

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No.5/2001
Allahabad this the 15th day of Dec 2006.

HON'BLE DR. K.B.S. RAJAN, MEMBER (J)
HON'BLE MR. A.K. SINGH, MEMBER (A)

R.P. Pippal, son of Late Sri Chirmoli Ram resident of Near Bus Stand, Radha Nivas, Vrindavan, District-Mathura.

..... Applicant.

By Advocate:- Shri S. S. Sharma.

Versus

1. Union of India, through General Manager, Northern East Railway, Gorakhpur.
2. General Manager (Personnel), Northern Eastern Railway, Gorakhpur.
3. Divisional Railway Manager, Northern Eastern Railway, Izzat Nagar, Bareilly.
4. Vijai Kuamr Bhargava, Divisional Railway Manager, Northern Eastern Railway, Izzat Nagar, District Bareilly.
5. Divisional Railway Manager (Personnel), Northern Eastern Railway, Izzat Nagar, Bareilly.
6. Divisional Railway Manager (Operation), Northern Eastern Railway, Izzat Nagar, Bareilly.
7. Enquiry Officer/ Assistant Commercial Manager, Northern Eastern Railway, Izzat Nagar, Bareilly.
8. Munnoo Ram Meena, Station Master, Mathura Cantt Station, Mathura, NER, Mathura

..... Respondents.

By Advocate: Shri V. K. Goel.

Order**BY HON'BLE DR. K.B.S. RAJAN, MEMBER (J)**

The applicant through this O.A. has challenged issue of chare sheet (Anenxure-1) dated 12.5.2000.

2. The facts of the case as per the O.A. are as under:-

"The applicant was initially transferred by order dated 6.3.1997 from Mathura Cantt. Station to Vrindaban temporarily for a period of 6 months. He filed O.A.No.995 of 1997 which was dismissed by judgment dated 12.3.1998. The applicant preferred a writ petition No.16298/1998. The above writ petition was disposed off by Annexure-A-2 judgment dated 27.5.1998, with the observation that since the transfer was only for six months the same lost it force and the respondents were directed to pass suitable order for the applicant and communicate him the same within 2 weeks. The respondents were also directed to pass appropriate order on the leave application submitted by the applicant for the period in question. The D.R.M. (P) Izzatnagar passed an order dated 11.6.1998 justifying the order of transfer of the applicant from Mathura Cantt to Vrindaban with a further direction that the applicant's transfer to Vrindaban shall be from the date of his joining at Vrindaban. As no order whatsoever was passed on the leave application, the applicant filed a contempt petition No.2893/1999 in which Annexure-3 notices were issued for personal appearance and the same is pending till date. In the said contempt Sri Alok Singh, D.R.M. (O), was also arrayed as a party. Sri Alok Singh had issued Annexure-1 major penalty charge sheet against the applicant on 12.5.2000 only on the basis of his malafide intention and biassed attitudes. The applicant challenged his transfer order dated 11.6.1998 by O.A.No.817/1999. Initially stay was granted and finally O.A. was allowed by Annexure-4 judgment dated 24.1.2000 with a direction to the respondents for handing over full charge to the applicant within 3 days of the post of Station, Manager, Mathura Cantt. The applicant was only permitted to join on his post on 25.3.2000. Review

application filed by respondents has been rejected by Annexure-5 order dated 17.5.2000. With malafide intention, Shri Alok Singh, D.R.M. (O) suspended the applicant vide order dated 31.3.2000. The applicant personally met the D.R.M., Izzatnagar Sri Vijai Kumar Bhargava, while he was on inspection to Mathura Cantt Station on 3.4.2000. The applicant also filed Annexure-8 representation before the D.R.M., who refused to entertain the same and instead started abusing the applicant and misbehaved with him in public place in front of all the employees and his colleagues and threatened him with dire consequences, specifically stating that the applicant will not be permitted to work at Mathura Cantt. Immediately, the applicant filed an application before the Kotwali, Mathura for registering an F.I.R. against Sri Vijai Kumar Bhargava and others under Section 504, 506 IPC and 3 (i) (x) of S.C. & S.T. Act. Annexure-9 F.I.R. was Re-registered on 10.5.2000, and after through enquiry crime No.376/2000 got registered against the above persons. Suspension order was revoked by order dated 20.10.2000 and thereafter the applicant joined his service again on 25.10.2000. A direction was issued on 29.10.2000 to undergo medical examination for obtaining a medical fitness certificate. The Chief Medical Superintendent, Mathura examined the applicant and issued a fitness certificate dated 26.12.2000 (Annexure 15). Even the Divisional Medical Officer, Mathura Cantt, NER had declared the applicant fit for duty by means of his certificate (Annexure-6) dated 9.10.1999. Inspite of the aforesaid the applicant is not permitted to do his duties. A charge sheet of major penalty had been issued to the applicant on 02.11.2000 and the charge is as under:-

“श्री आर, आर, पिघल स्टेशन प्रबन्धक/मथुरा छावनी दिनांक 24.4.07 से लंबी अनुपस्थिति के उपरान्त कैट/इलाहाबाद में बाद सं 817/99 में हुये अग्रिम आदेशानुसार दिनांक 25.3.2000 को मथुरा कैन्ट स्टेशन पर अपना कार्यग्रहण किया। तदुपरान्त मसंधि/इन छारा दिनांक 27.3.2000 को श्री पिघल को भारतीय रेल चिकित्सा नियमावली नियम 540 व 543 के तहत विशेष डाक्टरी जॉच हेतु निर्धारित प्रपत्र सं पु अ. - जी 259 दिनांक 27.3.2000 को मुयानि/मथुरा छावनी के छारा श्री पिघल को सौपने

हेतु भेजा गया। दिनांक 28.3.2000 को मुयानि मथुरा छावनी ने जब उपरोक्त प्रपत्र श्री पिप्पल को दिया तो उन्होंने उक्त प्रपत्र को लेने से इन्कार कर दिया। तदोपरान्त दिनांक 30.3.2000 के कन्टोल आदेश द्वारा श्री पिप्पल को निर्देश दिया गया कि वे 31.3.2000 को वम्पचाप्र/इ.न. से उनके कार्यालय में आकर मिलें लेकिन श्री पिप्पल ने इस आदेश का पालन नहीं किया। दिनांक 31.3.2000 को श्री पिप्पल को निलंबित किया गया एवं उन से स्टेशन का वर्किंग चार्ज श्री एम आर मीना वरिष्ठ स्टेशन मास्टर/मथुरा छा० को सौंपने हेतु मुयानि/मथुरा छा० के द्वारा आदेश दिया गया परन्तु उसे भी श्री पिप्पल ने मानने से इन्कार कर दिया और जान बुझ कर रेल कार्य में व्यवस्थान उत्पन्न किया।

श्री पिप्पल का उपरोक्त कृत्य सामान्य एवं सहायक नियम 2.06 तथा रेल आचरण संहिता- 1966 के नियम 3 (1)(1),3(1)(11),3(1) (111),व 26 के उल्लंघन है।"

The respondents authorities are bent upon to terminate the services of the applicant on account of malafides and the bias attitude adopted by the respondent authorities against the applicant. The above charge sheet has been issued with a specific purpose for harassing the applicant on above reasons with specific malafide intention of D.R.M. Izzatnagar, Sri Vijai Kumar Bhargava against whom the applicant has also lodged an FIR U/S 504 and 506 IPC and 3 (i) (x) of S.C. and S.T. Act.

3. The applicant by this O.A. seeks the following relief's: -

"To issue an order or direction of a suitable nature quashing the major penalty charge sheet dated 12.5.2000 issued by the D.R.M. (O) which has been served upon the applicant only on 02.11.2000 by the Inquiry Officer (Annexure No.1 to the compilation-1 to this application; and to direct the authorities to pay the applicant his entire salary from April, 1997 to October 2000 after including the increments gained and also to direct the respondents to give effect to the judgment dated 24.1.2000 passed by this Hon'ble Tribunal in O.A.No.817/1999.

4. Though Respondent-5 has been impleaded in his personal capacity against whom applicant has levelled allegations, no separate reply has been filed by him.

5. Respondents have contested the O.A. Their version is as under:-

"The applicant while availing himself leave of 10 days moved Annexure-1 application dated 1. 5.1997 for grant of 15 days leave which was not sanctioned with the remarks/orders that the question of sanctioning the 15 days leave as asked for vide application dated 1.5.1997 shall be considered only when Sri R.R. Pippal joins his post. The applicant did not join his duties as Station Manager since 24.4.1997. The medical certificate (Annexure-CA-1) does not cover the entire period of his absence. The applicant did not submit the original certificates. The Hon'ble High Court had never directed to regularize the period of absence of the applicant. No fresh application has been filed by the applicant for regularization of the leave after passing of the Judgment by Hon'ble High Court or after decision in O.A.No.817 of 1999 by this Hon'ble Tribunal. In compliance of the judgment by the Hon'ble Court dated 27.5.1998 an order was passed vide order dated 11.6.1998. However with regard to the direction regarding leave application competent authority on 21.1.2000 by Annexure-CA-5 refused to order sanction of leave with a further direction to treat the entire period of absence of the applicant from duty to be unauthorized absence. The post of Station Manager is a safety and sensitive post. The applicant had remained away from his duty since 3.5.1997 and under these circumstances it was, as per rule, incumbent upon the applicant to get himself medically examined by a railway doctor and submit the fitness certificate. The disciplinary proceedings have been initiated against the applicant on the charges for disobeying the orders to get himself examined medically as well as for disobedience of the order by which he was directed to appear before the Senior Divisional Operating Officer".

Further pleadings Rejoinder and Supplementary Affidavit had also been exchanged.

6. Counsel for the applicant submitted that the entire action of respondents has been vitiated by malafide. His filing the contempt application impleading Shri Alok Kumar, Respondent No.5 is the only reason for issue of charge sheet. When the High Court had passed its judgment directing the respondents to pass suitable orders as the entire transfer order became infructuous, the respondents had issued transfer order again, posting out the applicant from Mathura. When the applicant challenged the said order the Tribunal had quashed the same vide Annexure-A-4. The applicant was allowed to join duty only on 25.3.2000.

The applicant had to file complaint against Respondent No.5 in May 2000 and issue of charge sheet dated 12.5.2000 around the same time would prove that the action is accentuated by malafide. Absence of specific reply by Respondent-5 would only amount to deemed confirmation of malafide.

7. Counsel for the respondents contends that the applicant had disobeyed the order of higher authority consequent to which he was to be proceeded against.

8. Counsel for the respondents has cited the following decisions to contend that judicial interference at the charge sheet stage is premature: -

- (a) 1995 SCC (L&S) 374.
- (b) 1995 SCC (L&S) 313.
- (c) 1994 SCC (L&S) 768.

9. Arguments were heard and documents perused. This Tribunal by order dated 17.1.2001 passed an interim order to the effect that the enquiry proceedings may be kept pending till counter reply is filed. Perhaps the respondents were under a mistaken impression that the stay granted was even after filing the counter. Thus, the inquiry was not commenced. Taking benefit of the misconstruction of the order dated 17.1.2001 by the respondents the applicant moved M.A.829/2005 to have the stay extended and the same was allowed by order dated 22.2.2005. Today the applicant stands retired in May 2005 (D.O.B. 5.5.1945) and it is not known whether the applicant had been paid his terminal benefits.

10. Be that as it may, two aspects are to be considered:-

"(a) The sequence of events to ascertain whether the element of malafide has at all accentuated the issue of charge sheet.

(b) Whether the applicant cannot challenge the issue of charge sheet in the light the judgment relied upon by the respondents."

11. First a look at the decision relied upon by the respondents counsel.

(a) In the case of *Union of India v. Ashok Kacker*, 1995 Supp (1) SCC 180,

Kackar, the Apex Court has held as under:-

"4. Admittedly, the respondent has not yet submitted his reply to the charge-sheet and the respondent rushed to the Central Administrative Tribunal merely on the information that a charge-sheet to this effect was to be issued to him. The Tribunal entertained the respondents application at that premature stage and quashed the charge-sheet issued during the pendency of the matter before the Tribunal on a ground which even the learned counsel for the respondent made no attempt to support. The respondent has the full opportunity to reply to the charge sheet and to raise all the points available to him including those, which are now urged on his behalf by learned counsel for the respondent. In our opinion, this was not the stage at which the Tribunal ought to have entertained such an application for quashing the charge sheet and the appropriate course for the respondent to adopt is to file his reply to the charge sheet and invite the decision of the disciplinary authority thereon. This being the stage at which the respondent had rushed to the Tribunal, we do not consider it necessary to require the Tribunal at this stage to examine any other point which may be available to the respondent or which may have been raised by him."

(b) In the case of this extract is taken from *Transport Commr. v. A.*

Radha Krishna Moorthy, (1995) 1 SCC 332, the Apex Court's view

is as under:

"7. So far as the truth and correctness of the charges is concerned, it was not a matter for the Tribunal to go into more particularly at a stage prior to the conclusion of the disciplinary enquiry. As pointed out by this Court repeatedly, even when the matter comes to the Tribunal after the imposition of punishment, it has no jurisdiction to go into truth of the allegations/charges except in a case where they are based on no evidence, i.e., where they are perverse. The jurisdiction of the Tribunal is akin to that of the High Court under Article 226 of the Constitution. It is power of judicial review. It only examines the procedural correctness of the decision-making process. For this reason the order of the Tribunal insofar as it goes into or discusses the truth and correctness of the charges, is unsustainable in law."

And prior to the above two, the Apex Court in This extract is taken from

Union of India v. Upendra Singh, (1994) 3 SCC 357, held as under: -

"6. In the case of charges framed in a disciplinary inquiry 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. At this

stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or Tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court."

12. It is evident from the above that the Tribunal need not interfere on the merit of charges at that level as the delinquent official has the quasi-judicial remedy by way of the defence before the Inquiry Authority and inter on before the Appellate/Revisional Authority. Here the applicant has not taken up any ground and his entire O.A. is purely on the aspect of malafide intention etc. Hence, the instant case is one where the decision of the case revolves round answers to (a) above.

13. Reply to (a) above can be derived from the sequence of events and the same is as under:-

27.5.1998: Disposal of Writ Petition whereby the High Court held that the earlier transfer order had become infructuous and the authority should pass necessary orders as (a) posting of the applicant and (b) regularization of period of absence.

11.6.1998: Posting of applicant to Vrindaban.

7.1.2000: Notice to Shri Alok Singh in Contempt petition filed by the applicant before High Court.

24.1.2000: Order of Tribunal against transfer of applicant, in O.A. 817/1999.

31.3.2000: Suspension of applicant by Shri Alok Singh.

03.04.2000: Complaint against Respondent 5.

10.05.2000: F.I.R. against Respondent 5 lodged.

12.05.2000: Charge sheet issued by Alok Singh (stated to be not served upon applicant).

20.10.2000: Revocation of suspension.

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02.11.2000: Supply of charge sheet.

14. The above details would show that Respondent 5 came in the scene only in April 2000 while suspension was ordered in March 2000 itself. Normally suspension order is passed when decision is taken to proceed against an individual and suspension is likely to be followed by a charge sheet. This decision about taking disciplinary action had been taken in March 2000 itself and, in fact, on 12.5.2000 the charge sheet was issued. Thus, the question of influence by any authority on account of malafide cannot be believed. However, it is true that charge sheet was served upon the applicant only on 02.11.2000 as is evident from the fact that in his representation dated 5.7.2000 and 5.10.2000 addressed to General Manager there was no reference of issue of charge sheet. It cannot be that the applicant would have deliberately omitted to refer to the same in the representations.

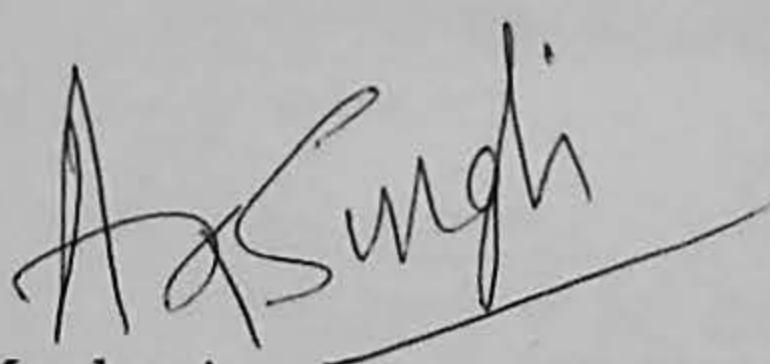
15. The alleged misconduct relates to the period of March 2000 and suspension was also on that month (31.3.2000). That notice was issued to Shri Alok Singh on 7.1.2000 in Contempt consequent to which he had issued charge sheet cannot also be accepted. Again the applicant has not impleaded Shri Alok Singh in his personal capacity. As regards allegation against the Respondent 5, even if it were presumed that he had malafide intention, the fact is that he is not the authority who issued either the charge sheet or suspension order. As such to think that he would have been instrumental for the issue of charge sheet is also far-fetched. Thus, it cannot be said that malafide played its role in issue of charge sheet.

[Signature]

16. The stage of disciplinary proceedings is just at the threshold level. The applicant is now retired. It is for the respondents, taking into account the extent of gravity of alleged misconduct, to decide whether at all the proceedings should continue. Respondent No.1 may have to consider judiciously in this regard.

17. Thus, while holding that the applicant has not made out a case, taking into account the fact that the applicant is already retired in May 2005, the O.A. is disposed of with the observation that should the respondents choose to continue the proceedings, they may give time to the applicant to file necessary reply to charge sheet and within 6 months of the date of receipt of such reply (or time limit for reply, whichever is earlier) the respondents should complete the proceedings. The procedure laid down for continuation of the proceedings after retirement, should be religiously followed.

No costs.



Member-A



Member-J

/amit/