

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

Date of Decision: 4/6/2007

OA 485/96

Ghanshyam Singh, Ex Hamal G/o the Divisional Railway Manager, Western Railway, Kota.

... Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Assistant Personnel Officer (III), Western Railway, Kota.
3. Sr.Divisional Personnel Officer, Western Railway, Kota.
4. Divisional Railway Manager, Western Railway, Kota.

... Respondents

CORAM:

HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

HON'BLE MR.A.P.HAGRATH, ADMINISTRATIVE MEMBER

For the Applicant ... Mr.K.L.Thawani

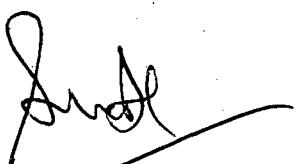
For the Respondents ... Mr.Anupam Agarwal, proxy counsel
for Mr.Manish Bhandari

O R D E R

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

In this OA prayer of the applicant is to quash and set aside the impugned orders (Anns.A/1 to A/3) and to direct the respondents to reinstate the applicant in service with retrospective effect, with all consequential benefits.

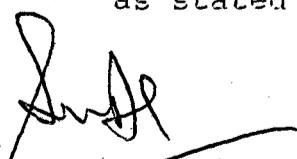
2. Applicant's case, in brief, is that while working on the post of Hamal, Group-D, he was served with a



charge-sheet under Rule-9 of the Railway Servants (Discipline & Appeal) Rules, 1968 on 11.5.88. The applicant denied the charges and it is stated that the first inquiry officer did not find him guilty and recommended to drop the disciplinary proceedings against him but the disciplinary authority disagreeing with the report of the inquiry officer appointed new inquiry officer vide memo dated 1.12.88 to conduct fresh inquiry on certain points but those points were not determined. It is stated that as per rules, appointment of new inquiry officer is void, ab initio. Thus, appointment of new inquiry officer for conducting the inquiry again is illegal and against the provisions of the Railway Servants (Discipline & Appeal) Rules, 1968. It is stated that the second inquiry officer conducted the inquiry afresh and re-examined all the witnesses to fill up the lacunae. Thus, the disciplinary authority has no power to order a fresh inquiry as has been done in the present case. The applicant has also challenged the order of appellate authority as being not the competent authority and the order of the revisional authority being a non-speaking order.

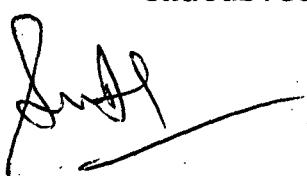
3. Reply was filed. It is stated in the reply that the earlier inquiry was not a complete inquiry on all the issues of charges levelled against the applicant, therefore, Shri M.C.Chaturvedi conducted the inquiry in furtherance of earlier inquiry and submitted the report. It is denied that the Divisional Railway Manager had no power to entertain revision petition, therefore, in view of the reply filed by the respondents they have requested to dismiss this OA with costs.

4. Rejoinder has also been filed reiterating the facts as stated in the OA and the same is on record.



5. Heard the learned counsel for the parties and also perused the whole record.

6. As per statement of allegations, the charge against the applicant is that on 11.12.87 at about 15.15 Hrs. the applicant was in heavy drunken state/under heavy influence of liquor and created a big nuisance and when he was asked to stop the nuisance by the complainant, the applicant abused him and caught his left hand and twisted it. Another charge against the applicant is that on the same day in the evening the applicant abused and beat Shri K.L.Makhija. The undisputed fact emerges out of the pleadings of the parties is that the inquiry officer did not find the applicant guilty of the charges and recommended to drop the disciplinary proceedings. Another undisputed fact emerges out of the pleadings of the parties is that the disciplinary authority had appointed Shri M.C.Chaturvedi as second inquiry officer to submit the report. Although it appears that certain points were determined for further inquiry but according to the applicant those points were not determined. Copy of the order passed by the disciplinary authority has not been produced by the respondents before this Tribunal so as to make this fact clear as to what were those points for determination for further inquiry. On perusal of second inquiry report submitted by Shri M.C.Chaturvedi it appears that the inquiry has not been conducted in furtherance of those points for which the disciplinary authority ~~xx~~ remitted the said inquiry but it appears that Shri M.C. Chaturvedi has again inquired into the matter, re-examined the witnesses and prepared a fresh inquiry report. Therefore, the second inquiry conducted by Shri M.C. Chaturvedi is not in accordance with the rules/procedure.



It is also undisputed fact that the inquiry officer, Shri M.C. Chaturvedi, appointed for conducting second inquiry was not the same officer who has conducted the first inquiry. If the intention of the disciplinary authority was to remit the case for further inquiry then he should have remitted the same to the same inquiry officer but undisputedly in this case Shri M.C. Chaturvedi, another inquiry officer, was appointed. No reasons have been explained why the same inquiry officer was changed.

7. The learned counsel for the applicant has urged that when the first inquiry officer was available, inquiry by another inquiry officer is not permissible and the punishment imposed on such inquiry is not sustainable in law. In support of his contention he has cited (1989) 9 ATC 141, Romeo Charley v. Director General, Council of Scientific & Industrial Research (CSIR) New Delhi & Another, (1989) 11 ATC 110, Motiram Tejumal Gurbaxani v. Chief Commissioner of Income Tax, Bombay City (Administration) & Others, and AIR 1996 SC 2447, State Bank of Bikaner and Jaipur v. Ajay Kumar Gulati.

8. On the other hand, the learned counsel for the respondents has supported the action of respondents as legal and fair.

9. We have given anxious consideration to the rival contentions of both the parties and also perused the whole record including the legal submissions, as referred to by the learned counsel for the applicant.

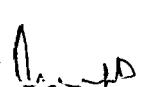
10. As per the provisions contained in the CCS (CCA) Rules and the Railway Servants (Discipline & Appeal) Rules,

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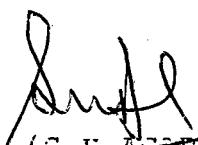
only one inquiry is contemplated and there is no provision in the rules for completely setting aside the previous inquiry and ordering de-novo inquiry. A disciplinary authority, if does not agree with the report of the inquiry officer on certain issues, may remit the case to the same inquiry officer after determining the points but in this case admittedly/undisputedly another inquiry officer was appointed who conducted the inquiry afresh and submitted the inquiry report and on the basis of such an inquiry, punishment was imposed upon the applicant, which is not sustainable in law. it also appears that a copy of the inquiry report, before imposing punishment upon the applicant, has not been furnished upon the delinquent and his reply/defence has not been taken into consideration.

11. As the disciplinary authority in this case while disagreeing with the report of the inquiry officer appointed another inquiry officer, who conducted the inquiry afresh without reference to the points for determination and on such an inquiry report punishment is imposed by the disciplinary authority without following the principles of natural justice. Therefore, the impugned order of punishment, at Ann.A/1, is not sustainable in law and, therefore, the impugned orders at Anns.A/2 & A/3 are also not sustainable in law and all the three impugned orders (Ann.A/1 to Ann.A/3) are liable to be quashed and set aside.

12. We, therefore, quash and set aside the impugned orders, at Ann.A/1 to A/3, and direct the respondents to reinstate the applicant in service forthwith with back wages and all consequential benefits. No order as to costs.


(A.P.NAGRATH)

MEMBER (A)


(S.L. ABHAYWAL)

MEMBER (J)