

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 1601/2000

New Delhi: this the 16<sup>th</sup> day of APRIL, 2001. (12)

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

T. D. Chandna,

S/o Shri J. R. Chandna,

Ex. Sr. Section Engineer,

Under Sr. Divisional Electrical Engineer (TRS)

Central Railway,

Kalyan,

r/o House No. 235-B, Gali No. 4,

Near Shri Krishna Gaushala

Gaupuri,

Ghaziabad (UP)

.....Applicant.

(By Advocate: Shri B. S. Mainee)

Versus

Union of India  
through

1. The General Manager,  
Central Railway,  
CST,  
Mumbai.

2. The Sr. Divisional Electrical Engineer (TRS),  
Central Railway,  
Kalyan.

3. Shri R. Viswanathan,  
Retired CMM,  
Western Railway,  
145B Ranka Colony,  
Banner Ghatta Road,  
Bangalore (Karnataka)

.....Respondents.

(By Advocate: Shri E. X. Joseph)

ORDER

S. R. Adige, VC (A):

Applicant impugns respondents' Memo dated 16.3.2000 (Annexure-A1) initiating disciplinary proceedings against him under Rule 9 Railway Servants (Disciplinary & Appeal) Rules and letter dated 17.7.2000 intimating to him the date of the commencement of the inquiry. He seeks release of DCRG with interest as also commuted value of his pension.

2. Applicant who commenced service as Asstt. Electrical Driver on 16.11.59 retired on superannuation on 31.10.96.

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On the same day i.e. 31.10.96, he was placed under suspension (Annexure-A2), and a memorandum charge sheet dated 3.10.98 was later issued to him (Annexure-A6) alleging that while working as Chief Traction Foreman, Bombay VT he had obtained 3 first class privilege pass books out of which only 1 book was deposited for use and the other two books were kept by him unauthorisedly in his personal custody. Another charge levelled against him was that he fraudulently prepared and issued in his own handwriting 2 first class passes in favour of fake railway employees.

3. Applicant had earlier filed OA No. 1189/96 claiming release of retiral benefits. In that OA he averred that he had sought voluntary retirement w.e.f. 11.7.96 which he had later sought to prepone to 8.6.96 owing to domestic problems. That OA was disposed of by order dated 23.7.98 (Annexure-R1) in which inter alia it was held that applicant retired on superannuation only on 31.10.96, his prayer seeking voluntary retirement w.e.f. 12.7.96 having been rejected. That OA was disposed of with certain directions.

4. Thereafter applicant filed OA No. 1192/96 praying that he may be deemed to have retired w.e.f. 11.6.96. That OA was dismissed at the admission stage itself by order dated 7.6.99.

5. Thereafter applicant filed yet another OA bearing No. 2524/99 which was later allowed to be withdrawn by order dated 10.3.2000 (Annexure-A4) with liberty granted to applicant to file fresh OA in accordance with law, if so advised.

6. This is now the 4th OA filed by applicant.

7. We have heard both parties.

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8. A perusal of the charge Memo dated 3.10.98 issued to applicant and the impugned charge Memo dated 16.3.2000 issued to him reveals that they relate to the same charges, namely unauthorised retention of two first class pass books, and issue of 2 first class passes to fake railways employees. Nothing has been shown to us during hearing to establish that the aforesaid charge Memo dated 3.10.96 was formally withdrawn by any written order, before issue of the subsequent charge Memo dated 16.3.2000 which is now impugned.

9. Further, Railway Board in its Circular dated 1.12.93 (RBE No.171/93, copy taken on record) has referred to a CAT Mumbai decision and has specifically laid down that once proceedings initiated under Rule 9 Railway Servants (D & A) Rules are dropped, the disciplinary authority would be debarred from initiating fresh proceedings against the delinquent unless reasons for cancellation of the original charge Memo or for dropping the proceedings are appropriately mentioned and it is duly stated in the order that proceedings were being dropped without prejudice to further action which may be considered. It was therefore necessary that when the intention was to issue a fresh charge sheet subsequently, the order cancelling the original one or dropping the original proceedings should be carefully worded as to mention the reasons for such an action indicating the intention of issuing fresh charge sheet appropriate the nature of the charges.

10. In the present case, no order has been shown to us withdrawing the earlier charge sheet dated 3.10.98 before issuing the fresh impugned charge sheet dated 16.3.2000, much less indicating the reasons for withdrawing the same. Respondents' reply to the OA does not state the reasons either.

11. In the result the impugned order dated 16.3.2000

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and dated 17.7.2000 are squarely hit by respondents' own circular dated 1.12.93 (supra). No thing has been shown to us to establish that the aforesaid circular dated 1.12.93 has been stayed, modified, withdrawn or set aside.

12. Other grounds have also been taken by applicant to challenge the aforesaid Memo dated 16.3.2000, but in the light of the foregoing discussion, even without considering it necessary to dwell on those other grounds, it is clear that in the light of respondents' own circular dated 1.12.93 and the foregoing discussion, the impugned Memo dated 16.3.2000 and letter dated 17.7.2000 are not sustainable in law.

13. The OA therefore succeeds and is allowed. The impugned orders are quashed and set aside. Applicant should be released his DCRG and commuted value of pension forthwith. Prayer for interest is rejected. No costs.

*A. V. V. V. V.*  
( DR. A. VEDAVALLI )  
MEMBER (J)

*S. R. Adige*  
(S. R. ADIGE)  
VICE CHAIRMAN (A)

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