

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.287 of 1998

Jabalpur, this the 7th day of May, 2003.

Hon'ble Mr.R.K.Upadhyaya-Administrative Member
Hon'ble Mr.J.K.Kaushik-Judicial Member

P.N.Chottopadhyaya, S/o Late Satish Chandra
Chattopadhyaya, aged 58 years, retired Station
Master, S.E.Railway, Bhilai Marshalling yard,
Bilaspur Division, present resident of Colenel
Gola (Dharma) Post and District Midnapur(W.Bengal)

- APPLICANT

(By Advocate - Shri V.Tripathi)

Versus

1. Union of India represented through the
General Manager, S.E.Railway, Garden Reach,
Calcutta-43.
2. Senior Divisional Operations Manager, South
Eastern Railway, Bilaspur-RS(M.P.).
3. Senior Divisional Personnel Officer, S.E.
Railway, Bilaspur-RS.(M.P.).

- RESPONDENTS

(By Advocate - Shri M.N.Banerji)

O R D E R (Oral)

By J.K.Kaushik, Judicial Member -

Shri P.N.Chottopadhyaya has filed this O.A. inter alia challenging the order of conducting de novo enquiry in the disciplinary proceedings being held in pursuance to the charge-sheet dated 24.11.1988 and has sought a further direction to close the disciplinary proceedings and also make the payment of his retiral dues. He has also sought for quashing of order dated 17.8.2001.

2. The undisputed abridged facts of the case necessary for adjudication of the controversy involved are that the applicant while working on the post of Assistant Station Master was issued with a charge-sheet dated 24.11.1988 alleging improper use of Excess Fair Tickets. An enquiry was conducted and the enquiry officer completed the enquiry. A copy of the enquiry report was supplied to the applicant and he has also submitted a representation against the same clearly indicating that the findings of the enquiry officer were not based

on evidence and were perverse. However, the submissions made therein were not duly considered and the disciplinary authority ordered for de novo enquiry as has been indicated in Annexure-II dated 20.1.1993 which reads as under:-

"As the formalities required during enquiry proceedings have not been observed properly, the file should be returned back to the enquiry officer for de novo enquiry".

Thereafter, the enquiry officer proceeded with the enquiry. Incidentally, the applicant had retired from service on 28.2.1998. It is primarily the order of de novo enquiry has been challenged by the applicant in this OA, on the ground that ordering denovo enquiry by the respondents is without legal sanction and all proceedings thereof are invalid.

3. The respondents have filed a detailed reply and the facts are not in dispute. It is submitted that ordering de novo enquiry is only to help the applicant and give him a reasonable opportunity. The same is within the power of the disciplinary authority as per Railway Servants (Discipline & Appeal) Rules, 1968.

4. We have heard the learned counsel of parties and have carefully perused the records of this case. At the very outset the learned counsel of the applicant has drawn our attention to Rule 10 of the Railway Servants(Discipline and Appeal)Rules and has submitted that there is a provision of only a further enquiry and no provision of de novo enquiry by the disciplinary authority. On the contrary the learned counsel of the respondents has reiterated his contentions mentioned in the reply. He has submitted that no prejudice has been caused to the applicant by the de novo enquiry, rather it was the applicant who was complaining that the enquiry was not properly conducted and that is the reason the fresh enquiry has been ordered.

5. We have considered the only question as to whether the disciplinary authority has power to order for de novo enquiry or not as per the provisions of Railway Servants

(Discipline & Appeal) Rules, 1968. Incidentally this issued has been settled by a co-ordinate Bench of this Tribunal in O.A. No. 222 of 1997, Mr. P.K. Mittal Vs. Union of India & ors where one of us (Mr. J.K. Kaushik) was a party. The question involved in the present case has been elaborately discussed in the said case and it also contains number of authorities wherein it has been held that the disciplinary authority has no power to order for de novo enquiry. To cut short the controversy, a copy of the said judgment is placed on record and we also refrain from repeating the discussions made therein, so as to avoid prolixity. We have no hesitation in following the said decision and decide this application on the similar line.

6. In view of the settled principles of law as crystallised by various judgments of the Hon'ble Supreme Court and the mandatory provisions of Rule 10 ibid and its sub-rules, the impugned order cannot be sustained. The O.A. is allowed. The order relating to conducting de novo enquiry and also subsequent proceedings thereof are hereby quashed. However, the respondents will be at liberty to proceed against the applicant as per law from the stage of submission of representation by the applicant against the first enquiry report. But, keeping in view the fact that the applicant has already retired from service in the year 1998, the final order in the matter shall be passed within a period of four months from the date of receipt of a copy of this order. No costs.

JK Kaushik
(J.K. Kaushik,
Judicial Member)

Upadhyaya
(R.K. Upadhyaya)
Administrative Member.

rkv.

Issued
13.5.03
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W. Tripathi, Adv.
MN Bangar, Adv.

J. K. Kaushik
12.5.03