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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.263 of 2003
Cuttack, this the 26th day of June, 2007.

Subash Ch. Dakua ... Applicant
Versus
Union of India & Others ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?

(N.D.RAGHAVAN)
VICE-CHAIRMAN

13/3/07
(B.B.MISHRA)
MEMBER(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.263 of 2003
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C O R A M:

THE HON'BLE MR. N.D.RAGHAVAN, VICE-CHAIRMAN
AND
THE HON'BLE MR.B.B.MISHRA, MEMBER (A)

Subash Ch. Dakua, aged about 49 years, son of Gangadhar Dakua,
working as Travelling Ticket Examiner (T.T.E), East Coast Railway,
Puri, At/Po/Dist.Puri.

..... Applicant.

By legal practitioner: M/s.G.A.R. Dora, G.R.Dora, J.K.Lenka,
Advocates.

-Versus-

1. Union of India represented through General Manager, East Coast Railway, Bhubaneswar, Dist. Khurda.
2. Senior Divisional Commercial Manager, East Coast Railway, Khurda Road, PO. Jatni, Dist. Khurda.

... Respondents.

By legal practitioner: Mr. P.C.Panda, Advocate

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ORDER

MR.B.B.MISHRA, MEMBER(A):

On the basis of the CBI trap of demand and acceptance of bribe by the Appilcant in the capacity of Traveling Ticket Examiner (in short 'TTE'), a set of charge under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 was drawn up and served on him under Annexure-2 dated 12.04.2001. On receipt of show cause, the Disciplinary Authority, vide order dated 06.08.2001 appointed Shri D.N.Saha Enquiry Officer. While the enquiry was in progress, vide order dated 26.12.2001, Shri Saha was replaced by one retired Railway Officer namely Shri K.Ranga Rao. But Shri Rao expressed his inability to be the EO in this case; for which Shri A.K.Singh was appointed EO to enquire into the charge framed against the Applicant. The newly appointed EO, Shri A.K.Singh, vide his letter No. CEI/D&A/SCD/KUR/02/90, dated 04.02.2002 informed the Disciplinary Authority that the previous EO had conducted the enquiry without any PO and the report was bereft of the documents relied in the charge memo. He also returned the entire file containing 83 pages which includes the part report of the previous IO vide letter No.CEQI/D&A/SCD/KUR/02/90 dated 18.07.2002. On receipt of the papers, the Disciplinary Authority examined the matter with

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reference to various representations made by the Applicant in regard to frequent change of the EO, delay in concluding the proceedings etc. and directed vide order under Annexure-6 dated 15.01.2003 for holding de novo enquiry. Being aggrieved by such order of the Disciplinary Authority, he has carried the matter in appeal. No reply on his appeal and on the other hand notice to appear in the enquiry has prompted him to approach this Tribunal in the present Original Application filed under section 19 of the Administrative Tribunals Act, 1985 with prayer to quash the order under Annexure-6 dated 15.1.2003 with direction to complete the enquiry from the stage it was stopped and submit the report at an early date.

2. Respondents filed their counter stating that if it was found that the enquiry has not been done in proper manner in accordance with rules, the Disciplinary Authority has inherent power to order for de novo/fresh enquiry by any other EO. As in this case it was seen that the previous EO had left serious lacuna in the enquiry, the disciplinary authority has rightly ordered for de novo enquiry. It has been stated that if the matter is enquired into afresh it would not cause any prejudice to the Applicant as he would be provided sufficient opportunity to meet the points and prove his innocence. They have therefore, prayed for dismissal of this OA.

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3. It appears from the record that on 08.05.2003 the matter was listed for consideration of admission and grant of ad-interim order. But this Tribunal while directing issuance of notice on the OA, was not inclined to grant any ad interim order. Being aggrieved by such order, the Applicant filed WP (C) No. 4964 of 2003. The Hon'ble High Court in order dated 29.05.2004 while directing notice to the Respondents, stayed the further enquiry as against the Applicant and it is the admitted fact of the parties that the stay order is still in force as the matter has not yet reached a finality.

4. It is the case of the Applicant that the order under Annexure-4 directing de novo enquiry is against the Rule 9 (24) of the Railway Servants Discipline and Appeal Rules, 1968. His stand is that as per Rule 9 (18 to 24) if the EO and his successor find any inherent lacuna or defect in the evidence already recorded, he may recall the witness for examination, cross examination and re-examination. But the successor must act on the evidence recorded by his predecessor. His argument is that if the appellate authority rejects the appeal, the revisional authority in exercise of the powers conferred under rule 22 (2) of the Rules, 1968, to meet out ends of justice may pass necessary orders as he deems proper. Similarly, in exercise of powers conferred under Rule 25 (1) (c), the revisional authority may remit the case for further enquiry as it

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considers proper in the circumstances of each case from a particular stage from where the infirmity crept in. But certainly the disciplinary authority has no power to direct de novo enquiry in the manner as has been done in this case. Therefore, he fervently prays for grant of the relief claimed by him in this OA. None appeared for the Respondents. Also no written note of submission was filed by any party although opportunity was given in order dated 23.02.2007.

5. Before proceeding to deal with various contentions advanced by the parties, we would like to quote various provisions made in the Rules. Sub Rule 24 of Rule 9 of the Railway Servants (D&A) Rules, 1968 provides as under:

“9(24) Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein and is succeeded by another inquiring authority which has, and which exercises, such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor, and partly recorded by itself.

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross examine and re-examine any such witnesses as hereinbefore provided.”

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6. Railway Board's Letter No. E(D&A) 63-RG 6.44 dated 4-5-70 (NR,SL.No.5025) deals with regard to inquiring authority succeeded by another inquiring authority and it provides as under:

“Whenever an inquiring authority after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein and is succeeded by another inquiring authority which has and which exercises such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor or partly recorded by its predecessor and partly recorded by itself (This rule has been upheld by the Supreme Court in Civil Appeal No. 1186 (H) of 1967 in General Manager Eastern Railway v. Jwala Prasad Singh).

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded, is necessary in the interest of justice, it may recall, examine, cross-examine and re-examine any such witnesses as herein before provided.”

7. Rule 10 of the Railway Servants (Discipline and Appeal) Rules, 1968 deals with regard to action on the inquiry report relevant portion of which is quoted herein below:

“10. ACTION OF THE INQUIRY REPORT:

(1) If the disciplinary authority, having regard to own findings whether it is itself the inquiry authority, or having regard to its decision on all or any of the findings of the inquiring authority, is of the opinion that the penalty warranted is such as is within its competence that authority may act on evidence on the record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interest of justice, recall the

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witnesses and examine, cross-examine and re-examine the witnesses and may impose on the Railway Servant such penalty as is within its competence, in accordance with these rules. Where such disciplinary authority is of the opinion that the penalty warranted is such as is not within its competence, that authority shall forward the records of the inquiry to the appropriate disciplinary authority who shall act in the manner as hereinafter provided.

(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 thereupon proceed to hold further enquiry according to the provisions of Rule 9 as far as may be."

8. From the above, it is clear that 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 thereupon proceed to hold further enquiry according to the provisions of Rule 9 as far as may be. Also it is crystallized that whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein and is succeeded by another inquiring authority which has, and which exercises, such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor, and partly recorded by itself. On the face of the rules quoted above, it cannot be said that the order under Annexure-6 dated 15-01-2003 of the disciplinary authority directing de novo enquiry by another EO is sustainable.

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9. Rule 10 of the Railway Servants (Discipline and Appeal) Rules, 1968 is the replica of Rule 15 of the CCS (CCA) Rules, 1965 which is applicable to the employees other than the Railways. While dealing with a similar grievance as to whether the disciplinary authority has the power to direct de novo/fresh enquiry of an employee covered under Rule 15 of the CCS (CCA) Rules, 1965, Their Lordships of the Hon'ble Apex Court in the case of **R.K. Deb v. Collector of Central Excise**, AIR 1971 SC 1447 have held that there is no provision in Rule 15 for completely setting aside the previous enquiry on the ground that the report of the enquiry officer or officer does not appeal to disciplinary authority. The disciplinary authority has enough power to reconsider the evidence itself and come to its own conclusion under Rule 9. Further it was held that if there is some defect in the inquiry conducted by the inquiry officer, the disciplinary authority can direct the inquiry officer to conduct further inquiries in respect of that matter but it cannot direct a fresh inquiry to be conducted by some other officer.

This was also the view taken by the Principal Bench of the CAT in the case of **S.P. Bansal v. Union of India and others**, ATR 1987 (1) CAT 215.

In the case of **Kesavan Namboodiri v. State of Kerala and others**, 1983 (1) SLJ 182 (Ker.) it has been held that

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disciplinary authority cannot wipe out the inquiry already done and direct a de novo inquiry.

While examining Rule 10(2) of the Railway Servants (D&A) Rules, 1968, in the case of **L. David v. Union of India**, (1990) 14 ATC 590 it has been held that the Rule 10(2) is very clear and unambiguous viz., the disciplinary authority for its reasons to be recorded in writing, may remit the case to the inquiring authority for further inquiry and report. The rule does not envisage a de novo inquiry by appointing another inquiry officer.

In the case of **Gulab Singh v. Union of India**, 5/99 Swamynews 82, the Principal Bench of this Tribunal have held that the disciplinary authority if it is of the opinion that the inquiry was incomplete or irregular in any respect can only remit the case for further inquiry but cannot order a de novo inquiry.

Similarly a civil servant cannot insist for de novo inquiry when there has been change of personnel of inquiry officer because the findings of inquiry officer do not have a conclusive or binding effect on the punishing authority (Ref. **S.Harjit Singh v. I.G.Police**, AIR 1963 Punjab 90 & **DIG of Police v. Amualanathan**, AIR 1966, Madras 203 (FB)).

In other words, also a change of inquiry officer after the proceedings have begun and some evidence recorded cannot make

any difference to the case of the civil servant. Report of inquiry officer was not vitiated, nor there was violation of any principle of natural justice. If the inquiry officer starts inquiry from where it has been left by its predecessor, the proceedings are not vitiated. (Ref: **General Manager, Eastern Railway v. J.P. Singh**, AIR 1970 SC 1095). It is also well settled law that no inquiry officer can be appointed to write the report only, after the recording of evidence is already over. In other words, the change in the inquiry officer is permissible only when a part of the evidence is still to be recorded. (Ref. **M.N.Dasanna v. State of A.P.**, (1973) 2 SLR 92).

10. In this view of the matter, since the order under Annexure-4 is contrary to Rules and the Laws cited above, the same is hereby quashed and the matter is remitted to the DA.

11. We see that that the order dated 08.05.2003 of this Tribunal refusing to stay the proceedings was challenged before the Hon'ble High Court of Orissa in W.P. (C) No. 4964 of 2003. The Hon'ble High Court of Orissa in order dated 29.05.2003 while directing notice to the Respondent, in Misc. Case No.4638 of 2003 was pleased to stay the further enquiry. Lastly the matter was listed on 04.08.2003 and the Hon'ble High Court of Orissa passed the following orders:

"None appeared for the opposite parties in spite of service of notice. It appears that this case was listed number of times for the opposite parties to show

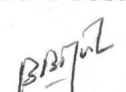
cause against prayer for interim order and against the main writ petition. Despite this, none has turned up though the case was adjourned from time to time due to non-appearance of the opposite parties. In the circumstances, let this case go out of the list for the present.

Until further orders, interim order dated 29.5.2005 passed in Misc. Case No.4638 of 2003 shall continue."

12. Since the Hon'ble High Court of Orissa stayed further enquiry in the matter, which is still in force, we refrain from passing any order so far as the prayer of the applicant to direct the Respondents to start the enquiry from where it has been left by its predecessor.

13. With the observations and directions made above, this OA stands disposed of by leaving the parties to bear their own costs.


(N.D. RAGHAVAN)
VICE-CHAIRMAN


(B.B. MISHRA)
MEMBER(A)