

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2218/2004
MA 690/2005

New Delhi, this the 24th day of August, 2005

Hon'ble Sh. Kuldip Singh, Vice-Chairman (J)
Hon'ble Sh. D.R. Tiwari, Member (A)

Shri Satya Narayan,
S/o Shri Pooran,
Call Man,
Under Loco Shed, Northern Railway,
Bareilly.

.....Applicant.

(By Advocate Mrs. Meenu Mainee for 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 (I)
Northern Railway,
Moradabad.

.....Respondents.

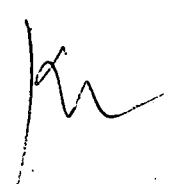
(By Advocate Shri Rajender Khatter)

O R D E R (ORAL)

By Sh. Kuldip Singh, Vice-Chairman (J):-

By this OA, applicant has impugned order dated 22.7.2004 (Annexure A-1) by which another Enquiry Officer has been appointed to conduct the enquiry. The applicant has also impugned order dated 8.9.2004 whereby the applicant has been called upon that he may appoint his defence assistant to defend himself in the enquiry and was informed the next date of hearing.

2 The facts of the case in brief as alleged by the applicant are that he was initially engaged as Casual Labour and thereafter he was appointed as Substitute Loco Cleaner and on 31.5.1991 a charge-sheet was issued to him and a




disciplinary enquiry was held against him. Consequent to which, the applicant was removed from service and appeal filed by him was also rejected. Thereafter the applicant filed an OA, which was allowed vide order dated 4.1.2000. Though the respondents were directed to reinstate the applicant but the Tribunal has given liberty to the respondents to the extent that it will be open to the respondents to proceed against the applicant in accordance with law, if so advised. After the OA was allowed, the applicant was reinstated. However, the respondents appointed another Enquiry Officer to hold the enquiry but the said Enquiry Officer submitted his report by recording his findings on 26.12.2001 by which the proceedings against the applicant were dropped. The disciplinary authority also after considering the report of the Enquiry Officer dropped the disciplinary proceedings and the suspension of the applicant was revoked. However, instead of reinstating the applicant as Substitute Loco Cleaner in the Loco Shed, respondents posted the applicant as a Call Man whereas the juniors to the applicant who were already working in the same Loco Shed, have been regularized and some of his juniors also stated to be promoted as Diesel Assistants. After appointing the applicant as Call Man, respondents have neither passed any order regarding pay and allowances in respect of intervening period nor they have declared the intervening period as period spent on duty as per provisions of the Indian Railway Establishment Rules, Vol.I. So, the applicant has submitted a representation to the Assistant Mechanical Engineer (I), Northern Railway, Moradabad requesting to treat the intervening period as period spent on duty with consequential benefits but no decision was communicated to the applicant. So, after waiting for six months, the applicant has submitted an appeal to the General Manager (P), Northern Railway, Baroda House, New Delhi giving detailed background of the case. But since no decision has been taken by the appellate authority also, the applicant has filed another OA 131/2004 praying for quashing the impugned orders in terms of which respondents have failed to treat the Intervening period as spent on duty. The said OA was disposed of vide

19

order dated 19.1.2004 whereby directions were given to the respondent no.1 to consider the case of the applicant and pass an appropriate order preferably within six months from the date of receipt of a copy of this order vide annexure A-15. On this order issued by the Tribunal, the respondents have passed an order dated 3.6.2004 whereby the respondent no.1 set aside the order of the disciplinary authority dated 24.1.2002 and ordered that further proceeding be done 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. Disciplinary authority was further directed to decide the intervening period from the date of suspension to the date of reinstatement after conclusion of the disciplinary proceedings as per rules. So, on the basis of this order dated 3.6.2004, the impugned order dated 22.7.2004 appointing another Enquiry Officer (Annexure A-1) and impugned order dated 8.9.2004 (Annexure A-2) advising the applicant to appoint defence assistant, were issued.

3. The applicant has challenged the same on the grounds that the orders issued by the General Manager are contrary and illegal particularly when the disciplinary authority had dropped the charges the entire intervening period as well as the earlier period of suspension has to be treated as spent on duty. The Enquiry Officer appointed to hold fresh enquiry did not find any oral/ documentary evidence against the applicant. That is why the respondents passed the order and the case was closed.

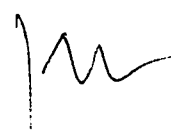
4. The applicant further submits that the Hon'ble Supreme Court has also laid down the law that once enquiry has been completed no fresh enquiry can be ordered which is an unnecessary harassment and torture to an employee. Thus it is submitted that the order passed by the General Manager is not a bonafide order but out of vindictiveness and revengeful measure unmindful of the fact that a government servant cannot be made to suffer with a sword hanging upon his head for such a long time. So, it is prayed that the impugned orders be quashed.



5. Respondents have contested the OA. They have filed their reply. The defence order passed by the General Manager, which was passed on the directions given by Tribunal in OA 131/2004, it is submitted that on the representation of the applicant, the General Manager came to the conclusion that the disciplinary authority has passed the order in violation of rules and the charges were wrongly dropped. That is why the General Manager has remanded back the case to the disciplinary authority. Hence it is prayed that OA is to be dismissed.

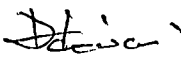
6. We have heard the learned counsel and also gone through the pleadings. When the case was taken up for arguments, learned counsel for the parties pointed out that an identical OA has been decided by coordinate bench of this Tribunal in OA 1503/2004 on 22.8.2005 wherein facts are also identical. Therefore, the counsel for the parties submitted that the judgement in that case has already been given by coordinate bench and stated that this OA can also be decided on the same lines.

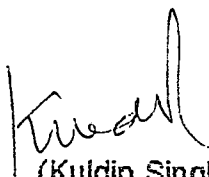
7. A copy of the said judgement has been placed on record whereby the coordinate bench has decided the said OA. In the said case also, the facts are all identical. There also, the applicant was proceeded departmentally and removed from service. Thereafter, OA was filed which was allowed but it was kept open to the disciplinary authority to pass an appropriate order according to law. As some defects were found taken up by the Enquiry Officer in that case also when case was remanded back and the disciplinary authority had dropped the proceedings but the General Manager had again passed an order for holding further enquiry, therefore, the Court has partly allowed the OA and quashed the orders directing the General Manager to pass fresh order permitting appointment of another Enquiry Officer only if the same Enquiry Officer who had earlier held the enquiry is not available for some good reason and it was further directed that in case the documents in terms of the order decided in their earlier OA are not available, the enquiry shall abate forthwith and if the documents are available to



the applicant, then the defence witnesses asked for by the applicant shall be examined and the enquiry shall be completed within a period of four months. Same is the situation here in this case also. When after the OA was allowed and the Court had directed the respondents to hold further enquiry but in the said enquiry the same documents are stated to be not available, so that is why the disciplinary authority had dropped the proceedings. But now against this General Manager has passed the order and the situation is identical as that of said case. Accordingly, present OA can be disposed of in the same manner and we also hereby quash the orders i.e. Annexure A-1, Annexure A-2 and Annexure A-3 and direct the General Manager to pass fresh orders regarding appointment of another Enquiry Officer but only in the circumstances when the earlier Enquiry Officer is not available for some good reason and the documents asked for by the applicant should also be supplied to the applicant, if available and, if the same are not available, the enquiry shall abate forthwith. And if the documents are made available to the applicant, then the enquiry proceeding shall proceed in accordance with law and the applicant was also able to examine the defence witnesses and if such recourse is conducted, the enquiry shall be complied within a period of four months from the date of receipt of a copy of this order. We also order that the applicant shall be entitled to all wages and consequential benefits from the date of reinstatement depending upon the enquiry, if held after availability of the documents.

8. With these directions, OA stands disposed of. No costs.


(D.R. Tiwari)
Member (A)


(Kuldip Singh)
Vice-Chairman (J)

/gkk/