CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

(ORDERS RESERVED ON 1.10.2018).

O.A.NO.063/00054/2017 Date of order:- 22.11.2018

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**
Hon'ble Mrs.Ajanta Dayalan, Member (A).

Anand Kumar Guleria son of late Sh. Karam Singh, Station Superintendent, Railway Station Makhhu Division, Ferozepur, presently residing at village Dehri, Post Office Rehan, Tehsil Nurpur, District Kangra(HP)-176 022.

……Applicant.

(By Advocate :- Shri S.S.Pathania)

Versus

1. Union of India through General Manager, Northern Railways, Baroda House, New Delhi.

2. Divisional Railway Manager, Northern Railway, Ferozepur(PB).

3. Senior Divisional Operation Manager, Divisional Office, Northern Railway, Ferozepur (PB).

4. Chief Medical Officer, Northern Railway Divisional; Hospital, Ferozepur(PB).

5. Senior Divisional Medical Officer, Northern Railway Divisional Hospital, Ferozepur(PB).

6. Senior Divisional Personal Officer, Northern Railway, Ferozepur(PB).

…Respondents

(By Advocate : Shri G.S.Sathi).

O R D E R

Sanjeev Kaushik, Member (J):

The applicant assails an order dated 3.3.2016 (Annexure A-20) whereby disciplinary authority appointed a new Inquiry Officer

to hold de-novo enquiry. He has further sought issuance of a direction to the respondents to accept the earlier enquiry report (Annexure A-17) by taking a view in accordance with law.

2. Before us, there is no material dispute to the factual narration of facts, but to unfold the controversy certain facts which led to the filing of the present OA are necessary to unfold. The applicant joined the respondents as Assistant Station Master on 10.12.1985 in the office of Northern Railway, Chandosi(UP). He was promoted to the post of Station Master on 3.10.2011 and was posted at Railway Station Makhhu, Northern Railway Division, Ferozepur. As per para 514 of the Indian Railway Medical Manual (for short "IRMM") An employee more than 55 years of age belonging to Class A-2 has to be periodically re-examined every year. The applicant was issued memo on 22.10.2012 by the Station Master Makhhu, for the periodic medical examination (for short "PME"), where he appeared on the said date and was referred to respondent no.5 for medical examination. He was examined on 22.10.2012 & 23.10.2012. After examination, he was to be issued a certificate of competency as per requirement of para 524 of IRMM. It is the case of the applicant that instead of issuing such certificate, he was asked to bring G-92 form and was referred to Railway hospital, Ferozepur. When the applicant was neither issued fitness certificate nor was given G-92 form, then he submitted a representation on 28.10.2012 to respondent no.2 bringing out the factual scenario to his knowledge. When he did not receive any information pursuance to his representation (Annexure A-5), he again submitted another representation on 5.11.2012. He

was called in the office of respondent no.2 vide letter dated 6.11.2012 and was informed that he was issued G-92 form.

3. Pending issuance of the above certificate, when the applicant was not paid salary, then he approached this Tribunal by filing O.A.No.14485/PB/2012, wherein this Court, by way of interim direction, directed the respondents to release salary for the month of November, 2012 subject to outcome of the pending OA. After exchange of pleadings, on a statement made by counsel representing the Railways therein that they will furnish the G-92 form, the OA was disposed of on 10.2.2014. After receiving the sick memo i.e. G-92 form, the applicant reported for duty before the Divisional Railway, Ferozepur on 12.2.2014, where after proper investigation, applicant was referred to Northern Railway, Central Hospital, New Delhi, for blurred vision. As per averment in the O.A., the applicant was under treatment till the filing of the O.A. By an order dated 15.5.2014 issued by respondent no.3, applicant was declared as absent from duty till he gets fitness certificate from the concerned medical authority. He was slapped with a charge-sheet on standard form 5 on 9.10.2014 and he was required to submit reply, if any, which the applicant submitted his reply on 8.12.2014. After considering the reply, the respondents issued statement of defence Annexure A-15 and appointed a regular Inquiry Officer on 25.3.2015. It is submitted that the said Inquiry Officer submitted his report on 13.12.2015 and exonerated the applicant from the charge levelled against him. Copy of the said enquiry report was given by the office of respondent no.3 on 8.9.2016 which the applicant received on 14.9.2016 requiring him to submit any representation within 15 days

which he submitted on 15.9.2016, requesting therein to accept the enquiry report. But without considering the enquiry report, wherein the applicant was exonerated, the competent authority without recording any reason issued an order dated 3.10.2016 by issuing SF No.7 by appointing another Inquiry Officer to look into the charges levelled against the applicant. Against this order, the applicant is before this Court by way of present OA.

4. The applicant has taken various grounds for invalidation of impugned order as also the charge-sheet. The star argument which has been raised in the OA is that instead of accepting the enquiry report Annexure A-17, the disciplinary authority without recording any reason or dis-agreement note, vide order dated 3.10.2016 issued another SF No.7 by appointing New Inquiry Officer to hold de-novo enquiry, which as per his submissions cannot be done as per rule formation and is also against the judicial pronouncements. Thus, it is prayed that the impugned order dated 3.10.2016 be quashed and set aside and direction be issued to the competent authority to accept the enquiry report Annexure A-17.

5. Respondents while resisting the claim have filed written statement wherein they did not deny the factual accuracy. However, they submitted that earlier Inquiry Officer did not examine the material witness, therefore, the competent authority after recording the dis-agreement note appointed another Inquiry Officer to hold de-novo enquiry, which is permissible as per law. Thus, it is prayed that the OA be dismissed.

6. Applicant has filed a rejoinder.

7. We have heard the learned counsel for the parties and have perused the material placed before us.

8. Shri Pathania, learned counsel for the applicant, vehemently argued that the impugned order dated 3.10.2016 (Annexure A-20) appointing new Inquiry Officer to hold de-novo enquiry is against the rule formulation and, as such, the impugned order be set aside. To elaborate his arguments, he submitted that once an Inquiry Officer has already submitted his report, copy of which has been forwarded to the concerned employee, who had already filed his reply, then as per the procedure, the competent authority is under obligation to either accept the report or if he is dis-agreeing with it, then he has to record dis-agreement note and only thereafter can proceed in the matter. Here since the disciplinary authority has not recorded any reason and has straightway appointed new Inquiry Officer to hold de-novo enquiry, therefore, the same be set aside. In this regard, he placed reliance on a judgment passed by the Hon'ble Apex Court in the case of **K.R.Deb** versus **Collector of Central Excise** (1971 A.I.R. S.C. Page 1447).

9. Per contra, Shri G.S.Sathi, learned counsel for the respondents has reiterated what has been stated in the written statement. However, he admitted this fact that the disciplinary authority has travelled beyond the rules because he ordered de-novo enquiry by appointing a new Inquiry Officer, without remitting the matter back to the same very Inquiry Officer to conduct further enquiry.

10. Having completed all the formalities, having heard the learned counsel for the parties, having gone through the pleading on board and legal provisions and the judgments relied thereupon with their valuable assistance. The solitary issue raised at the hands of the applicant came for our consideration is whether the disciplinary authority can order de-novo enquiry by appointing a new Inquiry Officer or not ?

11. Rule 10 of the Railway Servants (Discipline & Appeal) Rules, 1968 (for short 1968 Rules) deals with action on the enquiry report by the disciplinary authority. For better appreciation, the same reads as under:-

> "10. Action on the inquiry report :-
> (1) If the disciplinary authority:-
> (a) after considering the inquiry report, is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, it may recall the said witness and examine, cross-examine and re-examine the witness;
> (b) is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold further inquiry according to the provisions of rule 9, as far as may be.
> (2) The disciplinary authority:-
> (a) shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority a copy of the report of the inquiring authority, its findings on further examination of witnesses, if any, held under sub-rule(1) (a) together with its own tentative reasons for disagreement, if any, with findings of the inquiring authority on any article of charge to the Railway Servant, who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Railway Servant;
> (b) shall consider the representation if any, submitted by the Railway Servant and record its findings before proceeding further in the matter as specified in sub-rules (3), (4) and (5).

(3) Where the disciplinary authority is of the opinion that the penalty warranted is such as is not within its competence, he shall forward the records of the inquiry to the appropriate disciplinary authority who shall act in the manner as provided in these rules.
(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (i) to (iv) of rule 6 should be imposed on the railway servant, it shall, notwithstanding anything contained in rule 11, make an order imposing such penalty:
Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Railway Servant.
(5) If the disciplinary authority, having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of the opinion that any of the penalties specified in clauses(v) to (ix) of rule 6 should be imposed on the railway servant, it shall make an order imposing such penalty and it shall not be necessary to give the railway servant any opportunity of making representation on the penalty proposed to be imposed:
Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the railway servant".

Rule 10(2) of 1968 Rules makes it clear that if the disciplinary authority is not agreeing with the enquiry report, then he has two course first to note disagreement note and supply copy of the inquiry report with disagreement note to the delinquent officer to file objection and second course is to record reasons for not agreeing with the inquiry repot or some defects have crept into the enquiry, then send matter back to the same inquiry officer to hold further enquiry as provided under Rule 10(1)(b) according to rule 9. It is clear that Rule does not debar the disciplinary authority for ordering de-novo enquiry. What rule mandate that the disciplinary authority has to record reason in writing. The expression further enquiry

cannot be restricted to mean to start from the stage defect was noticed or left by the previous Inquiry Officer. Expression further enquiry is one amplitude and it includes the same or fresh evidence as well as appreciation of the record. But it is equally settled that the enquiry report did not suit to the disciplinary authority then under the garb of de-novo enquiry, cannot appoint another Inquiry Officer to hold de-novo enquiry, but he can only remit the matter to the same very Inquiry Officer to continue with the enquiry on the point which as per his submission has not been considered by the Inquiry Officer. In any eventuality, when the earlier Inquiry Officer is not available to act as an Inquiry Officer, then in that eventuality, a new Inquiry Officer can be appointed. But the disciplinary authority himself without recording any reason cannot order for a de-novo enquiry by appointing a new Inquiry Officer.

12. The law on the question of power of the disciplinary authority to direct a fresh enquiry or de novo enquiry in cases where the delinquent is exonerated by the Enquiry Officer is well settled. It has been held by the Courts that unless rules applicable so provide, a second or de novo enquiry cannot be ordered. But if some defects have crept into the enquiry, the punishing authority is empowered to ask the enquiry officer to record further evidence or it may itself consider the evidence and come to its own conclusion. But in the absence of a specific rule enabling it to do so, it cannot order a de-novo or fresh enquiry by another Inquiry Officer.

13. The jurisdictional High Court in the case of **Paramjit Walia v. State of Punjab, ILR (2007) 1 P&H 248**, after referring to various precedents quashed the de novo enquiry ordered, on the ground that there was no provision in the relevant rules for ordering a de novo inquiry and the only provision was that the matter could be remitted to the same enquiry officer for further inquiry. In Paramjit Walia's case, the Court has observed as under:-

> "The provisions of rule 9(1) of the 1970 Rules, however, provide that the punishing authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry. The inquiring authority shall thereupon proceed to hold further inquiry according to the provisions of rule 8 as far as may be. It is appropriate to note that the Municipal Council has not remitted the case to the inquiring authority but has entrusted the case to the CVO, Local Government for fresh inquiry. In fact, in terms of Rule 9 of the 1970 Rules, after the receipt of the report of the Inquiring Authority, the punishing CWP-11985-1995 [11] authority may after recording its reasons in writing remit the case for further inquiry to the reporting authority/inquiry officer. Besides, the said rule only provides for the holding of a further inquiry by the inquiring authority and it does not provide for the conducting of a fresh or a de novo inquiry and that too by an officer other than the inquiring authority. The conduct of a de novo inquiry is, therefore, not provided by the Statute. In State of Haryana and others versus Roshan Lal Sharma, Letters Patent Bench of this Court observed that if a superior officer holds a departmental inquiry in a slip shod manner or even dishonestly, the State can take action against the superior officer and it is also open to it to prosecute in a Court of law a person once exonerated in a departmental inquiry. On the other hand, if a second departmental inquiry could be ordered without the authority of the Statute or the relevant service rules, the danger of harassment to the Government Officer would be immense and in the present climate of rapid political change such a course would be very demoralizing to the public servant. It was further held that dropping of certain charges against the public servant means the exoneration therefrom. The same is a quasi judicial order and is not liable to be varied at the will of the authority unless the relevant Statute or the rules give the authority the power to review. In Parkash Nath Saidha, Naib Tehsildar versus The Financial Commissioner (Revenue) Punjab and others, it was held that there is authority for the proposition that the fundamental principle viz. that no one shall be

punished or put in peril twice for the CWP-11985-1995 [12] same matter, is applicable even to orders passed on departmental inquiries. In KR Deb versus The Collector of Central Excise, Shillong, it was held by the Supreme Court that Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957 on the face of it provides for one inquiry, but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in rule 15 of Central Civil Services Rules 1957 for completely setting aside previous inquiries on the ground that the report of the inquiring Officer or officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under Rule 9 of Central Civil Services (Classification, Control and Appeal) Rules, 1957. It seemed that punishing authority was determined to get some officer to report against the appellant. The procedure adopted was not only not warranted by the rules but was harassing to the appellant. It was further observed that from the material on record, a suspicion did arise that the Collector was determined to get some inquiry officer to report against the appellant therein. In Pawan Kumar Garg versus The Punjab Co-operative Cotton Marketing and Spinning Mills Federation Ltd. and others, the inquiry officer had exonerated the petitioner therein. The punishing authority disagreeing with the inquiry officer appointed a new inquiry officer with a direction to hold a de novo inquiry. It was held that a de novo inquiry cannot be ordered and only further inquiry can be ordered by the disciplinary authority. The impugned order in the said case was quashed with liberty to start the inquiry from the stage when the inquiry findings were submitted by the inquiring officer. In the case in hand, as has already been noticed, the petitioner has been exonerated of some of the charges and particularly charge No.3 which is with respect to his misbehaviour with the President of the Municipal Council (respondent-3). The petitioner was exonerated in term of the inquiry report (Annexure P-8) after full fledged departmental inquiry. No statutory provisions or rules have been brought to our notice which give the Municipal Council (respondent-2) the power to get a de novo inquiry conducted merely because it disagrees with the report of the inquiring authority. The disagreement that has been recorded is without reasons. In terms of the inquiry report (Annexure P-8), the punishing authority could, after recording its reasons in writing, remit the case to the inquiring authority for further inquiry and the inquiring authority was to proceed thereupon according to the provisions of rule 8 of the 1970 Rules. Therefore, there

being a clear infraction of Rule 9 of the 1970 Rules, the impugned resolution No. 8, dated 3rd January, 2006 (Annexure P-9) is unsustainable.

14. In the case of **State of Punjab Vs. Harjinder Singh 1999(3) RSJ 264** after referring to Rule 9(1) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, the Hon'ble Court has observed as under:-

"The language of Rule 9(1) is not suggestive that the disciplinary authority is vested with the jurisdiction to direct de novo enquiry and rendering the previously held enquiry as ineffective. The power vested in the authority is limited for further enquiry and report. This authority cannot be enlarged if the rule making authority opted to limit the powers of the disciplinary authority where it has intention and it records reasons for remittance of the case to the enquiry officer. In this regard reference can be made to the judgment of the Hon'ble Supreme Court in the case of K. R. Deb vs. The Collector of Central Excise Shillong, AIR 1971 Supreme Court 1447, where the Court was concerned with some what similar rules governing the conditions of service of the petitioner in that case. It was held as under:-

"It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reasons, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under rule 9."

In the present case, a reading of the relevant Statute of the respondent-University, reproduced above, reveals that there is no provision therein as per which, in case of disagreement by the disciplinary authority with the first enquiry report, enquiry can be entrusted to a second enquiry officer.

15. This aspect of the matter has also been considered by the jurisdictional High Court in the case of **Union of India & Ors. vs. Shashi Bhushan & Another** (2011(1) R.S.J. Page 506) where

Division Bench after noticing the judgment relied upon by the applicant in the case of K.R.Deb(supra) and **Union of India** versus **P.Thayagaraian** (1999(1) S.C.C. Page 733) has come to the conclusion that if the disciplinary authority comes with definite finding that there is procedural lapse in conducting the enquiry, then he can order de novo enquiry under Rule 15(1) of the 1965 Rules. Relevant part of the judgment passed in the case of Shashi Bhushan (supra) reads as under:-

> "15. When we apply the principles laid down by Hon'ble the Supreme Court, it emerges that the disciplinary authority has noticed in paras 3 and 4 of its order dated 18.1.2007(supra) that during inquiry, the prosecution documents as per details in Annexure III of charge memo have not been taken on record although these documents were presented by the Presenting Officer and inspected by the charged officer. This was regarded as procedural lapse. The disciplinary authority has further recorded that deposition of S.W.2 and S.W. 3 recorded on 16.12.2005 are same and even designation have not been correctly mentioned. The disciplinary authority felt that the Enquiry Officer has conducted the enquiry in a casual manner. It is in the aforesaid context that the disciplinary authority exercised power under Rule 15 (1) of the Rules and ordered further enquiry by appointing Shri H.C.Ahuja, as Enquiry Officer. The order passed by the Disciplinary Authority falls within the four corners of its power conferred by Rule 15(1) of the Rules and the judgments of Hon'ble the Supreme Court. Accordingly, it has to be concluded that on precedent, principle and on the anvil of statutory rules, the order passed by the disciplinary authority deserves to be upheld".

16. It is, thus, apparent from the law declared by the courts of law from time to time that there is no hard and fast rule or water tight compartmentalization, that in every case the competent authority can order de-novo enquiry and/or it can only order a further enquiry from the stage, the defect had crept in, and even change of inquiry officer has also been approved, considering the facts of the cases like non availability of the enquiry officer for valid

reasons. In other words, the application of mind has to take place and arbitrariness has no place. The competent authority has to take decision as per rules and law and with proper application of mind, considering the facts of the case and give plausible reasons for its action. The procedure for start of denovo enquiry would attracts the principle, that if a statute requires a thing to be done in a particular manner, it should be done in that manner or not all. This principle was approved and accepted in well-known cases of **Taylor v. Taylor**, (1875) 1 Ch. D. 426 and **Nazir Ahmed v. Emperor**, AIR 1936 PC 253. It is clear that the rule formulation clearly provides that if the disciplinary authority is not inquiring authority itself, then for reasons to be recorded in writing, remit the case to the inquiring officer for "further inquiry". It has not come on record that the earlier inquiry officer was not available for conducting the further inquiry. It appears, from the facts of case and sequence of events, that the Disciplinary Authority was not satisfied with the inquiry officer and as such proceeded to appoint another inquiry officer that too by passing a simple order, without giving any reasons therefor. The course of action adopted by the disciplinary authority in this case is not in consonance with the rule formulation and as such cannot be approved by a court of law. The concept of further enquiry is clearly provided in the rules itself as amplified by the indicated judicial pronouncements, that the inquiry was to be conducted from the stage the defect had taken place.

17. However, the respondents have tried to defend the action of disciplinary authority that the disciplinary authority apprehended collusion between the applicant and the inquiry officer and as such

I.O. was changed. However, a perusal of Annexure R-4 indicates that the disciplinary authority has only mentioned in file noting that he is not in agreement with findings of I.O. and has also not pointed out specific defect in that regard. However, the element of collusion is not mentioned in the noting and it has come for the first time in the written statement only. This is impermissible. Hon'ble Supreme Court in the case of **Mohinder Singh Gill-vs.-The Chief Election Commissioner, New Delhi** reported in AIR 1978 SC 851, has observed as follows:-

> "The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out."

Similarly, in the case of **Commissioner of Police, Bombay vs. Gordhandas Bhanji** , AIR 1952 SC 16, – has held that "Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to, do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself." Orders are not like old wine becoming better as they grow older. Hon'ble Supreme Court in the case of **Hindustan Petroleum Corporation Ltd. vs. Darius Shapur Chenai** reported in (2005 (7) SCC 627), has observed that when an order is passed by a statutory authority, the same must be supported either on the

reasons stated therein or on the grounds available therefore in the record. A statutory authority cannot be permitted to support its order relying on or on the basis of the statements made in the affidavit de hors the order or de hors the record. The Hon'ble Supreme Court also observed that assignment of reasons is a part of the principles of natural justice unless the necessity for assigning reasons is taken away by a statute either expressly or by necessary implication.

18. In the wake of aforesaid discussion, the facts of this case, rule position and legal position settled in the indicated cases, we answer the poser in affirmative. Accordingly we are of the opinion that the impugned order, Annexure A-20 dated 3.10.2016 is illegal, arbitrary, nonest and is accordingly set aside. The applicant has also retired from service during pendency of the O.A. However, quashing of the order would not preclude the authority from proceeding ahead in the matter, as per rules and law, as discussed above. No other point raised and argued. The parties are, however, left to bear their own costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(AJANTA DAYALAN)
MEMBER (A).

Dated:- November 22, 2018.

Kks