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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO. 1720/2004

New Delhi this the 20th day of September, 2005

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

Shri Chatter Pal,
S/o Shri Khuman,
Carriage Cleaner,
Under Senior Section Engineer (C&W),
Northern Railway,
Dehradun.

..... Applicant.

(By Advocate Shri 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 Shri R.L. Dhawan)

ORDER

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

By this O.A., applicant has challenged the order dated 7.7.2004 passed by the General Manager, Northern Railway, New Delhi whereby the order dated 24.5.2002 passed by the disciplinary authority has been set aside and he has ordered that further proceedings be initiated from the stage of appointment of Inquiry Officer and order dated 15.7.2004 whereby it was ordered to appoint some Inquiry Officer for conducting further inquiry against the applicant.



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Applicant has further sought directions to give him all consequential benefits, as prayed for in Annexure A-10.

2. It is submitted by the applicant that he was initially given a charge-sheet in the year 1991. Pursuant to holding the inquiry, he was removed from service by order dated 16.10.1994. Being aggrieved, he filed appeal and revision but both were rejected. Therefore, he had challenged those orders by filing OA 1327/96. After hearing both the counsel, by a detailed judgment dated 4.12.1998, the impugned orders were set aside. Respondents were directed to reinstate the applicant forthwith with continuity of service and all other attendant benefits and to pay him the full back wages for the period he was kept out of service (Page 27 at 39).

3. The said judgment was challenged by the respondents before Hon'ble High Court of Delhi by filing Writ Petition No. 419/99, which was disposed of by a detailed judgment dated 21.8.2001 by modifying the judgment given by this Tribunal, giving liberty to the respondents herein to initiate fresh departmental inquiry against the Respondent No.1 (petitioner herein), if so advised (page 50). It is submitted by the applicant that pursuant to the directions given by Hon'ble High Court of Delhi, the disciplinary authority decided not to proceed any further against the applicant in SF-5 dated 11.7.1991, thus SF-5 dated 11.7.1991 was closed. However, intervening period from 16.12.1994 to 25.1.2001 was treated as dies non (page 52).

4. Applicant has stated that he was aggrieved by this order inasmuch as the period from 16.12.1994 to 25.1.2001 was treated as dies non without any justification. Therefore, he filed appeal before the DRM on 19.8.2002 but the same was not decided. Therefore, he filed an appeal before the General Manager on 8.1.2003 for setting aside the order of dies non and for making payment of arrears for the intervening period by adding increment, etc. but no order was passed even by the General Manager. Therefore, he had no other option but to file yet another OA bearing No. 3055 of 2003, which was disposed of on 18.12.2003 directing the General Manager to consider and decide the



controversy of the applicant preferably within four months from the date of receipt of certified copy of the order (page 58).

5. It is pursuant to these directions that the General Manager issued order dated 7.7.2004 whereby he set aside the order dated 24.5.2002 passed by the disciplinary authority for closing the departmental inquiry itself against the applicant and issued further directions for holding further inquiry from the stage of appointment of Inquiry Officer by providing the documents and right to defend to the applicant. It is this order, which has been challenged by the applicant, on the ground that once departmental inquiry was dropped by the disciplinary authority, on the ground that relevant documents were not available, the General Manager could not have issued the contrary orders sitting in his Chamber without examining the file to initiate further inquiry because this shows total non-application of mind to the facts of the case. Counsel for the applicant vehemently argued that even in the first OA while quashing the impugned orders, Tribunal had observed that relevant documents were not produced nor the witnesses summoned by the applicant were called by the Inquiry Officer, thus the applicant was denied right to defend himself and since those very documents were not available, as observed by the disciplinary authority, the General Manager could not have ordered further inquiry in the matter. He also submitted that Tribunal had directed the Respondent No. 1 to decide only his representation with regard to the consequential benefits, therefore, he prayed that the order passed by the General Manager may be quashed and direction be given to the respondents to release all his consequential benefits, namely, arrears due to back wages, continuity of service, seniority, regularization and promotion, etc. He also relied on three judgments stated to have been passed by this Tribunal in similar circumstances, namely, OA 1503/2004 in the case of **Ramesh Kumar Vs. Union of India & Ors.**, OA 2066/2004 in the case of **Vipin Kumar Vs. Union of India & Ors.** and OA 2218/2004 in the case of **Satya Narayan Vs. Union of India & Ors.** He thus prayed that the same orders be passed in this case also.





6. Counsel for the respondents, on the other hand, has opposed this OA by submitting that this case is different from other three cases and since General Manager has passed the order after applying his mind to the facts of the case, it cannot be said that he passed the orders sitting in his Chamber, without looking into the file, as alleged by the counsel for the applicant. He further submitted that as per Rule 25 of the Railway Servants (Discipline and Appeal) Rules, 1968, General Manager could always have reviewed the orders passed by the disciplinary authority if he found them to be bad in law. Moreover, he examined the whole matter as per directions of this Tribunal, therefore, applicant cannot have any grievance with regard to the passing of order by the General Manager. He further submitted that in this case, respondents had carried the matter to the Hon'ble High Court of Delhi and Hon'ble High Court had specifically made it clear that though quashing of the orders by the Tribunal is upheld but no back wages shall be paid to the applicant herein, giving liberty to the Railway Administration to initiate fresh departmental inquiry against the applicant. He also submitted that respondents did have sufficient material on record, on the basis of which the charge framed against the applicant could have been proved. Therefore, there is no illegality in the order passed by the General Manager. Counsel for the respondents relied on the judgments of Hon'ble Supreme Court in the case of **Union of India Vs. Upendra Singh** reported in JT 1994 (1) SC 658 and **Union of India Vs. J.R. Dhiman** reported in 1999 (6) SCC 403. He thus prayed that this case calls for no interference, the same may, therefore, be dismissed.

7. We have heard both the counsel and perused the pleadings as well. Since counsel for the applicant had submitted that this case is covered by the judgments given in O.As as mentioned above, we had called for those files. On perusal of the said O.As, we find that in OA 1503/2004, General Manager was directed to pass fresh orders, permitting appointment of another inquiry officer, only if the same inquiry officer who had earlier held the inquiry is not available for some good reason. It was further held that in case the documents in terms of Tribunal's orders dated 2.9.1999 and 15.12.2003 in OA 2048/1995 and OA 3024/2003, are not available, the inquiry shall abate forthwith. However, if they

are made available to applicant, then the defence witnesses asked for by applicant shall be examined and the inquiry shall be completed within a period of four months from the date of communication of these orders. It was further held that the applicant shall be entitled to all wages and consequential benefits from the date of reinstatement in view of the inordinate delay caused in implementing the directions of this Court contained in orders dated 2.9.1999 and 15.12.2003. In OA 2066/2004, since both the counsel had agreed that the said case was fully covered by the judgment in OA 1503/2004, the same orders were passed. As far as OA 2218/2004 is concerned, some other inquiry officer was appointed by the respondents, which was challenged in the said OA. It was in those circumstances that the General Manager was directed to pass fresh order permitting appointment of another inquiry officer only if the same inquiry officer who had earlier held the inquiry is not available for some good reason. Other conditions were the same as were passed in the other cases.

8. The distinguishing feature in the present case is, however, that none of these three O.As were carried by the respondents to the Hon'ble High Court of Delhi, as was done in the present case. After examining contentions of both the sides, Hon'ble High Court observed that there was no justification for the Inquiry Officer to deny the documents, as asked by the applicant or refuse to call the witnesses which were stated to be relevant by the applicant for defending his case. It was in this background that the Hon'ble High Court of Delhi upheld the order of the Tribunal, to the extent of quashing the impugned orders of punishment but gave a definite finding that since applicant had not been working with the Railways from 1994 onwards, he would not be entitled to back wages. It was also observed that the inquiry proceedings are vitiated due to non-supplying the relevant documents which has prejudiced the applicant's defence. Therefore, the Respondent No.1 was directed to reinstate the applicant in service within one month without back wages by giving liberty to the respondents to initiate fresh departmental inquiry against the Respondent No.1 (applicant herein), if so advised.



9. From the above judgment, it is clear that it was noticed by the Hon'ble High Court that certain documents were not provided to the applicant and some of the witnesses which were requested to be called by the applicant were not called by the Inquiry Officer yet liberty was given to the respondents to initiate fresh departmental inquiry against the applicant herein, meaning thereby that if respondents could substantiate all the charges on the basis of available documents, such of the documents were required to be given to the applicant herein so that he is given full right to defend himself. From the above judgment, it is also clear that no wages were required to be given to the applicant herein as there was a categorical order passed by the Hon'ble High court to this effect. Since Hon'ble High Court had specifically stated that no back wages are to be given to the applicant, it was not open to the applicant to still insist for full back wages. Keeping in view the above facts and the specific directions given by the Hon'ble High Court of Delhi in this case alone, we are satisfied that applicant cannot claim this case to be identical as that of the other three O.As, as mentioned above because in none of those three cases, there was any such order of Hon'ble High Court as was passed in the case of applicant herein. Of course, it can be said that the facts of committing forgery for the purpose of getting employment as Loco Cleaner were almost common in all the three cases. In the other three cases, though Tribunal had directed the payment of full back wages, it was not challenged by the respondents before Hon'ble High Court for reasons best known to them but definitely the applicant herein cannot get the same relief in view of categorical order passed by the Hon'ble High court in his own case.

10. We have also examined the order dated 7.7.2004 and find that this order was not passed by the General Manager sitting in his Chamber, as alleged by the counsel for applicant but was passed after applying his mind to the facts of the case, inasmuch as he has categorically stated that the documents as mentioned in Annexures-II and III of the charge-sheet were very much available on record, which could prove the charge against the applicant. There were as many as four distinct charges against the applicant. Therefore, even if one

charge could not be proved, action could be taken against the applicant on other charges if proved. He thus opined that disciplinary authority had wrongly dropped the proceedings against the applicant. Therefore, by invoking the powers under Rule 25 of the Railway Servants (Discipline and Appeal) Rules, he set aside the order of disciplinary authority and ordered further proceedings be initiated from the stage of appointment of Inquiry Officer by providing additional documents and also by examining the defence witnesses, as laid down under the rules. The last paragraph of the order makes it clear that while ordering further proceedings, General Manager had made it clear that full opportunity of defence should be given to the applicant inasmuch as all available additional documents should be provided to the applicant and the defence witnesses, as named by him, should also be examined. We do not find any illegality in the said order because after all even the Hon'ble High Court had given liberty to the respondents to initiate fresh inquiry and provide full opportunity to defend himself. If the DE was dropped by the disciplinary authority under some misconception, the same could always be set aside by the General Manager by invoking his powers under Rule 25 of the Railway Servants (Discipline and Appeal) Rules. From the perusal of order dated 15.7.2004, it is seen that some inquiry officer was to be appointed.

11. We are of the opinion that this O.A. can be disposed of by giving certain directions viz.,

- (i) respondents shall appoint some other inquiry officer only in the event if earlier inquiry officer is not available due to some valid reasons otherwise the same inquiry officer shall be appointed;
- (ii) respondents shall provide all available documents as demanded by the applicant, namely, casual labour card, etc. without withholding any document, which is available with the respondents;
- (iii) The Inquiry Officer shall summon the defence witnesses, who are named by the applicant, namely, the person who had verified his working period before he was appointed as Loco Cleaner so that applicant has full opportunity to defend himself. Shri S.P. Julta,

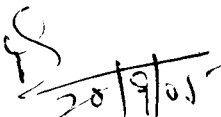


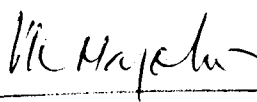
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IOW, Balmau is the person, who has stated that he had not signed in the casual labour card. Therefore, his signatures should be got verified by a hand writing expert and Shri Julta as well as hand writing expert's report should be produced with handwriting expert by providing opportunity to the applicant to cross examine him, so that he may not claim denial of right to defend himself. In other words, full opportunity should be given to the applicant at every stage;

- (iv) I.O. shall submit his report by dealing with all the evidence, which is produced before him;
- (v) Copy of the report shall be given to the applicant so that he may file his representation;
- (vi) Disciplinary Authority shall pass a speaking order by dealing with the point to be raised by applicant;
- (vii) Respondents shall decide as to how the intervening period is to be decided, namely, whether applicant can be given continuity in service for the purposes of counting his seniority and pensionary benefits, etc. by keeping in view the judgment already given by the Hon'ble High Court of Delhi, on the conclusion of the inquiry;
- (viii) Applicant is also directed to cooperate in the inquiry so that the inquiry may be completed within a period of four months from the date of receipt of copy of this order and final orders passed thereon within six weeks thereafter.

12. With the above directions, this O.A. stands disposed of. No order as to costs.


(Mrs. Meera Chhibber)
Member (J)


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

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