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CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

Original Application No.631 of 2005

Jabalpur, this the 30th day of October, 2006.

Hon'ble Dr.G.C.Srivastava, Vice Chairman
Hon'ble Shri A.K.Gaur, Judicial Member

V.S.Nigudkar, S/o Shri S.S.Nigudkar, Date of Birth
6.2.1951, Station Superintendent (Under suspension),
Bheraghat, R/o LIG-I, Puneet Nagar, Adhartal, Jabalpur

-Applicant

(By Advocate – Shri S.Paul)

V E R S U S

1. Union of India, Ministry of Railway, Through General Manager, West Central Railway, Indira Market, Jabalpur.
2. General Manager (Revising Authority), West Central Railway, Indira Market, Jabalpur.
3. Divisional Railway Manager, West Central Railway, Jabalpur.
4. Sr. Divisional Operating Manager, West Central Railway, Jabalpur.

-Respondents

(By Advocate – Shri M.N.Banerji)

O R D E R

By Dr.G.C.Srivastava, VC.-

This Original Application has been filed against the order dated 11.4.2005 (annexure A/1) passed by the revising authority and the charge sheet dated 24.5.2005 (annexure A/7) issued by the disciplinary authority in pursuance of the order of the revising authority. The applicant has prayed for the following main relief :-

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“7(ii) Set aside the order dated 11.4.2005 Annexure A/1 to the extent it directs de novo inquiry from the stage of issuance of charge-sheet and keeping the applicant under suspension.

(iii) Consequently, command the respondents to reinstate the applicant with full back wages and other consequential benefits as if impugned order dated 11.4.2005 to the extent challenged herein under the entire charge-sheet dated 24.5.2005 Annexure A/8 be set aside with all consequential benefits be directed to be given to the applicant”.

2. The applicant has also prayed for an interim relief for restraining the respondents from conducting the inquiry pursuant to the charge sheet dated 24.5.2005. This prayer was considered after a short reply was filed by the respondents and vide order dated 26.7.2005 the respondents were restrained from concluding the inquiry.

3. The undisputed facts of the case are that disciplinary proceedings were drawn up against the applicant (who, at the relevant time, was posted as Station Master at Bheraghat) on the charge that on account of certain lapses on his part a head-on collision occurred between track maintenance machine and UP Nasik “N” goods train. An inquiry was conducted into the charges and the inquiry officer held all the charges as proved. After considering the representation of the applicant on the inquiry report, the disciplinary authority imposed the penalty of removal from service, which was confirmed by the appellate authority. The applicant thereafter preferred a revision-petition which was also rejected. The applicant approached this Tribunal against the rejection of the revision-petition and the Tribunal without going into the merits of the case remitted it back to the revising authority through order dated 14.9.2004 in OA No.181/2003 with a direction to decide the case after considering all the issues raised by the applicant in his revision-petition dated 24.7.2002 and also treat the

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aforesaid OA as part of the revision-petition. In compliance of the aforesaid order of this Tribunal, the revising authority has passed the order dated 11.4.2005 (annexure-A-1) through which the disciplinary proceedings have been quashed from the stage of issue of the charge-sheet and the case has been remitted back to the disciplinary authority with a direction to issue a fresh charge-sheet without any prejudice. It was also ordered that the applicant shall be taken back in service on the same status as he was on the date of issue of the original charge-sheet i.e. under suspension. The applicant has approached this Tribunal again against this order of the revising authority on the ground that the revising authority while exercising power of revision under Rule 25 of the Railway Servants (Discipline & Appeal)Rules,1968 can not order a de novo inquiry as has been ruled by the Full Bench of this Tribunal in **Siya Ram Soni and others Vs. Union of India and others**, OA No.228/1992 decided on 21.3.1997 and reported in 1997 MPLSR 389. The applicant has accordingly contended that the fresh charge-sheet issued in pursuance of the impugned order should also be set aside. The applicant has also stated that he had made a representation to the revising authority on 4.6.2005 (annexure A/6) after the charge-sheet was issued requesting for a review of the impugned order on the basis of the aforesaid judgment of this Tribunal. He sent a copy of this representation to the disciplinary authority and followed it with another representation addressed to the disciplinary authority on 25.6.2005 (annexure A/9) requesting him to keep the proceedings pending until his representation is decided by the revising authority. Having received no response from the disciplinary authority and the revising authority, the applicant has approached this Tribunal for relief. The applicant has stated that the revising authority ought to have quashed the inquiry which was full of infirmities and should have exonerated the

applicant from the charges instead of ordering a de novo inquiry and continued suspension of the applicant.

4. In their reply, the respondents have submitted that the applicant has been proceeded against on a serious charge involving a train accident and such a misconduct cannot be overlooked on the ground of technical irregularities in the proceedings. It was further averred that the revising authority has considered all the points raised by the applicant and has passed a detailed and speaking order. It was further contended that the OA is premature as the applicant has submitted a representation against the impugned order on 4.6.2005 (annexure A/6) and has immediately thereafter filed this OA in July, 2005 without waiting for a decision on his representation. It has been prayed by the respondents that the OA should be dismissed being devoid of merit and also premature.

5. We have heard the arguments advanced on behalf of the parties and have also gone through the impugned order closely.

6. We have also seen the full bench judgment of this Tribunal in Siya Ram Soni's case (supra) wherein the following question of law was required to be decided:

"Whether a de novo enquiry can be ordered in exercising powers under Rule 29 of the CCS(CCA)Rules by issuing fresh charge-sheet"

The full bench answered the above question as follows:-

"De novo enquiry cannot be ordered while exercising powers under Rule 29 of the CCS (CCA) Rules by issuing fresh charge-sheet"

Rule 25 of the RS(D&A)Rules, 1968, under which proceedings have been taken up against the applicant in the instant OA, is

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parallel to Rule 29 of the CCS(CCA) Rules,1965. The above mentioned decision of the full bench of this Tribunal, therefore, squarely applies to Rule 25 of the RS(D&A)Rules,1968. In view of this, there is no doubt that the order of the revising authority directing the disciplinary authority to issue a fresh charge-sheet and start the proceedings de novo is legally unsustainable. A close look at the impugned order reveals that this direction has been issued because the revising authority found the charge-sheet defective. The revising authority has given the following observations in the impugned order on the basis of which it has found the charge-sheet defective:-

“(b) It is a fact that the charge sheet has not been framed correctly as per the provisions of the D&A Rules. A major penalty charge sheet can have only four Annexures whereas in this case there are five Annexures. Annexure I should have the Articles of Charge in brief but distinct and should also mention the violation of relevant Railway Service (Conduct)Rules. I find no mention of violation of any of the Railway Service Conduct in the Annexure I.

(c) Annexure II should give the imputations of misconduct or misbehaviour amplified from definite and distinct Articles of charge on which the misconduct or misbehaviour are to be proved. This has not been done. Instead the contents of the Annexure V, which should not have been there at all, have been repeated. Therefore, the charge sheet is defective”.

The revising authority has also made the following observations regarding the inquiry report:

“(h) The Inquiry Officer should have investigated only the Articles of charge mentioned in the charge sheet and delivered his findings on each Articles of charge separately stating reasons in his report. He has exceeded his brief by commenting on violation of certain provisions of the SR, GR & BW Manual in his report, which have not been mentioned in the charge sheet. Moreover, the Inquiry Officer has started his conclusion by discussing the Annexure V instead of Annexure II, which is not as per the rule”.



Fairly, despite the above lacunae, the revising authority has found that the disciplinary authority and the appellate authority as also the revising authority had passed reasoned and speaking orders, but since the charge-sheet and the consequent inquiry report were defective, there was no need to further elaborate on this point.

7. We have given our anxious thought to the impugned order in general and to the observations made about the charge-sheet and the inquiry report in particular. In the light of full judgment of this Tribunal in **Siya Ram Soni's** case, the direction of revising authority to initiate the proceedings *de novo* from the stage of issue of fresh charge sheet is clearly unsustainable in the eyes of law. In fact, even the reasons given by the revising authority in the impugned order for treating the charge-sheet as defective do not appear to be very serious in nature. These are (i) "a major penalty charge sheet can have only four annexures whereas in this case there are five annexures; (ii) annexure-I should have the articles of charge in brief but distinct and should also mention the violation of relevant Railway Services (Conduct)Rules; and (iii) Annexure-II should give the imputations of misconduct or misbehaviour amplified from definite and distinct articles of charge on which the misconduct or misbehaviour are to be proved.

8. A close scrutiny of the charge-sheet (annexure A/3) reveals that annexure-V is linked to annexure-II for elaborating the imputation of misconduct and hence its inclusion in no way renders the charge-sheet as defective. In fact, annexures I, II and V read together clearly give the details of the alleged misconduct and there is no ambiguity in the charge. Further, the charge sheet specifically mentions that the applicant has violated Rule 3(1)(i)(ii) and (iii) of Railway Services (Conduct)Rules, 1966. We thus find

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that the grounds on which the revising authority has found the charge-sheet defective are practically non-existent or at best only technical in nature and have in no way caused any prejudice to the applicant or have violated the principles of natural justice.

9. Further, the revising authority has found the inquiry report defective on the ground that the inquiry officer has "exceeded his brief by commenting on violation of certain provisions of SR, GR and BW Manual in his report, which have not been mentioned in the charge sheet". The revising authority has also pointed out that "the Inquiry Officer has started his conclusion by discussing the Annexure-V instead of the Annexure-II, which is not as per the rule". We have already pointed out that annexure-V has merely elaborated annexure-II and hence there is nothing wrong if the inquiry officer has discussed annexure-V. Further, if the inquiry officer has commented on something which is outside the scope of the inquiry, the revising authority is free to ignore those findings. These facts do not vitiate the inquiry, especially when the revising authority itself has admitted that the disciplinary and appellate authorities have passed reasoned and speaking orders.

10. In view of the above discussion, we find that there was neither sufficient nor legitimate ground for quashing the proceedings from the stage of issue of charge-sheet and remitting the case back to the disciplinary authority for issue of a fresh charge-sheet. Instead, as directed by this Tribunal in OA 181/2003, the revising authority should have considered all the issues raised by the applicant and decided the case on merit by passing a speaking, detailed and reasoned order. The revising authority should have done this on the basis of the material available on record instead of prolonging the proceedings by directing the disciplinary authority to initiate proceedings de novo.

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11. In view of this, we quash and set aside the impugned order and remit the case back to respondent no.2 with the direction that the revision-petition shall be decided on merits within a period of two months from the date of receipt of this order. Till then, the applicant shall remain under suspension, as decided by the revising authority on the ground that the charge on which the disciplinary proceedings were undertaken are very grave and relate to safety aspects.

12. With the above directions, the OA is disposed of. No costs.

A.K.Gaur
(A.K.Gaur)
Judicial Member

G.C.Srivastava
(Dr.G.C.Srivastava)
Vice Chairman

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पृष्ठांकन सं. ओ/न्या.....जबलपुर, दि.....
पत्रिलिपि आच्ये हिंदा:-

- (1) समिक्षा, उत्तर व्यापारी द्वारा एसोसिएशन, जबलपुर
- (2) गोदाराज श्री/मिस्ट्री/कु.....को काउंसल
- (3) प्रत्यक्षी श्री/मिस्ट्री/कु.....को काउंसल
- (4) व्यापारी, कोरारा, जबलपुर व्यापारीठ
सूचना एवं अवश्यक कार्यवाही द्वारा

उप रजिस्ट्रार

1/8/06
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