

(2002) 09 DEL CK 0119
In the Delhi High Court
Case No : C.W.P. No. 1063 of 1999

Chander Prakash

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-09-2002

Acts Referred:

Constitution of India, 1950 — Article 166(1)

Railway Servants (Discipline and Appeal) Rules, 1968 — Rule 11, 25, 25(1), 25(2), 25A

Citation : (2002) 09 DEL CK 0119

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : Yasobant Das and Upashan, for the Appellant; Jagjit Singh, for Railways, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, C.J.—The Order dated 11.11.1998 of the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter for the sake of brevity called and referred to as, "the Tribunal") passed in O.A. No. 524 of 1997 whereby and whereunder the Original Application filed by the petitioner herein was dismissed, is in question in this writ petition.

2. In the aforesaid Original Application filed by the petitioner herein before the learned Tribunal, a question arose as regard the interpretation of Rule 25 of the Railway Servants Discipline & Appeal Rules, 1968 (hereinafter for the sake of brevity referred to as, "the said Rules"). The petitioner was subjected to a disciplinary proceeding and by an order dated 01.11.1994 a penalty of reduction of pay of the petitioner herein from Rs. 1,030/- to Rs. 1,010/- for a period of 2 years without cumulative effect was passed. He did not prefer an appeal thereagainst.

By his letter dated 30.05.1995, the third respondent herein proposed to enhance the penalty by reducing pay to the initial stage in the pay-scale for 5 years with cumulative effect and directed the petitioner herein to file his objections against

the proposed enhancement.

Thereafter, an order dated 19.07.1996 was passed, which is in the following terms:-

"ADRM OFFICE

NR MORADABAD

Letter No. ML6/333T/2/5/94TA

Dated 19-7-96

Shri Chandra Prakash VII

Diesel Asstt.

Moradabad

Through: Loco Foreman Moradabad

Sub: Collision of Train No. 4673 up with a truck at Gate No. 343-A between Vilpur and Miranpur on 11-2-94

Ref: Your reply dated 26-6-95 through foreman Muradabad regarding enclosed letter dated 30-5-95 for enhancement of penalty.

In aforesaid reference your reply is received by ADRM, Muradabad and enclosed order dated 1-11-94 in which your pay of Rs. 1030/- has been reduced to Rs. 1010/- for two years with cumulative effect has been enhanced to Rs. 950 in the scale of Rs. 950-1500 per month for five years with cumulative effect.

Sd/-

ERDM

NR Muradabad"

The aforesaid Original Application was filed questioning the aforesaid order.

3. Before the learned Tribunal various contentions were raised on behalf of the petitioner in support of the said Original Application, but the same were negated.

Before us, however, only question, which has been raised, is that of limitation.

4. Before the learned Tribunal, records of the proceedings were produced and upon perusal thereof it was held that as in noting of the file a decision had been taken to initiate such a proceeding on 10.04.1995, the same must be deemed to have been initiated within the period of limitation. For the said purpose, the learned Tribunal noticed upon the decision of the Apex Court in Delhi Development Authority Vs. H.C. Khurana, and Union of India Vs. Kewal Kumar,

5. Mr. Yasobant Das, the learned senior counsel appearing on behalf of the

petitioner, would submit that the learned Tribunal went wrong in passing the said order insofar as it failed to take into consideration that the aforesaid decisions of the Apex Court were rendered in different fact situation.

The learned senior counsel would contend that initiation of proceedings cannot be done by way of a noting in a note sheet.

6. Mr. Jagjit Singh, the learned counsel appearing on behalf of the respondents, on the other hand, inter alias submitted that the Office Memorandum of 1963 cannot have any application whatsoever after the said Rules came into force. The learned counsel then contended that in the instant case Sub-rule (1) of Rule 25 of the said Rules will have no application, but Sub-rule (2) thereof would apply as it was a case of accident and as such the question of proceedings being barred by limitation does not arise.

In the alternative, it was submitted that this is a case of review and not that of a revision.

7. The notice dated 30.05.1995 reads thus:-

"Northern Railway

Divl Rly Manager Office

Muradabad

No. ML6/333T/2/5/94TA

Dated: 30-5-95.

Shri Chandra Prakash VII

Dsl Asstt. MB

Through LF/MB

1. Vide Memorandum charge sheet [SF-5] of even No. dated 28-4-94 you were charge sheeted with following statement of imputation of misconduct or misbehavior by the competent authority Shri Rajiv Chandra, ERDM/MB.

Statement of the imputation of misconduct or misbehavior on which action is proposed to be taken against Shri Chandra Prakash VII Diesel Asstt. MORA. Dated 11-2-94 in UCO No. 17942 WDMW2 train No. 4673 UP has crossed the level crossing gate No. 343[A] between MK BLPU, the gate signal being red. Due to which truck No. UTS 186 crossing the level crossing collided due to which truck cleaner died on the spot and two persons traveling on truck became injured. For which you are fully responsible. By doing this, you have violated General and Royal Diary rule 1983, GR 373 .

Your representation dated 28-10-94 submitted in defense of that was duly considered by said competent authority which vide order of imposition of penalty under Rule of RS [D & AR], 1968 of even No. 1-11-94 imposed upon you the

penalty of Reduction. [Enc. Step below the present pay for a period of two years].

2. The said action of competent authority was in exercise of power conferred upon him under Rule 11 of the Railway Servant [D & AR], 1968 and as amended.

3. I Naveen Malhotra, ADP have considered the matter in exercise of power conferred upon me under Rules 25 of Rly Servants [D & AR], 1968 and as amended and is of the opinion that the penalty awarded to you by the competent authority in this case is to commensurate with the offence and have Therefore decided to exercise the revision of the penalty already awarded. It is proposed to enhance the said penalty to revert you to initial stage in his present grade for a period of five years.

You are Therefore hereby given an opportunity a such your defense if any to the proposed enhancement of penalty. Your representation if any must reach undersigned through your immediate supervisor but not latter than 15 days from the receipt of the letter. In case no representation is received the case will be decided exparte on the basis available records.

sd/-

Naveen Malhotra

ADRM/MB

Provisioning Authority"

8. Before proceeding to deal with the controversy raised in this writ petition, we may notice the relevant provisions of the said Rules, which are in the following terms:-

25. Revision. --(1) Notwithstanding anything contained in these rules.-

(i) The President, or

(ii) The Railway Board, or

(iii) The General Manager or a Zonal Railway or an authority of that status in any other Railway Unit or Administration, in the case of a Railway servant serving under his or its control, or

(iv) The appellate authority not below the rank of a Deputy Head of Department or a Divisional Superintendent in cases where no appeal has been preferred, or

(v) Any other authority not below the rank of a Deputy Head of Department or a Divisional Superintendent, in the case of a Railway servant serving under its control;

may at any time, either on its own motion or otherwise, call for the records of any inquiry and review any order made under these rules or under the rules repealed by Rule 29 and may after consultation with the Commission where such consultation is necessary-

... .. (d) Pass such other orders as it may deem fit; provided that-

(a) No order imposing or enhancing any penalty shall be made by any reviewing authority unless the Railway servant has been given reasonable opportunity of making a representation against the penalty proposed; and

... .. Provided further that no power of revision shall be exercised under this rule:

(i) By the appellate or revising authority where it has already considered the appeal or the case and passed orders thereon; and

(ii) By a revising authority unless it is higher than the appellate authority, where an appeal has been preferred or where no appeal has been preferred and the time limit laid down for review by the appellate authority, has expired.

Note. --This Proviso shall not apply in case of revision by the President:

Provided further that no action under this rule, shall be initiated by (a) an appellate authority other than the President or (b) the revising authorities mentioned in item (v) of Sub-rule (1)-

(i) More than six months after the date of the order to be reviewed in cases where it is proposed to impose or enhance a penalty, or modify the order to the detriment of the Railway servant, or

(ii) More than one year after the date of the order to be reviewed in cases where it is proposed to reduce or cancel the penalty imposed or modify the order in favor of the Railway servant.

Note. --The time limits for revision of cases mentioned in this proviso shall be reckoned from the date of issue of the orders proposed to be reviewed. In a case where the original order has been upheld or modified or set aside by the appellate authority, the time limit shall be reckoned from the date of issue of the appellate order.

(2) Wherein revision is undertaken by the Railway Board or the General Manager of a Zonal Railway or an authority of the status of a General Manager in any other Railway Unit or Administration, when they are higher than the appellate authority, and by the President, even when he is the appellate authority, this can be done without restriction of any time limit.

(3) No proceeding for revision shall be commenced until after:-

(i) The expiry of the period of limitation for an appeal, or

(ii) The disposal of the appeal, where any such appeal has been preferred:

Provided that the provisions of this sub-rule, shall not apply to the revision of punishment in case of Railway accidents.

25-A. Review. --The president may at any time either on his own motion or

otherwise review any order passed under these rules when any new material on evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case has come or has been brought to his notice.

Provided that no order imposing or enhancing any penalty shall be made by the President unless the Railway Servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed or where it is proposed to impose any of the major penalties specified in Rule 6 or to enhance the major penalty imposed by the order sought to be reviewed to any of the major penalties and if an enquiry under Rule 9 has not already been held in the case, no such penalty shall be imposed except after inquiring in the manner laid down in Rule 9, subject to the provisions of Rule 14 and except after consultation with the Commission where such consultation is necessary."

9. It is not in dispute that the order of punishment was passed on 01.11.1994 and the proceedings to enhance the same were initiated on 10.04.1995. It is also not in dispute that the proceedings were initiated by the third respondent herein and not by the President; the Railway Board; or the General Manager of a Zonal Railway; or an authority of that status. It is, thus, not a case where Sub-rule (2) of Rule 25 of the said Rules shall apply, as it stands admitted that the notice had been issued under Rule 25 of the said Rules. Evidently Rule 25-A thereof, which provides for review and that too by the President, cannot be said to have any application in the instant case.

10. The second proviso appended to Rule 25 of the said Rules prescribed period of limitation. It is, Therefore, to be construed strictly as by reason thereof an extraordinary power has been conferred upon the Revisional Authority to enhance the punishment imposed upon a delinquent officer by the Disciplinary Authority.

It is also not necessary to consider the submission of Mr. Singh to the effect that in the instant case the Office Memorandum of 1963 will have no application inasmuch as the matter in substance is now contained in the Note appended to the said proviso. The second proviso appended to Rule 25 is couched in negative language and, thus, must be held to be imperative in nature. By reason of the said provision, the jurisdiction of the Appellate Authority or the Revisional Authority to take recourse thereto is taken away and no action can be initiated more than 6 months after the date of the order to be reviewed. In the instant case, the order of punishment was passed on 01.11.1994, the action, Therefore, could have been initiated only within 6 months from the said date. As noticed hereinbefore, the notice for enhancement of penalty was issued on 30.05.1995, which was beyond the stipulated period. The date of issue of the order proposed to be reviewed, in other words, being dated 01.11.1994, the action for enhancement of penalty was required to be initiated within 6 months there from.

11. The question, however, which arise for consideration is what would amount

to initiation of a proceeding.

12. By reason of Rule 25 of the said Rules, the Revisional Authority exercises a statutory power and, in our considered opinion, proceedings can only be initiated in terms thereof after service of the notice and not prior thereto.

The word "initiate" may mean different things in different situation. The action under Rule 25, in our considered opinion, can be initiated only with issuance of the notice and not prior thereto. As and when the notice is signed, initiation of a proceeding becomes final, prior thereto although the authority may have applied his mind and tentatively arrived at a decision in the note-sheet of the proceedings that such a proceeding be initiated, but the same can be withdrawn before issuance of the actual notice.

13. In *Bachhittar Singh Vs. The State of Punjab*, , it had been held that a disciplinary action taken against a Government servant cannot be said to have come into effect until it was communicated, as until then it could be reconsidered and modified and, thus, prior thereto it pertains to an order of provisional character. In the said case also the Minister concerned made a noting in the file, but no order in terms of the said note was drawn up in the name of the Governor as required by Article 166(1) of the Constitution of India or communicated to the concerned Government servant.

14. A statutory authority as is well known must act in terms of the procedure laid down Therefore and within the four corners of statute. The said Rules do not envisage that a penal proceeding can be initiated by making noting in the file and, thus, the same must, in our considered view, be held to be initiated only when the actual order is issued for the purpose of communication and not prior thereto.

15. In *H.c Khurana's case (Supra)*, the question, which arose for consideration, was as to whether issuance of the charge sheet would amount to initiation of disciplinary proceedings. The said question was answered holding:-

"14. "Issue" of the charge-sheet in the context of a decision taken to initiate the disciplinary proceedings must mean, as it does, the framing of the charge-sheet and taking of the necessary action to dispatch the charge-sheet to the employee to inform him of the charges framed against him requiring his Explanation; and not also the further fact of service of the charge-sheet on the employee. It is so, because knowledge to the employee of the charges framed against him, on the basis of the decision taken to initiate disciplinary proceedings, does not form a part of the decision making process of the authorities to initiate the disciplinary proceedings, even if framing the charges forms a part of that process in certain situations. The conclusions of the Tribunal quoted at the end of para 16 of the decision in *Union of India Vs. K.V. Jankiraman, etc. etc.*, which have been accepted thereafter in para 17 in the manner indicated above, do use the word "served" in conclusion No. (4), but the fact of "issue" of the charge-sheet to the employee is emphasized in para 17 of the decision Conclusion No. (4) of the

Tribunal has to be deemed to be accepted in Jankiraman only in this matter.

15. The meaning of the word "issued" on which considerable stress was laid by learned Counsel for the respondent has to be gathered from the context in which it is used. Meanings of the word "issue" given in the Shorter Oxford English Dictionary include: "to give exit to; to send forth, or to allow to pass out; to let out; to give or send out authoritatively or officially; to send forth or deal out formally or publicly; to emit, put into circulation". The issue of a charge-sheet, Therefore, means its dispatch to the Government servant, and this act is complete the moment steps are taken for the purpose, by framing the charge-sheet and dispatching it to the Government servant, the further fact of its actual service on the Government servant not being a necessary part of its requirement. This is the sense in which the word "issue" was used in the expression "charge-sheet has already been issued to the employee", in para 17 of the decision in Jankiraman."

Drawing analogy from the said decision, we are also of the view that the date of issue of the notice would be the date when the proceeding is said to be initiated irrespective of the fact as to whether the notice had been served upon the petitioner or not.

16. In Kewal Kumar's case (Supra), the Apex Court again simply followed the decision of H.C. Khurana's case (Supra) in a matter wherein the question as to whether the sealed cover proceedings could have been taken recourse to or in a situation where a charge sheet had been issued but not served upon the delinquent employer, was in question.

17. For the reasons aforementioned, we are of the opinion that the impugned judgment cannot be sustained, which is set aside accordingly. This writ petition is, Therefore, allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.