imposed punishment upon him of reduction to a lower stage in same time scale from the stage of Rs. 3050/- to the stage of

Rs. 2375/- in the scale of Rs. 2000/- to Rs. 3200/- for a period of 4 years. The appellate authority by order dated 18.2.1992 has rejected the appeal. This application has been filed for quashing punishment order dated 3.10.1991 and appellate order dated 18.2.92 on the ground that the 2nd departmental proceedings on the same facts was not maintainable and that the authority which recommended holding of fresh enquiry was not competent to pass such order. The impugned orders have been assailed <sup>also</sup> on the ground that principles of natural justice have not been complied with.

2. We have heard the learned counsels for the parties and perused the record. The averments made in para 4.7 of the application to the effect that the disciplinary proceedings initiated on the basis of charge-memo dated 18.4.1988 (annexure-A-4) was dropped by the then Disciplinary authority on finding the written statement of defence submitted by the applicant to be satisfactory, ~~These averments~~ have not been denied by the respondents in their counter-affidavit. All that ~~which~~ has been stated in para No.12 of the counter-affidavit ~~that~~ in reply to the contents of para 4.7 <sup>is</sup> that the same needs no comment. The obvious conclusion that would, therefore, follow is that the departmental proceeding initiated on the basis of the charge-memo (Annexure-A-4) was dropped by the then disciplinary authority.

3. In view of the foregoing conclusion, the second question that falls for our consideration is whether it was competent to initiate fresh enquiry on the basis of the same facts which were considered earlier and the proceeding was dropped on finding the explanation, submitted by the delinquent employee to be satisfactory. In this connection, reference may be made to sub-Rule (2) of Rule 10 of the Railway Servants Discipline & Appeal Rules, 1968, which reads as follows :-

\*10. Action on the inquiry report :-

(1) ... ..

(2) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall there upon proceed to hold further inquiry according to the provisions of Rule 9 as far as may be."

(3)... ..

Sub Rule (3) of Rule 10 provides that in case where the disciplinary authority disagrees with the findings of the inquiring officer shall records own finding on the charges if evidence on record is sufficient for the purpose. From the material on record, i.e. the averments made in the application and the counter-reply, filed by the respondents, it is apparent that the disciplinary authority neither remitted the case for further inquiry nor recorded dissenting note on the finding recorded by the inquiry officer, dropping ~~the~~ enquiry. The disciplinary

authority has ~~inherent~~ power to review and modify the articles of charges and drop some of the charges or all the charges after receipt of the written statement of defence submitted by the accused government servant under relevant rules. The disciplinary authority appears to have exercised its ~~inherent~~ power in accepting the report of the inquiry officer in dropping the charges.

4. However, the reviewing authority may, under Rule 25 of the Railway Servants Discipline and Appeal Rules on its own, ~~motion~~ <sup>motion</sup> or otherwise call for the record of any authority and revise any order made under these Rules ~~or under the rules repealed under Rule 29~~ after consultation with the Commission where such consultation is necessary, review modify and set-aside the order or confirm reduce/enhance or set-aside the penalty imposed upon the delinquent employee. ~~Therefore, we remit the case to the authority which made the order or to any other authority directing them to make such further inquiry as it may consider~~ <sup>proper in the circumstances</sup> ~~under the facts of the case~~ <sup>or</sup> and pass such order as it may deem fit.

5. Fresh inquiry, as has been done in the instant case, in our opinion could have been ordered either by the disciplinary authority or the reviewing authority under Rule 25 as mentioned above. We know of no other authority which can exercise the power of disciplinary authority, appellate authority or reviewing authority other than those mentioned in the relevant rules, pertaining to disciplinary proceedings. From

the averments made in para 14 of the counter-reply, it appears that the second charge-sheet was issued on the basis of the Vigilance Report (Annexure-CA-1). From the perusal of Annexure-CA-1, it appears that the enquiry report and the observation of the disciplinary authority were examined by the Vigilance. The enquiry report and the observation of the disciplinary authority were not accepted by the Vigilance for reasons given in the Annexure-CA-1. The learned counsel for the respondents failed to point out any provision of the Disciplinary & Appeal Rules empowering the authority other than the ~~main body~~ disciplinary authority/ appellate authority and reviewing authority to order for initiating fresh disciplinary proceedings. The authority on whose report ~~the~~ fresh disciplinary proceeding has been initiated in our opinion does not find place in the scheme of Disciplinary & Appeal Rules, 1968, ~~after issuing such an order.~~ <sup>In the</sup> facts and circumstances of the case, discussed above, initiation of fresh disciplinary proceedings on the same facts, in our opinion was without jurisdiction.

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6. In view of the foregoing consideration, we do not consider it necessary to record our finding on the contention of the learned counsel for the applicant that the respondents having recovered market and penal rent from the applicant for his over stay in the quarter, ~~he~~ <sup>the applicant</sup> could not have been subjected to double jeopardy by imposing impugned punishment in the disciplinary proceeding and leave it open.

7. In view of our finding recorded above, ~~that~~ initiation of fresh enquiry against the applicant was without jurisdiction, ~~it~~ follows that the punishment imposed by the disciplinary authority and confirmed by the appellate authority will be deemed as non-est. It was stated, that because of the above disciplinary proceeding, the D. P. C. which considered the applicant for promotion to grade Rs. 2375/- to Rs. 3500/- has kept its recommendation in sealed cover. One of the reliefs claimed by the applicant is that the respondents be directed to promote the applicant to grade Rs. 2375-Rs.3500/- from the date his juniors have been promoted to the said scale with all consequential benefits including arrears of pay and allowances.

8. ~~The~~ respondents, after conclusion of the disciplinary proceeding are expected to have opened the sealed cover and acted according to the recommendation of the D. P. C. In case, however, the applicant has been denied promotion to the said grade because of the pending disciplinary proceeding, only, the case of the applicant for promotion to grade Rs. 2375-3500 will have to be reconsidered by a review D. P. C. which shall examine the applicant for promotion on the basis of his service record as if no disciplinary proceeding has been initiated against him.

9. In view of the findings recorded above, we allow this application and quash the impugned orders dated 3.10.1991 and 18.2.1992 and direct

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the respondents to re-consider the case of the applicant for promotion to grade Rs. 2375-3500, by constituting review D. P. C., with effect from the date his juniors have been promoted in the light of the discussions made above. There will be no order as to costs.

*J. M.*

J. M.

*A. M.*

A. M.

VKP/-