CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

OA/020/00361/2020

Date of CAV : 09.11. 2020
Date of Pronouncement : 23.11.2020

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

M.Srinivas S/o M.Madhava Rao,
Aged 47 years, Occ : Loco Pilot (Passenger)
(Group 'C'),
O/o The Chief Crew Controller (TRSO),
South Central Railway, Bitragunta Depot,
Bitragunta R.S., ONgole Dt. A.P. ...Applicant

(By Advocate : Mr.K.R.K.V.Prasad)

Vs.

1.Union of India rep by the
The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.

2. The Senior Divisional Electrical Engineer (Operations),
O/o The Divisional Railway Manager,
South Central Railway, Vijayawada Division,
Vijayawada.

3. The Senior Divisional Mechanical Engineer,
O/o The Divisional Railway Manager,
South Central Railway, Vijayawada Division,
Vijayawada.

4. Sri J.V.Ramanaiah,
Chief Loco Inspector/Inquiry Officer,
RRI, Vijayawada R.S.,
South Central Railway, Vijayawada Division,
Vijayawada.

….Respondents

(By Advocate : Mrs. Vijaya Sagi, SC for Railways)

ORAL ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:

2. The OA is filed challenging the charge memorandum dated 8.7.2019 r/w order dated 24.6.2020 issued by the 2nd respondent and the letter dated 11.7.2020 issued by the 4th respondent.

3. Brief facts of the case are that the applicant while working as Loco Pilot (Passenger) was selected as DI (Drivers Inspector) in response to a notification issued by 3rd respondent, Sr. DME on 11.9.2015. While working as Driver's Inspector, under the control of Sr DME, a charge memo was issued by the 2nd respondent, Sr DEE, on 8.7.2019 and the charges were denied. Later the applicant was transferred to his substantive post of Loco Pilot (Passenger) vide office order dated 8.8.2019, signed by the Asst. Personal Officer (Mechanical) demonstrating the fact that the applicant was working under the 3rd respondent. Inquiry officer was appointed to inquire and during the inquiry applicant claimed that the 2nd respondent is not the disciplinary authority to issue the charge sheet which was responded to by the 2nd respondent informing that the mechanical and electrical wing have been merged on 1.1.2019 and that the transfer of posts from mechanical branch to electrical branch were effected on 5.12.2019. Despite objections raised, inquiry officer went ahead and submitted a report on 28.2.2020 holding the charges as proved. Applicant represented against the I.O report and the 2nd respondent appointed another inquiry officer vide impugned order dated 24.6.2020 to conduct fresh inquiry. Applicant objected for fresh inquiry on the ground that there is no provision to do so

under discipline and appeal rules and yet the Inquiry officer was going ahead with the inquiry resulting in the filing of the present OA.

4. The contentions of the applicant are that the 2nd respondent is not the disciplinary authority to issue the charge sheet, since the applicant was working under the 3rd respondent as DI at the relevant point of time. This is substantiated by the fact that the applicant was reposted as loco pilot (Passenger) by the APO (Mechanical) and that general orders of the running cadre under mechanical wing are issued by APO (Mechanical). There is no rule provision to order fresh inquiry after acceptance of the I.O report by the disciplinary authority. Hence the new inquiry officer appointed cannot proceed with the inquiry. The transfer of posts from mechanical branch to electrical branch was effected on 5.12.2019 whereas charge sheet was issued earlier on 8.7.2019. No memo was issued by the respondents transferring men from the mechanical branch to electrical branch. Applicant cited the judgments of the Hon'ble Madras and Calcutta Benches of this Tribunal in support of his contentions. Articles 14, 16 and 21 of the Constitution of India have been violated.

5. Respondents state in the reply statement that a contractor has given a complaint against the applicant on 18.5.2019 about making payment to the wife of the applicant through cheques which were encashed. Disciplinary authority issued charge memo on 8.7.2019 and the inquiry officer after due inquiry held the charges as proved. Objection raised by the applicant that the Sr DEE is not the disciplinary authority is not tenable since the mechanical wing and the electrical wing have been merged on 1.1.2019, consequent to Railway Board order dated 1.5.2018 and the DRM approval

on 26.12.2018. Thus both the wings were brought under the jurisdiction of Sr.DEE as on 1.1.2019 and the charge sheet was issued subsequent to the merger on 8.7.2019. Applicant worked as DI under Sr DME only upto 31.12.2018. From 1.1.2019 applicant was reporting to the Sr.DEE and later applicant was repatriated to his substantive post as loco pilot passenger from DI, on 8.8.2019 by the same authority. Further, APO (Mechanical) being the personal and cadre officer issues orders in regard to Mechanical and electrical wing as well. Applicant participated in the disciplinary proceedings after being explained about the jurisdiction of the disciplinary authority. Even the muster and salary of the applicant are taken care of by authorities under the control of the disciplinary authority. Re-inquiry was ordered based on the objections raised by the applicant and that D &A Rules clause 10 (1) (b) permits re-inquiry. In the fact finding inquiry applicant accepted the financial transactions between his wife and the contractor which is violative of rules 3 (xiv) and 3 (xv) of conduct rules. Respondents cited the judgment of Hon'ble Apex Court in Khaza Khan v PMG, Andhra (1978 (2) SLR 512, Principal Secretary to Govt. of A.P v Adinarayana, 2004 (6) SLR 432 in support of their contentions. The transfer of records like book of sanctions, seniority takes some time. Therefore, posts were transferred on 8.8.2019 with the concurrence of the accounts wing while men and assets by 1.1.2019. Applicant did not explain as to why amounts were credited to his wife and in his relatives account. Applicant was given an opportunity to defend himself through re-inquiry and instead of doing so applicant is raising only technical objections. The charges are serious and grave which mar the image of the respondents' organization.

Applicant filed a rejoinder wherein he submits that the respondents admitted that the transactions took place between his wife and the contractor, which, he claims are private transactions not related to applicant's official duty, about which the applicant has neither knowledge nor control. APO functioning as nodal officer is not supported by any office order. No office order was issued communicating about unified control of mechanical and electrical crew under Sr. DEE electrical. Transfer of posts occurred on 5.12.2019 and no order of transfer of staff has been issued till date. Fact finding committee is not a quasi judicial proceeding and it has no bearing in respect of who should be the disciplinary authority. Transfer of posts was done on 5.12.2019 and therefore to state that the applicant was under the control of Sr. DME till 31.12.2018 is wrong. Respondents admit that applicant worked as DI under Sr. DME and therefore he is the disciplinary authority. Charge sheet was issued prior to transfer of posts.

Respondents filed additional reply affidavit and we have gone through the same carefully and found that the core averments are mostly the same as those in the reply statement.

6. Heard both the counsel and perused the pleadings on record.

7. I. Applicant was issued a charge memo in connection with credit of some amounts in the account of the wife of the applicant by a contractor, who complained that they were credited based on messages received. Denying the charges applicant has raised 3 objections as under:

1. Sr. DEE is not the disciplinary authority to issue the charge sheet.

2. The internal note approved by the DRM on 26.12.2018 for merging the two wings, without being followed up by a regular circular is invalid under law.
3. Disciplinary authority after accepting the inquiry report is not empowered to order fresh inquiry.

II. To begin with, in regard to the first question, the Electrical Wing crew and Mechanical Wing crew were merged on 1.1.2019 and brought under the Sr.DEE with the approval of DRM on 26.12.2018 through an internal note put up to him. However, it was not followed up by issue of a regular circular testifying the merger. An administrative order is complete when the decision taken on the file is communicated to the employees concerned. Otherwise it is known to those who are privy to the note and not to others who require to be made known. In this case it was the Sr. DEE, Sr. DME, DRM and those few who would have processed the file and not the employees who would be affected by the merger. The transfer of posts was effected vide circular 5.12.2019 which was in the public domain. There are two types of documents namely public and private documents. The public document as its nomenclature goes is available in the public domain and is easily accessible. The private document requires some authentication to be accepted. The internal note in an office file, though maintained in a public office but unless it is circulated to the employees would not attain the character of a pubic document. It would continue to have the shades of a private document and in the instant case the note approved by the DRM falls into the category of a private document

which will transform into a public document after being circulated among all those concerned who would be affected by it. Therefore, we find that the Courts accept public documents readily and not the private documents which require secondary evidence to establish their validity. An internal note is subject to change by the same authority or by another authority. The internal note is not subject to external exposure. It thus acquires validity when it is communicated to those concerned. Further an internal note lacks legal force, as observed by the Hon'ble Apex Court in Shanti Sports Club v. Union of India [(2009) 15 SCC 705], which was cited by the applicant, as under:

> *"34. The issue was recently considered in Sethi Auto Service Station and another v. Delhi Development Authority and others (2009) 1 SCC 180. In that case, the appellant had claimed relocation of two petrol pumps which had become non-profitable on account of construction of 8 lane express highway between Delhi and Gurgaon. The appellants relied on the notings recorded by the technical committee headed by the Vice Chairman, DDA. It was urged that the technical committee had recommended relocation of the petrol pumps, it was not open to DDA to do a volte face and reject the representation of the appellants. On behalf of the respondents, it was urged that mere notings and proposal recorded in the files of DDA did not create any right in favour of the appellants and the final decision taken by DDA against relocation of petrol pumps was consistent with the policy in vogue. This Court approved the High Court's refusal to interfere with DDA's decision and observed:*
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> > *"It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned."*
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> *xxx*
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> *36. The Full Bench then examined the notings in the file, referred to Section 21 of the General Clauses Act, 1897 and concluded:*
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> > *"157. Section 48 by itself does not require publication of such an order in the Official Gazette. As a matter of fact, there is no repugnancy between the provisions of Section 48 of the Act as*

read with Section 21 of the General Clauses Act. The purpose of issuance of publication of notifications and declarations under Sections 4 and 6 of the Act in Official Gazette are that public at large should become aware of the factum that the land so notified is to be acquired for public purpose so that people at large should not suffer any monetary loss or any other inconveniences in entering into any deals in respect of such land, subject-matter of compulsory acquisition. As an analogy of the purpose enshrined in notification issued under Section 4 and declaration issued under Section 6 for their publication in Official Gazette is also, in our view, linked to the order which is made under Section 48 of the Act for withdrawing from such acquisition and unless the same is also published in the manner as the original notifications, the said object could not be achieved i.e. of giving public notice to the public at large."

37. As a result of the above discussion, we hold that the noting recorded in the official files by the officers of the Government at different levels and even the Ministers do not become decision of the Government unless the same is sanctified and acted upon by issuing an order in the name of the President or Governor, as the case may, authenticated in the manner provided in Articles 77(2) and 166(2) and is communicated to the affected persons. The notings and/or decisions recorded in the file do not confer any right or adversely affect the right of any person and the same can neither be challenged in a court nor made basis for seeking relief. Even if the competent authority records noting in the file, which indicates that some decision has been taken by the concerned authority, the same can always be reviewed by the same authority or reversed or over-turned or overruled by higher functionary/authority in the Government."

II. Applying the legal principle to the case on hand the merger would come into vogue after the transfer of posts on 5.12.2019 which was circulated whereas the charge sheet was issued on 8.7.2019. The power to impose a penalty is statutory in nature and it has to be exercised by only those statutory authorities who are vested with such a power. It cannot be assumed and exercised. Therefore, till the date of transfer of posts the applicant would come under the administrative control of the Sr. DME. Hence the charge sheet should have been issued by Sr. DME and not by Sr.DEE. The contentions of the respondents that the applicant was transferred by the Sr. DEE would not stand ground since transfer is effected by a transfer and placement committee and if the transfer of the applicant from DI to his original post from Rajahmundry to Bitragunta is on punitive

grounds as is projected in the reply statement, then it becomes all the more questionable. Drawing of salary and muster rolls though done for administrative convenience, yet, it would have been proper had they been done after issue of a circular, which would be binding on all those concerned. However, administrative flexibility can be exercised in matters other than those which are statutory in nature whereas in cases where statutory functions are to be discharged by an identified authority and if exercised by others, it would have legal repercussions as in the present case. A charge sheet issued by other than the disciplinary authority would not be valid as held by the Hon'ble Supreme Court on 05.09.2013 in ***Union of India & Ors. Vs. B.V. Gopinath***, as under:

"The charge sheet/charge memo having not been approved by the disciplinary authority was non est in the eye of law."

Therefore the charge sheet issued by the Sr. DEE on 8.7.2019 would not be valid in the eyes of law based on the legal principle laid down as at above since he was not the disciplinary authority till the transfer of posts on 5.12.2019.

III. Therefore the first two questions are answered by observing that the Charge sheet issued stands invalid and the internal note approved by the DRM does not have sanctity till it is formulated by a circular or by an associated act which has placed the issue in the public domain like in the instant case by the transfer of posts vide memo 5.12.2019. When the establishment is not transferred the men who occupy the posts would be coming under the authority, who operates the posts.

IV. Now coming to the aspect of re-inquiry by the disciplinary authority, in the instant case when the Sr. DEE is not the disciplinary authority, ordering re-inquiry by him on 24.6.2020 lacks legal basis. Even otherwise, unless the disciplinary authority disagrees with the findings of the Inquiry officer and records reasons which are to be forwarded to the delinquent, he cannot proceed to order re-inquiry as observed by the Hon'ble Apex Court in ***Jayantibhai Raojibhai Patel Vs. Municipal Council, Narkhed & Ors.*** [Civil Appeal No. 6188 of 2019 arising out of SLP(C) No 8112 of 2019]

> *"8. The view of the High Court that a fresh appointment of an inquiry officer could not have been made without recording reasons why the disciplinary authority disagreed with the enquiry report is correct. This is borne out by the decision of this Court in CSHA University v BD Goyal3, where a three judge Bench of this Court observed:*
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> *"7. It is no doubt true that the punishing authority or any higher authority could have disagreed with the finding of the enquiring officer, but in such a case the authority concerned is duty-bound to record reasons in writing and not on ipse dixit can alter the finding of an enquiring officer. The order of the Vice-Chancellor, which was produced before us does not satisfy the requirements of law in the matter of differing with the findings of an enquiring officer."*

Therefore, on all counts the action of the respondents in proceeding with re-inquiry is devoid of legal tenability.

V. However, we do observe that the charges framed based on allegations of crediting certain amounts credited into the account of the wife of the applicant through cheques by the complainant contractor, are serious, involving grave misconduct. In the fact finding inquiry the applicant did admit to the fact that there were financial transactions between his wife and the contractor. However, in the rejoinder filed, applicant claims that the transactions are personal to his wife and are in no

way related to his official duties. Rather, a sophisticated submission, in the context of the applicant not knowing as to why his wife is dealing with the contractor who had official dealings with him. The charge has to be proved in a regular inquiry conducted constituted by the competent disciplinary authority. Applicant has been raising the lack of jurisdiction of the disciplinary authority since the inception of the inquiry and the respondents instead of looking at this aspect from the legalistic point of view have been trying to justify their decision by bringing in circumstantial evidence which is not pertinent to the case on hand. It is not understood as to why the respondents could not issue a merger memo at the earliest before the transfer of posts. Respondents have not explained the same in the reply statement. Moreover, instead of wasting valuable time in harping on technical issues relating to the competency for issue of charge sheet, respondents could have dropped the charge sheet and issued a fresh one to take the matter to its logical end. To do so they are empowered as per rules and law. Administration is all about taking a pause when required, contemplate and then proceed. Power has to be exercised with required restrain and when such responsible restrain is inculcated in administrative practice, Principles of Natural justice would be in full flow in the most Natural way, thereby giving little room for a grievance to arise. Respondents must remember that they are discharging functions of the nature in question at the cost of the public exchequer. Disciplinary inquiry involves, men material and money and therefore it has to be completed in a reasonable interval of time by following the prescribed dictates so that they do not end up in prolonged litigation with no end in sight. For reasons obviously evident as in the instant case, taking a step back and then moving

forward by the respondents would be beneficial to all those involved, rather than holding on to what cannot be held to. The other averment made by either sides, in respect of issue of transfer order by the APO (Mechanical) is inconsequential in view of the fact that the substantive aspect as to who is the competent disciplinary authority, decides the dispute under adjudication.

VI. Nevertheless, based on the facts of the case and the relevant law as discussed above, we remit the case back to the respondents directing to drop the charge sheet issued on 8.7.2019 by the Sr. DEE as well as the re-inquiry ordered and proceed afresh from the stage of issue of charge sheet by following mandatory procedure prescribed under Railway Servants (D&A) Rules, 1968 and as per law, keeping in view observations made by the Hon'ble Supreme Court in the judgments cited by the respondents. Endeavour of the respondents should be to complete disciplinary case at the earliest as laid down by the Hon'ble Supreme Court in its Judgment dated 16.12.2015 in ***Prem Nath Bali Vs. Registrar, High Court of Delhi & Anr***. Time period allowed to implement the directions in regard to dropping of the charge sheet and re-inquiry is 3 months from the date of receipt of the order.

With the above directions, the OA is allowed as indicated, with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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