

*** HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
HON'BLE SMT DR.JUSTICE G.RADHA RANI**

+ WRIT PETITION No.12573 of 2006

% 21.02.2022

The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad & others

.....Petitioners

And

\$ D.K.Narayana, S/o.D.K.Naganna,
Aged about 43 yrs, Occu : Senior Train Ticket Examiner,
South Central Railway, Kurnool, A.P.

..... Respondent

! Counsel for the petitioners : Sri M/s.C.V.Vinitha Reddy

Counsel for respondent : Sri Rajasekhar,

< Gist :
> Head Note :
? Citations :

**HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD**

WRIT PETITION No.12573 of 2006

Between:

The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad & others

..... Petitioners

And

D.K.Narayana, S/o.D.K.Naganna,
Aged about 43 yrs, Occu : Senior Train Ticket Examiner,
South Central Railway, Kurnool, A.P.

..... Respondent

DATE OF JUDGMENT PRONOUNCED : 21.02.2022

SUBMITTED FOR APPROVAL:

**HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
HON'BLE SMT DR.JUSTICE G.RADHA RANI**

1. Whether Reporters of Local Newspapers : Yes / No
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : Yes / No
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : Yes / No
see the fair copy of the Judgment ?

HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
HON'BLE SMT Dr.JUSTICE G.RADHA RANI
WRIT PETITION No.12573 of 2006

ORDER: *(per Hon'ble Sri Justice P.Naveen Rao)*

This writ petition is filed seeking the following relief :

“... direction in the nature of the Writ under Article 226 of the Constitution of India calling for the records relating to and connected with the order dated 12.09.2005 rendered in O.A.No.1184 of 2002 on the file of Hon'ble Central Administrative Tribunal, Hyderabad Bench, Hyderabad and quash the same as it is contrary to law and pass such other order or orders..”

2. No representation on behalf of the petitioners. We have heard Sri Rajasekhar, learned counsel for the respondent.
3. The disciplinary proceedings initiated against the respondent resulted in imposing punishment of reduction to lower grade as ticket collector operative for a period of 12 months. Aggrieved by the order of disciplinary authority dated 17.03.1999, the respondent did not avail the remedy of appeal and therefore, in so far as he was concerned the order has become final. That being so, the Additional Divisional Railway Manager issued notice dated 17.09.1999 exercising suo-moto power of Revision and called for explanation of the respondent why the punishment of dismissal should not be imposed. Not satisfied with the explanation offered by the respondent, by order dated 23.10.1999, he passed order of dismissal from service. The appeal preferred by the respondent was rejected by order dated 12.06.2000 and the General Manager by his order dated 22.09.2000 rejected the application filed by

him treating it as a Mercy petition, but not as a Revision. Challenging the order of dismissal from service as confirmed by the higher authorities, the respondent filed O.A.No.1747 of 2000. The Tribunal having noticed that the Revisional power was not exercised within six months as prescribed in Rule 25 (5)¹ of the Railway Servants (Discipline

¹ **25. Revision -**

(1) **Notwithstanding anything contained in these rules -**

- (i) the President, or
- (ii) the Railway Board, or
- (iii) the General Manager of a Railway Administration or an authority of that status in the case of a Railway servant serving under his control, or
- (iv) the appellate authority not below the rank of a Divisional Railway Manager in cases where no appeal has been preferred, or
- (v) any other authority not below the rank of Deputy Head of Department in the case of a Railway servant serving under his control -

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

- (a) confirm, modify or set aside the order; or
- (b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
- (c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or
- (d) pass such orders as it may deem fit:

Provided that-

- (a) no order imposing or enhancing any penalty shall be made by any revising authority unless the Railway servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed;
- (b) subject to the provisions of Rule 14, where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of Rule 6 or the penalty specified in clause (iv) of Rule 6 which falls within the scope of the provisions contained in sub-rule (2) of Rule 11 or to enhance the penalty imposed by the order under revision to any of the penalties specified in this sub-clause, no such penalty shall be imposed except after following the procedure for inquiry in the manner laid down in Rule 9, unless such inquiry has already been held, and also except after consultation with the Commission, where such consultation is necessary.

(5) : 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) -

After more than six months from the date of the order to be revised in cases where it is proposed to impose or enhance a penalty or modify the order to the detriment of

and Appeal) Rules, 1968 (for short 'the Rules') held that power was not validly exercised and quashed the order of punishment as affirmed by the higher authorities. While so, on 05.09.2002, the General Manager issued fresh show cause notice calling upon the respondent to show cause why punishment of dismissal from service should not be imposed. This show cause notice was challenged before the Tribunal in O.A.No.1184 of 2002.

4. Learned counsel for the respondent contended that there is no provision for second time revision once power of Revision already exercised, even higher authority cannot undertake revision of punishment. He would submit that in the earlier round of litigation the Tribunal having found that the Revision was exercised beyond the time specified in Rule 25 (5) of the Rules, the action was not maintainable in law and set aside the enhanced punishment on that ground, it is no more permissible to undertake second Revision by relying on some other provision.

the Railway servant; or more than one year after the date of the order to be revised in cases where it is proposed to reduce or cancel the penalty imposed or modify the order in favour of the Railway servant :

Provided that when 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.**

Explanation : For the purposes of this sub-rule the time limits for revision of cases shall be reckoned from the date of issue of the orders proposed to be revised. In cases where original order has been upheld by the appellate authority, the time limit shall be reckoned from the date of issue of the appellate orders.

5. In support of the decision to issue second Revision notice, reliance was placed on Rule 25 (1) of the Rules, stating that no time limit is prescribed in Rule 25 (1) and Rule 25 (5) has no application. This contention was not found favour with the Tribunal and Tribunal allowed the O.A., setting aside the show cause notice.

5.A. The issue for consideration is whether second revision is maintainable ?

6. Rule 25 vests residuary power in the authorities mentioned therein to consider the punishment imposed by the disciplinary authority and when no appeal was preferred and if the Revisional authority opines that the punishment imposed is not commensurate with the delinquency alleged and proved, that requires higher punishment or when the higher punishment is imposed than what is required on the delinquency alleged, it can revise. Rule 25 (1) specifies the authorities who can exercise this power. It includes the Hon'ble President of India, Railway Board, General Manager and the appellate authority not below the rank of a Divisional Railway Manager and any other authority not below the rank of Deputy Head of Department. Concurrent power is vested in hierarchy of authorities.

7. After noting the competent authorities who can exercise Revision, the Rule reads further as **'may at any time'**. Sub-Rule (5) specifies time limit to exercise power of Revision. It starts with **"No action under this Rule shall be initiated by"** and fixes time limit of six months from the date of

order to be revised, where higher punishment is proposed or within one year where punishment is sought to be reduced. However, the proviso appended to Sub-Rule (5) relaxes this restriction, if power of Revision is undertaken by the Railway Board or the General Manager or any authority of the status of a General Manager when they are higher than the appellate authority.

8. In the instant case, the second Revision notice was issued by the General Manager, who is higher than the appellate authority. No doubt the proviso, vests power in the General Manager to exercise power of Revision to enhance the punishment *at any time*, but in the instant case, it cannot be said that said power was validly exercised.

9. In exercise of power of Revision, the Additional Divisional Railway Manager, issued notice on 17.09.1999 proposing to enhance the punishment. This notice resulted in imposing punishment of dismissal from service. In the earlier round of litigation the punishment of dismissal from service was set aside by the Tribunal on the ground that it was not exercised within six months as specified in Rule 25 (5).

10. Though a General Manager can undertake revision of punishment *at any time* the Rules do not vest power of Revision second time even by an authority higher than the earlier revisional authority.

11. It is elementary principle of law that no person can be subjected to repeated action on the same delinquency. Principle of double jeopardy is attracted in all such cases.

12 We therefore, do not see any error committed by the Tribunal in setting aside the show cause notice.

13. Further, the issue relates to the year 1999, when for the first time, punishment was imposed on a charge relating to the year 1996. Therefore, it is not just and equitable to undertake the exercise as proposed by the General Manager on 05.09.2002 after lapse of more than 19 years.

14. The Writ Petition fails and accordingly dismissed. Pending miscellaneous petitions, if any, shall stand closed.

P.NAVEEN RAO,J

Dr. G.RADHA RANI,J

21st February, 2022
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