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OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH: ALLAHABAD.

THURSDAY, THIS THE 24TH DAY OF MAY, 2007.

QUORUM : HON. MR. JUSTICE KHEM KARAN, V.C.

HON. MR. K.S. MENON, A.M.

ORIGINAL APPLICATION NO.153 OF 2007.

Suman Kumar Gami, Son of, Late Ram Prakash Gami, aged about 42 years, R/o, 557-A, Northern Railway New Loco Colony, Varanasi Cantt..... Applicant.

Counsel for applicant: Shri S.S. Sharma.

Versus

1. Union of India through General Manager, Northern Railway, Headquarter Office, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, D.R.M. Office, Lucknow.
3. The Additional Divisional Railway Manager-II, Northern Railway, D.R.M. Office, Lucknow. (The Appellate Authority).
4. The Divisional Superintending Engineer-II, Northern Railway, D.R.M. Office, Lucknow (Disciplinary Authority).
5. The Divisional Engineer-III, Northern Railway, D.R.M. Office, Lucknow (Disciplinary Authority).
6. The Assistant Divisional Engineer, Northern Railway, Varanasi (Enquiry Officer).

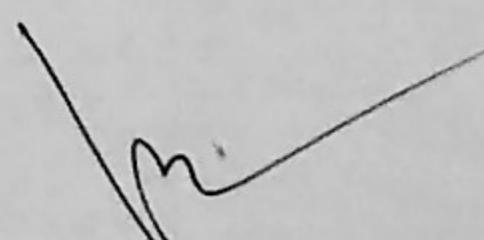
..... Respondents.

Counsel for Respondents: Sri P.N. Rai.

O R D E R

BY HON. MR. JUSTICE KHEM KARAN, V.C.

The applicant Suman Kumar Gami is praying that the order dated 18.12.2006, passed by the Additional Divisional Railway Manager-II, Northern Railway, Lucknow in exercise of his appellate powers under Rule 22 of the Rules of 1968, remitting the matter back to the Divisional Engineer-II for inquiry *denovo*, be quashed and also the order dated 19.4.2006 (Annexure A-4), passed by the Divisional Engineer-III, Northern



Railway appointing the Inquiry Officer to conduct the inquiry.

2. His case, in brief, is that after being subjected to formal disciplinary proceedings under Rule 9 of the Railway Servant (Discipline & Appeal) Rules, 1968, the Divisional Superintending Engineer-II, Northern Railway, Lucknow imposed upon him the penalty of reduction, postponing the future increment from the state of Rs.5250/- to the stage of Rs.4500/- in the pay scale of Rs.4500-7000 for a period of three years from the date the order dated 9.1.2003. He says that he preferred a departmental appeal to the A.D.R.M., Northern Railway, Lucknow, which he dismissed vide order dated 21.4.2003. Applicant filed one O.A. No.1085/04, which this Tribunal allowed in part vide its order dated 15.3.2005. The appellate order dated 21.4.2003 was set aside with a direction to it to decide the appeal afresh in the light of the observations made, within a period of four months from the date of receipt of a copy of the order. It appears that after these directions dated 15.3.2005 of this Tribunal, the Appellate Authority passed the impugned order dated 18.12.2006 (Annexure A-3), which is being challenged in this O.A. on the grounds inter alia that the Appellate Authority could not have, in exercise of ~~its~~ powers under Rule 22, of the Rules of 1968, remitted back the matter for *denovo* inquiry and that too ~~to an~~ authority lower in rank to the authority, which ~~had~~ passed the punishment order. It is said that on the basis of this impugned order of December, 2006 of the Appellate Authority, the Divisional Engineer appointed Inquiry Officer vide order dated 19.4.2006 for holding fresh inquiry.

3. We have heard Shri S.S. Sharma appearing for the applicant and Shri P.N. Rai for the Respondents. Shri Sharma has contended that the averments made in the impugned order dated 18.12.2006, would bring the case within clause (v) of proviso 4 of sub rule 2 of Rule 22

of the Rules of 1968 and a plain reading of the said clause makes it clear that though the Appellate Authority can direct for inquiry in accordance with the provisions of Rule 9 but will pass the orders himself on the basis of inquiry so conducted pursuant to the order passed in appeal. He says that the provision does not permit the Appellate Authority to direct the authority concerned to hold denovo inquiry by appointing Inquiry Officer etc. Shri Sharma has also submitted that it is not clear from the impugned order dated 18.12.2006 as to whether the earlier punishment order has been kept intact or has been set aside or whether the appeal has been kept pending or has been allowed. He argues that if the punishment order remains intact, the question of holding denovo inquiry should not arise. According to him, the first question of denovo inquiry should not arise and even if for the sake of arguments, it arises that could be done by only setting aside the punishment order. Shri Sharma says that the impugned order has created a lot of problems and the applicant ^{is} ~~was~~ fix as to where he stands and what remedies ^{he} should pursue. Shri P.N. Rai has tried to justify two orders.

4. Firstly, when this Tribunal had directed the Appellate Authority to dispose of the appeal on merits, he ought to have tried to do so within the time given by the Tribunal and should not have delayed the matter by about two years. Secondly, if he was convinced that the applicant ^{had} ~~was~~ not given reasonable opportunity of hearing, he ought to have passed clear-cut orders for directing the authority concerned to hold inquiry as per Rule 9 and send the proceedings to him so that he could pass necessary orders. We doubt whether denovo inquiry, as directed in the order dated 18.12.2006, could have been ordered in exercise of the powers under Rule 22 of the Rules of 1968. A Full Bench of this Tribunal has taken a view in Siya Ram Soni and two others Vs. Union of India and others, reported in 1997 MPSLR 389 that denovo inquiry in

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exercise of powers under Rule 27 or Rule 29 of the Rules of 1965, could not be ordered. The provisions contained under Rule 27 of the Rules of 1965 appear to be ~~peripheria~~ ^{pari materia} to the provisions contained in Rule 22 of the Rules of 1968. So ~~mentioning~~ no different conclusion can be drawn on that point. ~~so~~ ^{From} ~~From~~ this angle as well, such a denovo inquiry, as provided ^{by} in the impugned order dated 18.12.2006, could not have been directed by the Appellate Authority in exercise of its powers under Rule 22.

5. Shri Sharma has tried to say that since a number of years have elapsed to the start of the disciplinary proceedings and since the applicant is working at the initial grade for the last so many years, so matter should be closed by setting aside the punishment order. We are of the view that this will not be proper in the facts and circumstances of the case. The proper course seems to be to set aside the impugned orders dated 18.12.2006 and ask the Appellate Authority to pass a fresh order in accordance with law within the shortest possible time, preferably within a period of two months from the date a copy of this order is produced before him.

6. So the impugned order dated 18.12.2006 is hereby quashed with a direction to the Respondent No.3 to decide the applicant's appeal afresh in accordance with the relevant rules and in the light of the observations made above, within a period of two months from the date a copy of this order is produced before him.

No order as to costs.

Guernsey
A.M. 24.5.07

V.C.

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