

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.126/2004

Monday, this the 4th day of October, 2004.

CORAM;

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

HON'BLE MR H.P.DAS, ADMINISTRATIVE MEMBER

L.Anil Kumar,
Goods Driver,
Southern Railway,
Quilon.

- Applicant

By Advocate Mr TC Govindaswamy

Vs

1. Union of India represented by
the General Manager,
Southern Railway,
Headquarters Office,
Park Town.P.O.
Chennai-3.
 2. Senior Divisional Mechanical Engineer,
Southern Railway,
Trivandrum Division,
Trivandrum-14.
 3. R.Manimaran,
Additional Divisional Mechanical Engineer,
Trivandrum Division,
Trivandrum-14.
- Respondents

By Advocate Mr P Haridas (for R.1&2)

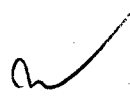
By Ms Deepa G Pal (for R-3)

The application having been heard on 4.10.2004, the Tribunal on the same day delivered the following:

O R D E R

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


The applicant, while working as Goods Driver, Quilon, was served with a memorandum of charge, A-1. The imputation of charge are as follows:



"Sri L.Anil Kumar, Goods Driver/QLN has committed serious misconduct is that on 13.8.2001 when NCJ pilot was ordered at TEN at 9.00 hrs. with guard and BPC but without BV and orders given to driver, Sri Anil Kumar, he has refused to work the train without BV. The request from PRC/TVC and SLI/TVC to start the train as a special case was also refused. DRM/TVC message, P-14 given to the driver to cooperate and work the train was also not accepted by him. This has resulted in calling another driver Sri A.Shaju of QLN and finally the train left TEN at 14.20 Hrs with a detention of five hours twenty minutes.

The above act of Sri L.Anil Kumar, Goods Driver/QLN amounts to disobedience and non-devotion to duty and violative of Rule 3(1)(ii) &(iii) of Railway Services Conduct Rules 1966."

The applicant denied the charge. An enquiry was held. The applicant maintained that as operating the train without certification, that it was fully vacuum braked and fitted with tail lamp, would be against the safety rules contained in S.R.4.25, his action in refusing to run the train was in conformity with the safety rules and he was not guilty. An enquiry was held in which the witnesses were examined. It appears that the Inquiry Officer submitted a report. After 18 months, the applicant received A-4 order issued by the disciplinary authority appointing another Inquiry Officer to hold the enquiry. The applicant submitted A-5 representation to disciplinary authority stating that the enquiry had already been held and completed by the Inquiry Officer and therefore appointing another Inquiry Officer to hold an enquiry afresh was not in accordance with rules. While the applicant did not get any response to this letter, the disciplinary authority issued A-6 order dated 28.11.2003 appointing one Mani Maran, ADME/TVC as yet another Inquiry Officer to hold an enquiry against the applicant. The applicant submitted A-7 representation. But he was served with A-8, fixing the date



of enquiry by the Inquiry Officer. The applicant submitted A-9 letter to the Inquiry Officer requesting that the further proceedings in the inquiry be dropped. However, inspite of the objection raised, the Inquiry Officer proceeded with the enquiry. Under these circumstances, the applicant has filed this application seeking to set aside A-6 declaring that the action on the part of the 2nd respondent in conducting a fresh enquiry into the allegations contained in A-1 is ultravires of statutory rules and unconstitutional. It is alleged in the application that to the knowledge of the applicant, the Inquiry Officer had submitted a report holding him not guilty and the action on the part of the 2nd respondent in appointing successive Inquiry Officers for holding a fresh inquiry is wholly unsustainable.

2. The respondents in their reply statement indicated that the disciplinary authority found that many points had not been clarified by the Inquiry Officer in his report, it was necessary to hold a fresh inquiry and since the action taken is only in that regard, the respondents plead that the Tribunal may not interfere.

3. The moot question that arises in this application is whether a disciplinary authority is justified in directing a fresh enquiry to be held after the Inquiry Officer submitted his report totally ignoring and setting aside that enquiry report and evidence already recorded?

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4. We have gone through the application and other material placed on record and have heard Shri K.M.Anthru, learned counsel of the applicant and Shri P.Haridas, learned counsel for respondents.

5. Learned counsel for the applicant submitted that a mere reading of A-6 impugned order would show that the intention of the 2nd respondent is to have a fresh inquiry held ignoring the evidence and findings of the first Inquiry Officer and that this is not permissible. If holding successive enquiries ignoring the report of Inquiry Officer is permitted that would result in allowing a disciplinary authority to hold as many enquiry as he feels necessary till the Inquiry Officer submits a finding acceptable to him. The learned counsel of the respondents on the other hand argued that although in somany words it was not stated that the enquiry proposed to be held was a further enquiry, the intention was only to held a further enquiry which is permissible under Rule 10(2) of the Railway Servants (Discipline & Appeal) Rules.

6. On a perusal of the materials available on record, it is evident that the disciplinary authority did not direct a further inquiry to be held but ordered really a fresh inquiry. The indication in A-6 is clearly that it would be an inquiry to be commenced from the beginning. Further, in the proceedings of the Inquiry Officer dated 13.2.2004, A-10 in page 23 it has been stated as below:

"As stated in the speaking order of the D.A. on receipt of the charged employee's representation with reference to letter No.V/TP 28/NCJ pt./13-8 dated 12.9.03, "the enquiry report of the earlier E.O. was not accepted the D.A. hence the new E.O. was nominated for fresh enquiry", the regular enquiry proceedings will be continued."

The contention of the respondents that the action taken was only to hold further enquiry therefore is factually untrue. The question whether a disciplinary authority can direct a fresh enquiry to be held ignoring the previous enquiry officer's report and evidence had come up for consideration before the Apex Court in K.D.Dep Vs The Collector of Central Excise, reported in AIR 1971 SC 1447. In paragraph 13 it was observed as follows:

"13. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under rule 9."

The Apex Court has again considered similar situation in Union of India Vs K.P.Pandey and another 2003 SCC L&S 791 observed in para 5 as follows:

"5. Learned counsel for the appellant contended that in this case the Board had examined the material on record and come to the conclusion that four of the six charges could be proved on the available material, which had not been properly examined in the earlier



inquiry. In fact from the order made by the Railway Board as well as from that part of the file where the inquiry report made earlier is discussed, it is clear that specific findings have been given in respect of each of the charges after discussing the matter and, if that is so, we fail to understand as to how there could have been a remit to the inquiry authority for further inquiry. Indeed this resulted in second inquiry and not in a further inquiry on the same set of charges and the material on record. If this process is allowed the inquiries can go on perpetually until the view of the inquiry authority is in accord with that of the disciplinary authority and it would be abuse of the process of law. In that view of the matter we think that the order made by the High Court affirming the order of the Tribunal is just and proper and, therefore, we decline to interfere with the same. The appeal is dismissed accordingly."

7. This Bench of the Tribunal also had occasion to consider identical question dealing with the Railway Servants(Discipline & Appeal) Rules in O.A.427/2002 in which it has been observed as follows:

"4. We have carefully gone through the pleadings and have heard Shri T.C.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 warrant 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.

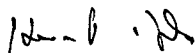
(2) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall there upon proceed to hold further inquiry according to the provisions 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 disciplinary 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."

The issue involved in this case is exactly identical and in the light of the law declared by the Apex Court in the said decision, we are of the considered view that the 2nd respondent had no competence to issue A-6 order for a fresh inquiry. The 2nd respondent had to take a decision on the enquiry report in the manner prescribed in Rule 10 of the Railway Servants (Discipline & Appeal) Rules and has no authority to act against the rules. The O.A. is allowed and the impugned order is set aside. There is no order as to costs.

Dated, the 4th October, 2004.



H. P. DAS
ADMINISTRATIVE MEMBER



A. V. HARIDASAN
VICE CHAIRMAN