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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH: JODHPUR

Date of order : 2.7.1996

OA No. 296/95

Chattur Singh ... Applicant.
v e r s u s
Union of India & Anr. ... Respondents.

Mr. S.K. Malik, Counsel for the applicant.

Mr. V.D. Vyas, Counsel for the respondents.

CORAM:

Hon'ble Mr. Gopal Krishna, Vice Chairman.

Hon'ble Mr. S.P. Biswas, Administrative Member.

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PER HON'BLE MR. GOPAL KRISHNA:

Applicant Chattur Singh in this application under Section 19 of the Administrative Tribunals Act, 1985, has assailed the impugned orders at Annexures A/1, A/2 and A/6 dated 8.7.94, 12.9.94 and 12.7.95 respectively by which a de novo enquiry under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 (for short, the Rules), was proposed to be held against him and for holding a de nova enquiry Shri Sita Ram was appointed as an Enquiry Officer.

2. The contentions of the applicant are that he was chargesheeted for major penalty for the offence of accepting and demanding a price of Rs. 90/- vide Annexure A/3 dated 25.9.92. Thereafter, the enquiry officer was appointed to conduct an enquiry. The enquiry officer after completing the enquiry had come to the following conclusion :-

"In the gist so far the charges to the extent of demand and acceptance of the tained money is concerned the same are not proved however the charge that the tained money was recovered from the table drawer of Shri Chattar Singh is proved."

A copy of the enquiry report was furnished to the applicant vide Annexure A/5. Instead of passing a final order on the enquiry report, the Disciplinary Authority (respondent No.2) passed the impugned order

CPK/b-n



for de novo enquiry against the applicant vide Annexure A/1.

3. The contention of the respondents, on the contrary, is that after receiving the report from the enquiry officer, the matter being connected with the Vigilance, had to be referred to the Vigilance Officer (T), Northern Railway Headquarters, New Delhi, as also the C.B.I. Authorities who had initiated the action against the applicant. The C.B.I. Authorities by a confidential communication dated 14.6.1994 informed the General Manager (Vigilance) that the conclusion of the Enquiry Officer having been based on mere presumption, his report was not acceptable and, therefore, it was suggested that a fresh enquiry be held against the applicant by appointing a new enquiry officer. It is also urged on behalf of the respondents that since earlier enquiry report was not accepted as correct, it was considered expedient in the interest of justice to order in terms of Rule 9 of the Rules to hold a de novo enquiry in the matter. Thus, the action of the Disciplinary Authority in refusing to accept the report of the Enquiry Officer and making an order for de novo enquiry was wholly justified. It is also stated that there is no prohibition under the law for holding further enquiry as envisaged under Rule 10 (2) of the Rules.

4. We have heard the learned counsel for the parties and have gone through the records of the case carefully.

5. The subject of main challenge is the order at Annexure A/1 dated 8.7.1994, which reads as follows :-

"NORTHERN RAILWAY

Confidential

Name of Railway Administration
D.R.M's Office, Jodhpur.

DCS/Confdl./Vig/SPE/55/91

Dated : 08.7.1994

11-Vig/8137/91/SPE

O R D E R

Whereas de novo inquiry under rule 9 of the Railway Servant (Discipline & Appeal) Rules, 1968 is being held against Shri Chattar Singh Chauhan, CPS, Jodhpur.

And whereas the undersigned considers that an EO/HQ/NDLS should be appointed to re-inquire into the charges framed against him.

Now, therefore, the undersigned in exercise of the powers conferred by sub-rule (2) of the said rules, hereby appoints Shri Raj Kumar Malhotra EO/HQ/NDLS as inquiry officer to inquire into the charges framed against Shri Chattar Singh Chauhan, CPS/Jodhpur.


Cykhre

Singnature.....

Name (N.P. Singh)

Sr. Divl. Comml. Manager,
N. Railway, Jodhpur."

6. It is crystal clear from a perusal of the impugned order that what was, in fact, proposed to be held against the applicant ^{was} a de novo enquiry / fresh enquiry and not a further enquiry as urged by the learned counsel for the respondents before us. A perusal of Rule 10 (2) of the Rules clearly shows that there is no provision conferring any power to the Disciplinary Authority to make an order for re-enquiry or denovo enquiry into the charges which had already been enquired into by an Enquiry Officer who had submitted his report to the Disciplinary Authority after concluding the enquiry. Rule 10 (2) of the Rules does not authorise the Disciplinary Authority to hold successive enquiries and all that it permits is that the Disciplinary Authority, for reasons to be recorded by it in writing, remit the case to the enquiring authority for further enquiry and the enquiring authority shall thereupon proceed to hold further enquiry according to ^{the} provisions of Rule 9. All that Rule 10(2) of the Rules empowers is the remittance of the case to the inquiring authority for further enquiry and report and inquiring authority shall thereupon proceed to hold further enquiry according to the provisions of Rule 9 as far as may be. Reliance is placed on 1994 (1) ATJ 222 Vol. 16 D.Devaraj vs. Union of India & Ors. in which the Madras Bench of the Tribunal has observed as follows :-



"The above decision clearly establishes that the first respondent has no power to appoint the second respondent as enquiry officer to re-enquire and submit his report when the enquiry report has already been submitted by the first enquiry officer and the same is received by the disciplinary authority and the applicant was asked to submit his explanation on the same. The enquiry report submitted by the first enquiry officer is still in force and as such we are unable to agree with the contention of the first respondent that he has got power to appoint the second respondent as enquiry officer to conduct fresh enquiry."

7. In view of the legal position stated above, the impugned orders at Annexure A/1 dated 8.7.94, Annexure A/2 dated 12.9.94 and Annexure A/6 dated 12.7.95 are hereby set aside with all consequential benefits. However, the respondents are free to take further appropriate action in

C.K. Kulkarni

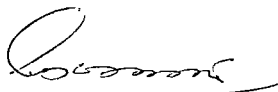
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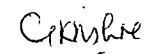
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the matter in accordance with rules.

8. This application is allowed accordingly with no order as to costs.


(S.P. BISWAS)
Member (Adm.)


(GOPAL KRISHNA)
Vice Chairman

CVR.

