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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR

O.A. No. 518/1995

Date of order: 16.8.2001

Poosa Ram S/o Shri Kan Singhji, by caste Rawna Rajput,
aged about 50 years, R/o House No. CH-14, High Court
Colony Ratanada, Jodhpur.

(Ex-Hospital Attendant, Health Unit, Samdari)

...Applicant.

V e r s u s



- (1) Union of India, through the General Manager,
Northern Railway, Baroda House, New Delhi.
- (2) The Chief Medical Superintendent,
Northern Railway, Railway Hospital,
Jodhpur.
- (3) The Divisional Medical Officer,
Northern Railway, Samdari.
- (4) The Divisional Medical Officer,
Northern Railway Health Unit,
Merta Road.

...Respondents.

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

Mr. S.S. Vyas, counsel for the respondents.

CORAM:

HON'BLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER.

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER.

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Dr

: O R D E R :

(per Hon'ble Mr. J.K. Kaushik, Judl. Member)

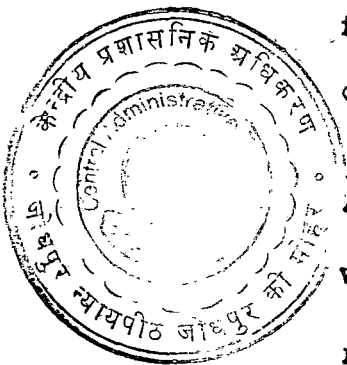
Shri Poosa Ram has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 and has prayed that order dated 05.05.1995 (Annexure A/1) passed by respondent no. 3 and order dated 27.08.1995 (Annex. A/2) passed by respondent no. 2, be declared illegal and quashed. The applicant be directed to be re-instated in service with all consequential benefits including arrears of pay and promotion. He has also prayed for awarding interest @ 24%p.a. on the amount of arrears of pay.



2. The factual matrix of the case as borne out from the pleadings of the applicant are that while working on the post of Hospital Attendant in Health Unit Merta Road, in the year 1990, a trap was conducted by C.B.I. The applicant was placed under suspension by senior Divisional Medical Officer, Jodhpur vide letter dated 09.06.1990. The suspension order was revoked by ADMO Merta Road, vide letter dated 03.10.1991. Thereafter a charge-sheet for major penalty was issued vide memo dated 15.03.1991 by 4th Respondent. The ADMO Merta Road appointed Inquiry Officer vide letter dated 09.12.1991. On the other hand, the applicant was posted to Railway Hospital, Samdari and he joined at Samdari on 08.11.1991.

3. The inquiry was concluded and a copy of inquiry report was supplied to the applicant by the 4th Respondent for making a representation/submission within a period of 15 days. The applicant submitted a representation against the inquiry report vide letter dated 24.05.1994, stating therein

that the inquiry was not conducted as per rules in as much as the statement of witnesses were not recorded in his presence, the cross examination were not done, many other infirmities in the inquiry were pointed out. Thereafter another inquiry officer was appointed without recording any reason. Without following the due procedure the inquiry was concluded in one date itself without calling the defence counsel and asking the applicant to appear before him. Again the inquiry report was submitted to the respondent no. 4 though he had no jurisdiction in the matter. A copy of the inquiry report was furnished to the applicant and again he was asked to submit any representation or submission on the findings of the Inquiry Officer. He submitted a representation on 23.02.1995.



4. The further case of the applicant is that he was issued with a notice on imposition of penalty dated 05.05.1995 by respondent no. 3 and penalty of removal from service has been inflicted on him. An appeal was preferred before the respondent no. 2 bringing out the infirmities which were committed by the Inquiry Officer as well as by the various disciplinary authorities in his case including the appointment of Inquiry Officer. Without considering the various illegalities and irregularities committed by Inquiry Officer as well as the disciplinary authorities, the respondent no. 2 passed a non-speaking order upholding the penalty of removal from service.

5. The Original Application has been filed on number of grounds mentioned in para 5 (A) to (H) which we proposed to deal in the later part of this order.

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6. The counter reply has been filed in this case and the contentions raised in the Original Application have been controverted. It has been submitted that a proper ^{procedure} was adopted by the respondent no. 4 in conducting the disciplinary case. The relevant documents were supplied and there has been no infirmity in the order.

7. The matter was heard by this Bench of the Tribunal and was decided by order dated 23.07.1998 wherein the impugne orders were quashed with a direction to the respondents to re-instate him in service without pay for the intervening period which was to be counted for pensionary benefits with a further liberty to the respondents to take appropriate action in the matter. The case was dealt with mainly on the point of remitting the case for fresh inquiry by appointing fresh Inquiry Officer. Against this said order a Writ Petition No. 361/99 was filed before Hon'ble Rajasthan High Court, Jodhpur wherein vide order dated 22.11.2001, the order passed by this Tribunal has been set aside with a direction to hear and decide the Original Application filed by delinquent officer on merits. It has also been observed that the applicant had participated in the inquiry conducted by Mr. Kandelwal after his appointment was made way back in 1994 until his conclusion by him without demur and without raising any objection.



8. We have heard the learned counsel for the parties and carefully perused the records of this case.

9. The learned counsel for the applicant has submitted that the applicant was transferred from Merta Road to Samdari and he joined at Samdari on 08.11.1991. After joining at Samdari, the DMO Merta Road had no jurisdiction to act as

disciplinary authority and appoint the Inquiry Officers. The another limb of argument of the learned counsel for the applicant is that the applicant was not given reasonable opportunity to defend his case in as much as he was not supplied with a copy of relied upon the documents. He was simply asked to inspect the copies of documents in the C.B.I. Court. Further it is submitted that he was not permitted the service of defence helper by the new Inquiry Officer and was denied the opportunity to cross examine ~~the~~ the witnesses. The another argument of the learned counsel for the applicant has been that Mr. V.K. Gupta was examined as a prosecution witness despite the fact that he was not one of the listed witness in the charge-sheet. He also argued that the respondent no. 3 was not competent to pass a final order in the matter since he never dealt with the disciplinary case against the applicant i.e. neither appointed Inquiry Officer nor supplied the copy of the inquiry report to the applicant. Lastly it has been submitted that appellate order is a non-speaking order and has not been passed in confirmity with the law laid down by the Apex Court in Ramchander's case.

10. On the other hand, the learned counsel for the respondents has submitted that the applicant was given all the opportunities in as much as when he declined to inspect the documents in the C.B.I. Court, all the documents were called and a copy of the same was supplied to the applicant and this fact is available on records. It has also been submitted that the first Inquiry Officer was appointed by the DMO, Merta Raod when the applicant was not under his administrative control since the applicant

had gone to the other station i.e. Samdari, his controlling officer became DMO Samdari. In this case, the final order has been passed by the competent disciplinary authority and no prejudice has been shown to have been caused to the applicant by the action of DMO, Merta Road who appointed the second Inquiry Officer and also supplied a copy of inquiry report to the applicant. The applicant was never denied the facility of defence helper and his defence helper attended the inquiry. The applicant was also free to cross examine the witnesses and there was no denial of reasonable opportunity.

11. The relevant disciplinary case file was made available to this Tribunal. The perusal of note N/23 reveals that there is a specific noting that DAR case gets also transferred as and when C.O. is transferred under new authority. There are catena of judgements on this matter that the authority which has administrative control over a particular employee can only act as a disciplinary authority. However, we need not examine all of them here since the position in respect of the applicant is admitted to the extent that after his transfer from Merta Road to Samdari, DMO Samdari became his disciplinary authority.

12. Thus the admitted position of the case is that the applicant was transferred ^{from} ~~to~~ Merta Road to Samdari on 08.11.1991 and subsequent to that the DMO Merta Road appointed a new inquiry officer as well as supplied a copy of inquiry report ~~to him~~ but the final order has been passed by the competent disciplinary authority.



13. The primary question for our examination is as to whether the proceedings conducted by the second inquiry officer appointed by the DMO, Merta Road and also the subsequent proceedings upto the stage of passing of the final order stand vitiated on the ground that DMO Merta-Road was not competent to conduct the disciplinary proceedings since he had no administrative control over the applicant after 8.11.1991. The learned counsel for the applicant had tried to reopen the matter regarding very appointment of fresh Inquiry Officer which was set at rest by the Hon'ble High Court holding that in certain circumstances appointment of new Inquiry Officer would be justified. In support of his contentions, Mr. Malik, learned counsel for the applicant has placed reliance on the judgement of Apex Court in CSHA University and another vs. B.D. Goyal, 2001 (3) ATJ, 531, wherein their lordship was dealing with a question regarding de novo inquiry as well as the requirement of law in the matter of differing with the finding of Inquiry Officer. We have perused the judgement and find that the matter mainly relates to the fact that the reasons for disagreement with the findings of Inquiry Officer were not recorded and the same is distinguishable on facts. Further the said point is already set at rest by the Hon'ble Rajasthan High Court and the judgement has attained the finality as no S.L.P. have been preferred against the same.


14. The learned counsel for the applicant has vehemently argued that the DMO Merta Road has acted beyond his jurisdiction and the complete inquiry proceedings stand vitiated. In this connection, he has placed reliances on a Full Bench judgement of this Bench of the Tribunal in Akhil Mohd. Nayak

versus Union of India and Ors., 2002 (2) ATJ, 276, wherein it has been held that the Divisional Safety Officer is not competent or has no jurisdiction to initiate the departmental proceedings or to sign the charge-sheet and pass the order of punishment in relation to any member belonging to operating branch of the Railway. In the present case the charge-sheet has been issued by the competent authority and the final order also has been passed by the competent authority and it is only certain action regarding appointment of second inquiry officer, supplying the copy of inquiry report etc. have been done by the DMO Merta Road. Thus the judgement in Akhil Mohd. Nayak's case does not cover the controversy in the present case and the contention of the learned counsel for the applicant that the inquiry proceedings conducted by the second inquiry officer stands vitiated on the ground that DMO Merta Road was not competent in the matter is not sustainable.

15. Now the another ^{ancillary} ~~question~~ question which comes next for our consideration is regarding as to whether due to appointment of fresh inquiry officer, supplying the copy of inquiry report to the applicant has caused any prejudice to the applicant ~~the~~ and the proceedings could be said to be vitiated. We have not been shown as to what prejudice what caused to the defence of the applicant in this case. The applicant was given ~~an~~ reasonable opportunity to defend his case and was supplied with a copy of inquiry report on which the competent disciplinary authority has taken a decision and imposed the penalty. Thus the contention of the applicant that the proceedings conducted by an Inquiry Officer who was appointed by DMO Merta Road as a

second inquiry officer does not vitiate the disciplinary proceedings.

16. On the perusal of the records of the disciplinary case, we are satisfied that the applicant was given reasonable opportunity to defend his case. Further it is not a case of no evidence and this Tribunal shall not go on the sufficiency or otherwise of the evidence. We are also not sitting in the appeal over the orders of the departmental authorities and thus cannot ~~re~~ reappreciate the evidence. We only want to make it clear that there was no infirmity in the action of the Inquiry Officer to call Mr. V.K. Gupta as a prosecution witness. There is a specific provision in the rules and the same has been followed. Thus the inquiry was proper and in conformity with the rules.




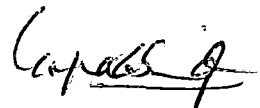
17. The next argument of the applicant has been regarding the order passed by the appellate authority and it has been submitted that the order is bad in law and is against the principles of law laid down in Ramchandra's case. Even the order makes a mention that there have been minor lacunae in the procedure followed in this case. We have given considerable thought and gone through the appellate order. As far as the lacunae is concerned, we have already considered the matter in the aforesaid paragraphs and given our finding that no prejudice have been caused to the defence of the applicant. As regards the other contention of the learned counsel for the applicant, we do not find that the order of the appellate authority suffers from any infirmity. Looking to the charge against the applicant, we also do not find that the punishment is in any way disproportionate to the alleged misconduct. Otherwise also as per the mandate of rule 6 of the Railway Servant Disci-

plinary Appeal Rules, 1986 second proviso, once a person have been found guilty of having accepted from any person any gratification other than legal remuneration as a motive or reward for doing or for bearing to do any official act, penalty of removal or dismissal shall ordinarily being passed and when such penalty is not imposed the reasons thereof shall be recorded in writing. Thus we do not find that there is any infirmity, arbitrariness or illegality in the impugned order of punishment and appellate orders.

18. Before parting with this case we are constrained to observe that none of the parties was able to give the details regarding the criminal case which was going on in C.B.I. Court. We specifically asked the learned counsel for the applicant as to what was the fate of this case but he expressed his inability to give any information. Similar was the position from the respondents side.

19. Viewing the matter in all its complexities, we are of considered opinion that there is no force in this O.A. and the same merits dismissal and is hereby dismissed with no order as to costs.


(J.K. Kaushik)
Judl. Member


(Gopal Singh)
Adm. Member

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