

(11)

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NO. 832 OF 2006

ALLAHABAD THIS THE 7 DAY OF 8 2008.

Hon'ble Mr. A.K. Gaur, Member-J
Hon'ble Mr. K.S. Menon, Member-A

Udai Shanker Singh aged about 44 years, son of Shri Ram Awadh Singh, resident of Village and Post Gohani District Mau (U.P).

.....Applicant

(By Advocate: Shri R.K. Nigam)

Versus.

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Divisional Railway Manager, North Eastern Railway, Varanasi Division, Varanasi.
3. Chief Vigilance Officer, North Eastern Railway, General Manager's office, Gorakhpur.

.....Respondents

(By Advocate: Shri P.N Rai/Shri Anil Kumar)

ORDER

By Mr. A.K. Gaur, Member-J

Through this O.A., the applicant has prayed for following reliefs:

- (i) *to issue writ, order or direction in the nature of certiorari quashing the impugned order of compulsory retirement dated 20.9.2005 passed by the Disciplinary Authority and the Appellate order dated 18.5.2006 (Annexure A-I and A-II respectively).*
- (ii) *To issue another order, writ or direction in the nature of mandamus thereby commanding the respondents to reinstate the petitioner back in service immediately with all consequential benefits for which a time bound direction is fervently prayed;*
- (iii) *To issue another writ, order or direction in the nature of mandamus thereby commanding the respondent NO. 3 (Chief Vigilance Officer, Allahabad) to file affidavit of the Vigilance Inspector concerned and in case his affidavit is not filed, he may be taken up under the specific provisions of Railway Servants (Discipline and Appeal) Rules 1968 and likewise the enquiry officer also deserves punishment as undoubtedly he has misconducted himself for which specific provisions exist.*
- (iv)
- (v)"

✓

(P)

2. The brief fact of the case are that the applicant while working as Goods Guard was given a chargesheet SF-5 dated 16.7.2003. Copy of chargesheet has been filed as Annexure A-3. The Railway Vigilance Department deputed decoy Shir Triloki and Kamta Prasad pretending them to be a passenger for traveling in Train NO. 574, where the applicant was working as Guard on 12.12.2003. These decoy passengers met the applicant for traveling without ticket in the said train from Mau to Ballia after getting the approval from the applicant, decoy Shri Tikori had given Rs.30/- (already marked by the Vigilance) and as per instruction of applicant, they boarded in the attached coach to the Break Van of the Train. In the surprise check by the Vigilance Team, the applicant was directed to declare his private money in writing. The applicant did not declare his private money before joining the duty as per Rules. Rs.95/- had been recovered from the applicant including Rs.30/- (marked by Vigilance Team) given by the Decoy. The applicant being Guard of the Train was not authorized to carry passengers under the Rules. Accordingly, applicant submitted his reply to the chargesheet and ample opportunity was given to the applicant and all relevant documents were provided to him. Principle of natural justice has been followed and copy of the enquiry report was given to the applicant. After having considered the reply of the applicant, Disciplinary Authority found the charges to be proved. Accordingly by order dated 20.9.2005, the Disciplinary Authority awarded the punishment of compulsory retirement. Applicant preferred statutory appeal to Senior Divisional Operating Manager, Varanasi who decided the same by a reasoned and speaking order and Appellate Authority maintained punishment awarded by the Disciplinary Authority dated 18.5.2006. Applicant filed revision petition. (Copy of revision petition dated 14.6.2006 has been filed as Annexure 6 to the O.A.), the same was pending for consideration, before that applicant has submitted his so called reference dated 3.7.2006. The aforesaid reference was made under Rule 24 of Railway Servants (Discipline and Appeal) Rules, 1968. According to the applicant, Vigilance team has not followed the mandatory provisions of treating the currency notes with the help of chemical process and also getting the hands of the person concerned (applicant) duly dipped into water thereby changing the colour of the water from white to red. It has been contended on behalf of the applicant that neither the Disciplinary Authority nor the Appellate Authority had taken into

H/

consideration the fact that Decoy as well as Vigilance Khalasi and enquiry officer, all were in collusion, and no credence could be attached to their testimony. It is also contended on behalf of the applicant that admittedly the place where the trap was held is a public place, having crowd of independent and impartial witnesses, but since the Vigilance Teams had its own motive, they intentionally did not call any impartial and independent witness to corroborate the factum of incident.

3. In the reply filed by the respondents, it is clearly stated that against the appellate order, applicant preferred a revision petition dated 14.6.2006 and the same is pending for consideration, before that applicant has submitted his so called reference dated 3.7.2006 under Rule 25 of Railway Servants (Discipline & Appeal) Rules 1968 to the General Manager, N.E. Railway, Gorakhpur which in fact is contrary to the Rules. In spite of pendency of the said revision and reference under Rule 24 of Railway Servants (Discipline and Appeal) Rules 1968 without waiting for reasonable time, the applicant has immediately filed the present O.A. and the O.A. is premature and deserves to be dismissed as such. According to the respondents, enquiry officer has conducted the enquiry as per Rules in which charges were found proved and there is no illegality in the enquiry. Supplementary counter and rejoinder were also exchanged between the parties.

4. Supplementary affidavit was also filed by the counsel for the applicant, copy thereof was duly served upon learned counsel for the respondents. No supplementary counter affidavit has been filed by him. In the supplementary affidavit filed by the applicant, it is clearly mentioned that in the Departmental DAR proceedings the Vigilance visualized the pocket, Inquiry Officer Ramadhar Gupta, who was a retired railway employee, and he could not be appointed as Inquiry Officer in the DAR proceeding. Learned counsel for the applicant in support of this contention placed reliance on the decision of this Tribunal rendered in O.A. NO.129/07, Chandra Bhushan Prasad Srivastava Vs. Union of and India decided on 18.3.2008 and O.A. NO.479/07, Ram Bahor Yadav Vs. Union of India and others.

✓

5. The respondents in their reply also submitted that in view of Railway Board Guidelines dated 29.7.2008; there is nothing bad in appointing retired railway employee to enquire the charges leveled against the applicant. According to the applicant, no retired railway servant could have been appointed as Inquiry Officer under the Rules namely Railway Servants (Discipline and Appeal) Rules 1968 and order of punishment for compulsory retirement is bad in the eye of law and deserves to be quashed.

6. We have heard Shri R.K. Nigam, learned counsel for the applicant and Shri P.N Rai, learned counsel for the respondents.

7. Learned counsel for the applicant vehemently argued that in view of the decision rendered by Hon'ble Apex Court, a retired person cannot be appointed as an Inquiry Officer. According to the learned counsel for the applicant, the Inquiry officer must be a servant of the public and not a person who was not a servant of the public. In other words, he could not be a retired officer. The Appellate Authority did not consider even single point raised by the applicant in his appeal and had passed the order dated 18.5.06 by giving few lines comments. The order of the Appellate Authority deserves to be set aside in view of the decision rendered by the Hon'ble Supreme Court in **AIR 1986 SCC (L&S) 383- Ram Chandra Vs. Union of India and others**.

Learned counsel for the applicant has placed strong reliance on the decision rendered by a Bench consisting of **Hon'ble Mr. Justice Dr. B.S Chauhan and Hon'ble Mr. Justice Arun Tandon, J.J. in Kendriya Vidyalaya Sangathan Vs. Central Administrative Tribunal, Allahabad Bench, Allahabad and Anr.** The Hon'ble High Court while relying upon the judgment of Hon'ble Supreme Court rendered in **(2004)13 SCC 427 Ravi Malik Vs. National Film Development Corporation Ltd.** And Ors has clearly held that appointment of retired officer as an Inquiry Officer for holding the departmental inquiry against a person working in Kendriya Vidyalaya is in teeth of the provisions of Central Civil Services (Classification, Control and Appeal) Rules, 1965, the appointment of Inquiry officer is governed by the provision of Railway Servant (Disciplinary and Appeal) Rules and other provisions and therefore we find

h✓

no reason to defer with the conclusion arrived at by Hon'ble Supreme Court in its judgment rendered in Ravi Malik's case (supra), that the Inquiry Officer to be appointed for holding an enquiry against a Government employee is to be a person in active service. Learned counsel for the applicant has further placed reliance on the decision rendered by the Tribunal in **O.A. NO. 479/07 in the case of Ram Bahor Yadav Vs. Union of India and Ors. and OA NO. 41/2007 in the case of Balvir Bahadur Vs. Union of India and Ors** and argued that under Sub Rule (2) of Rule 9 of the Rules of 1968 no retired railway servant could be appointed as Inquiry officer and inquiry report submitted by him and subsequent order thereon deserves to be quashed on this ground alone.

8. With a view to properly appreciate the arguments on the said point, it would be useful to reproduce sub-rule (2) of 9 of the Rules of 1968, but also sub-rule (2) of Rules 14 of Central Civil Services (Classification, Control and Appeal)Rules, 1965 (for short the Rules of 1965).

9. Sub-rule (2) of Rule 9 of the Rules of 1968 reads as under:-

"(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a railway servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, (a Board of Inquiry or other authority) to inquire into the truth thereof".

Sub-Rule (2) of Rule 14 of CCS (CCA) Rules reads as under:-

"Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

Explanation:-where the Disciplinary Authority itself holds the Inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) to the Inquiring Authority shall be construed as a reference to the Disciplinary Authority".

10. In Ravi Mallick's case (supra) the Apex Court considered the meaning of word 'Public Servant" appearing in Rule 23 (b) of Service Rules and Regulation 1982, relating to the servants of National Film Development Corporation. Their Lordships took the view that words

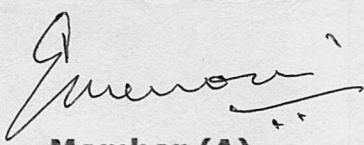
"Public Servant" used in Rule 23 (b) would not include retired officer. We have also noticed that decision rendered by Principal Bench of this Tribunal dated 19.4.2006 in O.A. NO.766/06- Sangeeta Ashok's case, a Bench of Allahabad Tribunal relying upon this judgment set aside the inquiry report as well as the punishment order based on it by order dated 22.1.2007 in O.A. NO. 41/07. That was a case, relating to a servant of Kendriya Vidyalaya Sangathan (KVS). The Bench ruled that Retired Servant, would not fall within the expression "an authority", used in Sub-Rule (2) of Rule 14 of the Rules of 1965. The view taken by the Tribunal has been upheld by the Hon'ble High Court in writ Petition No.44002/07. The Hon'ble High Court clearly observed that any executive instructions, providing for enquiry by a retired servant, will be of no use unless the rules were amended. Shri P.N Rai, learned counsel for the respondents has vehemently argued that in that case the above judicial pronouncements relied on by Shri R.K. Nigam and sub- Rule (2) of Rule 9 of the Rules of 1968 of the value of instructions/guidelines dated 29.7.1998, were not under consideration. On the other hand, Shri R.K. Nigam, learned counsel for the applicant contended that what has been ruled in the context of an expression "an authority" used in sub-rule (2) of Rule 14 of the Rules of 1965, will hold good as regards the scope and meaning of words "other authority" appearing in sub-rule (2) of Rule 9 of the Rules of 1968. A close reading of sub-rule (2) of Rule 9 of the Rules of 1968, reveals that it is para meteria with sub-rule (2) of Rule 14 of the Rules of 1965. If the words "an authority" in sub rule (2) of Rule 14 of the Rules of 1965, does not include retired servant, the expression "other authority" used in sub-rule (2) of Rule 9 of the Rules of 1968, will also not include retired servant of the Railways. In our considered view guidelines/order dated 29.7.1998 will not supersede sub-rule (2) of Rule 9 of the Rules of 1968. Executive instructions cannot enlarge the meaning of words "other authority".

11. So we accept the contention of Shri R.K. Nigam, learned counsel for the applicant that Shri Ramadhar Gupta, a retired railway servant could not have been appointed as Inquiry Officer under Sub-Rule (2) of Rule 9 of the Railway Servants (Discipline and Appeal) Rules and the report submitted by him is wholly without jurisdiction and no punishment order could have been passed on such a report.

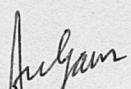
✓

12. Accordingly, the O.A. is allowed and orders dated 20.9.2005 and 18.5.2006 is hereby quashed with a liberty to the respondents to get the enquiry held afresh in accordance with Rules of 1968 by appointing eligible persons as Enquiry officer as per Sub Rule (2) of Rule 9 of Rules of 1968.

No order as to costs.



Member (A)


Member (J)

Manish/-