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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

J A I P U R.

O.A. No. 877/92

Date of decision: 12.7.94

GHANSHYAM LAL MALKAR : Applicant.

VERSUS

UNION OF INDIA & ORS : Respondents.

Mr. R.N. Mathur : Counsel for the applicant.

Mr. Manish Bhandari : Counsel for the respondents.

CORAM:

Hon'ble Mr. Gopal Krishna, Member (Judicial)

Hon'ble Mr. O.P. Sharma, Administrative Member

PER HON'BLE MR. O.P. SHARMA, ADMINISTRATIVE MEMBER:

Shri Ghanshyam Lal Malkar has filed this application U/S 19 of the A.T. Act, 1935 wherein he has prayed that order dated 10.6.1988 issued by the D.F.O., Patnam on 10.6.1988 remitting the case back to the Disciplinary Authority to conduct de novo enquiry into the charges framed against the applicant vide memorandum dated 23.1.87 may be quashed.

2. A memorandum dated 23.1.87 under Rule 9 of the Railway Servants (Discipline & Appeal) Rules was issued to the applicant, on the charge of claiming certain undue and excess contingent/conveyance allowances. Inquiry Officer was appointed to inquire into the charges. At the request of the applicant, the Inquiry Officer was changed. Eventually, inquiry report dated 30.11.87 was submitted by Shri Uttam Chand, Assistant Personnel Officer. The Disciplinary Authority agreed with the Inquiry Officer and imposed on him the penalty of withholding of two sets of privilege passes when due and also recovery of a sum of Rs. 28.70 for excess payment of travelling allowances. Thereafter, vide communication dated 10.6.88 (Annexure A-10) the D.F.O., Patnam informed the applicant that the ADM, Ajmer has reviewed the disciplinary case of the applicant under Rule 25 of the Railway Servants (Discipline & Appeal) Rules and has remitted this case back to the Disciplinary

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Authority to conduct de novo enquiry into the charges framed against the applicant vide memorandum dated 23.1.87. The applicant was also informed that the penalty imposed earlier had been cancelled without prejudice to any further action that would be taken. Thereafter, vide order dated 23.6.1988 (Annexure A-11), Shri C.V. Harshe was appointed as Inquiry Officer.

3. The applicant's grievance is that an inquiry was held into the charges framed against him and after consideration of the entire matter, the disciplinary authority had chosen to impose upon him the penalty of withholding of two sets of privilege passes and a recovery of sum of Rs. 28.70 on him. The applicant had not preferred any appeal against the order of penalty. The matter, therefore, should have ended at that stage, instead the respondents have chosen to reopen the matter by ordering a de novo enquiry on the basis of the same charge-sheet, the charges in which have already been inquired into by the Inquiry Officer against whom the applicant had no grouse.

4. The learned counsel for the respondents drew our attention to Rule 25 of the Railway Servants (Discipline & Appeal) Rules. Rule 25(1)(v)(c) permits the Revisionary Authority to remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case. According to the learned counsel for the respondents, this provision permits a case to be remitted for further inquiry etc. and the authority to whom the matter is remitted is empowered to make such further inquiry as it may consider proper in the circumstances of the case. The learned counsel for the respondents has also drawn our attention to Annexure P-1 wherein reasons have been recorded for remitting the case to the lower authority. According to him, this Annexure P-5 was recorded in view of the request made by the applicant by letter dated 30.7.87

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(Annexure A-4) by which he had asked for change of Inquiry Officer. According to him, therefore, the respondents were justified in remitting the case for de novo inquiry.

5. We have heard the learned counsel for the parties and have gone through the records including the provisions of the rules cited before us. The order Annexure R-5 reads as follows:-

"Copy of AFPM's orders dated 12.5.88 (at NIP 5 of DAF Case No. COM.E.308/C/196).

I have gone through the case again. The E.O., in this case, has not brought out clearly whether each of the charge against delinquent employee stands proved or not. The greater reliance in the enquiry has been placed on the arguments produced while the documentary evidence has been thrown into background. The EO has clearly tried to skirt the main issue, possibly due to over-sight. The enquiry in this case, therefore, has to be conducted de novo from the stage of appointing E.O. by the Disciplinary Authority."

6. Even though the provision of Rule 25 cited by the learned counsel for the respondents permits a case to be remitted for further inquiry or action, it cannot be assumed that such a remittal can be of a blanket nature, without citing any reasons in support thereof. The communication dated 10.6.88 (Annexure A-10) does not contain any reasons for remitting the matter back to the Disciplinary Authority. Some reasons appear to be contained in Annexure R-5 but these only show that the revisionary authority was of the view that the Inquiry Officer had not brought out clearly whether each of the charges stood proved or not and greater reliance had been placed on the "arguments produced", while the documentary evidence has been thrown into background. It is further stated in Annexure R-5 that the Inquiry Officer has clearly tried to skirt the main issue, possibly due to over-sight. Hence, according to him, the inquiry requires to be conducted de novo.

7. Now, on the very face of it, this communication does not contain any tenable reasons for remitting the

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matter back to the Disciplinary Authority. In fact, what the revisionary authority wants the Inquiry Officer to do now is to re-appreciate the evidence which was led before him and come to a different conclusion. If certain evidence was led during the inquiry by the prosecution and the defence and the Inquiry Officer failed to appreciate the evidence properly and then came to an incorrect conclusion, the disciplinary authority or the revisionary authority was fully empowered to re-appraise the evidence and to come to his own conclusion. Remittal of inquiry is not permitted on the ground that the authority concerned does not agree with the conclusion of the Inquiry Officer or it does not like its findings. Inquiry can be remitted only if there is any inherent defect in the inquiry or the procedure adopted by the Inquiry Officer or if some vital evidence was shut out by the Inquiry Officer arbitrarily or without reason. The remittal of the inquiry in the present case appears to us to be wholly unjustified.

8. In the circumstances, we quash the communication dated 10.6.38 (Annexure A-10). The O.A. is allowed as above, with no order as to costs. The order Annexure A-7 dated 29.12.37 by which penalty was imposed on the applicant by the Disciplinary Authority is restored.

(O.P. SHAFINA)
Administrative Member

Cikhyar
(GOPAL KRISHNA)
Member (Judicial)