

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 2938/2004

New Delhi this the 12th day of April, 2005

Hon'ble Shri V.K.Majotra, Vice Chairman (A)
Hon'ble Mrs. Meera Chhibber, Member (J)

Shri Vijay Kumar,
S/O Shri Sardari Lal,
R/O 50, Chaman Garden Extension,
Karnal, working as Chief Parcel Clerk at
Northern Railway, New Delhi.

..Applicant

(Present in person)

VERSUS

1. General Manager (Vig.), Northern Railway,
HQ Baroda House, New Delhi.
2. Chief Vigilance Officer (T), N.Railway,
HQ Baroda House, New Delhi.
3. Divisional Traffic Manager, N.Railway,
DRM Office, New Delhi.
4. Inquiry Officer/HQ/Vig (Sh.Y.K.Tyagi),
N.Railway, DRM Office, New Delhi.
5. Divisional Personnel Officer, N.Railway, DRM Office, N/Delhi.

..Respondents

(By Advocate Shri R.L Dhawan)

O R D E R

(Hon'ble Mrs.Meera Chibber, Member (J)

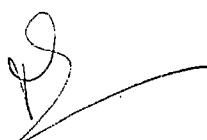
By this OA, applicant has sought quashing of the impugned order dated 18.8.2004 i.e. the order passed pursuant to the directions given in OA 2553/03 (page 11), order dated 24.11.2004 (Annexure A 2) issued by the I.O. fixing the next date of hearing 14.12.2004 for examination of PWs and attendance was required to be made in time (page 13) and quash the charge sheet dated 24.5.2001. He has also sought to treat the suspension period from 5.1.2001 to 28.5.2001 as period spent on duty with full salary alongwith interest and he be



promoted in the grade of Rs.6500-10500 with all consequential benefits as the same is being denied on the ground of pending disciplinary case.

2. The grievance of the applicant in this case is that he was given chargesheet on 24.5.2001 (page 16) but the same has not been completed till date nor the direction given by this Tribunal in earlier OA had been complied with by the respondents.

3. It is submitted by the applicant that he had initially filed OA 3015/2001 with a request to provide Hindi documents which was rejected by the authorities. Moreover, no order had been passed in his application for appointment of a defence assistant. He had not been afforded a reasonable opportunity of furnishing his defence before appointment of enquiry officer, therefore, the disciplinary proceedings should be quashed. The Tribunal disposed of this OA on 6.11.2001 by directing the respondents to pass a speaking order on his request for furnishing documents in Hindi and to pass suitable orders on applicant's representation for appointing a defence assistant and to proceed with the disciplinary proceedings only after permitting the applicant to put his defence. (Page 17). It is the case of the applicant that the said directions were not complied with by the respondents even after a period of more than a year. Therefore, he gave an appeal to the Chief Vigilance Officer on 22.12.2002 for quashing the chargesheet. The same was not disposed of. Therefore, he had to file 2nd OA bearing No. 2555/2003 which was disposed of vide order dated 20.10.2003 by directing respondent No.1 to decide the pending appeal of applicant preferably within four months from the date of receipt of the certified copy of the order.(Page 23) Respondents thereafter filed MA 769/2004 in OA 2555/2003 seeking clarifications which was disposed of vide order dated 12.4.2004 by clarifying that respondent No.2 should pass appropriate order in terms of the directions of this Tribunal dated 20.10.2003 ((page 31) .



Finally his appeal was disposed of on 18.8.2004 knowing fully well that Divisional Traffic Manager is not the appellate authority of applicant. Respondent No.4 thereafter issued order dated 24.11.2004 fixing the next date of enquiry. He has thus submitted that on one hand respondents are violating the directions given by this Tribunal even in spite of four years having elapsed and yet he is being deprived his due promotion, therefore, the reliefs as prayed for may be granted.

4. Respondents have opposed this OA. They have taken a preliminary objection to the maintainability of this OA, on the ground that it is still at the stage of chargesheet and no final order has yet been passed by the disciplinary authority. Therefore, the OA is liable to be dismissed on this ground alone. They have relied on the judgement given by the Hon'ble Supreme Court in UOI Vs. Upendra Singh reported in JT 1994(1) 658) wherein it was held that judicial review cannot extend to the examination of the correctness of charges or reasonableness of a decision. They have further submitted that applicant has not approached the Tribunal with clean hands as he has suppressed the material fact inasmuch as he has not filed the complete copy of chargesheet dated 24.5.2001. They have also submitted that OA is barred by res-judicata as he had filed earlier OAs also one after another for seeking the same relief, namely, to quash the charge sheet.

5. On merits they have submitted that applicant had given a representation dated 22.12.2002 alleging therein that false and fabricated charges have been framed against him vide memo. of charges dated 24.5.2001 and this representation has been termed as an appeal whereas in terms of Rule 17 of the Railways Servants (Discipline and Appeal) Rules, 1968 it cannot be termed as an appeal. As no appeal lies against an order of interlocutory in nature or of the



(A)

nature of step-in-aid of the final disposal of disciplinary proceedings, other than order of suspension or any order passed by an Inquiring Authority in the course of an inquiry under Rule 9. In any case in compliance with the directions of this Tribunal his representation dated 22.12.2002 had been decided by the competent authority whereby applicant has been advised to participate in the enquiry under process and submit his defence statement before the Enquiry Officer so that truth comes out and justice may be done in his case, They have thus submitted that no case has been made out for interference by the Tribunal. They have further submitted that the inquiry into the charges framed against the applicant is being conducted in accordance with procedure laid down in Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. Applicant had also been advised that the next date of hearing was 14.12.2004. Therefore, it is in his own interest that applicant should participate in the enquiry to clear himself of the charges framed against him. Moreover applicant would be allowed to submit written brief under rule 9 (22) of D&A Rules, 1968 in which he can always put his contention which will be considered by the competent authority before passing the final order. Suspension period will be decided after the completion of disciplinary proceedings as he has been charged with failure to maintain absolute integrity exhibited lack of devotion to duty and acted in a manner unbecoming of a Railway servant. They have further submitted that in case he has any grievance with regard to the procedure adopted by the Enquiry Officer, he should raise objection at the proper stage and cannot be allowed to come to the Court after each and every order is passed by the enquiry officer.

6. Respondents have also produced the enquiry file for courts perusal and have prayed that the OA may be dismissed.



7. We have heard the applicant who appeared in person and the counsel for respondents and have perused the pleadings as well. Since respondents had produced the enquiry file we have gone through it and find that on 9.8.2003 applicant was given all the documents in Hindi version as per Annexure III in the major penalty charge sheet. However, applicant made a note thereon that he has received illegible photostate copies of the documents. This file further shows that initially documents were made available to the applicant through special messenger but he refused to accept the same. Thereafter the said documents were sent to him by regd post at his own address. The same was received back. Apart from this, efforts were made to call the employee in the office through control message on 22.6.2002, 27.7.2002 and 29.8.2002 but he did not turn up to receive the documents. It is further seen that vide letter dated 12.6.2002 applicant was sent all the Hindi documents as mentioned in the charge sheet under Rule 5 and he was further asked to send the name of his defence Assistant along with the defence statement so that further proceedings may be initiated. There is a letter dated 12.9.2002 also which shows that the relied upon documents in Hindi version were sent to the employee through regd. letter and another set of Hindi documents was sent to Enqy. officer for conducting the disciplinary enquiry. All these documents available on the file clearly show that all efforts were made by the respondents to give Hindi version documents to the applicant as demanded by him in his first OA but it was applicant himself who refused to take the documents therefore, delay cannot be attributed to the respondents alone. Applicant is also partly responsible for the delay. It is further seen that applicant was given opportunity to give name of his defence assistant and also to give written statement to the charge sheet. Therefore the direction given in the first OA



bearing No.3015/2001 stands already complied with. It is seen that 1st OA was disposed off ex parte and the only direction given was as follows:-

“Having regard to the aforesated facts, we find that it will be in the interest of justice to dispose of the present OA at the admission stage itself even without issuing notices with a direction to the respondents to pass a further speaking and a reasoned order on his request for furnishing documents in Hindi in the light of the directions contained in the order of the Chief Official Language Officer of 30.7.2001 at Annexure A-6, to pass suitable orders on applicant's application for appointing a defence assistant as contained in his application dated 11.8.2001 at Annexure A-8 and to afford the applicant to put in his defence and only thereafter to proceed with the disciplinary proceedings. We order accordingly”.

8. The 2nd OA bearing No. 2555/03 was filed for quashing the charge sheet on the ground that his appeal has not been decided. The said OA was also disposed of at the admission stage itself without calling any reply from the respondents by directing respondent no.1 to decide his pending appeal. At this juncture, it would be relevant to quote Rule 17 of the Railway Servants (Discipline and Appeal) Rules, 1968 which for ready reference is as under:-

“ Rule 17- Order against appeal Not withstanding anything contained in this para, no appeal shall lie against:-

- (i) any order made by the president;
- (ii) any order of any interlocutory in nature or of the nature-in-aid of the final disposal of disciplinary proceedings, other than order of suspension;
- (iii) any order passed by an Enquiry Authority in the course of an inquiry under Rule 9”.

This rule makes it clear that there cannot be any statutory appeal against any of the order which is interlocutory in nature or of the nature of the final disposal of disciplinary proceedings or any other order passed by an Enquiring authority in the course of an inquiry under rule 9. If in this background, if the representation which was given by the applicant dated 22.12.2002 is seen it shows he had requested to quash the charge sheet on the ground that false and fabricated case



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has been framed against him. In this representation there was no mention at all about non compliance of the directions given by this Tribunal in 1st OA 3015/2001. On the contrary he had stated that false and fabricated case has been framed against him. Therefore, applicant cannot relate the said representation with the directions given by this Tribunal in his first OA bearing No. 3015/2001 as both were entirely different in nature, yet even ^{the 1st} directions given in 2nd OA were also complied with. It is seen that initially in the second OA filed by applicant, the Tribunal had directed the General Manager (Vigilance) NR to decide the pending appeal of applicant vide order dated 20.10.2003 but subsequently the direction was modified vide order dated 12.4.2004 passed in MA 769/2004 by clarifying that the appeal has to be decided by respondent No.2 who was Divisional Traffic Manager (page 31). It was pursuant to the said clarification dated 12.4.2004 that applicant's representation dated 22.12.2002 was disposed of by the Divisional Traffic Manager by a speaking order dated 18.8.2004 (page 11) wherein applicant was informed that charge sheet had been issued to him on the basis of certain documents/evidence. The enquiry is in process where he would be at liberty to defend himself by giving all facts. Therefore, he should pursue the enquiry and defend himself before the Inquiry Officer so that justice may be done in the case. From the above facts it is clear that even the directions of 2nd OA also stand complied with.

9. Applicant who is appearing in person next contended that the said order could not have been issued by the Divisional Traffic Manager as he was not the competent authority. This contention has to be rejected in view of the clarification given by the Tribunal in its order dated 12.4.2004 whereby respondents No.2 was directed to pass appropriate order, in terms of the Tribunal's order dated



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20.12.2003. The order dated 12.4.2004 has not been challenged by the applicant therefore it is binding on applicant.

10. He next contended that even Divisional Traffic Manager did not deal with the question whether Hindi documents were given to the applicant or not as was directed by this Tribunal. However, as we have just stated above, this was not even the grievance of the applicant in his representation dated 22.12.2002 therefore while disposing of his representation the authority had naturally to dwindle only on those points which were raised by the applicant in his representation, therefore, this contention also has to be rejected.

11. Applicant had next challenged the order dated 24.11.2004 but this order was passed by the Inquiring authority for fixing the date of enquiry on 14.12.2002 for examination of PWS. Since this is an order passed by I. O. for conducting the enquiry, this cannot be challenged in the OA as applicant cannot be permitted to challenge each and every order passed by the enquiry officer. If that is permitted, it will never be possible to complete the enquiry. If applicant feels that enquiry officer is not conducting the enquiry in the manner prescribed under the rules, it is open to him to raise objection in writing and take all those objections before the disciplinary authority at the stage when he is called upon to give his representation after setting him the findings of I. O.

12. It is seen that applicant had already filed 2 earlier OAs also which were disposed off at admission stage itself without hearing the respondents yet respondents complied with the directions. Now applicant has filed 3rd OA to quash the charge sheet on the ground that inquiry is not completed in spite of 5 years having elapsed but from the perusal of enquiry file, we find that applicant himself is delaying the enquiry. Therefore, chargesheet cannot be quashed on this ground. Even otherwise the very object of issuing chargesheet to the delinquent



officer is to afford him an opportunity to defend himself by producing defence and cross examining the prosecution witnesses, therefore, he must defend himself before the Enquiry Officer. The correctness of chargesheet cannot be gone into by the Tribunal or by the authorities at this stage because that would depend on the evidence adduced during the course of enquiry both by prosecution as well as defence witnesses. It is therefore not open to the applicant to challenge the chargesheet at this stage. Hon'ble Supreme Court has held in the case of **Union of India Vs. Upendra Singh** reported in JT 1994(1) SC 658 that Tribunal has no jurisdiction to go into the correctness or truth of the charge and the Tribunal ought not to interfere at an interlocutory stage because Tribunal cannot take over the functions of disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. It was further held therein that the Tribunal or Court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law.

13. In this case neither the applicant has been able to show us that the charges framed against him are contrary to any law or biased nor is its his case that chargesheet is issued by an authority who was not competent, therefore, we would agree with the respondents counsel that no case has been made out for interference by Tribunal at this stage.

14. As far as the suspension period is concerned that would have to be decided only after the disciplinary proceeding is completed. Therefore, the prayer of the applicant that his suspension period should be decided as period spent on duty is rejected at this stage.



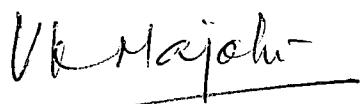
15. Since enquiry is already in progress, it is in applicant's own interest to pursue the enquiry and defend himself by adducing all the evidences which are in his possession or by cross examination of prosecution witnesses. He can not be allowed to come to the court after each and every order is passed by the Enquiry Officer as in that case he would himself be responsible in delaying the enquiry. So long his enquiry is pending, naturally he would not be considered for promotion as his case has to be kept in a sealed cover which can be opened only after the disciplinary proceedings are concluded and he is totally exonerated therein. He is therefore, advised to participate in the enquiry and protest in writing whenever he feels that the enquiry officer is not proceeding in accordance with the rules which can be used by him ultimately to challenge the final order passed in the disciplinary proceedings, in case he is aggrieved by the same.

16. In these circumstances, none of the relief as prayed by applicant can be given to him. However, since chargesheet was issued to the applicant as back as in 2001, we are of the view that enquiry should be concluded expeditiously preferably within a period of 4 months from the date of receipt of copy of this order provided the applicant cooperates with the enquiry officer in concluding the enquiry. In case applicant does not cooperate in the completion of the enquiries, it shall be open to the Enquiry officer to record the same in his order sheet and proceed in accordance with rules thereafter so that enquiry is taken to a logical conclusion. It is ordered accordingly.

17. With the above directions, this OA stands disposed of. No order as to costs.


12/4/05
(Meere Chhibber)

Member (J)


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

12. 4. 05

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Erash MA680/10 for discretion