

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1094 of 2002

Allahabad this the 09th day of January, 2004

Hon'ble Mr.V.K. Majotra, Vice Chairman,
Hon'ble Mr.A.K. Bhatnagar, Member(J)

J.N. Tiwari, S/o Late Sri G.P. Tiwari, Station
Superintendent, Northern Railway, Etawah, R/o
Kothi No.16, Railway Colony, Etawah.

By Advocate Shri Sudama Ram

Applicant

Versus

1. Union of India through General Manager, Northern Railway, Headquarters Office, Baroda House, New Delhi.
2. Sr.Divisional Operating Manager, Northern Railway, D.R.M. Office, Allahabad.
3. Divisional Railway Manager(P), Northern Railway, D.R.M. Office, Allahabad.

Respondents

By Advocate Shri A.K. Pandey

O R D E R (Oral)

By Hon'ble Mr.A.K. Bhatnagar, Member(J)

This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985 with a prayer for quashing the second charge-sheet dated 23.08.2002 (ann.A-1) and letter dated 07.10.2002 annexure A 1/A being void after withdrawing first charge sheet without giving any reason for its withdrawal by the disciplinary authority.

2. The case in brief, as per the applicant, is that a major penalty charge sheet was issued against

the applicant on 01.06.2002. The applicant requested to supply the relied upon documents and additional documents connected with the charges, followed by a reminder given on 02.07.2002. The disciplinary authority replied vide letter dated 15.07.2002 that no other documents can be supplied. The applicant again requested vide letter dated 19.07.2002 and 23.07.2002 to supply the relied upon documents. The disciplinary authority nominated an Inquiry Officer vide letter dated 26.06.2002, which was received on 24.07.2002. The applicant was asked to visit Allahabad alongwith S.F.5 dated 01.06.2002 through Safety Control Message on 23.08.2002. On 24.08.2002 the disciplinary authority in reference to his letter dated 21.08.2002 has withdrawn S.F. 5 dated 01.06.2002 without giving any reason for its withdrawal and issued a fresh charge sheet dt. 23.03.2002 on the same charges and handed over to the applicant on 24.08.2002. On 29.08.2002, the applicant represented against the issuance of second charge-sheet dated 23.08.2002. The respondents gave reply and disposed of the representation of the applicant by order dated 07.10.2002, hence this O.A.

3. Learned counsel for the applicant submitted that the charge-sheets as mentioned above, have been issued under the influence of the rival union. It is further submitted that the applicant was going to retire on 31.10.2002 and the second charge sheet dated 23.08.02 was intentionally issued to harass him and to deprive him of his pensionary benefits. It is further submitted that the applicant has been awarded several times for his good working but due to union rivalry, he has been implicated for no fault of his. Learned counsel for the

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applicant finally submitted that the first charge sheet S.F. 5 dated 01.06.2002 was withdrawn on 24.08.02 without giving any specific reasons for its withdrawal hence second charge sheet on the same charges cannot be issued by the Disciplinary Authority in contravention of the rules as clarified by the Railway Board vide letter no.E(D&A)93-RG-6-83 dated 01.12.1993. Thus, the action of the respondents is full of prejudice, bias, tainted with malafides and contrary to the law.

4. Resisting the claim of the applicant, learned counsel for the respondents filed counter-affidavit against which rejoinder was filed by the applicant reiterating the facts mentioned in the O.A.

5. Learned counsel for the respondents submitted that by letter dated 21.08.2002(ann.C.A.-4)issued to the applicant from D.R.Ms Office, it was made clear to the applicant that withdrawing the first charge sheet issued to him is without prejudice and with all fairness and there is no illegality in issuing the fresh charge sheet. Learned counsel relying on the Judgment of Apex Court in the case of Union of India & Ors. Vs. Ashok Kacker cited in 1995 S.C.C.(L&S) 374, has contended that the O.A. is premature as the applicant has filed this O.A. without waiting for decision of the disciplinary authority.

6. We have heard the learned counsel for the parties and perused the record.

7. Firstly we take the plea of learned counsel for the respondents that the O.A. is premature. In our considered opinion, the O.A. is not premature as the applicant has filed this O.A. after getting reply dated 07.10.2002 on his representation dated ,,, pg. 4/-

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29.08.2002 (Annexure A 1/A), which is also challenged in this O.A. . The applicant has availed the remedies available to him and after that he approached the Tribunal.

6. Learned counsel for the applicant submitted that the order passed on his representation dated 29.08.2002, is illegal as the same has been passed without following the instructions contained in Railway Board's letter dated 01.12.1993. We have gone through the annexure A-14 page 153, which for convenience sake is reproduced below:-

" R.B.E.No.171/93

No.E(D&A)93 RG6-83 dated 1.12.1993

Subject : Issuing fresh charge Memorandum after cancellation/withdrawal of original chage Memorandum or 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 chargesheet on the same facts after withdrawing the first one, the second chargesheet 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

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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 chargesheet 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 chargesheet afresh appropriate to the nature of the charges."

In view of the above, we are of the opinion that the respondents should take into consideration the instructions mentioned above while passing any order.

7. We have perused the annexure A 1/A letter dated 07.10.2002, which certainly does not contain any reason for withdrawing the first charge sheet and issuing the second one later on in the light of the observations made in the Railway Board letter dated 01.12.1993

8. In view of the aforesaid discussion, facts and circumstances, we are of the view that the letter dated 07.10.2002 disposing of the representation of the applicant dated 29.08.2002 (annexure A-15) has been passed without giving any reason, therefore, deserves to be quashed. Accordingly, the O.A. is partly allowed. The order dated 07.10.2002 is quashed and the case is remitted back to the respondent no.2 i.e Senior Divisional Operating Manager (disciplinary authority) to reconsider the representation dated 29.08.2002 of the applicant, and pass a fresh reasoned and speaking order in the light of Railway Board's letter dated 01.12.1993 within a period of one month from the date of receipt of a copy of this order. No order as to costs.

/M.M./

Member (J)

V.K. Mayur
Vice Chairman
9-1-04