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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
KOLKATA BENCH

DETAILS OF THE APPLICATION

O.A. No. 350/1542/2010

PARTICULARS OF THE APPLICANT :

Alak De Ray, son of Late Pulin Behari De Ray, aged about 43 years, residing at Village : Subhasnagar, P.O. & P.S. : Chakdah, District : Nadia, working for gain in Indian Railways, posted as Cabin Master, Kalyani Station, Sealdah Division, Eastern Railway.

..... Applicant.

- Versus -

PARTICULARS OF THE RESPONDENTS (EIGHT IN NOS.) :

1. Union of India, Department of Railways, through the General Manager, Eastern Railway, 17, Netaji Subhas Road, Kolkata - 700 001.

2. The General Manager, Eastern Railway, 17, Netaji Subhas Road, Kolkata - 700 001.

3. The Divisional Railway Manager, Eastern Railway, Sealdah Division, Sealdah, Kolkata.

4. The Divisional Operations Manager / SDAH, Sealdah Division, Eastern Railway, Sealdah, Kolkata.

5. The Divisional Operations Manager / SDAH & Disciplinary Authority, Eastern Railway, Sealdah Division, Kolkata.

..... Respondents.

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

O.A. 350/1542/2010

Date of Order: 6.4.2021

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member



Alak De RayApplicant

Vrs.

Union of India & Ors.Respondents

For the Applicant(s): Mr. I.Mitra, Counsel

For the Respondent(s): Mr. N.D.Bandyopadhyay, Counsel

ORDER

Bidisha Banerjee, Member (J):

This application has been preferred for the following reliefs:

"a) An order do issue setting aside and/or quashing the charge memo dated 11.3.2010, issued by the Divisional Operations Manager/SDAH, Eastern Railway, Sealdah, forthwith.

b) An order do issue directing the respondents more particularly the Divisional Operations Manager/SDAH, Eastern Railway, Sealdah to rescind, cancel and/or withdraw the charge-memo dated 11.3.2010, forthwith."

2. The facts leading to the application are as under:

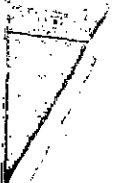
The applicant was appointed in terms of an office order dated 15.02.1994 issued by the Assistant Engineer, Barasat. He joined as Gangman (under PWI Department) on 22.02.1994 under AEN/Barasat, submitting his joining report. On completion of all formalities, applicant was transferred to Traffic Department

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from PWI Department and posted as Gateman at Chakdaha Station. He was promoted to the post of Liverman and on 04.12.2002 he was again promoted to the post Cabin Master and, after completion of training, he was posted as Cabin Master at Kalyani Station. While the applicant was discharging his duties as Cabin Master, to his utter shock and surprise, he received an order of suspension vide order dated 22.06.2005. The applicant submitted his reply to the charge-sheet dated 28.12.2005 within the time stipulated in the charge memo.

The Charge-sheet dated 28.12.2005 was withdrawn in the midst of the departmental proceedings. After withdrawal of the 1st charge-sheet dated 28.12.2005, the Divisional Operations Manager, Eastern railway Sealdah, under Memo No. SDA/VIG/875 dated 05/10.10.2006 issued a 2nd charge-sheet. The applicant submitted his reply before the Divisional-Operations Manager, Eastern Railway Sealdah on 25.10.2006. Pending disciplinary proceedings, order of suspension was revoked and the applicant was allowed to join his service again.

Challenging the legality and validity of the charge sheet dated 05/10.10.2006, applicant preferred an Original Application being O.A No. 756 of 2008 (Alak De Ray vs- Union of India & Ors). This Tribunal was pleased to dispose of the said Original Application vide order dated 31.07.2008 with the observation that "at this stage there is no question of staying the enquiry proceeding nor it is permissible to quash the charge memo". Being aggrieved and dissatisfied with the order dated 31.07.2008 passed in O.A 756 of 2008, the applicant preferred a Writ Petition being WPCT No. 210 of 2008 before the Hon'ble High Court at Calcutta. On 19.08.2009, Hon'ble High Court, after hearing the submission made on behalf




of the parties, set aside and quashed the impugned judgment dated 31.07.2008 passed in O.A No. 756 of 2008 (Alak De Ray vs- Union of India & Ors) along with the 2nd charge sheet dated 05/10.10.2006 with the observation that quashing the 2nd charge memo as issued on withdrawing the 1st charge memo will not debar the respondent Railway Authority to issue appropriate charge memo following the Rule Under Index No. 1033, namely, specifying the sufficient reasons in the charge memo itself for issuing the fresh charge memo.




When the 2nd charge sheet dated 05/10.10.2006 was quashed by the Hon'ble High Court, the Divisional Operations Manager, Eastern Railway, Sealdah, vide letter dated 11.03.2010 withdrew the 2nd charge sheet. However, on the very same day, i.e. on 11.03.2010, a 3rd charge sheet was issued by the Divisional Operations Manager, Eastern Railway, Sealdah, which is the subject matter of challenge in the present Original Application.

On 08.08.2011, this Tribunal, after hearing the submissions on behalf of the applicant, was pleased to pass an interim order to the effect that the charge-memo dated 11.03.2010 is kept at abeyance. Further the Original Application was taken up for hearing on 13.07.2012 when issues were framed.

Being aggrieved and dissatisfied with the order dated 13.07.2012, applicant preferred a Writ Petition being WPCT NO. 283 of 2012. On 17.09.2012, the Hon'ble Division Bench of High Court was pleased to set aside and quash the order dated 13.07.2012 with the observation that the charge-sheet, which has been stayed by the interim order, shall continue to be stayed till the Tribunal disposes the application.



3. The Ld. Counsel for the applicant, at hearing, would vociferously plead that a 3rd charge sheet dated 11.03.2010 is not maintainable due to the following reasons:

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- (i) It is nothing but a replica of the second charge sheet dated 05/10.10.2006.
 - (ii) It does not contain any reason for issuance.
 - (iii) The Hon'ble Division Bench of the High Court vide its judgment and order dated 19.08.2009 in WPCT No. 210/2008 has already settled the issue of maintainability of the said charge sheet after withdrawal of the second charge sheet.
 - (iv) The 3rd charge sheet contains stale allegation of the year 1994 and hence not maintainable.

4. Per contra, the respondents would submit that the 3rd charge sheet dated 11.03.2010 has been issued properly and in prescribed format containing Annexure-1, 2, 3 and 4 along with the RUDs and after withdrawal of the second charge sheet dated 05/10.10.2006 in terms of the order dated 19.08.2009 in WPCT No. 210/2008. That both the earlier charge sheet dated 28.12.2005 and 05/10.10.2006 were withdrawn with liberty to issue a fresh one on identical charge and the reason for withdrawal was communicated to the applicant by a separate order dated 11.03.2010. As stated by the respondents in their written arguments and in the order dated 11.03.2010 are as under; the reason for such withdrawal are the following:

- (i) Signature of the Disciplinary Authority was not put in every annexure of memorandum.
- (ii) Violation of Railway Service Conduct Rule was mentioned 1968 instead of 1966 due to typing mistake.

(iii) So, withdrawal charge sheet had been done without any prejudice for further DAR action against same charges.

The reasons were furnished to the applicant through office letter dated 11th March, 2010 and was received by the applicant on 12th March, 2010.



5. The Ld. Counsels were heard and the records were perused.

6. Ld. Counsel for the applicant, at hearing, drawing our attention to the operative portion of the order passed by the Hon'ble High Court in WPCT 210/2008, would submit that while the Hon'ble High Court had directed the authorities to specify sufficient reasons in the charge memo itself for issuing a fresh charge memo, the authorities have issued a separate order mentioning the order and, therefore, the 3rd charge sheet dated 11.03.2010 is not maintainable.

7. The issue that cropped up for determination is whether the 3rd charge sheet dated 11.03.2010 on the self same charges as in the second one was maintainable when the 2nd charge sheet was withdrawn with reasons of withdrawal and mentioned separately liberty to issue a fresh one.

Further whether the third chargesheet contained stale allegations and was as such maintainable.

8. We would refer to the following to answer the issues framed:

(i) RBE No. 171/1993 as issuing fresh chargesheet, which reads as under:

"Sub: Issuing fresh charge Memorandum after cancellation/withdrawal of original charge Memorandum of after dropping disciplinary proceedings.

It has come to the notice of the Railway Board that on one of the Zonal Railways, the Memorandum of charges issued to an employee was withdrawn by the disciplinary authority with the intention of issuing fresh detailed charge Memorandum. However, while withdrawing the charge-sheet, no reasons therefor were given and it was only stated that the charge-sheet was being withdrawn. The issue of a fresh charge Memorandum subsequently was challenged by the employee before CAT/Bombay. The Central Administrative Tribunal on hearing the case have quashed the said charge Memorandum holding that unless there is a power in the disciplinary authority, by virtue of the rules or administrative instructions to give another charge-sheet on the same facts after withdrawing the first one, the second charge-sheet will be entirely without authority.

2. The matter has been examined and it is clarified that once the proceedings initiated under Rule 9 or Rule 11 of RS (D&A) Rules, 1968 are dropped, the disciplinary authorities would be debarred from initiating fresh proceedings against the delinquent officers unless the reasons for cancellation of the original charge Memorandum or for dropping the proceedings are appropriately mentioned and it is duly stated in the order that the proceedings were being dropped without prejudice to further action which may be considered in the circumstances of the case. It is, therefore, necessary that when the intention is to issue a fresh charge-sheet subsequently, the order cancelling the original one or dropping the proceedings should be carefully worded so as to mention the reasons for such an action indicating the intention of issuing charge-sheet afresh appropriate to the nature of the charges.

INDEX NO. 1033: Sufficient reasons should be worded for issuing fresh charge Memorandum after cancellation/ withdrawal of original charge Memorandum or after dropping disciplinary proceedings."

A bare perusal of the instructions, without any ambiguity or ambivalence, makes it amply clear that when a charge sheet is withdrawn and the authorities intend to issue a fresh charge sheet, the order cancelling the original charge sheet or dropping the proceedings arising out of the said charge sheet should be carefully worded so as to mention the reasons for cancelling the earlier charge sheet and for issuing a fresh charge sheet in the cancellation/withdrawal of original charge memo etc. itself but not necessarily in the fresh chargesheet.

In the present case, we would note that while issuing the earlier order dated 30.08.2006, withdrawing the previous charge memo dated 28.12.2005, the Divisional Operations Manager had simply recorded that the charge memo dated 28.12.2005 "is withdrawn without any prejudice" with liberty to issue a fresh major penalty memorandum on the same charge. The reasons for issuing a fresh charge memo withdrawing a previous one on the selfsame allegations were not mentioned in the said order dated 30.08.2006. The absence of such reasons rendered the 2nd charge sheet dated 05.10.2006, not maintainable.

The applicant assailed the said 2nd charge sheet dated 05/10.2010 in O.A. 756/2008. This Tribunal noted that the inquiry is nearing completion and the applicant has participated in the inquiry. Having noted that the 2nd charge sheet was issued after withdrawing the earlier one with liberty to issue a fresh charge sheet, this Tribunal held that "the 2nd charge sheet cannot be said to be illegal" and thus directed the conclusion of the inquiry proceedings within a period of three months from the date of communication of the order. The said order was passed by this Tribunal on 31.07.2008 (Annexure-A/4). Assailing the said order, WPCT 210/2008 was preferred before the Hon'ble High Court. Having noted RBE No. 171/1993, which was not placed before this Tribunal during hearing of O.A. 756/2008, the Hon'ble High Court framed the issue as under:

"Having regard to the language used in the said Index no. 1033, the regulation, the issue now is required to be considered whether that provision is a mandatory provision or directory provision."

Hon'ble Court held that the provision is a mandatory one. The Hon'ble Court found as follows:

"In the instant case it appears that after withdrawal of the charge memo, a fresh charge memo has been issued without assigning the sufficient reasons thereof, as such, there is a breach to comply with the Board's decision, which subsequently became a Rule in the procedural law of the departmental proceeding.

Besides the aforesaid Rule, even the decision of the Railway Board is binding to the Sub-ordinate Officers working in the Railway, having regard to the settled principle that when any authority empowered under a statute to issue any order/direction, it is binding to all subordinate departmental employee and is enforceable in the Court of law on considering the same having a statutory flavour."

The Hon'ble High Court further held that there is a mandatory breach and that the 2nd charge sheet was not legally sustainable due to lack of sufficient reasons for issuing a fresh charge memo on withdrawing the earlier charge memo. The Writ Application was allowed with a cost of Rs. 20,000/- payable by the Railway Authorities to the Writ Petitioner. The operative portion of the order is as under:

"Learned advocate for the Railway Authority, however, submits that modification of the charge-sheet is permissible under the rule, we are not finding, any such rule in the said rule itself. Since it is an admitted position that the Railway Authority has already amended the relevant rule and incorporated the same under Index No. 1033 of the Railway Manual, the same is binding to the Railway Officers, who initiated the departmental proceeding. It has not been done in the instant case, accordingly there is a mandatory breach and the impugned charge memo being the second charge memo on withdrawing the earlier charge memo is not legally sustainable due to the lack of sufficient reasons for issuing the fresh charge memo on withdrawing the earlier charge memo. It accordingly is set aside and quashed. Impugned-judgment of the Tribunal dated July 31, 2008 passed in O.A. No. 756/2008 is also set aside and quashed on the basis of the aforesaid observation. However, the quashing of the second charge memo as issued on withdrawing the first charge memo, will not debar the respondent, Railway Authority, to issue appropriate charge memo following the rule under Index No. 1033

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as referred to above, namely, specifying the sufficient reasons in the charge memo itself for issuing the fresh charge memo. The writ application, accordingly, is allowed with a cost of Rs. 20,000/- payable by the Railway Authority to the writ petitioner. Such cost to be paid within a month from this date.



Pursuant thereto the Divisional Operations Manager by a memo dated 11.03.2010 (Annexure-A/6) withdrew the charge memoranda dated 26.12.2005 and 30.08.2006, to issue a fresh memo on identical charge, mentioning the cause of withdrawal of the earlier charge memo as under:

"The major penalty charge memorandum No. SDA/VIG/875 dated 26.12.05 and 30.08.06 are hereby withdrawn with a liberty to issue a fresh major penalty charge memorandum on identical charge."

The cause of withdrawal of the aforesaid charge memorandums are follows:

1. Signature of D.A. was not put in every annexure of memorandum.
2. Violation of service conduct rule was put 1968 instead of 1966 due to typing mistake.
3. So withdrawal charge sheet had been done without any prejudice for further DAR action against same charges.

Divl. Operations Manager/SDAH"

Simultaneously vide charge memo issued on the same date, i.e. on 11.03.2010, the Divisional Operations Manager charge-sheeted the applicant. It has been assailed in the present O.A. as not maintainable as the reason for withdrawal, had to be mentioned in the charge memo as directed by Hon'ble High Court (supra) but was not mentioned in the charge sheet itself.

We noted that the Memo dated 11.03.2010, whereby the earlier charge sheet was withdrawn with reasons, mentions the order as SDA/VIG/875 and with the same file number (as no separate number is mentioned) the fresh charge sheet

was issued. The applicant has failed to show how the mentioning of the reasons separately in Memo numbered SDA/VIG/875 as a prelude to the fresh charge sheet dated 11.03.2010 would prejudice him in any manner whatsoever. What Rule 1033 requires is that simultaneous to the withdrawal of the previous charge sheet or after dropping the proceedings to initiate a fresh one, the authorities should record the reason why the previous charge sheet is being withdrawn and a fresh charge sheet is proposed. The Rule does not require mentioning of reason in the charge sheet itself as there is no such provision in a charge sheet.

9. Even if we go strictly by the tenor of the decision of Hon'ble High Court that sufficient reason should be mentioned in the charge memo itself, we deciphered no violation of the directions due to the reason stated supra. We have already discerned that the memo withdrawing earlier chargesheet and the subsequent charge memo were issued simultaneously with the same file number.

10. Accordingly, we fail to agree with the contention put forth by the Ld. Counsel for the applicant that only because the reason was not mentioned in the subsequent charge sheet itself, it became unsustainable. Such an argument could neither be comprehended nor countenanced. Accordingly, we dismiss the challenge to the 3rd charge sheet on the ground that the reason for withdrawing the earlier charge sheet is not mentioned in the 3rd charge sheet itself but is recorded separately.

11. The plea that the charges have become stale by now cannot be taken at this stage since the respondents have initiated a proceeding vide a fresh charge

memo dated 11.3.2010 emboldened by the liberty granted by the Hon'ble High Court on 19.8.09 in WPCT 210 of 2008, as enumerated supra.

12. In the aforesaid backdrop the challenge to the 3rd charge memo fails and therefore the O.A. is dismissed. No costs.



(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

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