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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 920 of 2015**

Ashok Kumar s/o Late Gayaram aged about 42 years, r/o Goldy Niwas,
Bihari Colony, Anuppur PS Anuppur Madhya Pradesh 484 224

---- Petitioner

Versus

1. Union of India Through The General Manager, South East Central Railway, Bilaspur, Chhattisgarh 495 004
2. Senior Divisional and Telecom Engineer, South East Central Railway, Old GM Building, Bilaspur, Chhattisgarh 495 004
3. Divisional and Telecom Engineer, South East Central Railway, Old GM Building, Bilaspur, Chhattisgarh 495 004
4. Senior Section Engineer (Telecom), L-1, South East Central Railway, Old GM Building, Bilaspur, Chhattisgarh 495 004

---- Respondents

For Petitioner	:	Shri A.V. Sridhar, Advocate.
For the Respondents	:	Shri H.S. Ahluwalia, Advocate.

**HON'BLE SHRI NAVIN SINHA, CHIEF JUSTICE &
HON'BLE SHRI P. SAM KOSHY, J.**

Order On Board**Per NAVIN SINHA, C.J.****16/6/2015**

1. The Petitioner assails order dated 13.2.2015 passed by the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting, Bilaspur in Original Application No. 403 of 2013. The Tribunal set aside the show-cause notice for imposition of punishment issued by the General Manager with liberty to the Respondents for proceeding afresh from that stage in accordance with law under the Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter referred to as 'the Rules') on basis of the enquiry report submitted after further enquiry was ordered by the General

Manager.

2. The Petitioner at the relevant time was working as Telecom Maintainer (TCM) at Kargi Road Station. He was served with a memo of charge dated 27.2.2007. The charge alleged that he travelled by train No.5610 on 7.10.2006 between GZB-MB on color photocopy of privilege pass No. 042061 of Shri G.C. Agrawal, DSTE at DMRC, Delhi and therefore failed to maintain, absolute integrity devotion to duty and had acted in a manner unbecoming of a railway servant contravening the rules. In essence the charge was of impersonation. The Enquiry Officer held that the charge had not been proved. The Disciplinary Authority differed with the exoneration by the Enquiry Officer and by order dated 29.1.2009 imposed major punishment for reduction of pay by three stages in the time scale of pay with effect from 1.7.2009 for a period of three years with cumulative effect. The Petitioner did not challenge the order of punishment and neither did he lay out any challenge to any procedural defect in the enquiry which may or may not have vitiated the punishment. The punishment thus attained finality. On 1.11.2011, he received fresh notice for enquiry asking him to be present on 3.11.2011. The Petitioner objected to such fresh enquiry as being without jurisdiction. A fresh enquiry report dated 11.9.2012 was submitted reiterating that the charges for traveling by impersonation had been proved. A fresh show-cause notice was issued to the Petitioner on 12.4.2013 that the punishment imposed by the Disciplinary Authority earlier was inadequate, not commensurate with the gravity of the offence, proposing removal from railway service. The Petitioner challenged it before the Tribunal leading to the impugned order.

3. Learned counsel for the Petitioner submitted that the charge against him after a disciplinary proceeding ended in an order of punishment dated 29.1.2009. The Petitioner did not assail the punishment either on grounds

of procedural irregularity or on merits. The order of punishment thus attained finality. If the Respondents were of the opinion that the punishment was inadequate, they had ample powers including suo moto revisionary powers under Rule 25 for enhancement of the punishment. The fact that a solitary witness on behalf of the department may not have appeared during the earlier enquiry was inconsequential, since the Disciplinary Authority had held the charge to be proved nonetheless and imposed punishment which the Petitioner had accepted. The question of a de novo enquiry or further enquiry in the matter simply did not arise. It was not a case where the charge could not be proved in absence of an important departmental witness. Learned counsel for the Petitioner next submitted that the power under Rule 25 for suo moto revision by the General Manager, even if no time limit had been prescribed, had to be exercised within reasonable time. In the present case, the order of the Disciplinary Authority was passed on 29.1.2009. Formal order was communicated on 6.3.2009. The suo moto power for revision was exercised by the General Manager on 11.4.2011 i.e. after two years. This was clearly impermissible making exercise of discretionary powers arbitrary relying on (2015) 3 SCC 695 (Joint Collector Ranga Reddy District vs. D. Narsing Rao). It was lastly submitted that in the fresh enquiry no presenting officer had been appointed. The same witnesses were examined again apart from some more witnesses not mentioned in the charge-sheet. The finding was the same of travel by impersonation.

4. Learned counsel for the Respondents submitted that no de novo enquiry had been ordered. In view of the procedural irregularities committed in the earlier enquiries, only further enquiry had been ordered under Rule 25 (v) (c). The Disciplinary Authority differed with the Enquiry Report for exoneration and imposed punishment on 29.1.2009, without giving a second show cause notice to the Petitioner. Shri Vivekanand

Sharma an important witness on behalf of the Department could not be examined during the earlier enquiry. The General Manager only ordered further enquiry in the gravity of the charge as the earlier enquiry had not been held in accordance with law.

5. Rule 25(v) proviso does not provide any time limit for exercise of suo moto revisional power by the General Manager. If the power was in the General Manager, it was not a case for usurpation of jurisdiction. In the nature of the charges, if the General Manager was satisfied that the enquiry had not been held properly, commensurate with the graveness of the charge, the Court may not interfere in disciplinary matters.

6. We have considered the submissions on behalf of the parties and regret our inability to concur with the Respondents. The solitary charge against the Petitioner was for travelling by impersonation. The Enquiry Officer held that the charge did not stand proved. It may or may not have been because of the non appearance of the departmental witness Shri Vivekanand Sharma. But, that aspect loses its relevance when the Disciplinary Authority differed with the Enquiry Officer and held the charge to be proved. If the Disciplinary Authority failed to give a second show-cause notice to the Petitioner for a difference of opinion with the enquiry report, it was an act to the prejudice of the Petitioner. The absence of such a second show-cause notice did not and cannot have caused prejudice to the Respondents. The grievance with regard to this procedural irregularity lay at the door of the Petitioner alone. It was a statutory right under the rules which the Petitioner opted to waive by not raising that challenge and accepting the order of punishment dated 29.1.2009. It is difficult for us to accept the extreme argument on behalf of the Respondents that because of this procedural irregularity, notwithstanding the fact that the Petitioner may not be complaining, the Respondents still had the authority to hold the enquiry vitiated from that stage and proceed afresh.

7. If the charge stood proved and the punishment accepted by the Petitioner, any procedural irregularity in the conduct of the proceedings waived, we fail to understand what charges were the Respondents trying to prove all over again. Had the Petitioner been exonerated, matters may have been different. In the fresh enquiry, the same finding that the Petitioner travelled by impersonation had been arrived at again.

8. Even if we were to concur with the Learned Counsel for the Respondents that there was no de novo enquiry but only a further enquiry, we are at a complete loss to understand what was the further enquiry being held by the Respondents and to prove what charge. The charge had already been proved and punishment imposed and accepted.

9. The counter affidavit by the Respondents reveals a complete lack of appreciation of Rule 25 and the principles of a departmental proceeding and issues for enhancement of punishment. Annexure R/2 to the counter affidavit contains a file note signed by the SDGM dated 24.3.2011. It states that the Respondents desired revision of the punishment as the Vigilance was dissatisfied by the punishment imposed by the Disciplinary Authority which was not commensurate with the gravity of the offence. The General Manager in his note dated 31.3.2011 noticed that the SDGM had put up a note for enhancement of punishment. The ADRM/BSP as revisional authority exercising suo moto powers had ordered for enquiry beyond the period of six months for which he had the authority and therefore, the General Manager then exercised suo moto powers because no time limit was prescribed with regard to him.

10. It is therefore beyond the shadow of any doubt that the entire exercise was undertaken by the Respondents specifically for the purposes of enhancement of punishment only. If they were of the opinion that the punishment imposed on 29.1.2009 was inadequate, notice for

enhancement of punishment could have been given under Rule 25 (v) (b) in exercise of suo moto powers by the ADRM/BSP within a period of six months from the date of punishment. The manner in which the General Manager has invoked his suo moto jurisdiction leaves us thoroughly dissatisfied as it was basically an act designed for overcoming the bar of limitation under Rule 29(v)(b) of six months from the date of punishment. The invocation of the power by the General Manager was clearly an after thought only to overcome that lacuna.

11. Reliance by the Respondents on (1999) 1 SCC 733 (Union of India v. P. Thyagarajan) is misconceived. It related to a case where the Enquiry Officer committed procedural irregularities in the conduct of the enquiry by admitting evidence outside the disciplinary proceeding leading the Disciplinary Authority to disprove of the same and directed fresh enquiry in accordance with law. It has therefore no application to the facts of the case.

12. Last, but not the least, even if no time limit for exercise of suo moto revisional powers has been prescribed under Rule 25(5) proviso for the General Manager, nonetheless, it had to be exercised within a reasonable time from the date of punishment. Exercise of powers nearly two years later, in our opinion is gross and reflects arbitrariness. Reliance by the Petitioner on Rangareddy (supra) is apposite that where no time limit is prescribed in the statute, the power has to be exercised within a reasonable time. What will be reasonable time will depend on the facts of each case. In the facts of the present case, in view of the discussion above, we are of the considered opinion that the exercise of suo moto revisional powers more than two years later is also completely unjustified and grossly arbitrary act not protected by the Rules.

13. The Petitioner had appeared and objected to the further enquiry and therefore it is not a case where he voluntarily participated without

demur in the further proceedings. We are therefore unable to uphold the exercise of suo moto revisional power by the General Manager and the further enquiry held by the Respondents pursuant thereto. The show-cause notice dated 12.4.2013 is therefore held to be not sustainable and is set aside as being without jurisdiction. The earlier order of punishment dated 29.1.2009/6.3.2009 is held to have attained finality.

14. The order of the Tribunal is set aside and the writ petition is allowed.

(Navin Sinha)
CHIEF JUSTICE

(P. Sam Koshy)
JUDGE