

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

(14)

XXXXX.

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T.A. No. 261/87

22.6.1990  
DATE OF DECISION

Shri H.D. Chothani

Petitioner

Mr. P.C. Madkholkar

Advocate for the Petitioner(s)

Versus

Additional Divnl. Rly. Manager &amp; Anr.

Respondent

Mr. S.K. Sanyal.

Advocate for the Respondent(s)

## CORAM :

The Hon'ble Mr. P.S. CHAUDHURI, MEMBER(A),

The Hon'ble Mr. D.K. AGRAWAL, MEMBER(J).

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

*P. S. Chaudhuri*  
(P. S. CHAUDHURI)  
MEMBER(A).

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
NEW BOMBAY BENCH, NEW BOMBAY,  
CAMP AT NAGPUR.

(15)

Tr. No. (N) 261/87.

Shri H.D.Chothani,  
Driver-A,  
Central Railway,  
resident of Ajni,  
Nagpur. ... Applicant.

V/s.

1. Additional Divisional Railway Manager, Central Railway, Nagpur.
2. Divisional Manager, Central Railway, Nagpur. ... Respondents.

CORAM: HON'BLE MEMBER(A), SHRI P.S.CHAUDHURI,  
HON'BLE MEMBER(J), SHRI D.K.AGRAWAL.

Appearances:-

Applicant by Mr.P.C.Madkholkar.  
Respondents by Mr.S.K.Sanyal.

JUDGMENT:-

(Per Shri P.S.Chaudhuri, Member(A)) Dated: 22.6.1990

Writ Petition No.442/83 was filed in the Nagpur Bench of the Bombay High Court on 11.3.1983. By order dated 21.10.1986 it was transferred to this Tribunal. It was taken on the file of this Bench of the Tribunal as Transferred Application No.(N) 261/87.

2. The facts. The petitioner (applicant) is a Driver Gr.'A' on Central Railway. By a memorandum dt. 28.4.1981 the applicant was informed that it was proposed to hold an inquiry into the charges annexed to the memorandum. In brief, the charges pertained to a detention of G.T. Express at Amla on 14.4.1981. By order dt. 13.5.1981 one Mr.D.G.Bhalerao, Senior Loco Inspector (Headquarters), Nagpur was appointed as the Inquiry Officer. By letter dt. 6.12.1982 the applicant was informed that one Mr.A.K.Verma, Divisional

Mechanical Engineer (Power), Nagpur had been appointed as the Inquiry Officer and that the earlier order dated 13.5.1981 had been cancelled. On 11.12.1982 the applicant submitted a representation stating that the inquiry had already been completed in all respects on 23.10.1981 but he had not received any communication about the outcome and so he requested for a copy of the complete proceedings and findings of the earlier inquiry as also the circumstances under which the inquiry was being re-conducted. By reply dt. 8.2.1983 he was informed that he had already been sent a communication regarding the appointment of a fresh Inquiry Officer cancelling the earlier proceedings on account of certain inconsistencies. By a representation dt. 3.3.1983 he submitted that the Discipline & Appeal Rules neither permitted such re-inquiry nor had a complete inquiry ever been re-ordered previously. He received no reply to this communication. Being aggrieved he filed the present writ petition. By order dt. 14.3.1983, when the matter was in the High Court, the High Court stayed the re-inquiry and this interim order continues in force till today.

3. In this Writ Petition the petitioner (applicant) has prayed that the order ordering a re-inquiry be set aside. The respondents have opposed this prayer by filing their written statement. We have heard Mr.P.C.Madkholkar, learned advocate for the applicant and Mr.S.K.Sanyal, learned advocate for the respondents.

4. The case hinges on a short point, viz. whether the ordering of re-inquiry was permissible in this case. To decide this question we have to look at the Railway Servants (Discipline & Appeal) Rules, 1968. Rule 9 thereof deals with the procedure for imposing penalties. Sub-rule 18 (since re-numbered as Sub-rule

(11)

24 ) of this rule is relevant and reads as follows:

"Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry cease to exercise jurisdiction therein and is succeeded by another inquiry authority which has, and which exercises, such jurisdiction, the inquiry authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor, and partly recorded by itself: Provided that if the succeeding inquiry authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may, recall, examine, cross-examine and re-examine any such witnesses as hereinbefore provided".

5. The next rule that we have to see is Rule 10 of these rules which deals with action on the inquiry report. Sub-rules 1 to 3 of this rule read 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 the evidence on the record or may, if it is of the opinion that further examination of any of the witnesses, is necessary in the interest 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 inquiry authority may, for reasons to be recorded by it in writing, remit the case to the inquiry 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."

6. It was Mr. Madkholkar's case that Rule 9 (24) quoted above was not applicable in this case, inasmuch as,

it was not as if the Inquiry Officer had ceased to exercise jurisdiction. It was his contention that the Inquiry Officer had submitted his report and that it was, therefore, incumbent on the disciplinary authority to take further action thereon in terms of Rule 10. It was Mr. Madkholkar's contention that Sub-rules 1 to 3 of Rule 10 did not give any power to the disciplinary authority to order a re-inquiry. It was his case that under Sub-rule 1 the disciplinary authority could itself recall the witnesses and examine, cross-examine and re-examine them. Further, under Sub-rule 2 the disciplinary authority could remit the case to the same inquiry authority for further inquiry and report. Finally, under Sub-rule 3 the disciplinary authority could even dis-agree with the findings of the inquiring authority, record its reasons for such dis-agreement and record its own findings. It was Mr. Madkholkar's case that there was no provision in these rules for the disciplinary authority to order a re-inquiry because he dis-agreed with the findings of the Inquiry Officer. Mr. Sanyal attempted to counter this stand by submitting that the Inquiry Officer had ceased to exercise jurisdiction the moment he was replaced by another Inquiry Officer and that it was open to the disciplinary authority to so appoint a fresh inquiry officer to succeed the former inquiry officer. To enable us to decide the matter, we considered it necessary to ascertain from the department's record what were the exact circumstances which led the disciplinary authority to order a re-inquiry. This record was produced for our perusal and shows that

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the disciplinary authority has recorded that the circumstances which led him to order a re-inquiry were as under:-

"I am unhappy at the conduct of this departmental enquiry in this case and unable to accept the findings of the Enquiry Officer. I, therefore, set aside the same. The enquiry in this case should now be conducted afresh. I appoint DME(P) for conducting the DAR Enquiry in these cases."

In other words the sole reason which led the disciplinary authority to order a re-inquiry was that he was unable to accept the findings of the Inquiry Officer. The rules do not vest any power in him to do so on this ground. Under rule 10(3), which is the rule mentioned by the respondents in their written statement as being the rule under which the disciplinary authority acted, if he disagreed with the findings of the inquiry officer, he could have recorded his reasons for such disagreement and recorded his own findings. Further, under rule 10(1), if he was of the opinion that further examination of any of the witnesses was necessary in the interest of justice, he could have recalled the witnesses and examined, cross-examined and re-examined them himself. Also, under rule 10(2), he could have remitted the case to the inquiring authority. But there is no provision in the rules which empowers or authorises him to order a re-inquiry merely because he disagrees with the findings of the Inquiry Officer. Against this background we have no hesitation in holding that the order regarding re-inquiry was not at all in conformity with the provisions of the Railway Servants (Discipline and Appeal) Rules, 1968 which have been framed under Article 309 of the Constitution.

7. In this view of the matter, we are of the opinion that the Transferred Application deserves to succeed.

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8. We accordingly quash and set aside the orders dt. 6.12.1982 (at annexures 'C' and 'D' to the Writ Petition). In the circumstances of the case there will be no order as to costs.

*D.K.Agrawal*  
22.6.90

(D.K.AGRAWAL)  
MEMBER(J)

*P.S.Chaudhuri*

(P.S.CHAUDHURI)  
MEMBER(A).