
(2000) 08 MP CK 0007
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4204 of 2000

Suresh Kumar Jatav

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-08-2000

Acts Referred:

Railway Servants (Discipline and Appeal) Rules, 1968 — Rule 25, 6, 9

Citation : (2001) ILR (MP) 181 : (2000) 4 MPHT 507 : (2001) 1 MPLJ 477

Hon'ble Judges : Bhawani Singh, C.J.;A.K. Mishra, J

Bench : Division Bench

Advocate : Sujoy Paul, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Mishra, J.

The petition has been filed against the order passed by the Central Administrative Tribunal, Jabalpur on 16th May, 2000 in O.A. No. 289 of 1999. The Tribunal has remitted the matter to the Revising Authority to pass appropriate order on the representation of the petitioner in accordance with law within a period of one month from the date of receipt of the said order.

The factual matrix leading to the filing of the petition indicates that the petitioner was working as Goods Driver in the Railways. He was charge-sheeted with respect to a matter pertaining to an accident. Charge-sheet was issued on 30th October, 1998. On 4-1-1999 without conducting any enquiry punishment of reversion of the applicant from the post of Goods Driver to that of Shunter was imposed. Thereafter, a show-cause notice was issued on 20th April, 1999 why punishment imposed should not be enhanced by removing the petitioner from service. It was contended by the petitioner that as a matter of fact no accident had taken place. The facts leading to the lapse were tried to be explained before the Revising/Reviewing Authority. The Reviewing Authority vide order dated 29th June, 1999, being dissatisfied with the inquiry proceedings and punishment

imposed, appointed an enquiry officer to enquiry into the charges against the petitioner. This order came to be challenged by way of filing the O.A. before the Central Administrative Tribunal.

The learned Tribunal took the view that the Revising Authority should have remitted the case to the disciplinary authority to order such further enquiry as it may deem proper in the facts and circumstances of the case. The Tribunal took the view that it is not proper for the Revising Authority to take the role of disciplinary authority for conducting the enquiry by appointing an enquiry officer. The proper course under the Rules was to remit the case to the disciplinary authority to order the enquiry from the stage immediately after issue of charge-sheet and to pass appropriate fresh order and that could be done only after quashing the order of the disciplinary authority. Since the petitioner had already submitted a representation to the Revising Authority, the Tribunal directed that the representation should be decided in accordance with law within one month.

Thereafter, pursuant to the order of the Tribunal, an order has been passed by the respondent No. 2 on 13th June, 2000 taking the view that since it was a case of averted collision the enquiry should have been conducted by the Disciplinary Authority but this was not done. Therefore, the Disciplinary Authority has been directed to initiate the proceedings afresh from the stage of issuance of charge-sheet dated 30th October, 1998. The order of punishment passed has been cancelled and the delinquent employee has been held to be entitled to all benefits which would have accrued to him but for the punishment imposed.

Rule 25 of the Railway Servants (Discipline & Appeal) Rules, 1968 empowers the Revising/Reviewing Authority to confirm, modify or set aside the order or remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry as it may deem fit.

It has been submitted by Shri Sujoy Paul, learned counsel appearing for the petitioner that it is a case of double jeopardy as order of reversion has been set aside by the authority after the petitioner has already suffered it and in the facts and circumstances of the case the order passed cannot be said to be justified.

We find no substance in the submission raised by the petitioner. In the instant case, charge-sheet was issued on 30th October, 1998 under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968. The charges were denied. No enquiry was conducted by the disciplinary authority and punishment of reversion of the applicant to the post of Shunter was ordered on 4-1-1999. Thereafter, a show-cause notice was served on the petitioner on 20th April, 1999 by the Revising Authority. As per the instructions of the General Manager in cases pertaining to accident matter should be reviewed by the Divisional Railway Manager and the Divisional Railway Manager while reviewing the matter under Rule 25, issued a notice to show-cause against enhancement of the punishment. However, the Revising Authority found that as a matter of fact no enquiry was held, hence no punishment could be inflicted and as such it set aside the order

passed by the disciplinary authority. Thus, it Cannot be said that it is a case of doubly jeopardy of holding two enquiries in respect of the same charge. As a matter of fact, the previous order was passed by the disciplinary authority without conducting an enquiry which was necessary to be held. If the petitioner is not found guilty he can not be saddled with the penalty. It was a case of averted collision and as such it was incumbent upon the disciplinary authority to conduct an enquiry as per Rule 6 of the Railway Servants (Discipline & Appeal) Rules, 1968. The rules provide that in case of a person found guilty of any act or omission which resulted or would have ordinarily resulted in collision, the penalty to be imposed is removal or dismissal. In the instant case, the penalty imposed on the petitioner has been set aside by the Revising Authority. Show-cause notice against enhancement of punishment was issued in April, 1999. Punishment has not been enhanced as yet but has been set aside and enquiry has been directed and it may be that the petitioner would be able to prove his innocence in the enquiry still to be conducted from the stage of charge-sheet. The order of appointment of enquiry officer has also been recalled by the Revising Authority and disciplinary authority has been directed to proceed after the stage of issuance of charge-sheet.

We find no merit in the present petition. The same is dismissed in limine.