

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 702 of 2002

Allahabad this the 25/11 day of November 2004

Hon'ble Mr.A.K. Bhatnagar, Member(J)  
Hon'ble Mr.D.R. Tiwari, Member(A)

J.P. Srivastava, Son of Late C.L. Khare, resident of  
32 Mahajpura, Garia Phatak, Jhansi.

Applicant

By Advocate Shri A.K. Srivastava

Versus

1. Union of India through General Manager(CSTM)  
Central Railway, Bombay.
2. Divisional Railway Manager, Central Railway,  
Jhansi Division, Jhansi.
3. Senior Divisional Engineer(Cord.) Central Railway,  
Jhansi Division, Jhansi.

Respondents

By Advocate Shri S.K. Anwar

O R D E R

By Hon'ble Mr.D.R. Tiwari, Member (A)

By this O.A. filed under Section 19 of the  
Administrative Tribunals Act, 1985 the applicant has  
prayed for quashing the impugned order dated 09.05.02  
and has also prayed for issuance of direction to promote  
the applicant from the date his juniors were promoted  
and in any view of the matter the applicant may be  
promoted giving benefits of scheme of restructuring  
of the cadre with all consequential benefits. ...pg.2/-

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2. This is the third round of litigation by the applicant. The applicant was served with memo of charge sheet dated 06.02.1987 which contained 07 charges. He denied all the charges. An inquiry was conducted and the Inquiry Officer found him guilty for charges no.1, 2, 4, 5 and 7 and charge numbers 3 and 6 were not proved taking into account the Inquiry report, representation of the applicant and other relevant documents, the disciplinary authority vide his order dated 21.10.1988 punished him with the penalty of reducing him from the stage of Rs.2150/- to the stage of Rs.2050/- in the pay scale of Rs.1660-2660. The appellate authority on appeal confirmed the punishment order vide order dated 06.09.1995. Both the punishment orders as well as the appellate order were challenged in O.A.No.425 of 1996 and the Tribunal vide its order dated 23.02.2001 quashed the impugned orders as certain procedural irregularities were committed during the inquiry proceeding, and respondents were directed to refund the amount deducted from the salary of the applicant in pursuance of the impugned orders. However, the liberty was given to the respondents to hold a fresh inquiry in the matter as per rules.

3. Accordingly, in view of the order of Tribunal in O.A.No.425 of 1996 the respondents have issued the impugned letter(annexure-1) for the purpose of making a fresh inquiry and Shri G.N. Pandey has been appointed as Inquiry Officer. In pursuance of the order passed in the above stated O.A. the respondents had refunded the amount which were deducted from the salary of the applicant, which has not been disputed by the applicant.

Meanwhile the applicant made several representations for promotion to Senior Divisional Engineer, Divisional Railway Manager, Jhansi, General Manager and to the Chief Personnel Officer, Central Railway, Mumbai. These representations are at annexures-4, 5, 6 and 7 respectively. His complaint is that none of his representations were considered by the respondents. He has also complained that he was not allowed to appear in the examinations for the post of Inspector of Works Grade I, which were held in 1988 and in 1990. Being aggrieved the applicant filed another O.A. No.214 of 2002 for redressal of his grievance relating to his promotion either on his turn-- or under the scheme of restructuring. The Tribunal vide its order dated 21.03.2002 directed the respondents to decide the representation of the applicant within a period of 3 months. Accordingly, the competent authority i.e. General Manager passed the speaking order dated 11.07.2002, which is at annexure R-2 to the counter-affidavit. Without waiting for the action on the part of respondents, the applicant has filed the present O.A. on 04.06.2002 almost for the same grievance and in the present O.A. the only additional relief sought relates to quashing of the impugned order, which/annexed as annexure A-1. The applicant has pleaded that the letter, which has been impugned, is illegal and bad in law. Through his rejoinder he has relied on the case of Niranjan Mishra Vs. Union of India and Others, decided by Calcutta Bench of the Tribunal reported in 2000(3) E.S.C.11(CAT) to say that it is in violation of Railway Board Circular dated 17.01.1994 and on the same charges no second inquiry could be held. He has further relied on the case of Y.K. Mehta and others

Vs. Union of India and others decided by the Principal Bench of the Tribunal reported in 2000(3) E.S.C. 15(CAT).

4. The respondents on the other hand have resisted the contention/claim of the applicant by filing a detailed counter affidavit. They have submitted that the applicant was awarded punishment of reduction of pay with effect from 21.10.1988 in the same scale i.e. Rs.1600-2660/- in permanent nature and due to said punishment he could not be promoted on ad hoc basis as per standing rules. In so far as the question of his promotion on regular basis either in his turn or under the scheme of restructuring they have submitted that it was not possible to promote him as he was still undergoing the punishment of reduction of pay, stated above and another DAR case was also instituted vide memo of charge dated 23.01.1996 and the earlier punishment dated 21.10.1988 was also under consideration. The DAR proceedings instituted on 23.01.1996 resulted in the punishment of reduction of pay in the minimum of the grade for a period of 5 years w.e.f. 22.10.1997 to 21.10.2002 which was still under currency and he could not be considered for promotion even at this stage. They have further submitted that his complaint regarding the fact that he was ignored for interview and was not allowed to appear in the examination, has no basis. They have submitted that the applicant was advised to appear in the written examination for the post of I.O.W. Grade I, which was to be held on 09.10.1988 and 20.10.1988 vide letter dated 09.09.1988. The applicant has endorsed his remarks on the circular that he had noted it, which is annexed at annexure-3 of the counter affidavit. Since he did not appear in the written examination on the above dates, hence the question of calling him for interview... pg.5/

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does not arise. They have also submitted that he could not be directed for interview/viva voce test due to disciplinary proceedings under the restructuring scheme. They have further submitted that the representation of the applicant in compliance of direction of this Tribunal vide order dated 11.07.2002 is not under challenge in this O.A., which is a final order, so the contention regarding his promotion has been considered by the competent authority, and the present O.A. is barred by principle of resjudicata. So far as the contention of the applicant regarding quashing of the letter dated 03.05.2002 which has been issued to the applicant for initiating a fresh inquiry, the respondents have submitted that this has been done in pursuance of the order of the Tribunal dated 23.02.2001 as the liberty was given to the respondents and accordingly action has been initiated.

5. We have heard very carefully the rival contentions of the counsel at length and perused the pleadings on record.

6. During the course of arguments, Shri A.K.Srivastava counsel for the applicant emphasised that no second charge sheet could be issued and in view of this alone the impugned letter may be quashed. For this purpose he has relied on the cases of 'Niranjan Mishra(supra) and Y.K. Mehta and others(supra). Counsel for the respondents, however, submitted that argument of counsel for the applicant is not tenable as the impugned letter/charge sheet has been issued in pursuance of liberty given to the respondents to make a fresh inquiry as per rules. The applicant's counsel also stated that the impugned letter does not even

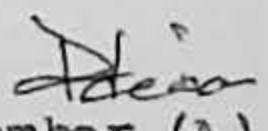
follow the rules in as much as it does not have any annexures relating to article of charges, statement of imputation, documents to be relied on or the name of witnesses, to prove the charges.

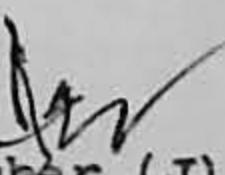
7. The moot question which falls for consideration is whether the issue of impugned letter is bade in law, as contended by the counsel for the applicant. In this connection it may be stated that question of quashing of the charge sheet has been subject matter of decisions in a number of cases by the Hon'ble Supreme Court. It is settled principle of law that Courts and Tribunal are devoid of power to interfere with the charge sheet at inter locutory stage. It cannot be gain said that Courts and Tribunal are not suppose to look into the correctness of the decision but they are to look into the manner in which decision has been taken. In this connection what is required, is to go into the question of fairness and principle of natural justice. The charge sheet could only be interfered on the ground of inordinate delay, vagueness or on the ground of malafides. The Hon'ble Supreme Court has held in the case of Union of India Vs. Upendra Singh J.T. 1994(1) S.C. 658 that in the cases 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 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 had no jurisdiction to go into the correctness or truth of the charges. The Tribunal cannot take over the functions of disciplinary authority.

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8. The next point contended by the counsel for the applicant is about his reliance on the decision pronounced by the Benches of this Tribunal, as cited above. It may be observed from these decisions that there is a bar for holding an inquiry on the same charges without giving any reasons. In those cases where the inquiry proceeding has been dropped, the Railway Board circular cited by him also is to this effect. In this connection we find that the impugned letter has been issued in pursuance of the direction from the Tribunal and it is not the case of dropping of the charges by the disciplinary authority hence the facts of this case are distinguishable from the facts of the cases cited by the counsel for the applicant.

9. In view of the above facts, circumstances and discussion, we see no justification to interfere with the impugned order, which is valid and legal. The O.A. is devoid of merit and is accordingly dismissed. No order as to costs.

  
Member (A)

  
Member (J)

/M.M./