

Central Administrative Tribunal  
Principal Bench: New Delhi

OA No. 466/1997  
OA No. 469/1997

New Delhi this the 31st day of December, 2001

(B7)

HON'BLE SMT. LAKSHMI SWAMINATHAN, VICE-CHAIRMAN (J)  
HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

OA No. 466/1997

Sri Prakash,  
S/o Shri Chaturi Prasad,  
R/o 1069, Subzi Mandi, Vijay Nagar,  
Mawai Road,  
Ghaziabad.

(By Advocate: Shri G.D. Bhandari)

-Applicant

Versus

1. Union of India through  
The General Manager,  
Northern Railway Baroda House,  
New Delhi.
2. The Chief Works Manager  
Signal/ W/shop., N. Rly.,  
Ghaziabad.

-Respondents

(By Advocate: Shri R.L. Dhawan)

OA No. 469/1997

Raja Ram,  
S/o Shri Pitamber Dayal  
R/o 1/9523, Rohtas Nagar,  
Shahdara,  
Delhi.

-Applicant

(By Advocate: Shri G.D. Bhandari)

VERSUS

1. Union of India through  
The General Manager,  
Northern Railway Baroda House,  
New Delhi.
2. The Chief Works Manager  
Signal/ W/shop., N. Rly.,  
Ghaziabad.

-Respondents

(By Advocate: Shri R.L. Dhawan)

ORDER (Oral)

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)

The above two original applications have been  
filed by two employees of the Railway Administration

(S2)

against whom charge-sheets have been issued by the respondents namely, charge memo dated 13.9.1995 and 12.9.1995 respectively. For the sake of convenience and as the learned counsel for the parties have also referred to the facts generally in Sri Prakash Vs. Union of India (OA-466/97), we have also referred to the facts in this case. The relevant facts apply mutatis mutandis to the facts in the application filed by Raja Ram in OA 466/97.

2. In OA-466/97, the Tribunal had passed an ad-interim order dated 4.4.97 directing the respondents not to compel the applicant to cross examine the witnesses or to proceed in the enquiry proceedings initiated against the applicant vide impugned memo dated 13.9.95 from the stage of recording of evidence on defence side. Shri G.D. Bhandari, learned counsel has, however, submitted that in spite of the interim order, the respondents proceeded in the pending enquiry proceedings against the applicant. Thereafter CP-231/97 was filed by the applicant in which cost of Rs.1,000/- has been imposed upon the respondents by the Tribunal vide order dated 22.9.97. Later, the interim order passed on 4.4.97 was further considered by the Tribunal in its order dated 5.6.98 and after hearing the learned counsel for the parties, the same was not extended. In other words, after 5.6.98 there was no stay operating against the respondents for completing the aforesaid disciplinary proceedings initiated against the applicant vide Memo dated 13.9.95. Shri G.D. Bhandari, learned counsel has submitted that in

the facts and circumstances of the case, there was no reason why the respondents had themselves thought it fit to keep the proceedings pending and not concluded the same in the span of "more than four years from 1997". On the other hand, Shri R.L. Dhawan, learned counsel has submitted that it was only after the order dated 5.6.98 has been passed that the respondents could proceed to complete the pending disciplinary proceedings in accordance with law. According to him, on instructions from the departmental representative Shri Lekh Raj, OS-II who is present in Court, the Enquiry Officer has submitted his report to the Disciplinary Authority and a copy of the same has also been given to the applicant but a final decision has yet to be taken by the Disciplinary Authority. He has also submitted that the applicant has also replied to the Enquiry Officer's report. He has submitted that in the circumstances, in a short while, the same will be concluded.

3. The learned counsel Shri G.D. Bhandari has submitted that there is no question of completing the disciplinary proceedings as mentioned above in view of the fact that the charge memo dated 13.9.95 in OA-466/97 is void-ab-initio. He has submitted that this is so, for two main reasons, firstly, the requirements under Rule 9 of the Railway Servants (Discipline and Appeal ) Rules, 1968 have not been complied with as no statement of imputation of charges have been appended as Annexure. Secondly, he has submitted that what has been stated as part of Annexure-2 is merely a re-production of the Article of

Charge where the applicant has also been held responsible for entering the Signal Workshop, Ghaziabad which is a restricted place in the night of 23.10.94 at 02/00 hrs. without any authority. The learned counsel has contended that the Memo of charge together with Annexure itself shows that Disciplinary Authority has already held the applicant responsible whereas the allegations in the charge have yet to be proved, which itself is bad in law. Therefore, on these grounds, he has submitted that the charge Memo dated 13.9.95 should be quashed and set aside. These submissions have been refuted by the learned counsel for the respondents. He has submitted that there is no vagueness in the charge sheet and he has also submitted that in any case the enquiry has been held in which the applicant has participated. The contention of the learned counsel for the respondents is that in the facts and circumstances of the case, there is no infirmity in the charge sheet and at this stage there is no ground to set it aside.

4. Shri G.D. Bhandari, learned counsel has relied on the judgment of the Supreme Court in **Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Anr.** (JT 1999 (2) SC 456) and Shri R.L. Dhawan, learned counsel has relied on another judgment of the Hon'ble Supreme Court in **State of Rajasthan Vs. B.K. Meena and others** (1996) 6 SCC 417).

5. We have carefully considered the pleadings and submissions made by the learned counsel for the parties.

(A)

6. By Tribunal's order dated 5.6.98, it is noted that after hearing the learned counsel for parties on the question of continuance of the interim orders passed on 4.4.97, extended from time to time, which expired on 3.6.98, the Tribunal had declined to extend the interim order any further. In the circumstances, we do see some force in the submissions made by Shri G.D. Bhandari, learned counsel that the respondents had sufficient time to conclude the disciplinary proceedings against the applicant in the interregnum period from 5.6.98. However, we note the submissions made by the learned counsel for the respondents that the Enquiry Officer's report has already been submitted to the Disciplinary Authority with copies to the applicant who has also submitted his representation. The Tribunal in its order dated 5.6.98 has relied on the judgment of the Supreme Court in UOI & Ors. Vs. Upendra Singh (JT 1994 (1) SC 658). In the facts and circumstances of the case, there is no reason why the submissions made by the learned counsel for applicant today regarding the fact that the charge Memo is void-ab-initio on the grounds mentioned above could not have been advanced by him on 5.6.98. The Tribunal's order is a reasoned order whereby the earlier ad interim order dated 4.4.97 restraining the respondents from proceeding with the disciplinary proceedings has been vacated. Even otherwise, we do not find any merit in either of the two grounds taken by the learned counsel for applicant as sufficient to

(B)

set aside the charge sheet at this stage. In Upendra Singh's case (supra) it has been held by the Hon'ble Supreme Court that:

"In the case of charges framed in a disciplinary enquiry the Tribunal or Court can interfere only if on the charges framed (readwith the imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law".

It has been further held that "the Tribunal has no jurisdiction to go into the correctness or truth of the charges. The Tribunal cannot take over the functions of the disciplinary authority". From a perusal of the charge sheet, it cannot be held that the charge levelled against the applicant with the imputation are contrary to any law to warrant any interference at that stage. Apart from this, as mentioned above, we note that the co-ordinate Bench of this Tribunal has also referred to the same judgment and had declined to extend the ad interim orders of 4.4.97, which had been extended from time to time in the order dated 5.6.98. Therefore, in the facts and circumstances of the case, the applicant's plea to set aside the charge Memo at this stage is rejected.

7. One of the cases referred to in Capt. M.Paul Anthony's case (supra) relied upon by applicant's counsel is **Delhi Cloth & General Mills Ltd. Vs. Kushal Bhan** (1960 (3) SCR 227). In this case it has been observed that:

".....We may, however, add that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the

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employer to await the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced".

Shri G.D. Bhandari, learned counsel has submitted that he understands that the case pending in the criminal court against the applicant is about to be concluded. He has, therefore, submitted that as the respondents themselves have delayed conclusion of the disciplinary proceedings, they may be directed to await the judgment in the criminal case. On the other hand, Shri R.L. Dhawan, learned counsel has relied on certain other observations of the Hon'ble Supreme Court in **B.K. Meena's** case (supra), wherein it has been held that "it is in his (respondent's) interest and in the interest of good administration that the truth or falsity of the charges against him is determined promptly". In the facts of the present case, we cannot, however, refrain from observing that the respondents have certainly not acted very promptly in the matter of concluding the disciplinary proceedings pending against the applicant for whatever reasons they thought fit. However, we see no reason why they should not take an appropriate decision in the matter, as expeditiously as possible, taking into account the aforesaid decisions of the Supreme Court and the relevant facts and circumstances of the present two cases.

8. In the result, for the reasons given above, OA No. 466/97 & OA 469/97 are disposed of with the following directions:-

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