

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

(U)

O.A. No. 146/98
T.A. No.

199

DATE OF DECISION : 03.08.2000

Jai Singh Rathore ... Petitioner

Mr. D.C. Sharma ... Advocate for the Petitioner (s)
Versus

Union of India & Ors. ... Respondents

Mr. S.S. Vyas ... Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

The Hon'ble Mr. Gopal Singh, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?

✓ 2. To be referred to the Reporter or not ? Yes

3. Whether their Lordships wish to see the fair copy of the Judgement ?

4. Whether it needs to be circulated to other Benches of the Tribunal ?

(Gopal Singh)
Adm. Member

(B.S. Raikote)
Vice Chairman

(12)

In the Central Administrative Tribunal, Jodhpur Bench,
Jodhpur

Date of orders 3.8.2000.

O.A. NO. 146/98

Jai Singh Rathore S/o Shri Basant Singh Rathore, at present working on the post of Permanent Way Inspector, Northern Railway, Jodhpur.

... Applicant.

versus

1. Union of India through the Secretary, Railway Board, Rail Bhawan, New Delhi.

2. General Manager, Northern Railway, Baroda House, New Delhi.

... Respondents.

... .

CORAM :

HON'BLE MR. JUSTICE B.S. RAIKOTE, VICE CHAIRMAN
HON'BLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

... .

Mr. D.C. Sharma, Counsel for the applicant.

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

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Per Hon'ble Mr. Justice B.S. Raikote, Vice Chairman :

This application is filed for declaring the Rule 25 of the Railway Servants (Discipline and Appeal) Rules, as illegal. The applicant has further prayed that the proceedings of the revision, pending before the General Manager, Northern Railway, New Delhi, be set aside.

2. The contention of the applicant is that, against the order of the appellate authority dated 16.6.97, vide Annex.A/2, he has already preferred an application before this Tribunal numbered as 378/97 and that application is



admitted vide order of this Tribunal dated 13.2.98. He further submits that after such admission of the application filed by the applicant under Sec. 19, the General Manager, Northern Railway, New Delhi, could not have issued Annex.A/1 notice for enhancement of penalty and hence, the same is without jurisdiction and contrary to Section 19(4) of the Administrative Tribunals Act. Therefore, it is a fit case in which writ of prohibition should be issued against the General Manager, respondent No.2, not to proceed in pursuance of his notice dated 30.4.98. By filing counter, the respondents have denied the case of the applicant. The respondents have stated that the OA No.378/97 was not admitted and only show cause notices were issued, therefore, the General Manager, was competent and had the jurisdiction to initiate the proceedings on the basis of Annex.A/1. At any rate, it is submitted that the application is premature and, therefore, the same is liable to be dismissed. The learned counsel for the respondents contended that the provisions contained under Section 19(4) of the Administrative Tribunals Act, does not apply to the facts of this case, since the application itself was not admitted ~~as~~ as on the date, the impugned show cause notice was given to the applicant by the revisional authority, proposing to revise the punishment so as to enhance it, therefore, the impugned notice of the revising authority cannot be quashed. He further contended, by relying upon judgment of Hon'ble Supreme Court reported in 1986 (2) SIR 720 - T.R.Parihar vs. State of Jammu and Kashmir and Another and 1995 (7) SIR 430 - U.O.I. and Anr. Vs. Ashok Kacker, that this application is premature since only a show cause notice has been issued. Thus, the application is liable to be dismissed as premature.



MR. JUSTICE S. P. BAGAI
JUDGMENT

3. From the pleadings of the both sides, the point for our consideration, would be, whether the revising authority can exercise his power conferred under Rule 25 of the Railway Servants (Discipline & Appeal), Rules, 1968 proposing to enhance the penalty imposed by the appellate authority, after the application filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, is admitted against the said order of the appellate authority.

4. In order to appreciate the point now raised, we think it appropriate to note the facts of this case. The disciplinary proceedings were initiated against the applicant by framing certain charges and the disciplinary authority, ultimately, imposed a penalty of reduction to two lower scales with immediate effect, vide his order dated 4.4.97, Annex.A/14 (OA No.378/97). This order was challenged by filing an appeal and the appellate authority vide its order dated 16.6.97 (Annex.A/1 in OA 378/97), allowed the appeal filed by the applicant and reduced the penalty by reducing the scale from two steps to one step. Being aggrieved by this order of the appellate authority dated 16.6.97, the applicant has preferred an OA bearing No. 378/97. The said OA has been admitted on 13.2.98 and this matter is pending since then before this Tribunal. Meanwhile, by the impugned proceedings dated 30.4.98 (Annex.A/1), the General Manager, exercising his power under Rule 25 (5) of Railway Servants (Discipline and Appeal), Rules, 1968, has issued a show cause notice, proposing to enhance the penalty. The applicant has challenged this proceeding vide Annex.A/1 in the present application in OA No.146/98.

5. The contention of the applicant is that the revising authority has no jurisdiction to proceed with the matter for enhancement of penalty on the basis of Annex.A/1 since

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the application against the order of the appellate authority, has already been admitted by this Tribunal, and under Sec. 19(4), there is a bar against the authorities to take-up the proceedings after such application is admitted by this Tribunal.

6. Though, there was a dispute whether the OA No. 378/97 was admitted or not, on verification, we found that the said OA against the order of the appellate authority dated 16.6.97 (Annex.A/1 in OA 378/97), was admitted on 13.2.98. Therefore, now the question for our consideration would be whether Sec. 19(4) of the Administrative Tribunals Act, would bar the proceedings of the General Manager (revising authority). In order to appreciate the contention of both sides in this regard, we would like to extract Sec. 19(4) of the Administrative Tribunals Act, as under :-



"19 (4). Where an application has been admitted by a Tribunal under sub section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall therefore be entertained under such rules."

7. From the reading of the above provision of Sec. 19 (4), it is clear that after admitting the application under Sec. 19 (3) all other proceedings under the relevant rules, as to the redressal of grievances in relation to the subject-matter of such application, pending immediately before such admission, shall abate, save as otherwise directed by the Tribunal. In other words, once the application is admitted against an order involving a particular subject matter and in relation to that subject

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matter, no appeal or any application will be entertained by other authorities. In the instant case, the General Manager as a revising authority is proposing to exercise his revisional power under Rule 25 of the Railway Servants (Discipline and Appeal) Rules, but in view of the provisions contained in Section 19(4) of the Administrative Tribunals Act, he cannot exercise such inherent power so as to modify the order challenged before this Tribunal. The intention of the legislature in enacting Section 19(4) to see that once an application is admitted by the Tribunal on finding a *prima facie* case such an order of the Tribunal is not frustrated by the appellate and the revisional authority. Therefore, an exercise of power by the authorities under the relevant rules, is prohibited by Section 19(4) of the Administrative Tribunals Act. Hence, in our considered view, it is a fit case to prohibit the respondent No. 2 : General Manager, from proceeding further in pursuance of the show cause notice vide Annexure A/1. The writ of ~~prohibition~~ is issued in such cases where the authorities having no jurisdiction in law intend to proceed with the matter. Therefore, we think it appropriate to issue a writ of ~~prohibition~~ in the instant case without going into the validity of Rule 25 of the Rly. Servants (Discipline & Appeal) Rules.

8. However, the learned counsel for the respondents relied upon the judgments of the Hon'ble Supreme Court report in 1986 (2) SIR 720-T.R. Parihar Vs. State of Jammu and Kashmir and Anr. and 1995 (7) SIR 430 - UOI & Anr. Vs. Ashok Kacker, contending that the impugned notice is only a show cause notice and the present application may not be entertained. In our opinion, these cases are distinguishable from the facts of the present case. In the case of Ashok Kacker, we find that the petitioner has challenged the chargesheet, by filing a writ petition. It was a case in which the petitioner sought for quashing the chargesheet on certain alleged illegality.

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It was not a case, in which the very initial jurisdiction of the authority which issued the chargesheet was in challenge. In the case of T.R. Parihar, reported in 1986 (2) SLR 720, the petitioner therein, had challenged the chargesheet issued by the High Court. It was also not the case in which the High Court had no jurisdiction to issue the chargesheet against the person concerned. Normally, when the authorities having jurisdiction, issued certain proceeding like show cause notice or chargesheet, the Courts in India rarely interferred with such proceeding on the alleged grounds of irregularity and illegality. But, they have issued a writ of prohibition, in case when the authorities proposed to exercise jurisdiction not vested in law or prohibited by law. In AIR 1962 SC 1893- M/s East India Commercial Co., Ltd., Calcutta and Anr. vs. Collector of Customs, Calcutta, the Hon'ble Supreme Court clarified the nature of writ of prohibition stating that :

" a writ of prohibition is an order directed to an inferior Tribunal forbidding it from continuing with a proceeding therein on the ground that the proceeding is without or in excess of jurisdiction or contrary to the laws of the land, statutory or otherwise; Mackenochie V. Lord Penzance, 1881 AC 424 and Halsbury's Laws of England, Vol. 2 3rd Edn."

In that case by construing Section 167 (8) read with Section 3(2) of the Sea Customs Act, the Hon'ble Supreme Court held as under :

"To state it differently, if on a true construction of the provisions of the said two sections the respondent has no jurisdiction to initiate proceedings or make an inquiry under the said sections in respect of certain acts alleged to have been done by the appellants, the respondent can certainly be prohibited from proceeding with the same. We, therefore, reject this preliminary contention."

Similary is the situation in this case also that when Section 19(4) of the Administrative Tribunals Act, prohibits entertaining any appeal or application, in respect of a proceeding under challenge before this Tribunal, the revisional authority

could not have entertained its revisional jurisdiction suo moto regarding the order against which an application is admitted by the Tribunal. Therefore, the very jurisdiction of the revisional authority conferred by rule 25 of the Railway Servants (Discipline and Appeal) Rules, is taken away or prohibited by Section 19(4) of the Act, after an application regarding the said subject matter is admitted by this Tribunal. Therefore, we have to hold that the General Manager on the basis of the notice dated 30.4.1998 (Annexure A/1) cannot initiate the proceeding to revise the order of the appellate authority which is under challenge before this Tribunal in a separate application No.378/97. In these circumstances, it is a fit case for issuing a writ of prohibition. Hence, we pass the order as under :

partly

The application is allowed and a writ of prohibition is issued against the respondent No.2 the General Manager, (revisional authority), prohibiting him from proceeding, in pursuance of the show cause notice at Annexure A/1 dated 30.4.1998 proposing to enhance the penalty imposed upon the applicant. No costs.

Gopal Singh
(GOPAL SINGH)

Adm. Member

B.S. RAIKOTE
(B.S. RAIKOTE)

Vice Chairman

Recd copy
25/11/07
JCM
25/11/07

Part II and III destroyed
in my presence on ... 8/11/07
under the supervision of
Section Officer () as per
order dated 10/11/06

MGW 9/11/07
Section Officer (Recd)