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**Central Administrative Tribunal
Principal Bench**

O.A. No.1254/2003

New Delhi this the 7th day of January, 2005

**Hon'ble Shri V.K. Majotra, Vice Chairman (A)
Hon'ble Shri Shanker Raju, Member (J)**

Sri Prakash
S/o Shri Chaturi Prasad
1069, Subzi Mandi,
Vijay Nagar, Mawai Road,
Ghaziabad.

-Applicant

(By Advocate: Shri G.D. Bhandari)

-Versus-

Union of India, through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Chief Works Manager,
Northern Railway,
Signal Workshop,
Ghaziabad.

-Respondents

(By Advocate: Shri R.L. Dhawan)

ORDER (Oral)

Hon'ble Shri Shanker Raju, Member (J):

Applicant impugns respondents' order dated 26.2.2002 whereby he has been imposed with a penalty of compulsory retirement and also appellate order dated 18.3.2003 whereby the appeal preferred by him has been rejected.

2. Applicant, who was appointed as Khallasi on 19.9.1965, while working as Fitter, a charge sheet under Rule-9 of the Railway Servant

(Discipline & Appeal) Rules, 1968 (hereinafter referred to as 'Rules') was served upon him on 13.9.1995 for the allegations of unauthorized entry on 23.10.1994 in Signal Workshop and for allegedly committing theft of 117 kg. Brass dust. Applicant had approached this Court earlier in OA-466/1997 seeking interference at interlocutory stage of the disciplinary proceedings. The Tribunal, vide its order dated 31.12.2001 directed the respondents to conclude the proceedings and decide the case.

3. Enquiry Officer vide its report dated 2.6.2001 substantiated the charge on representation. The Disciplinary Authority imposed major punishment of compulsory retirement, which was upheld even by the appellate authority, which gives rise to the present OA. An objection has been raised by the learned counsel for respondents Shri R.L. Dhawan as to non-existence of available remedy on revision provided under Rule-24 of the Rules, *ibid*. As such, it is contended that OA is pre-mature.

4. To substantiate, the decision of the Principal Bench in OA-1057/2001 in **Shri Ram Avtar Gupta Vs. Its General Manager** decided on 16.9.2002 has been relied upon and also ex-parte decision of one of the co-defaulter **Raja Ram Vs. Union of India** in OA-1253/2003 wherein the OA was dismissed on available remedy of decision vide order dated 3.2.2004. In this conspectus, it is contended on behalf of the respondents that the Court is bound by the doctrine of principles to follow the above decision or else to refer the matter to Larger Bench.

5. On the other hand, applicant's counsel contended that in the light of decision of the Apex Court in **State of Himachal Pradesh Vs. Raja Mahendra Pal and others**, AIR 1999 SC 1786 that in exceptional circumstances the existence of remedy can be waived of. Accordingly, it is stated that as in the present case the charge sheet is void abinitio as

the finding of the enquiry officer is absolutely bald and the orders passed by the disciplinary and appellate authorities are non-speaking and the fact that after three years of compulsory retirement when a stand on merit has been taken by the respondents in appeal in reply to the OA, exhaustive remedy would be a mere formality and in such an event the Revisional Authority is not going to decide the matter with open mind and would follow the stand taken by the respondents in the OA. It is at this stage contended that in effective dispensation of justice, the decision of the co-defaulter, who has been separately chargesheeted and imposed punishment vide separate order, OA-1253/2003 was decided in absence of the counsel of the applicant and the exceptional circumstances were not brought to the notice as well as the decision of the Apex Court in **Raja Mahendra Pal** (supra). As such the decision of the co-ordinate Bench would be per incurium and is not a precedent to be followed by the co-ordinate Bench.

6. On careful consideration of rival contention on preliminary issue in the light of the decision in Apex Court in **SI Roop Lal Vs. Lt. Governor** 1999(9) SC 597, it is obligatory upon the Tribunal of a co-ordinate Bench to follow the decision of another Bench but on disagreement, it has to be referred to a larger Bench.

7. However, doctrine of precedent laid down under Article-141 of the Constitution of India, a decision which does not take into consideration the statutory rules or the decision of the Apex Court is per incurium and is not binding. In such an event even without resorting to disagreement, a decision can be ignored, as it is not a decision in law. The aforesaid enquiry gains support from the decision of the Apex Court in **Fuerst Day Lawson Limited Vs. Jindal Exports Ltd.** 2001 (6) SCC 356.

8. While dealing with the question of remedy on revision available under Rule-24 of the Railway Rules, *ibid*, following observations have been made:-

“6. The said provision certainly puts an embargo on the powers of the Administrative Tribunals and though it used the word ‘ordinarily’ still that would be an exception to the rules. Only in exceptional cases, a departure from Section 20 of the Administrative Tribunals Act, 1985 could be made”.

9. If one has regard to the above, even under Section 20 of the Administrative Tribunals Act, 1985, Tribunal would not ordinarily admit the application and can waive of the requirement of available remedy in an exceptional case.

10. This aspect of the matter and the decision of the Apex Court in **Raja Mahendra Pal** (*supra*), which has allowed interference under jurisdiction of Article 226 of the Constitution of India, without exhaustive the remedy in the peculiar and special facts after the decision of the Constitutional Bench in **L. Chandra Kumar Vs. Union of India & Ors.** JT 1997 (3) 589, where the Tribunal has^{been} observed as a Court of first instance with all ancillary powers, the ratio applies in the jurisdiction of the Tribunal as well.

11. The aforesaid aspect of the Apex Court's decision and case being on exceptional circumstances could not be put before the co-ordinate Bench in Raja Ram's case (*supra*) which has been decided for want of assistance from applicant's side. Accordingly, holding the decision in *per-incurium* and having regard to the fact that, present is an exceptional case where not only the charge sheet is void ab initio but enquiry report, orders passed by the Disciplinary Authority and Appellate Authority are glaring examples of non-application of mind being non-

speaking orders. We use our discretion to entertain the application without exhaustive available remedy of revision without disagreeing with the co-ordinate Bench's decision and thus the objection of the respondents stands over-ruled.

12. Rule-9 (7) of the Railway Servants (Discipline & Appeal) Rules, 1968 laid down in holding disciplinary proceedings in Railways, obligates upon the Disciplinary Authority either to deliver or cause to be delivered to the Railway servant a copy of Article of charge, the statement of imputations of misconduct and also a list of documents and witnesses.

13. If one has regard to the above, the aforesaid Rules not only requires the Disciplinary Authority to formulate the imputation in detail but attach with the Memorandum the Articles of Charge, list of witnesses and list of documents. From the perusal of the charge sheet, Memorandum of Charge, annexed with the reply of the respondents, which shows single piece of paper. Article-I has been mentioned without any detail of imputation and the same list of witnesses and documents were given.

14. It is trite law that a charge sheet should not be vague or lacking^u any material and the particulars should be elaborative with all Annexures. As per Railway Board's letter No.E(D&A) 66 RG 6-7 dated 30.12.1968, it is mandated upon the Disciplinary Authority or the Enquiry Officer to separately issue an imputation of misconduct giving summary of the circumstances on which the charge is based. List of document and witnesses should also be separately prepared and the language of the charge sheet should be specific without any vagueness.

15. If we examine the charge sheet, in the light of these mandatory^u instructions, supplementing the rules, it is found that the Article of

Charges and imputation are not even having a brief summary, the particulars etc. and the list of witnesses and documents is printed on a printed proforma, which has been deprecated in various pronouncements and shows non-application of mind. Moreover in the Articles, it has been stated that the applicant is held responsible which shows that without following the due process and establishing the charge, the charge has been pre-determined by the Disciplinary Authority and the enquiry is only a formality. Such a vague charge vitiates the enquiry in the light of the decision of the Apex Court in **State of Uttar Pradesh Vs. Mohd. Sharif** 1982 SCC (L&S) 253.

16. We also find an illegality in the enquiry, i.e., the enquiry report is a non-speaking. It is pursuant to re-produce the enquiry arrived at by the Enquiry Officer:-

"Findings:-

On the basis of enquiry held in SF-5's case and statements of witness, it so appears that the CO Shri Shree Prakash, Mill Wright Fitter, Machine Shop, along with the co-accused Shri Raja Ram, Mill Wright Fitter, Machine Shop, entered the Signal Workshop, a restricted place, at 02.00 hrs. in the night of 23.10.1994 with malafide intention, in connivance with RPF Staff on duty, resulting in the theft of 117 kgs. Brass waste dust from the locked and sealed store of the Machine Shop.

The findings in the enquiry are based on the following assessment:_

- (a) Reply given by P.W.-I to Q.No.1 and 2 of the Defence Helper (pp-48 of the case).
- (b) Reply given by PW-1 to Q. No.4 put by the Enquiry Officer (pp-49).
- (c) Reply given by PW-1 to Q.No.3

The enquiry report is submitted for further action".

17. The Rule-9 25(i) of the Rules *ibid* provides that enquiry officer to pass a speaking order, *inter alia*, containing the article of Charge, Defence Statement and finding on each article of charge is proved. The Apex Court in **Anil Kumar Vs. Presiding Officer and Others** 1985 SCC (L&S) 815 while dealing with the aforesaid issues held that where the evidence is annexed to an order sheet and no co-relation is established and Enquiry Officer has not recorded the finding as to why the defence produced has not appealed to him and the conclusion is on the *ipse dixit* of the enquiry officer, it is not an enquiry report at all. In this view of the matter, the report of the enquiry officer is bald, vague, containing no reason. There is no apparent reason as to conclusion of the guilt against the applicant, therefore, a mechanical application is established, which vitiates the enquiry report.

18. Order passed by the Disciplinary Authority is also a non-speaking order without dealing with the contentions of the applicant and recording reasons. It was more incumbent upon him to have more reasons, as the enquiry report was non-speaking.

19. In High Court of Calcutta in **Ram Darash Dosad Vs. Union of India** 2004 (2) ATJ 48 Calcutta High Court has held that reasons are to be recorded in support of the enquiry held under the Railway Rules.

20. The Apex Court in **State of Bihar & Ors. Vs. Lakshmi Shankar Prasad**, 2002 (10) SCC 351, has held that a non-speaking punishment order is illegal.

21. Apart from it, Railway Board's instructions contained in instruction issued in 1982, 84 and 2000, mandates recording of reasons by the Disciplinary Authority in the light of decision of the Apex Court in **Mahavir Prasad Vs. State of U.P.** AIR 1970 SC 1302.

22. From perusal of the appellate order as well, we do not find any reason having been recorded and the same suffers from non-application of mind. In the result, for the foregoing reasons, orders passed by the respondents are not legally sustainable. Accordingly, OA is allowed. Impugned orders are quashed and set aside. Respondents are directed to forth-with reinstate the applicant and he would be entitled to all consequential benefits which shall be disbursed to him within a period of two months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

V.K. Majotra
(V.K. Majotra)
Vice Chairman (A)
7.1.05

cc.