

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/96/2021

HYDERABAD, this the 11th day of March, 2021

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member



M. Srinivas, S/o. M. Madhava Rao,
Aged 49 years, Occ: Loco Pilot (Passenger) (Group C),
O/o. The Chief Crew Controller (TRSO),
South Central Railway, Bitragunta Depot,
Bitragunta RS, Ongole Dt., AP.

...Applicant

(By Advocate: Sri K.R.K.V. Prasad)

Vs.

1. Union of India rep. by
The General Manager,
Rail Nilayam, III Floor,
South Central Railway, Secunderabad.
2. The Senior Divisional Electrical Engineer (Operations),
O/o. The Divisional Railway Manager,
South Central Railway, Vijayawada Division,
Vijayawada.
3. The Senior Divisional Mechanical Engineer,
O/o. The Divisional Railway Manager,
South Central Railway, Vijayawada Division,
Vijayawada.
4. Sri J. Ramanaiah,
Chief Loco Inspector/ Inquiry Officer,
RRI, Vijayawada RS,
South Central Railway, Vijayawada Division,
Vijayawada.

....Respondents

(By Advocate: Smt. Vijaya Sagi, SC for Rlys.)

ORAL ORDER
(As per Hon'ble Mr. B.V. Sudhakar, Administrative Member)

Through Video Conferencing:



2. The applicant filed this OA challenging the charge memo dt. 01.01.2021, letter dt. 12.01.2021 of the 2nd respondent and the appointment of the inquiry officer vide order dt. 27.01.2021.

3. Brief facts of the case are that the applicant hitherto filed OA 361/2020 in regard to the competency of Senior Divisional Electrical Engineer (Sr. DEE) in issuing the Charge sheet dt.08.07.2019, which was allowed on 23.11.2020. Consequently, respondents dropped the said charge sheet on 23.11.2020 and issued a fresh one on 01.01.2021. Aggrieved, the applicant approached the Hon'ble High Court in WP No. 2067/2021, which was dismissed on 1.2.2020 granting liberty to the applicant to challenge the fresh charge sheet. Accordingly, the instant OA is filed.

4. The contentions of the applicant are that the word 'dropped' conveys the meaning of cease, lapse or annulment. The complaint made against the applicant, based on which the earlier charge sheet was issued, did not reveal any violation of Conduct Rules. Moreover, the complaint has to be taken cognizance of by the Divisional Railway Manager or the the 3rd respondent and not 2nd respondent. The alleged financial transaction, which is the core of the complaint was between the applicant's wife and the complainant and hence, the applicant has no role to play in the same. The amount remitted to the account of the applicant's wife was the amount due paid back by the complainant. Therefore, the complaint is concocted. The respondents claiming that the issue of fresh charge sheet was as per the direction of the

Tribunal is incorrect and on the contrary, respondents have acted in violation of the Tribunal order dt.23.11.2020. The same incompetent authority i.e. Sr. DEE whose decision was found fault with by the Tribunal in issuing the earlier charge sheet has issued a fresh charge sheet. The Fact Finding Enquiry, banked upon by the respondents, did not bring out the truth. Judgments cited by the respondents are not relevant. Issue of fresh charge sheet is malice in law and violative of Articles 14, 16 & 21 of the Constitution.



5. The respondents have filed detailed instructions which are as good as a comprehensive reply statement, covering the contours of the dispute. Citing Tribunal order, respondents claim that they have issued the fresh charge sheet. Applicant wrongly defined disciplinary authority and that the true definition is as what is expounded in Railway Servants (Discipline & Appeal) Rules, 1968. Respondents cited Railway Board letter dt. 8.8.1984 and superior judicial fora observations to further their contentions. Employees should not be allowed to violate Conduct Rules.

6. Heard both the counsel and perused the pleadings on record.

7(I) The dispute is about the competency of the authority to issue a charge memo to the applicant. The case with a similar angularity filed by the applicant fell for consideration by the Tribunal in OA 361/2020 and after adjudicating on the issue, it was directed as under:

“VI. Nevertheless, based on the facts of the case and the relevant law as discussed above, we remit the case back to the respondents directing to drop the charge sheet issued on 8.7.2019 by the Sr. DEE as well as the re-inquiry ordered and proceed afresh

*from the stage of issue of charge sheet by following mandatory procedure prescribed under Railway Servants (D&A) Rules, 1968 and as per law, keeping in view observations made by the Hon'ble Supreme Court in the judgments cited by the respondents. Endeavour of the respondents should be to complete disciplinary case at the earliest as laid down by the Hon'ble Supreme Court in its Judgment dated 16.12.2015 in **Prem Nath Bali Vs. Registrar, High Court of Delhi & Anr.** Time period allowed to implement the directions in regard to dropping of the charge sheet and re-inquiry is 3 months from the date of receipt of the order.*



With the above directions, the OA is allowed as indicated, with no order as to costs.”

The background for the above direction was that the applicant was working in the Mechanical Wing of the running staff under the control of the Senior Divisional Mechanical Engineer (Sr. DME) and later, respondents took a decision to merge the Mechanical and Electrical cadre, by bringing both the cadres under the administrative control of Senior Divisional Electrical Engineer (Sr. DEE). However, the merger was effected from 01.01.2019 with the approval of DRM on 26.12.2018. The order of the DRM was not circulated as required under law as per Hon'ble Supreme Court judgment in **Shanti Sports Club v. Union of India [(2009) 15 SCC 705]** and therefore, Tribunal held the view that the issue of charge sheet dated 8.7.2019 was incorrect when transfer of posts to be brought under the control of Sr. DEE was effected on 5.12.2019.

II. Respondents, responding to the direction given by this Tribunal supra, have dropped the earlier charge sheet and issued a fresh one on 1.1.2021. The scenario prevailing on 01.01.2021 is that the memo dt. 05.12.2019 merging the cadres i.e. Mechanical & Electrical cadre of the running staff and bringing them under a unified control was furnished to the

applicant on 21.12.2020. Once his post has been transferred and is under the operative control of Sr. DEE, who is the competent authority to impose penalties under Rule 6 r/w. Schedule II of RS (D&A) Rules, 1968, the applicant has no further ground to raise the question of competency of the Sr. DEE as Disciplinary authority. Railway Board has clarified in letter dt.



8.8.1984 in no uncertain terms that the Disciplinary Authority has to be decided as on the date of issuing the disciplinary proceedings. Relevant portion is extracted hereunder:

The disciplinary authority has to be determined with regard to the post held by the charged Railway Servant at the time of initiation of disciplinary action. It is further clarified that the disciplinary authority may not be determined with regard to post he held at the time when misconduct occurred.

The charge sheet was issued afresh on 01.01.2021 and on this date, the applicant was under the command and control of Sr. DEE. It is, therefore, not correct on the part of the Applicant to state that the respondents have not followed the direction of the Tribunal. It is lucid from the judgment in OA No. 361/2020 that only after the transfer of posts under the control of Sr. DEE, he can act as a disciplinary authority. The applicant claims that Sr. DEE who was found to be incompetent to issue the earlier charge sheet dt.08.07.2019, issuing a fresh charge sheet would be prejudiced against the applicant, and a judge cannot decide his own case. We disagree with this contention since the dispute of competency of the disciplinary authority was time related and not position related, which was adjudicated in OA No. 361/2020. The officer of the cadre of Sr. DEE is competent disciplinary authority for the post held by the applicant. The said competency has been acquired by the Sr. DEE by the merger of posts from 05.12.2019 and

therefore, issuing a fresh charge memo on 01.01.2021 by Sr. DEE cannot be called into question.

Moreover, the Tribunal is precluded to interfere at the stage of inquiry/ charge sheet or show cause notice as observed by the Hon'ble Madras High Court in **A. Ananthakumar vs The Registrar General** on 20 December, 2019 in W.P.No.30961 of 2019, relying on a catena of judgments of Hon'ble Apex Court, as under:



7. The law regarding the power of a Writ Court to interfere at the stage of charge memo while exercising its jurisdiction under [Article 226](#) of the Constitution of India is well settled. The Hon'ble Supreme Court in the case of [Union of India v. Kunisetty Satyanarayana](#), (2006) 12 SCC 28, has observed as under:-

"13.It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide [Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh](#)[(1996) 1 SCC 327 : JT (1995) 8 SC 331] ,[Special Director v. Mohd. Ghulam Ghouse](#)[(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] ,[Ulagappa v. Divisional Commr., Mysore](#)[(2001) 10 SCC 639] ,[State of U.P. v. Brahm Datt Sharma](#)[(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , etc.

14.The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance. "

In view of the said judgment, this Court at this juncture is not inclined to go into the correctness or otherwise of the charge memo."

The question of competency having been resolved by 05.12.2019, there is no scope for the Tribunal to grant the relief sought.

III. Other contention of the applicant that the alleged financial transactions of his wife are no way related to him is a matter which can be effectively



defended by the applicant in the disciplinary inquiry. Applicant has not been prejudiced by issuing the charge sheet and holding an inquiry. It is not the end of the game. Respondents need to prove the charge before the independent adjudicator in the form of inquiry officer. It is possible that the inquiry findings could be in favour of the applicant. Such a possibility cannot be ruled out. If the charges are not proved, applicant will have nothing to lose and if proved, he has to face the penal consequences, as per law. Thereafter, the applicant has scope to seek remedies in the form of appeal, petition, etc. Not allowing the respondents to proceed with the charge sheet by invoking unsustainable technical reasons will not be of great help to the applicant. Perhaps, it may delay the process, but eventually applicant has to face the disciplinary inquiry and use it to shred the charges into pieces, if his conscious is clear that he is innocent. More particularly, when the instant case of the alleged hue of illegal gratification through the Bank account of his wife. Such allegations come under the grave misconduct and the same need to be tested in a full-fledged disciplinary inquiry. It is this opportunity which has to be availed by the applicant being a Government servant.

A Government servant, at all times, whether in office or outside, does nothing, which is improper or inappropriate or unsuited to his position as a Government servant. He has to keep within the bounds of administrative decency. What is becoming and what is unbecoming can always be ascertained having regard to the entirety of the conduct, as observed by the Hon'ble High Court of Andhra Pradesh in *P. Khaza Khan v. PMG, Andhra*, in WA No. 818/1973.

IV. The conduct of the applicant is under scrutiny and the applicant has come under a cloud which has to be cleared one day or the other. Applicant claims that the complaint was a concocted one. It is the applicant, who has nothing to hide, as forcefully claimed in his OA, about the complaint made by one Sri M. Ranga Swamy against him, to come clear of the allegations by mounting an effective defence. We fail to understand as to what deters him to do so in the disciplinary inquiry. A complaint received against any public servant has to be taken cognizance of by the competent authority and take it to its logical end, if it has verifiable facts. The charge memo contains only allegations. They have to be proved by the respondents, as a consequence of fresh charge sheet issued on 01.01.2021 by the competent authority, as expounded in paras supra.



V. We have gone through the Written Submissions of the applicant filed in response to the written instructions of the respondents and we are not persuaded by the averments made therein. They represent old wine in new bottle. We have gone through the judgments cited by the applicant and they are not of much assistance to him. Other contentions made by the applicant have been gone through and we find them irrelevant at this stage of the case.

VI. Hence, keeping the above facts in view and the law on the subject as brought out in paras supra, we find no merit in the OA and hence, dismiss it with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVEMEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/evr/