

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00821/2018

Jabalpur, this Friday, the 25th day of June, 2021

HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER
HON'BLE MS. NAINI JAYASEELAN, ADMINISTRATIVE MEMBER



Alok Gupta, S/o Dr. B.N.P.Gupta,
 Aged about 60 years, R/o H.No. 6, IRWO,
 Mansarovar Enclave, LDA Kanpur Road, Scheme,
 Mansarovar Yojana, Luknow 226012 (U.P.) **-Applicant**
 (By Advocate **-Shri Akash Choudhary**)

V e r s u s

1. Union of India, Through its General Manager,
 West Central Railway, Indira Market, Jabalpur (MP)-482001
2. Chief Personnel Officer, West Central Railway,
 Indira Market, Jabalpur (MP)-482001 **- Respondents**
 (By Advocate **-Shri Sapan Usrethe**)
 (Date of reserving the order:-11.11.2020)

O R D E R

By Ramesh Singh Thakur, JM:-

Heard.

2. By way of filing the present Original Application, the applicant is challenging the charge-sheet dated 24.10.2017 which is belatedly served to the applicant on 13.11.2017 through post. Hence this Original Application.

3. The applicant has prayed for the following relief in this Original Application:

“8. Relief Sought:-



- (i) *Summon the entire relevant record from the possession of the respondents for its kind perusal.*
- (ii) *Quash and set aside the charge-sheet dated 24.10.2017 (Annexure A-1)*
- (iii) *Command and direct the respondents to issue all consequential benefits to the applicant as if no charge-sheet is issued to the applicant.*
- (iv) *Any other order/orders, which this Hon'ble Court deems, fit proper.*
- (v) *Cost of the petition may also kindly be awarded.”*

4. The applicant was working on the post of Sr. Divisional Operational Manager (General) and was posted at Bhopal. The applicant was sent for training by the respondent administration for special course of Disaster management, Lucknow from 17.07.2017 to 27.08.2017. The applicant was again sent for special course for Safety Officers' Training at Indian Railway Institute of Transport Management, Lucknow from 28.08.2017 to 08.10.2017. Thereafter, the applicant was lastly sent for the course namely Management of

Procurement of Contract at Indian Railway Institute of Transport Management, Lucknow from 09.10.2017 to 27.10.2017. From 28.10.2017 to 29.10.2017, there was a weekly rest for the applicant as it was Saturday and Sunday. The applicant fell sick from 28.10.2017 and therefore, the applicant remained hospitalized as an indoor patient at Northern Railway Hospital, Lucknow from 28.10.2017 to 31.10.2017. The applicant stood superannuated from the aforementioned post w.e.f. 31.10.2017 and submitted required papers to the competent authority seeking release of his terminal and retiral benefits. Thereafter, the impugned charge-sheet dated 24.10.2017 served to the applicant belatedly on 13.11.2017 whereby certain unfounded charges were leveled over the applicant. A copy of the charge-sheet dated 24.10.2017 is annexed as Annexure A-1.

5. The counsel for the applicant further submits that the applicant was served with a reminder letter dated 24.01.2018 and also letter dated 26.02.2018 (Annexure





A-3) detailing the applicant to submit reply to the charge memo dated 24.12.2017. A bare perusal of the aforesaid reminder letters would go to show that the respondents in their reminder have categorically detailed that as the applicant did not join office on 30.10.2017 and 31.10.2017 and also refused to receive charge-sheet, therefore the same was glued in the resident of the applicant in front of two witnesses on 31.10.2017, which is unlawful and is de-hors the Rule 26 of Railway Servant (Discipline & Appeal) Rules, 1968.

6. The counsel for the applicant further stated that the applicant never refused to receive the charge memo as detailed by the respondents in reminder letter dated 24.01.2018. The applicant replied to the charge-sheet dated 24.10.2017. Copy of the reply is marked as Annexure A-4. In reply to the charge-sheet the applicant has categorically averred that he has continued regular inspection of stations mentioned in the charge-sheet. However, during such inspection period, the applicant remained sick and was



hospitalized on numerous occasions and, therefore, at that time, the applicant could not carry his mobile phone and left the said at home. On the basis of major penalty charge sheet dated 24.10.2017, served on the applicant on 13.11.2017 the respondents are now proceeding with the disciplinary proceedings and have appointed enquiry officer and presenting officer to proceed with the departmental enquiry. Copy of the document dated 29.06.2018 is annexed as Annexure A-5.

7. The main grounds for challenging the impugned action of the respondents are that no departmental enquiry can be initiated against the applicant without consent of the competent authority after his retirement as the applicant stood superannuated from service on 31.10.2017. Therefore, service of charge-sheet to the applicant on 13.11.2017 after the retirement date is arbitrary & unlawful.

8. The respondents have filed their reply to the Original Application, in which, in preliminary submissions they submitted that the applicant was not present to

acknowledge the charge memorandum on 30.10.2017 & 31.10.2017 (even though 31.10.2017 is his retirement date), accordingly, as per Para 6 of Master Circular-67 issued by Railway Board, the copy of charge-sheet has been pasted to his residence in presence of two witnesses, hence it is considered that the charge-sheet deemed to have been served upon the applicant on 31.10.2017. Copy of the charge sheet Annexure A-1 was also sent to the applicant at his residence through Speed Post. Copy of Para-6 of Master Circular-67 and copy of Speed post receipt is enclosed herewith as Annexure R-1 & R-2.

9. The respondents further submits that the O.A. filed by the applicant is premature as the enquiry officer is already appointed in the present case and enquiry is in process. It is further submitted that Vigilance Branch vide letter dated 11.08.2017 recommended for initiation of major penalty proceedings against the applicant. The applicant was alleged with the charges that he did not physically inspected the various stations allotted to him for inspection but he





claimed Travelling Allowance for performing journey for the said inspections on respective dates. After considering all the facts and records of the case, the disciplinary authority i.e. GM/WCR issued a major penalty charge memo dated 24.10.2017 against the applicant. The respondents further states that on number of occasions Hon'ble Apex Court and the High Court has held that charge sheet cannot be interfered at initial stage as the truth will only come when the enquiry was done.

10. It is therefore clear that a Court can only interfere with continuation of enquiry proceedings when there is complete lack of jurisdiction in holding of the enquiry proceedings by the authority which is holding the enquiry, or because the authority did not have the power to initiate the enquiry or the enquiry may be barred by principle of res-judicata or double jeopardize or that on the face of the show cause notice even if facts are accepted as correct no charges are made out or there is no cause of action. Thus, in view of the facts and circumstances, the O.A. deserves to be dismissed.

11. We have heard the learned counsel for both the sides and have gone through the pleadings and the documents annexed therewith.

12. From the pleadings it is undisputed that the applicant was charge-sheeted on 24.10.2017. The main ground for challenging the impugned action of the respondents are that the charge sheet has been issued in the year 2017, when the applicant was due for retirement on 31.10.2017. It is also admitted fact that the reminder was issued to the applicant on 24.01.2018 and also dated 26.02.2018 qua the charge memo dated 24.12.2017. As the applicant did not join office on 30.10.2017 and 31.10.2017 and also refuse to receive charge-sheet, therefore the same was glued in the residence of the applicant in front of two witnesses on 31.10.2017.

13. On the other hand, the case of the applicant is that the applicant has never refused to receive the charge-memo as detailed by the respondents in reminder letter dated 24.01.2018. The applicant replied to the charge-sheet





dated 24.10.2017 (Annexure A-4). The applicant has specifically submitted that the impugned action of the respondents regarding the department enquiry is illegal as no departmental enquiry can be initiated against the applicant without consent of the competent authority after his retirement as the applicant stood superannuated from service on 31.10.2017. Therefore, service of charge-sheet to the applicant on 13.11.2017 after the retirement date is arbitrary & unlawful.

14. On the other hand the respondents has specifically submitted that as the applicant was not present to acknowledge the charge memorandum on 30.10.2017 & 31.10.2017 (even though 31.10.2017 is his retirement date), accordingly, as per Para 6 of Master Circular-67 issued by Railway Board, the copy of charge-sheet has been pasted to his residence in presence of two witnesses, hence it is considered that the charge-sheet deemed to have been served upon the applicant on 31.10.2017. Copy of the charge sheet Annexure A-1 was also sent to the applicant

at his residence through Speed Post. Copy of Para-6 of Master Circular-67 and copy of Speed post receipt is enclosed herewith as Annexure R-1 & R-2.

15. The applicant has relied upon the judgments passed by the Hon'ble Apex Court in the matters of **Union of India and Ors. vs. Dinanath Shantaram Karekar**, 1998(7) SCC 569. The applicant has also relied upon the judgments passed by the Hon'ble High Court of Madhya Pradesh in the matters of **O.P. Manchanda vs. Union of India and Ors.**, 2004 (4) MPLJ 136 & **R.D. Meena vs. Food Corporation of India and ors.**, 2017 (2) MPLJ 359. The applicant has further relied upon the judgment passed by the Hon'ble High Court of Kerela in the matters of **V.M. Shamsuddin vs. Union of India and ors.**, 2007 (3) KLJ 252.

16. The question for determination in this Original Application is qua the service of the charge-sheet. From the facts it is clear that the charge sheet has been issued on 24.10.2017. It is also admitted fact that the reminder was



issued to the applicant on 24.01.2018 and also dated 26.02.2018 qua the charge memo dated 24.12.2017. As the applicant did not join office on 30.10.2017 and 31.10.2017 and also refuse to receive charge-sheet, therefore the same was glued in the residence of the applicant in front of two witnesses on 31.10.2017.



17. On the other hand, the contention of the applicant is that the applicant has never refused to receive the charge-memo as detailed by the respondents in reminder letter dated 24.01.2018. The respondents has specifically submitted that as the applicant was not present to acknowledge the charge memorandum on 30.10.2017 & 31.10.2017 (even though 31.10.2017 is his retirement date), accordingly, as per Para 6 of Master Circular-67 issued by Railway Board, the copy of charge-sheet has been pasted to his residence in presence of two witnesses, hence it is considered that the charge-sheet deemed to have been served upon the applicant on 31.10.2017.

18. As per the judgment passed by the Hon'ble Apex Court in the matters of Dinanath Shantaram Karekar (**Supra**), the charge sheet should have been served upon the delinquent and should have been communicated so that the delinquent be given an opportunity to submit his reply. The theory of "Communication" cannot be invoked and "Actual Service" must be proved and established. In the present case, it has been specifically submitted by the replying respondents that the applicant has refused to receive the charge memo as detailed by the respondents dated 24.10.2017 and the same was ultimately pasted to the residence of the applicant in front of two witnesses. It is also very clear from the reply that the applicant did not reported for duty on 30.10.2017 & 31.10.2017despite the fact that he was retiring on superannuation on 31.10.2017 and the applicant has also not submitted any leave application and the applicant has been informed regarding non-attending his retirement on 31.10.2017, which is also clear from Annexure R-3. So it is made clear from the reply



of the respondents that efforts were made to serve the applicant but the applicant was not present in the office nor any leave application was there. So resultantly the applicant has invoked the provision of Master Circular-67 issued by the Railway Board and the same was pasted on the residence of the applicant which has been witnessed by two witnesses on 31.10.2017, which is clear as per Annexure R-4. So the service of the charge sheet on the applicant is deemed to have been served and the judgment relied upon by the applicant is not applicable in the present case.

19. The applicant has also relied upon the judgment in the matters of O.P. Manchanda (**Supra**) which is not applicable due to the fact that in that judgment there is a delay of 14 years of serving the charge sheet. In the present case such large delay is not there. The judgment relied upon by the applicant in the matters of R.D. Meena (**Supra**) is also not applicable in the instant case due to the fact that the applicant himself was not available even on the last date of his superannuation and there was no leave application also



and the respondents has invoked Circular 67 issued by the Railway Board which has been duly complied with. Hence, this judgment relied upon by the applicant is not applicable in the present case.



20. From the all it is crystal clear that the applicant has been deemed to be served in view of the Circular 67 issued by the Railway Board which has been duly complied with and the charge sheet has been deemed to be served to the applicant.

21. Hence we do not find any reason to interfere with the impugned order passed by the respondent department.

22. Resultantly the Original Application is dismissed. No costs.

(Naini Jayaseelan)
Administrative Member
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(Ramesh Singh Thakur)
Judicial Member