

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2068/2004

New Delhi, this the 06th day of March, 2006

**HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)**

Shri Jaidev
S/o Shri Natha,
Call man, Northern Railway,
Bareilly. Applicant.

(By Advocate Ms. Meenu Mainee with Sh. B.S. Mainee)

VERSUS

Union of India: Through

1. The General Manager
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager
Northern Railway,
Moradabad.
3. The Assistant Mechanical Engineer (III)
(Shri Rajesh Kumar)
Northern Railway,
Moradabad. Respondents.

(By Advocate Rajender Khatter)

O R D E R (ORAL)

By Hon'ble Mr. Mukesh Kumar Gupta:-

In this third round of litigation applicant challenges impugned order dated 22.7.2004 (Annexure A-1) appointing Inquiry Officer as well as communication dated 03.6.2004 whereby the General Manager, Northern Railway set aside the disciplinary authority order dated 24.1.2002 dropping the charges and ordered that : "further proceedings be initiated" from the stage of appointment of the Enquiry Officer by providing available and relevant additional documents and also examine the defence witnesses. Further relief is sought in the nature of direction to respondents to treat the intervening period from the date of removal to the date of re-instatement as 'spent on duty' with all consequential benefits.

2. Shorn on details, the relevant factual matrix to decide the controversy in the present OA is that the disciplinary proceedings were initiated against the

19

applicant vide Memo dated 24.5.1991 alleging that he had obtained the employment in the Railways based on false record. An oral enquiry was held and accepting the findings of the Inquiry Officer holding the charges proved, the disciplinary authority vide order dated 26.10.1994 imposed the penalty of removal. Since appeal dated 30.11.1994 had not been disposed of, OA No.1884/1995 was instituted. Among various other contentions, it was contended that there had been violation of principle of natural justice; he was not given fair opportunity of defending himself by not producing the relevant documents and permitting him to produce defence witnesses; the order passed by the disciplinary authority was non-speaking order. On consideration of entire matter, the said OA was allowed on 31.8.1999 with the following directions:-

"9. In the result, the application is allowed as follows:

- i) The impugned order dated 26.10.1994 passed by the disciplinary authority, is hereby set aside.
- ii) The matter is remanded to the Disciplinary Authority to take a decision whether to proceed with the enquiry and if so, he can appoint an Enquiry Officer to conduct the enquiry. The Enquiry Officer can proceed on the basis of evidence already on record and record further evidence that may be produced by the Administration and then record defence evidence. In such a case, the applicant should be given fair and sufficient opportunity to defend himself in the enquiry including the production of relevant documents and examination of relevant witnesses.
- iii) The applicant shall be reinstated immediately. But the Disciplinary Authority is given liberty either to continue him in the post or to keep him under deemed suspension from the date of original order of removal from service subject to continuing with the disciplinary enquiry according to law.
- iv) Since, there is a case of charge sheet of 1991, the Disciplinary Authority should take a decision one way or the other viz. to proceed with the enquiry or not within a period of two months from the date of receipt of copy of this order and in case he decides to continue the enquiry then the enquiry should be expedited and to be disposed of as earlier as possible. In case the Disciplinary Authority decides to continue the enquiry and keeps the applicant under deemed suspension, then the applicant will be entitled to subsistence allowance as per rules from the date of deemed suspension 26.10.1994 till the enquiry is concluded and final orders are passed.
- v) All contentions on merits are left open.
- v) In the circumstances of the case, there will be no order as to costs."

3. Pursuant to the aforesaid orders, applicant was re-instated in service and placed under deemed suspension from the date of removal i.e. 26.10.1994 till the finalization of D&AR proceedings. Thereafter, the respondents passed an order dated 24.1.2002 (Annexure A-6) and dropped the departmental proceedings issued vide SF 5 dated 24.5.1991. Since no vacancy of Sub-Loco Cleaner was available in the Loco Branch and as per the orders of the ADRM, the applicant was to be posted as Gangman in the Engineering Department, the further posting orders were directed to be issued by the Personnel Branch. Since the applicant was not satisfied with the aforesaid order, he submitted an appeal dated 10.7.2002 to the General Manager (P), Northern Railway dated 10.7.2002 and requested to pass orders for grant of arrears of pay and allowances as well as issuing posting orders. Since the aforesaid representation remained unconsidered, he instituted OA No.7/2004. The said OA was disposed of in limine vide order dated 05.1.2004 (Annexure A-10) with directions to General Manager, Northern Railway to consider and pass an appropriate order in accordance with law within the time-frame prescribed therein. In the purported compliance of the aforesaid directions, the General Manager passed impugned communication dated 03.6.2004 and while invoking Rule 25 of Railway Servants (Disciplinary & Appeal) Rules, 1968 set aside the order of the disciplinary authority dated 24.1.2002 and issued further directions which read as follows:

"order that further proceedings be initiated from the stage of appointment of I.O. by providing available and relevant additional documents and also examine the defence witnesses as laid down under the rules. The Disciplinary Authority shall decide the intervening period from the date of suspension to the date of re-instatement after conclusion of the Disciplinary proceedings as per rules. The inquiry be conducted by the Enquiry Officer by following rules and procedures on the subject."

4. Consequently, the respondent no.2 issued order dated 22.7.2004 appointing Shri Javed Iqbal as Enquiry Officer into the proceedings.

5. The aforesaid communication and order namely 03.6.2004 and 22.7.2004 have been questioned in the present proceedings. Mrs. Meenu Maine, learned counsel appearing with Shri B.S. Maine forcefully contended that once the disciplinary authority had dropped the charges levelled against the applicant, he

was entitled to be re-instated with full back wages, seniority and promotion and further the intervening period is liable to be as period spent on duty; that the respondent no.1 order dated 03.6.2004 is not a bonafide exercise of power but is a vindictive and revengeful act; that he had no power to review such a case where the Enquiry Officer had completely exonerated the applicant on merits and the disciplinary authority passed orders to drop the said charge. It was further contended that the "fresh" enquiry is sought to be conducted only because the applicant was getting benefit under the statutory rules and, therefore, the action of the said authority being unfair is violative of law laid down by the Hon'ble Supreme Court in *State of Punjab vs. V.K. Khanna* [AIR 2001 SC 343] particularly Para-24 wherein it has been held that the action of authorities must be fair and reasonable; it should be benefited; it should not be arbitrary; it should not be passed on extraneous considerations.

6. Learned counsel further relied upon various orders passed by this Tribunal in OAs No.1503/2004 [*Ramesh Kumar vs. Union of India & Ors.*] decided on 22.8.2005, 2066/2004 [*Vipin Kumar vs. Union of India & Ors.*] dated 26.8.2005, 1720/2004 [*Sh. Chatter Pal vs. General Manager & Ors.*] dated 20.9.2005 and 1712/2004 [*Vinod Kumar vs. General Manager & Ors.*] dated 25.11.2005. Reliance was also placed on order dated 10.7.2003 in OA No.2507/2002 [*Shri Udaiveer vs. General Manager & Ors.*] to contend that similar orders passed by the concerned authorities were quashed and set aside therein.

7. The respondents, on the other hand, contested the claim laid in the OA. It was contended that applicant secured employment in the Railways based on forged casual labour certificates. The documents such as pay-sheets and attendance register were not available when the enquiry was held as the same were destroyed being the time barred cases. The applicant never produced any witness. The charges levelled against him were proved in the Enquiry and Enquiry Officer findings were accepted by the Disciplinary Authority who imposed the punishment of removal from service. On an appeal filed, the said order was maintained vide order dated 01.12.1995. The disciplinary authority passed order dated 24.1.2002 and dropped the said charges, but the said order was revised

under Rule 25 of the Railway Servants (Disciplinary & Appeal) Rules, 1968 by the General Manager and therefore applicant has no right for re-instatement with back wages. The cadre of Sub-Loco Cleaner, where the applicant had been posted was abolished due to closure of steam locos and, therefore, the order dated 24.1.2002 required further posting order in the category of Gangman be issued by the Personnel Branch. Since the disciplinary authority failed to exercise the jurisdiction vested in him, it became incumbent on the part of General Manager to intervene in the matter, who ordered "further proceedings into the matter."

8. By filing rejoinder, the applicant controverted the plea raised.

9. We have heard learned counsel for parties and perused the pleadings carefully.

10. During the course of hearing, Mrs. Mainee forcefully contended that the order dated 03.6.2004 amounts to "fresh de novo enquiry" into the matter as the respondents appointed Shri Javed Iqbal as Enquiry Officer, who had not conducted the enquiry on an earlier occasion. Learned counsel maintained that the orders relied upon (supra) are fully applicable in the facts and circumstances of the present case. However these contentions were disputed by Shri Rajender Khatter, learned counsel for the respondents. Learned counsel pointed out that in Chatter Pal (supra), respondents had taken up the matter before the Hon'ble High Court, wherein it has been held that the applicant therein would not be entitled to back wages.

11. Upon hearing counsel for the parties and perusal of the pleadings, the only question which requires consideration, in our considered view, is whether the order dated 03.6.2004 could be construed as a "fresh de novo enquiry" and also as to whether the appointment of Shri Javed Iqbal as Enquiry Officer vide order dated 22.7.2004 is justified or not.

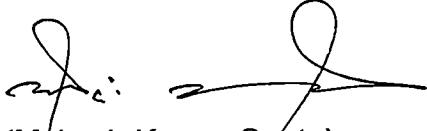
A bare perusal of the order dated 03.6.2004, relevant excerpts noticed hereinabove, would show that the General Manager had ordered "further proceedings" and not "fresh de novo" proceedings, as projected by the applicant. It is well-settled that further proceeding is permissible under the rules in vogue.

Moreover, this Tribunal on an earlier occasion, while remanding the matter vide order dated 31.8.1999 accorded such liberty to respondents to take a decision whether to proceed with the enquiry or otherwise. The respondents were also allowed to proceed with the enquiry on the basis of evidence already on record and also to record further evidence, with further relevant documents and examination of all relevant witnesses. A perusal of order dated 22.8.2005 passed in OA No.1503/2004 [Ramesh Kumar vs. Union of India & Ors.] indicates that the action of the respondents in appointing another Enquiry Officer was held to be permissible only in the cases when "the same Enquiry Officer who had earlier held the enquiry is not available for some good reasons." The said judgment has been followed in the subsequent orders, details of which have been noticed hereinabove.

As far as the powers exercised by General Manager to remand the matter to hold "further proceedings" is concerned, we may note and observe that no attempt was made to dis-lodge the said order. In any case, on examination of the matter, keeping in view the rule position as well as the facts noticed hereinabove, we find no infirmity in the said order dated 03.6.2004. As far as the appointment of Shri Javed Iqbal vide order dated 22.7.2004, as Enquiry Officer is concerned, it needs to be clarified. Following order in Ramesh Kumar (supra), we hold that the respondents should pass a specific order indicating whether the same Enquiry Officer, who had earlier held the enquiry into the departmental proceedings initiated vide memorandum dated 26.10.1994, is available for some good reasons or not. If the said Enquiry Officer is available, enquiry shall be conducted by the same Enquiry Officer. In the absence of said Enquiry Officer available now, the respondents would be at liberty to proceed with further proceedings. We make it clear that the evidence already brought on record would not be wiped out, and would have to be considered in addition to the evidence and material now sought to be added, particularly in terms of Tribunal's aforesaid order dated 31.8.1999. The respondents are accordingly directed to pass the orders as required hereinabove within a period of two months from the date of receipt of a copy of this order. Since the departmental

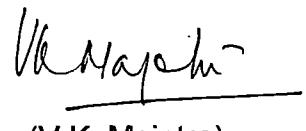
proceedings in the present case were initiated in the year 1994, respondents would be well advised to conclude the said proceedings within a period of six months from the date of receipt of a copy of this order. The applicant is also directed to fully cooperate with the authorities. In the facts and circumstances of the present case, we do not find any justification for either treating the period of removal till the date of reinstatement as spent on duty or to give all consequential benefits, as prayed for. These aspects would have to be regulated upon conclusion of disciplinary proceedings initiated against the applicant. The interim order dated 26.8.2004 restraining the respondents from proceedings into the enquiry, is accordingly vacated.

12. In view of the discussion made as well as directions issued hereinabove, the present OA is disposed of. No costs.



(Mukesh Kumar Gupta)
Member (J)

/gkk/



(V.K. Majotra)
Vice-Chairman (A)

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