

AB (17)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

CIRCUIT BENCH

LUCKNOW

T.A. 1137/1987

(Writ Petition No. 1452/83 of High Court of Judicature,
at Allahabad, Lucknow Bench, Lucknow)

Anwar Ahmad Khan

...Petitioner.

versus

Union of India & others

...Respondents.

Hon. Mr. Justice K. Nath, V.C.

Hon. Mr. K. Obayya, Adm. Member.

(Hon. Mr. Justice K. Nath, V.C.)

The Writ Petition described above is before us under section 29 of the Administrative Tribunals Act, 1985 for quashing the order dated 23.12.1982 (Annexure -1) whereby the petitioner was dismissed from railway service in consequence of a departmental disciplinary enquiry.

2. The petitioner Anwar Ahmad Khan was working as Assistant Station Master when a charge sheet dated 1.9.78 ~~xxx~~ issued by the Senior Divisional Commercial Superintendent was served upon him on 12.3.1979 for defrauding the railway administration of a sum of Rs 43.40 by preparing fraudulent accounts and records foils of various blank paper ticket No. 579865 dated 9.7.1977. He did not file any reply to the charge sheet on the pretext that he was asking for certain documents. The Enquiry Officer found him guilty of the charge and the General Manager, Headquarters, New Delhi passed the

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impugned dismissal order after accepting the enquiry report.

3. The first point raised in this petition is that notice of holding an enquiry proceedings was never given to the petitioner, although he submitted a reply to the chargesheet. The answer in the counter is that the petitioner never furnished a reply to the chargesheet, yet the enquiry officer had given notice to the petitioner by telegram dated 21.9.81 and 16.10.1981 (Annexure -4 and Annexure -5 respectively). The petitioner never appeared and therefore, the proceedings were conducted ex parte. There is no reason to disbelieve the case taken in the counter. We find therefore, that the petitioner had reasonable opportunity of making a defence.

4. The next point raised is that the copy of the enquiry report was not furnished to the petitioner before the impugned order of punishment was passed by the disciplinary authority. No such plea was taken in the Writ Petition; we are not inclined to allow the petitioner to raise that question of facts at this stage.

5. The last and the most important point raised by the petitioner in para 15 A in the petition is that disciplinary proceedings was initiated by an authority who was not competent to do so and therefore, the entire disciplinary proceedings stands vitiated. The case of the petitioner is that in his capacity as Assistant Station Master, he was working in the operating department

under the administrative control of that department whereas the disciplinary proceedings were initiated by the Senior Divisional Commercial Superintendent who belonged to the commercial department. Reliance was placed on Railway Board Circular dated 16.10.1973 (Annexure -3) in this regard.

6. The reply in para 15 of the counter is that the circular of Railway Board dated 16.10.1973 has been superseded by Railway Board's circular dated 19.4.1974 (Annexure -9) and therefore, in the light of the latter circular the Senior Divisional Commercial Superintendent was competent to initiate the disciplinary proceedings.

7. In para 15 of the Rejoinder the petitioner has stated that the Railway Board letter dated 19.4.74 itself was superseded and withdrawn by Railway Board letter dated 10.1.1979 circulated by letter dated 3.2.1979 (Annexure -4). The true meaning of these circulars of the Railway Board would govern the question whether the departmental/proceedings against the petitioner was initiated by the competent authority or not.

8. Annexure -3, the letter dated 16.10.1973 in paragraph 1 referred to in Railway Board's earlier circular dated 28.7.1962 and mentioned that it had been indicated in that letter that it would be procedurally wrong for an authority to initiate and finalize the disciplinary proceedings against an employee who is not its administrative control. The letter then noticed certain difficulties

which were being experienced in initiating and finalizing the disciplinary proceedings and remarked that in respect of ASMs/SMs the disciplinary action is initiated and finalized by Divisional Safety Officer and Divisional Commercial Superintendent depending upon the department to which the irregularity committed pertained despite the fact that ASMs/SMs belong to the operating department. The Board then took a decision in the following words:

"The ASMs and SMs belong to the operating department even though they may have to perform the duties pertaining to the Commercial Department from time to time. The disciplinary authorities, in other cases, would thus belong only to the operating department and none else. If any other practice is being followed, that is irregular and should be stopped forthwith. The disciplinary action should be initiated and finalized by the authorities under whose administrative control the delinquent employee may be working as any other procedure would not be in keeping with the instructions referred to in para 1 above."

9. These decisions leave no manner of doubt the disciplinary proceedings could be initiated and finalized since as early as the Railway Board's circular dated 28.7.1962, only by an authority under whose administrative control the delinquent official serves, that the ASMs belong to the operating department and therefore, in his case, the disciplinary proceedings could be commenced only by an appropriate authority of the Operating Department and none else. The circular called upon to stop forthwith any practice to the contrary and directed that disciplinary action should be initiated and finalized by the authority under whose administrative control the delinquent employee may have been working.

Accordingly, the disciplinary proceedings against the petitioner could not have been commenced by the Senior Divisional Commercial Superintendent who is an authority in the commercial department whereas the petitioner belonged to the operating department. However, Annexure-9 to the counter is the Railway Board letter dated 19.4.1974. That letter referred to the Railway Board letter dated 16.10.1973 and in partial supersession of the instructions contained in that letter "clarified that the Station Masters/Assistant Station Masters belong to transportation(Traffic) and Commercial Department and not to Operating Department as mentioned in the letter dated 16.10.1973. It was observed that Station Masters/Assistant Station Masters in the course of their day to day functions might violate instructions of other departments, for example commercial or operating departments and in these circumstances, there is no objection for the authority in the commercial or operating wing of that department to initiate and finalize disciplinary action against the concerned Station Master/Assistant Station Masters according as irregularity for which the action is initiated relates to commercial or operating wing". This circular thus, modified the circular dated 16.10.1973 by clarifying that SMS/ASMs do not belong to operating department and that the authority of the Commercial department or operating wing could initiate and finalize the disciplinary action against them according as the irregularity for action relates to the commercial or operating department. Since defalcation of funds by fraudulent preparation of journey tickets concern the

commercial activity of the railways, it was permissible under the circular of 19.4.74 for the Senior Divisional Commercial Superintendent to initiate the disciplinary proceedings against the petitioner.

10. But the Railway Board circular dated 19.4.74 was cancelled in toto by Railway Board circular dated 10.1.1979 Annexure -4 in the following words:

"The Board have, after careful consideration, decided that their letter referred to above (that is dated 19.4.1974), should be treated as cancelled. The instructions contained in Board's letter No. E(D&A)72 RCS 13 dated 16.10.1973 on the above subject should continue to be followed."

11. This circular leaves no manner of doubt that the Railway Board's decision ~~that the Railway Board's~~ decision contained in the circular dated 19.4.1974 (Ann.9) was wholly cancelled and it was directed that the instructions contained in the circular dated 16.10.1973 (Annexure -3) should continue to be followed. In this context, it is material that whereas the chargesheet issued by the Senior Divisional Commercial Superintendent is dated 1.9.1978 when the Railway Board circular dated 19.4.74 (Annexure -9) ^{was} in force, it was served upon the petitioner only on 12.3.1979 when the circular dated 19.4.1979 (Annexure -9) had been totally cancelled by the circular dated 10.1.1979 circulated to the offices on 3.2.1979 by Annexure -4. In other words, even if it be held that the Senior Divisional Commercial Supdt.

could issue the charge sheet on 1.9.78, the disciplinary proceedings on that charge sheet could / have continued after 3.2.79, and therefore, on 12.3.1979 and afterwards it should have / withdrawn in accordance with the instruction

contained in the circular dated 16.10.1973 which was reiterated by the circular dated 10.1.1979. We have pointed out that in circular dated 16.10.1973 while it had been declared that the disciplinary authorities in the case of SMs/ASMs would belong only to the operating department and none else, ^{it} went on to say that any other practice being followed would be irregular "and should be stopped forthwith". It must be remembered that these letters contained the Railway Board's decision only for purposes of initiating the disciplinary proceedings but also for finalizing them. In other words, even if the initiation of the proceedings by the issue of charge-sheet dated 1.9.78 must be considered to be saved by circular dated 19.4.1974, any further proceeding thereunder could not have been protected after 3.2.1979, that is, even before the charge sheet was served upon the petitioner and consequently, should have "stopped forthwith" within the meaning of the circular dated 16.10.1973 (Annexure 3).

12. The learned counsel for the petitioner has also filed a copy of a judgment dated 27.2.1990 of the Hon. High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Second Civil Appeal No. 138/1981, Union of India through General Manager, Northern Railway, Baroda House, New Delhi vs. Hari Krishan to show that Divisional Commercial Superintendent had no administrative control over Hari Krishan the respondent who was chargesheeted on the post of Station Master and as such Divisional Commercial Superintendent was not competent to pass the

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removal order; the lower court's judgment quashing the impugned removal order was confirmed by the Hon. High Court. It must be stated at once that while this decision establishes that a Divisional Commercial Supdt. had no administrative control over Station Master and therefore, could not pass an order of removal of the Station Master, the decision does not deal with the question of initiation of disciplinary proceedings. Further, while the removal order in that case was passed by the Divisional Commercial Superintendent, the dismissal order before us was passed by the General Manager. The decision, therefore, is distinguishable from the case before us.

13. In this context we may refer to rule 8 of the Railway Servants(Discipline & Appeal) Rules, 1968 which provides for the authorities to institute disciplinary proceedings. Sub-rule 1 speaks of the power of the President or any other authority empowered by him by general or special order to institute disciplinary proceedings or to direct the disciplinary authority to institute the disciplinary proceedings. Sub rule 2 speaks of the competence of the disciplinary authority to institute disciplinary proceedings read with the definition of the expression 'disciplinary authority' in rule 2 (c) of the Rules. It is admitted by the learned counsel for both the parties that the Railway Board exercises the powers of the President in this respect and that is how the various circulars issued by the Railway Board have the authority of law. The powers of the Railway Board, thus, will also include the power to prescribe or clarify as to

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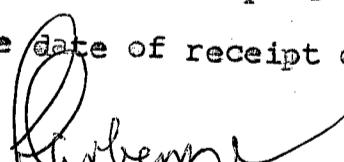
which authority of a department exercises administrative control over what class of employees. In this sense, the circular dated 16.10.1973 (Ann. -3) prescribed the authorities of the operating department only to be the appropriate authorities for initiating and finalizing disciplinary proceedings against ASMs; but that prescription must be considered to have ^{been} modified by the circular dated 19.4.1974 (Ann-9) which said that the authorities of the commercial department could also initiate proceedings against ASMs if the latter's default relate to activities concerned with the commercial functions like collecting money by issue of railway tickets. The authorities thus, prescribed by the circular dated 19.4.1974 must be held to have been cancelled only on 10.1.1979 when the circular of that date was issued and later circulated by letter dated 3.2.79 (Ann. 4). This circular could not operate retrospectively because neither it expressly describes itself to be retrospective, nor conferment or revocation of authority could be done retrospectively. We are of the opinion, therefore, that while issue of the charge sheet dated 1.9.78 by the Senior Divisional Commercial Superintendent against the petitioner was not invalid, any further proceeding in the disciplinary enquiry proceedings after 10.1.1979 or in any case after 3.2.1979, would be illegal and therefore, all the proceedings of enquiry from 12.3.79 when the charge sheet was served upon the petitioner after the date of the passing of the impugned dismissal order, would be illegal.

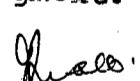
14. The effect of our findings is that the dismissal

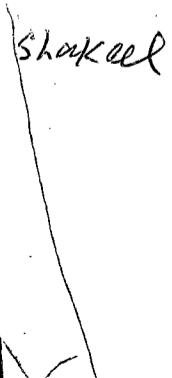
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order of the petitioner must be set aside but it is one of those rare cases where while the petitioner may be given pro-forma benefit of fixation of salary, opportunities of promotion etc., he may not be given back wages. The petitioner, in our opinion, has dis-entitled himself to back wages, because he did not participate in the proceedings of an enquiry despite repeated opportunities and if he had made appearance and raised objections about the competence of the authority which initiated the proceedings, the department might have examined and appreciated the true result of the circular referred to above.

15. The petition is partly allowed and while the impugned order of dismissal dated 23.12.1982 (Ann. -1) of the petitioner from service is quashed, and is declared to have continued to be in railway employment, he will only get pro-forma benefits of fixation of pay and a right to be considered for pro-forma promotion in accordance with law, he shall not get any back wages from the date of dismissal till the date of his re-instatement. The respondents are directed to re-instate the petitioner on an appropriate post within a period of one month from the date of receipt of a copy of this judgment.


Adm. Member.


Vice Chairman.


Shafeek

Lucknow Dated July, 25, 1990.