

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.
* * *

Date of Decision: 17.07.92

DA 1974/90

TIKAM CHAND

... APPLICANT.

Vs.

UNION OF INDIA & ORS.

... RESPONDENTS.

CORAM:

THE HON'BLE SHRI J.P. SHARMA, MEMBER (J).

For the Applicant ... SHRI VED PRAKASH SHARMA.

For the Respondents ... SHRI ROMESH GAUTAM.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporters or not ?

JUDGEMENT

(DECIDED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J).)

The applicant is Senior Head Shroff (under Suspension) Divisional Cash Officer, Northern Railway, Bikaner and has assailed the order dated 16.8.1990 passed by the Chief Cashier, Northern Railway and order dated 6/14.9.1990 nominating as Enquiry Officer by the same respondent. The applicant has prayed the relief that the impugned orders referred to above be quashed and the respondents be restrained to hold a fresh inquiry from the initial stage and the respondents be directed to put the applicant on work.

17

2. The facts of the case in brief are that the applicant has earlier filed OA 1834/86 before CAT, Jodhpur Bench which was decided on 10.12.1988. In which he assailed his punishment of imposition of penalty of dismissal from service by the order dated 6.5.1990. The appeal against the same was also dismissed. The Bench after considering the matter in that OA quashed the punishment order as well as the inquiry report and the Competant Authority was directed to hold a fresh inquiry in accordance with the law within a period of six months. After the aforesaid Judgement the respondents served a Memo dated 16.8.1990 on the applicant holding a fresh inquiry along with article of charges at Annexure-1, imputation of mis-conduct Annexure-2 alongwith list of witnesses and the documents to be relied upon. An Inquiry Officer as also appointed for the purpose. The applicant has, therefore, come again before the Tribunal and desired the quashing of this fresh charge-sheet on the ground that this charge-sheet could not be issued.

3. The respondents contested the application and stated that the present application is not maintainable and the applicant is raising merely a technical objection in the application although no prejudice is caused to him. The respondents are acting on the basis of the order of the CAT, Jodhpur Bench dated 30.12.1988 by which the respondents were directed to hold a fresh inquiry. The

respondents have also annexed as Annexure R-1 a letter dated 4.9.1979 from the District Magistrate, Bikaner where it is mentioned that the applicant Tikam Chand is not a Scheduled Caste and he has obtained certificate after defrauding from Tehsildar, Bikaner. The applicant was also convicted in a criminal case on the same issue or obtaining a false Scheduled Caste certificate but it was quitted in a appeal by the Additional Sessions Judge on the ground that the certificate issued cannot be said to be forged. In view of the above, the application is devoid of merit and liable to be dismissed.

4. I have heard the learned counsel for both the parties at length and have gone through the records of the case. In the present case the main accusation against the applicant is that he got employment under the Railways on the basis of a certificate issued by Tehsildar, Bikaner that he belongs to a Scheduled Caste. In fact, according to the respondents the caste which he belongs is not a Scheduled Caste. The respondents are in their right to proceed against the applicant departmentally in a disciplinary inquiry. The earlier order of punishment has been quashed as said above. However, the Tribunal gave a direction to the respondents for holding a fresh inquiry against the applicant within six months. Within a period of six months the impugned Memo has been issued. The charge framed against the applicant is the same as in the earlier charge-sheet and the imputation

of mis-conduct against the applicant is also almost the same except an addition of the word that he obtained Scheduled Caste certificate by playing fraud on Tehsildar, Bikaner. The substance of the charge, therefore, remains the same. The issuance of this charge-sheet, therefore, is not on a different pattern. Thus, the matter was not closed but was kept alive by the Tribunal itself. The earlier charges framed against the applicant were never dropped. The punishment imposed in the earlier inquiry was only quashed. There is no bar to issue a charge-sheet on the same charges against the applicant. Thus, the learned counsel for the applicant could not show that under what law the present inquiry on the same charges cannot be held. In fact, the respondents are complying with the direction issued by the Jodhpur Bench in the above referred Original Application. The charges framed earlier against the applicant was never dropped nor withdrawn. The respondents on the safer side issued a fresh Memo alongwith article of charge and article of imputation of mis-conduct. The witnesses remains the same and the nucleus of the inquiry is the same.

5. Another aspect also, ^{no} ~~prejudice~~ is caused to the applicant as he has been fully in clear terms informed about the charge he has to face in the inquiry. On another angle also, it has come during the course of the hearing, that the inquiry is almost complete and the applicant who

to the Tribunal has come very late and joined the proceedings and appearing before the Inquiry Officer. The application has been filed to quash an order which has already become effective. I am fortified in my view by the authority reported in 1987 (3) ATC 1. The learned counsel for the respondents, however, has referred to the authority of Jabalpur Bench reported in 12 ATC 1990 868 and also the case of Birala Behra Vs. UOI, reported in 1989 11 ATC 99. Both the cases do not at all apply to the present case of the applicant. In the present case, there is a specific direction by the Tribunal in an earlier application filed by the applicant himself that the respondents should within six months proceed with an inquiry against the applicant. That judgement has become final.

6. In view of the above facts, the application is devoid of merit and is dismissed leaving the parties to bear their own costs.

J. P. Sharma
(J. P. SHARMA) 17.7.92
MEMBER (J)