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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 7th July, 2010

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W.P.(C) 8433/2007

VIPIN KUMAR Petitioner
Through: Mr.S.K.Gupta, Advocate

versus

UOI & ORS Respondents
Through: Mr.Jitendra Kumar Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J. (Oral)

1. The petitioner has challenged the order dated 27.8.2007 passed by the Central Administrative Tribunal dismissing OA No.2020/2005.

2. The challenge before the Tribunal was to the order dated 21.2.2005 passed by the Disciplinary Authority inflicting penalty of compulsory retirement from service upon the petitioner as also the order passed by the Statutory Appellate Authority being the order dated 13.6.2005.

3. It is not in dispute that vide memorandum dated 20.2.2002, a charge sheet was issued against the petitioner listing two articles of charges. It is also not in dispute that prior thereto a charge sheet on same facts was issued against the petitioner and an inquiry was held which was ultimately found to be not in compliance with law by the Central Administrative Tribunal when OA No.2294/2001 was filed, in which the

grievance of the petitioner that relevant documents had not been supplied to him, was found justified and as a result the penalty order imposed as also the appellate order were quashed with a direction that the relevant documents be supplied and inquiry be held de-novo.

4. But, what the respondents did was to issue a fresh charge sheet as aforementioned and proceed with the inquiry. It is relevant to note that the subject matter of the two charge sheets is substantially the same and relates to the same incidents.

5. The petitioner requested that the documents which were found to be relevant when the first inquiry report was set aside be furnished to him. His grievance subsisted.

6. The inquiry officer, at the second stage, submitted the inquiry report and a perusal thereof shows that the two articles of charge were split up into seven different components. Two out of seven were held to be proved and five were held not to be proved. Thus it is a case of the charges being partially proved.

7. The Disciplinary Authority simply supplied the report of the inquiry officer to the petitioner and sought his response, which was filed. In the response various issues were raised and at the fore front was the issue that the relevant documents, held to be relevant by the Central Administrative Tribunal, were not supplied to him. Thereafter, contentions on merits with reference to the evidence led and the discussion on the charges by the inquiry officer, which were alleged to be faulty by the petitioner, were highlighted.

8. Vide order dated 21.2.2005 the Disciplinary Authority has rejected the response and has passed the order as under:-

“Orders of Imposition of penalty under Rule 6 (VII) to (IX) of Railway Servants (Discipline and Appeal) rules-1968.

No.79-T/2/1/98-TA/Optg.

Place of issue DRM's
Office/MB

Dated 21.2.05

To,

Shri Vipin Kumar (V.K.Gupta)
ASM/KARNA
HA. HRD

(THROUGH TI/HRI)

I have carefully considered your representation NIL dated 2-4-4 reply to the Memorandum of Show Cause Notice No even dated 17-3-04 I do not find your representation to be satisfactory due to the following reasons:-

As per Annexure – A attached

I, therefore, hold you guilty of the charge(s) viz. as mentioned in Annexure I & II of DF-5 No.79T/2/1/98 TA Optg dt. 20-2-2002, leveled against you and have decided to impose upon you the penalty of compulsory retirement from service. You are, therefore, compulsory retired from service with effect from 28.2.05.

2. Under Rule-18 of the Railway Servants (Discipline and Appeal) Rules, 1968 an appeal against these orders lies to SDRM/MB provided:-

(i) The appeal is submitted within 45 days from the date you receive the orders; and

(ii) The appeal does not contain improper or disrespectful language.

3. Please acknowledge receipt of this letter.”

9. Annexure A to the order, which purports to contain the reasons, reads as under:-

“Shri Vipin Kumar, ASM/KAR recharged third private number for dispatch of 136 Dn passenger train with east Cabin Signalman, released slot control slide for Down Advanced Starter with the result that the East Cabin Signalman took off departure signal. He also authorized East Cabin Signalman to lower departure signal without obtaining line clear from the next block section. The weather was foggy and the driver proceeded as the starter signal was ‘OFF’.”

10. The petitioner filed an appeal and before the Appellate Authority highlighted not only the non-supply of relevant documents, held as relevant by the Central Administrative Tribunal, but even one more technical plea that the Disciplinary Authority has held that the petitioner is guilty of all the charges; ignoring that the report of the inquiry officer splits the two articles of charge into seven components of which only two components were proved and five were held to be not proved. It was highlighted that it was apparently a case where the Disciplinary Authority has disagreed with the report of the inquiry officer and if that be so, the note of disagreement ought to have been prepared and served upon the petitioner for his response. Lastly, it was highlighted that the contentions raised before the Disciplinary Authority, on merits, were not considered.

11. The appellate order dated 13.6.2005 reads as under:-

"NORTHERN RAILWAY

Office of the
Divl. Rly. Manager
Moradabad

No. 79-T/2/1/98-TA/Optg.

Dated 13/06/2005

Sh.Vipin Kumar Gupta
Ex. ASM
338-Sarai Thok West,
N.S.Park,
Hardoi-241001

Sub: Appeal against the penalty of compulsory retirement awarded vide N.I.P. of even No. dated 24/2/05

Ref: Your appeal dated: 15/3/05

I have considered your appeal. Related facts produced by you on 30/5/05 during personal hearing in the chamber of undersigned. It is very clear that you acted in a most careless dubious irresponsible manner in so far that you exchanged this third private number meant of departure of 136 Dn. with East cabin implying instructions to lower the

departure signals and you pulled the slide for Dn. Advance Starter and completed all the formalities for departure of 136 Dn. which later on collided with 24258 (Kashi Vishwanath Express) and 51 passengers lost their lives by your erroneous act. Appeal is rejected. Punishment will stand.”

12. The petitioner proceeded to lay a challenge, as aforementioned, before the Central Administrative Tribunal which has repelled the challenge.

13. A perusal of the impugned order passed by the Tribunal shows that the Tribunal has not dealt with the issue of the order of the Disciplinary Authority dated 21.2.2005 and the fact that the same treats as if the petitioner has been indicted of the two charges against him, ignoring that the inquiry officer bifurcated the two charges into seven components and held only two of the seven to be proved. The Central Administrative Tribunal has also not considered the effect of the legal position requiring the Disciplinary Authority to pen a note of disagreement and seek the response of charged officer thereto, should the Disciplinary Authority disagree with certain findings of the inquiry officer. We find that the learned Central Administrative Tribunal has also not dealt with the issue that the order passed by the Disciplinary Authority as well as the Appellate Authority are bereft of reasoning.

14. We have highlighted hereinabove the various issues which the petitioner had raised before the Disciplinary Authority with reference to the report of the inquiry officer. Indeed, we find that the same have not been dealt with by the Disciplinary Authority.

15. A perusal of the appellate order dated 13.6.2005 shows once again that the issues on merits have not been touched upon.

16. Under the circumstances we set aside the impugned order dated 21.2.2005, the order dated 13.6.2005 and the order

dated 27.8.2007.

17. We remand the matter before the Disciplinary Authority with a direction to the Disciplinary Authority that the contentions urged by the petitioner in response to the show cause notice would be dealt with and a reasoned decision would be taken in the context of the submissions urged. Since the disciplinary authority has not issued any note of disagreement with the findings returned by the enquiry officer, the disciplinary authority shall deal only with the indictment proved.

18. Needless to state if the petitioner is aggrieved by the order passed by the Disciplinary Authority, statutory remedy before Appellate Authority would be available and should an appeal be filed it is expected that the Appellate Authority would not pass a cryptic order but would deal with the issues raised in appeal.

19. We also direct the Disciplinary Authority to pass appropriate orders required by law as to in what manner the period post 21.2.2005 till further orders are passed has to be treated for the service of the petitioner.

20. Needful would be done by the Disciplinary Authority within a period of 12 weeks from today and the decision would be conveyed to the petitioner.

21. No costs.

PRADEEP NANDRAJOG, J.

MOOL CHAND GARG, J.

JULY 07, 2010
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