

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.427/2002.

Friday this the 2nd day of August 2002.
CORAM:

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

K.Samy, S/o Ayyappan Mudali,
Shunter, Southern Railway,
Coimbatore. Residing at:
Plakkunnath House, Near Shornur. Applicant

(By Advocate S/Shri T.C.Govindaswamy and K.M.Anthru)

Vs.

1. Union of India represented by the
General Manager, Southern Railway,
Headquarters Office,
Park Town P.O., Chennai-3.
2. The Senior Divisional Mechanical Engineer,
Southern Railway, Palghat Division,
Palghat.
3. Senior Loco Inspector (Enquiry Officer),
O/o Chief Crew Controller,
Southern Railway, Erode. Respondents

(By Advocate Shri P.Haridas)

The application having been heard on 2nd August, 2002
the Tribunal on the same day delivered the following:

Ó R D E R

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

The short question that arises for consideration in this
O.A. filed under Section 19 of the Administrative Tribunals Act,
1985 is, whether under the provisions of Rule 9 and 10 of the
Railway Servants (Discipline & Appeal) Rules, 1968, ^{is} the
Disciplinary Authority/empowered to cancel the enquiry report and
proceedings and order a fresh enquiry, if it finds that there is
any procedural lapse in the enquiry?

2. The facts can be briefly stated as follows:

The applicant, a Shunter (Shunting Driver) in the Palghat Division of Southern Railway was proceeded against under Rule 9 of the Railway Servants (Discipline & Appeal) Rules 1968 on the basis of a memorandum dated 30.11.2001 (A1) for certain alleged misconducts. On his denying the charges Shri K.V.Surendranath was appointed as Enquiry Officer. Shri Surendranath completed his enquiry and submitted a report. The grievance of the applicant is that without acting on the enquiry report in accordance with the rules, the 2nd respondent, the Disciplinary Authority has issued the impugned order A-5 dated 14.5.2002 cancelling the disciplinary proceedings and the enquiry report submitted by Shri K.V.Surendranath on the ground that there were some procedural lapses and that an order dated 14.5.2002 was issued appointing one Shri V.Venkitachalam as Enquiry Officer to hold a fresh enquiry. The applicant has alleged in the application that, to the best of his information, Shri K.V.Surendranath held the applicant not guilty of the charges and the attempt of the 2nd respondent is to have a fresh enquiry held by an officer of his choice, so that the applicant can be punished. The applicant has, therefore, filed this application challenging Annexures A5 and A6.

3. The respondents in their reply statement have taken two contentions. The first contention is that the application is premature as the applicant has not exhausted the departmental remedies. The second contention of the respondents is that the cancellation of the enquiry report and appointment of the fresh enquiry officer is permissible in terms of Rule 1710 of Indian

Railway Establishment Code. It is also stated in the reply statement that, it is within the competency of the disciplinary authority to change the enquiry officer, and that the Railway Board in their letter No.D&A 93 RG 6-83 dated 1.12.93 permits cancellation of disciplinary proceeding if it suffers from any procedural lapse.

4. We have carefully gone through the pleadings and have heard Shri TC Govindaswamy, learned counsel of the applicant and Shri P. Haridas, learned counsel of the respondents. Rule 10 of the Railway Servants (Discipline & Appeal) Rules deals with the action on the enquiry report. The relevant part of Rule 10 is as follows:

"(1) If the disciplinary authority, having regard to its own findings where it is itself the inquiring 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 interests of justice, recall the 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 there upon proceed to hold further inquiry according to the provisions of Rule 9 as far as may be.

(3) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any articles of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record, is sufficient for the purpose."

5. A mere reading of the above quoted provisions would make it clear that the disciplinry authority has no right or discretion to order a fresh enquiry cancelling the enquiry proceedings and report, even if a procedural lapse is noted. If the disciplinary authority finds that there is any lapse or irregularity in the enquiry what the authority can do under Sub Rule (2) of Rule 10 is to remit the enquiry report to the inquiring authority for further inquiry for the reasons to be recorded in writing. It has no power to cancel the entire proceedings and report and direct a de-novo enquiry under the Railway Servants (Discipline & Appeal) Rules, 1968. If such a course is permitted, whenever an enquiry officer in his report holds the charged Railway Servant not guilty, the Disciplinary authority would be at liberty to have a fresh enquiry held by an officer of his choice which may lead to an unhealthy practice.

6. The contention of the respondents that the application is premature is untenable because, no appeal is provided for against an order of the nature of A5 and A6. The Railway Board's letter cited by the respondents in their reply statement has no relevance to the issue.

7. In the light of what is stated above, we find that the impugned orders cannot be sustained and that the applicant is bound to succeed. We therefore, allow this application and set aside the impugned orders. No costs.

Dated the 2nd August, 2002.


T.N.T.NAYAR
ADMINISTRATIVE MEMBER


A.V.HARIDASAN
VICE CHAIRMAN

A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of the memorandum of charges under No.J/T5/1/A3/31/001/DAR/Mechanical dated 16.11.2001/30.11.2001 issued by the 2nd respondent.
2. A-2: True copy of the proceedings of the enquiry dated 4.2.02.
3. A-3: True copy of the order bearing No.1J/T5/1/A3/31/2001 dated 11.4.2002 issued by the 2nd respondent.
4. A-4: True copy of the proceedings of the Enquiry Officer held on 13.5.2002.
5. A-5: True copy of the Letter bearing No.J/P5/1A3/31/2001 dated 14.5.2002 issued by the 2nd respondent.
6. A-6: True copy of the order bearing No.J/T5/A3/31/2001 dated 14.5.2002 issued by the 2nd respondent.
7. A-7: True copy of the objections submitted by the applicant dated 12.6.2002 addressed to the 2nd respondent.
8. A-8: True copy of the letter bearing No.J/T5/1/A3/31/01 dated 11.6.2002 from the Enquiry Officer.

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