

IN THE HIGH COURT OF DELHI AT NEW DELHI

**SUBJECT : Railway Servants (Discipline and Appeal)
Rules, 1968**

Writ Petition (Civil) No. 4014 of 2005

Judgment reserved on: November 6, 2008

Judgment delivered on: December 4, 2008

Mr. N.N.S. Rana
Ex Chief Personnel Officer
North Central Railway
Allahabad

R/o Q-60, First Floor
Rajouri Garden
New Delhi - 110 027

...Petitioner

Through Mr. A.K. Behera, Advocate along with
Petitioner in person

Versus

1. The Secretary
Railway Board
Rail Bhawan
New Delhi

2. The Chairman
Railway Board
Rail Bhawan
New Delhi

3. The General Manager
North Central Railway
Allahabad (U.P.)

....Respondents

Through Mr. H.K. Gangwani, Advocate

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE SURESH KAIT

MADAN B. LOKUR, J.

1. The question for our consideration is this: when the appellate authority acting under Rule 22 of the Railway Servants (Discipline and Appeal) Rules, 1968 issues a show cause notice to a delinquent officer only for enhancing the penalty, is it permissible for that authority to upset, on merits, the findings of fact and conclusions arrived at by the disciplinary authority? Our answer to the question is in the negative. We are of the opinion that when the appellate authority issues a notice to a delinquent officer only for the purposes of enhancing the penalty imposed by the disciplinary authority, it must proceed on the facts as found by the disciplinary authority. The appellate authority can disagree with the conclusions arrived at by the disciplinary authority, on merits, but only after complying with the principles of natural justice by issuing a show cause notice to the delinquent officer to this effect. In the present case, no such notice was issued to the Petitioner.

2. The Petitioner was working as the Chief Personnel Officer with the Railways. It appears that for an important meeting/conference, certain papers were required. The Petitioner asked his Private Secretary (a lady) to get the papers ready but she failed to do so. Upset by this, the Petitioner placed her under suspension with immediate effect on 20th September, 1996 and a charge sheet was issued to her on 23rd September, 1996.

3. According to the Petitioner, as a counterblast, his Private Secretary made a complaint against him on 31st October, 1996 alleging that he had sexually harassed her. On the basis of the allegations made, the Petitioner was placed under suspension and a charge sheet was issued to him on 16th December, 1996. The departmental enquiry was held and the enquiry officer concluded that all the four charges against him were proved. However, the disciplinary authority, which in this case was the Railway Board, passed a detailed order

on 13th January, 2000 holding that the first three charges were not proved against the Petitioner but as regards the fourth charge, it was held partially proved.

4. In view of this, we are of the opinion that it is not necessary to make any detailed reference to the first three charges levelled against the Petitioner. However, to fully appreciate the controversy, it is necessary to reproduce all the charges levelled against him. They are as follows: “1. He misbehaved and indulged in loose, lewd and suggestive talks with his Secretary, Smt. Kuljit Kaur, on several occasions on one pretext or the other with a view to sexually harass and seduce her. On one occasion he even propositioned her and suggested sexual relations which were spurned by her.

2. He deliberately created such privy situations by detaining her in office late into the night after closing hours, sometimes as late as 22:30 hrs. at night despite her protestations, under threat of DandAR action for deserting her duty.

3. He further created such privy situations by calling her to Office on Saturdays and other Gazetted holidays and detained her in office after sunset despite her protestations, under threat of DandAR action for deserting her duty.

4. When his advances were spurned by Smt. Kuljit Kaur he initiated DandAR action against her on frivolous ground with an ulterior motive of making her more pliable so that she would give in to him.”

5. It is clear from the charges levelled that the basis of the fourth charge is the sexual advances alleged to have been made by the Petitioner. But since none of the charges relating to sexual harassment were proved against him, it appears to us that the allegation that the Petitioner had initiated disciplinary action against his Private Secretary on a frivolous ground with the ulterior motive of making her more pliable so that she would give in to him, must necessarily fall to the ground.

6. It also appears to us that the Railway Board appreciated this difficulty and that is why it broke up the fourth Article of Charge into three parts: the alleged sexual advances made by the Petitioner, the suspension of the Private Secretary on a frivolous ground and the ulterior motive of the Petitioner of making her more pliable so that she would give in to him. The

Railway Board held that the first and third parts of the charge were not proved but held that the second part, that is, the suspension of the Private Secretary on a frivolous ground was proved. On this basis, the Railway Board held that the fourth charge was partially proved against the Petitioner. The Railway Board held that the Petitioner overreacted to a perceived intentional lapse which resulted in the charge sheet being issued to the Private Secretary. The Railway Board categorically held that it was not possible to conclude that the initiation of disciplinary action by the Petitioner was aimed at making the Private Secretary more pliable and to submit to his alleged sexual overtures.

7. With regard to the imposition of the penalty, the Railway Board was of the view that since the Petitioner had shown a lack of sensitivity, managerial and leadership qualities over a relatively trivial matter, the ends of justice would be met by imposing a minor penalty of reduction of one stage in the same pay scale for a period of six months without cumulative effect. The Petitioner has since undergone the penalty.

8. Feeling aggrieved by the imposition of penalty on an allegation which was not even a part of the charge sheet, the charge essentially having not been proved, the Petitioner preferred a departmental appeal. Since his appeal was not being taken up for consideration, the Petitioner filed an Original Application before the Central Administrative Tribunal for a direction, inter alia, for its expeditious disposal.

9. During the pendency of the case before the Tribunal, a show cause notice dated 19th December, 2001 was issued to the Petitioner by the appellate authority for enhancing the punishment awarded. The basis for issuing the notice for enhancement was that in a case of sexual harassment, it is difficult to conclusively prove the case and that such an action has to be sternly dealt with. The show cause notice mentioned that there was irrefutable documentary evidence to suggest indecent behaviour and conduct on the part of the Petitioner and since the fourth charge had been partially proved, there must be very strong reasons why the Petitioner should suspend his Private Secretary and issue her a major penalty charge sheet, unless there was some background or previous history of his sexual advances having been spurned.

10. The Petitioner responded to the show cause notice and eventually an order dated 26th December, 2002 was passed by the appellate authority to the effect that the fourth Article of Charge cannot be taken as merely arising

out of lack of sensitivity, managerial and leadership qualities and that it was quite probable that the Petitioner was responsible for other misconduct including sexual harassment as per the charges levelled against him. The appellate authority was of the view that the punishment awarded to the Petitioner was far too lenient and that he deserved to be removed from service.

11. The Petitioner challenged the order of the appellate authority by amending his Original Application before the Tribunal. By the impugned order dated 24th October, 2003 the Tribunal rejected the Original Application. The Petitioner then filed a Review Application being RA No. 8 of 2004 but that was also dismissed by the impugned order dated 9th July, 2004 and that is how the Petitioner is now before us.

12. As we have mentioned above, on a reading of the fourth charge, it is quite clear that the alleged cause for suspending the Private Secretary of the Petitioner was that she had spurned his alleged sexual advances. However, it was not proved that the Petitioner had made any sexual advances. Therefore, the cause for suspending the Petitioner's Private Secretary was not proved against him. Consequently, the fourth charge against the Petitioner ought to have been dropped. But for reasons that are not clear (and which we need not go into) the Railway Board split up the fourth charge and concluded that the suspension and issuance of a charge sheet to the Private Secretary was with reference to a trivial matter and an independent charge and to that extent the fourth charge against the Petitioner was proved.

13. On these facts, the appellate authority issued a show cause notice issued to the Petitioner for a limited purpose, namely, to enhance the punishment awarded to him. The show cause notice did not pertain to the merits of the case and was not intended to upset the views expressed by the disciplinary authority. In fact, the show cause notice dated 19th December, 2001 specifically mentioned that the Petitioner is being given an opportunity to make a representation, if any, against the provisional decision of the President to enhance the penalty imposed on him to that of removal from service. In other words, the appellate authority accepted the decision of the Railway Board on merits and the only issue for consideration was the quantum of punishment.

14. In its final order, the appellate authority went wrong in upsetting the factual conclusions arrived at by the disciplinary authority. This was not

permissible, given the fact that no show cause notice was given to the Petitioner in this regard. On a plain reading of the show cause notice dated 19th December, 2001 it is not possible to discern anything to suggest that the appellate authority was of the view that the conclusions of the disciplinary authority on the merits of the case are incorrect. The appellate authority was concerned only with the inadequacy of the punishment awarded and nothing else and it should have limited itself to this issue only.

15. It is significant that the decision rendered by the appellate authority on 26th December, 2002 recites that the show cause notice issued to the Petitioner was only with a view to giving him an opportunity to explain why the penalty imposed be not enhanced to that of removal from service. Under the circumstances, it is quite inexplicable how and why the appellate authority decided to overrule the conclusions of the Railway Board on merits, even though these conclusions were not under scrutiny or required any reconsideration by the appellate authority.

16. Learned counsel for the Respondents sought to rely upon Rule 22 of the Railway Servants (Discipline and Appeal) Rules, 1968 to justify the action of the appellate authority. The relevant portion of Rule 22 reads as follows: "22. Consideration of appeal. (1) xxx xxx xxx (2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider " (a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice; (b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders " (i) confirming, enhancing, reducing or setting aside the penalty; or (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case."

17. A perusal of the above rule no doubt suggests that the appellate authority is entitled to consider whether the findings of the disciplinary authority are warranted by the evidence on record and it may confirm, enhance, reduce or set aside the penalty. But, this is possible only if the delinquent official is put to notice that the findings of the disciplinary authority are incorrect or not

warranted by the evidence on record or that the punishment imposed is inadequate.

18. In the present case, as already mentioned above, the Petitioner was put to notice on a limited issue, that is, with regard to the quantum of penalty “ he was not put to any notice with regard to the correctness or otherwise of the findings of the Railway Board. Under the circumstances, the appellate authority should have applied its mind only to the penalty imposed on the Petitioner and nothing else. The fact that the appellate authority applied its mind to the merits of the case, without putting the Petitioner to notice in this regard, clearly suggests that the principles of natural justice were violated. The Petitioner was not given a fair opportunity of putting forth his point of view on the merits of the case. It is now very well settled that a delinquent official cannot be visited with civil consequences without complying with the principles of natural justice, unless those principles are specifically and statutorily excluded. In so far as Rule 22 of the Railway Servants (Discipline and Appeal) Rules, 1968 is concerned, the principles of natural justice have not been excluded, either specifically or even otherwise. The principles of natural justice were not complied with, in so far as the Petitioner is concerned with regard to the merits of the case.

19. Taking all these facts into consideration, in our opinion, it is quite clear that the appellate authority completely misdirected itself in law in upsetting the factual conclusions arrived at by the Railway Board and thereafter enhancing the punishment awarded to the Petitioner. For this reason, the order passed by the Tribunal upholding the decision of the appellate authority is required to be set aside.

20. In a situation such as this, ordinarily, we would have had to remit the case to the appellate authority for reconsideration of the matter in its correct perspective. But, we have been told that the Petitioner has since retired and has also suffered the monetary penalty that was originally imposed upon him by the Railway Board. Therefore, we do not think it appropriate to remit the matter back to the Respondents for a reconsideration of the issue. The case is about 12 years old and deserves to be given a quiet burial.

21. The writ petition is allowed, but there will be no order as to costs. The Petitioner will, however, be entitled to all consequential benefits.

Sd/-

MADAN B. LOKUR, J

Sd/-
SURESH KAIT, J