

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 13th day of May, 2004.

Original Application No. 1193 of 1999.

Hon'ble Mr. Justice S.R. Singh, Vice-Chairman.
Hon'ble Mr. D.R. Tiwari, Member-A.

Bakhtiar Hussain S/o Sri Mola Bux,
Sub Loco Cleaner, Moradabad.

.....Applicant

Counsel for the applicant :- Km. Sunita Sharma

V E R S U S

1. Union of India through Secretary,
M/o Railways, New Delhi.
2. The Chairman, Railway Board, Govt. of India,
New Delhi.
3. Divisional Railway Manager, Moradabad.
4. Assistant Mechanical Engineer-I,
Moradabad.

.....Respondents

Counsel for the respondents :- Sri A.K. Gaur

O R D E R

By Hon'ble Mr. Justice S.R. Singh, VC.

Impugned herein is the show-cause notice dated 07.09.1999 (Annexure- 8) whereby the applicant has been required to file his objection against the enquiry report. The main ground of challenge ^{is} the validity of the show cause notice is that the applicant has been earlier punished by the disciplinary authority whose order was upheld by the Appellate Authority and this order came to be quashed by the Tribunal in O.A No. 2610/1993 vide order dated 12.11.1996 without giving any ^{direction} opportunity to the disciplinary authority to hold the enquiry afresh and, therefore, the

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fresh enquiry conducted by the disciplinary authority was wholly illegal and without jurisdiction.

2. It would appear that initially the appellate order of punishment was quashed by the Tribunal in O.A 1126/92 and the Appellate Authority was directed to decide the appeal by speaking order after giving an opportunity to the applicant. The Appellate Authority instead of passing speaking order again passed cryptic order. The order passed by the disciplinary authority and confirmed by the Appellate Authority thus came to be challenged in O.A No. 2610/93 which was allowed by order dated 12.11.1996 thereby quashing the punishment order as well as the appellate order .

3. Sri A.K. Gaur, learned counsel for the respondents firstly submits that the O.A is not maintainable at this stage in that the applicant had a remedy to challenge the illegality of the proceedings by filing reply to the show-cause and secondly that the order by which a fresh enquiry has been conducted is not under challenge in this O.A. A perusal of the order dated 30.01.1997 (Annexure- 7) would indicate that the disciplinary authority passed an order for holding a fresh enquiry and for that purpose appointed one Sri Nakkee Lal as enquiry officer. The said order is not under challenge in this O.A. We ~~therefore~~ ^{expressing} further refrain from making any opinion about the ~~illegality~~ or otherwise of the order dated 30.01.1997 instituting a fresh enquiry. In our opinion, the applicant can raise the issue before the disciplinary authority in his reply to the show cause notice. In case of Special Director and Another vs. Mohd. Ghulam Ghouse and Anr. 2004 (3) SCC 440 it has been held that unless the High Court is satisfied of the nullity of the show-cause notice for want of jurisdiction of the authority concerned to even investigate the facts, the writ petition challenging the show-cause notice should not be entertained. The principal

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laid down by the Hon'ble Supreme Court in the aforesaid case, in our opinion, will apply even in case of O.A challenging the show cause notice.

4. In the circumstances, therefore, we dispose of the O.A with a direction that in case the applicant files reply to the show-cause notice within a period of one month from today, the disciplinary authority shall consider the pleas raised by the applicant in his explanation to the show-cause notice including the plea, if any, about the validity of the order instituting a fresh enquiry and take appropriate decision in accordance with law within three months.

5. There will be no order as to costs.

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Member- A.

Deo
Vice-Chairman.

/Anand/