

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 1238 of 2003

Fri day, this the 2nd day of February 2007

Hon'ble Mr. K. Elango, Member 'J'
Hon'ble Mr. M. Jayaraman, Member 'A'

Shishir Kumar, S/o Sri Shambhu Prasad Sharma, A/a 37 years, presently posted as Senior Commercial Clerk N.E. Railway, Ujhani PO-Ujhani, Distt. Badaun, Pin Code 243 639.

Applicant

Inperson

Versus

1. Union of India through the General Manager, North Eastern Railway, Gorakhpur.
2. Divisional Railway Manager (Personnel) N.E.R., Izatnagar, Distt. Bareilly.
3. Senior Divisional Commercial Manager, N.E.R. Izatnagar, Distt. Bareilly.
4. Asst. Commercial Manager-II (Enquiry Officer) N.E. R., Izatnagar, Distt. Bareilly.

Respondents

By Advocate Sri K.P. Singh

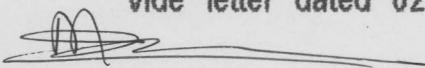
ORDER

By M. Jayaraman, Member (A)

The following reliefs have been sought by the applicant in this O.A.: -

- (i) to quash the major penalty charge sheet dated Nil/May 1999, issued by respondent no.3;
- (ii) to direct the respondents to make payments on the post of Senior Commercial Clerk with effect from 10.08.2000 till the date of joining the duties after reinstatement alongwith all consequential benefits together with interest.

2. The brief facts of the case here are that the applicant was appointed vide letter dated 02.11.1992 as Commercial Clerk at Mathura Cantt.



Station, N.E. Railway w.e.f. 03.11.1992. He earned further promotion in 1996 as Senior Commercial Clerk and posted to Dariaoganj Station in District Etah and he has served at different places like Kannauj and Mathura Cantt. He was issued a major penalty charge sheet dated Nil/May 1999 with the following two charges:-

1. On 21st April 1999, the applicant caused obstruction during the Inspection of the Office of Signal Inspector, Mathura Cantt. At about 10.20 hours by Divisional Railway Manager, Izatnagar and behaved in an undisciplined manner in spite of being on rest.
2. Again on the same day evening on 19.30 hours the applicant misbehaved with Divisional Railway Manager at the station, platform and in front of the office of Station Superintendent, Mathura Cantt. and used un-parliamentary language."

3. A departmental inquiry by the Inquiry Officer Shri B.M. Saxena, the then Assistant Commercial Manager followed. Subsequently, by Order dated 10.08.2000 passed by the Divisional Commercial Manager, he was removed from service. The applicant filed an Appeal before the Additional Divisional Railway Manager, N.E. Railway, which was rejected by the Order dated 23.01.2001. The applicant filed an O.A. No.239 of 2001. By its final Order dated 04.01.2002, the Tribunal held that ~~not~~ fair opportunity was not given to the applicant and so set aside the Order of the disciplinary authority dated 10.08.2000, as also the Appellate Order dated 23.01.2001. The applicant was ordered to be reinstated with leave given to the applicant to hold *denovo* inquiry from the stage of furnishing of copies of two documents, asked for by the applicant vide his letter dated 14.05.1999. Accordingly, the applicant tried to join his duties at Mathura Cantt. Since he was not allowed to do so he approached the Tribunal again by filing a Contempt Petition No. 99 of 2002. In the meantime, the respondents filed a Writ Petition No.33019 of 2002 before the Hon'ble High Court at Allahabad, in which the High Court upheld the Tribunal's Order and dismissed the Writ Petition vide Order dated 29.08.2002. During the contempt proceedings, counsel for the respondents informed the Tribunal that they have complied

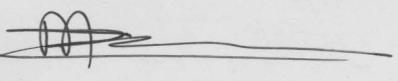


with the Tribunal's Order vide Order dated 18.09.2002 by which the applicant was reinstated. It was also said that the respondents would supply copies of two documents asked for. In view of the above, contempt proceedings were dropped. Since however, the applicant was not allowed to join his duties, he filed yet another O.A. No.1294 of 2002 in which the Tribunal issued an interim order dated 25.11.2002 directing the Station Superintendent, Ujhani to allow the applicant to join the duties. Accordingly, the applicant joined the duty on 30.11.2002. The O.A. No.1294 of 2002 was finally decided by Order dated 04.08.2003 wherein a direction was given to the respondents to serve two documents, as prayed for, by the applicant and conclude the inquiry against the applicant finally within 2 months. The applicant has stated that in spite of the above Order and his further pleadings with the respondents, those two documents have not been given to him and inquiry has not been concluded. In the above circumstances, the applicant has filed the subject O.A. praying for the reliefs mentioned in paragraph no.1 of this Judgment.

4. We have heard Sri Shishir Kumar-applicant inperson and also Sri K.P. Singh, learned Counsel for the respondents.

5. The main plank of the argument of the applicant is that the entire charge memo is with malafide intention and with biased attitude against him. In spite of the direction of this Tribunal directing the respondents to furnish two documents demanded by him vide letter dated 14.05.1999, the respondents have not supplied these two documents. As observed by the Tribunal in its Order dated 04.04.2002 passed in O.A. No.239 of 2001, the respondents have not denied the existence of these documents but have only denied its relevance. Accordingly, the respondents are duty bound to supply those documents without which the inquiry cannot be proceeded further. Since the respondents have failed to supply those documents, he has prayed for quashing the charge memo itself.

6. The respondents have opposed the above submissions of the applicant by saying that vide Order No. 1204 dated 18.09.2002 the



applicant was directed to join the duties at Ujhani Station. A copy of the said Office Order was sent to the applicant at his home address at Mathura, but the applicant did not join his duties. By further Order dated 09.10.2002, the applicant was advised to join his duties at Ujhani Station with no result. A further reminder dated 22.11.2002 was also sent to the applicant and lastly he joined on 30.11.2002. So if there was any delay, it was solely due to the applicant. They have further stated that issue raised by the applicant regarding bearer of the Office of Mazdoor Union is nothing to do with the current issue wherein the departmental proceedings have been initiated against him in 1999. The respondents have further stated that the applicant was not interested in joining the duties at Ujhani but only for posting at Mathura and it was only after the Order of this Tribunal, the applicant joined at Ujhani and before that he was not interested in joining at Ujhani. As regards the disputed two documents, it is submitted by the respondents that in regard to the item no.1 i.e. if any complaint made by the D.R.M., this document does not exist. Regarding item no.2 i.e. inspection note of the D.R.M., copy of the same was supplied to the applicant. Both the non-availability certificate of item no.1 and copy of inspection note-item no.2 were sent to the applicant by hand as well as by post but the applicant refused to take delivery vide remarks of S.S. and D.C.I., copy of which are annexed at annexure-1 to the counter affidavit. When the copy was sent by post and received by Station Superintendent, Ujhani, the applicant refused to receive the same and the envelop has been returned under covering letter by Station Superintendent, Ujhani vide annexure-2 to the counter affidavit. The respondents have stated that the applicant has been refusing to take delivery of the letters sent to him in person or by post and he has been refusing to take spare memo and ED Pass to attend the inquiry and he has not attended the inquiry on the following dates fixed for hearing namely 30.10.03, 03.11.03, 20.11.03, 10.12.03, 25.12.03 and 11.01.04. Copy of the report from the S.S. Ujhani and undelivered letters are annexed with the counter affidavit as annexure-3, 4, 5, 6 and 7 respectively. The respondents have stated that the applicant did not contact the Inquiry Officer nor attended the inquiry on any date fixed for holding preliminary inquiry and regular inquiry and so the Inquiry could not be concluded, as



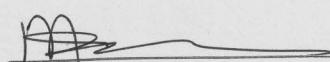
ordered by the Tribunal. The respondents have further submitted that the disciplinary authority is required to provide the prosecution documents listed in annexure-3 of the charge sheet. In this case all these documents have been supplied to the applicant. With regard to two documents (termed defence documents) to be supplied to the applicant, the respondents have stated that it depends upon the existence of the document and the custodian has supplied the available documents in respect of no.1 and furnished the non-availability certificate in respect of 2nd. The respondents have finally stated that so far as the charge sheet is concerned, it is based upon prosecution documents, which have already been supplied. Therefore, there should be of no question of quashing the charge memo.

7. We find very strong force in the pleadings of the respondents. This is the fourth time that the applicant has knocked at the doors of the Tribunal in this matter. From the narration of the events and also the submission made by the applicant himself, it is clear that the applicant is interested only in delaying the inquiry proceedings and is not interested in participating in the inquiry. Though it is a fact that his request for supply of two defence documents was considered by the Tribunal, which ordered the respondents to supply the same to the applicant vide its first order dated 04th April 2002 in O.A. No.239 of 2001, the respondents have clearly explained that these documents are not prosecution documents but are defence documents and so they are not under obligation to supply those documents. Secondly, the custodian of the documents has certified that the document no.1-complaint made by the D.R.M., does not exist. He has also said that inspection note of the D.R.M. was made available but not taken by the applicant. It is clear from the averments made by the respondents that the applicant has refused to receive those documents, which shows his attitude towards the inquiry. If a document does not exist it is not understood how the respondents can supply the same. It is up to the applicant to make use of the situation during the course of inquiry proceedings and try to prove his innocence. The applicant is silent so far as the fact of his refusal of the documents sent by the respondents, or attending the inquiry, which shows

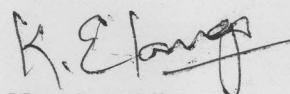


that he is not interested in participating in the inquiry to prove his innocence. When the applicant does not participate in the enquiry proceedings, as indicated in para-5 above, how can the respondents be expected to conclude the inquiry? This Bench, therefore, cannot interfere in the proceedings being held by the respondents. Under the law, the charged Officer is entitled to a copy of the prosecution documents, which have been supplied to him, as reported by the respondents. This is not being denied by the applicant. He is harping only on the non-supply of certain defence documents which he himself has refused to receive. As stated above, the respondents cannot be held responsible if the stated documents ~~are~~ in the first place are not available and subsequently if the applicant refused to receive the envelop containing the available documents sent to him. This Tribunal is constrained to direct the applicant to participate in the inquiry and prove his innocence, if he is innocent as he claims. In any case, the O.A. is filed against the charge sheet which is not maintainable as held by the Apex Court in the case of Union of India Vs. Ashok Kacker reported in 1995 Supp (1) SC cases 180. Seen this way also, the O.A. is liable to be dismissed.

8. In the circumstances, the O.A. fails, which is dismissed with no order as to costs.



Member (A)



Member (J)

/M.M./