

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 606 of 2007

Allahabad this the 29th day of February, 2012

**Hon'ble Mr. Justice S.C. Sharma, Sr. J.M./HOD
Hon'ble Ms. Jayati Chandra, Member-A**

Madan Lal Pathak, S/o Shri Sachchidanand Pathak, Aged about 53 years, R/o ET-75A, Railway Colony, Mathura Cantt., Mathura.

By Advocate: Mr. S.S. Sharma Applicant

Vs.

1. Union of India through The General Manager, North Eastern Railway, Headquarters Office, Gorakhpur.
2. The General Manager/Vigilance, North Eastern Railway, Headquarters Office, Gorakhpur.
3. The Divisional Railway Manager, North Eastern Railway, D.R.M. Office, Izzatnagar, Bareilly.
4. The Senior Divisional Engineer-I, North Eastern Railway, D.R.M. Office, Izzatnagar, Bareilly. (The Disciplinary Authority)
5. Shri Ramadhar Gupta, Retired Enquiry Officer, Office of The General Manager/Vigilance, Enquiry Section, North Eastern Railway, Headquarters Office, Gorakhpur. (The Enquiry Officer)
6. The Section Engineer/P. Way, North Eastern Railway, Mathura Cantt., Mathura.

By Advocate: Mr. K.P. Singh Respondents

ORDER

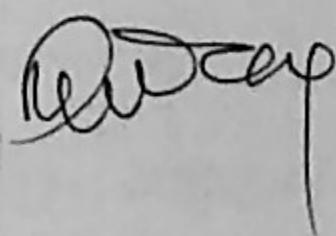
By Hon'ble Mr. Justice S.C. Sharma, Sr. J.M./HOD
Under challenge in this O.A. is the charge sheet for major penalty dated 26.03.2007 issued by the Senior

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Divisional Engineer-I, N.E. Railway, Izzatnagar. In alternative, relief has also been claimed for giving direction to the Senior Divisional Engineer-I, N.E. Railway, Izzatnagar not to initiate any disciplinary proceedings in pursuance to the charge sheet dated 26.03.2007 and to cancel the same as the impugned order, on which the charge sheet has been framed, has been challenged by the applicant in O.A. No. 1539 of 2004, and the interim relief was granted in favour of the applicant staying the operation of the orders vide Order dated 31.01.2005 in that O.A.

2. The pleadings of the parties may be summarized as follows: -

It has been alleged by the applicant that he had been working on the post of Senior Trackman in the pay scale of ₹ 2750-4000/- under the Section Engineer/P. Way, NE Railway, Mathura Cantt. in Civil Engineering Department of NE Railway, Izzatnagar and under the administrative control of the Divisional Railway Manager, NE Railway, Izzatnagar. The applicant was initially appointed on 17.11.1979, thereafter regularized w.e.f. 16.02.1985 on the post of Gangman, and earlier to that temporary status was conferred on him on dated



23.11.1983. The applicant was transferred on 17.03.1987 from Fatehgarh to Kannauj under the PWI, NE Railway, Kannauj. On 16.11.1989, he was promoted as Senior Gangman. It has also been alleged by the applicant that he was highly educated i.e. B.A. pass hence he was put to work as Office Clerk since from the date of his appointment. A notification was issued by the D.R.M., NE Railway, Izzatnagar, in order to conduct an examination for promotion on the post of Office Clerk in the pay scale of ₹ 950-1500/- in Group 'C' post from Class IV (Group 'D') against the vacancy of 1987-88 in 33 1/3% promotion quota. The applicant was declared successful even in viva voce and he was promoted as Junior Engineer on ad hoc basis and posted in a Personnel Branch under D.R.M. (P), NE Railway. Again a notification was issued in order to conduct a selection for the post of Junior Clerk in the scale of ₹ 950-1500/- against 33 1/3% promotion quota. A supplementary written test was held on 04.08.1990, and the applicant passed the written test, and his name was placed at serial No. 3 out of 16 candidates passed in the written test, and he was called for viva voce. The applicant had already qualified in the Clerk grade, and was promoted on ad hoc basis but the name of applicant was not

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included in the panel of Clerk as issued by the D.R.M.

(P) Izzatnagar on dated 24.08.1990. It is alleged that the applicant has been performing the duty of Office Clerk satisfactorily for the last 28 years continuously.

Due to arbitrary and malafide act of the respondents, applicant was not promoted on regular basis. While the applicant was working as Senior Trackman, he was transferred from Kannauj to Mathura Cantt. on request vide order dated 27.03.2001 on bottom seniority as per railway rules but, the grade and pay was not reduced of the applicant. At Mathura bottom seniority was assigned to the applicant, and a type-II accommodation was allotted to the applicant at Mathura, and to several other employees' type-II accommodation was allotted. A false complaint was made against the applicant that he placed the wrong facts for allotment of the house but later on another type-II quarter was allotted to the applicant, and the applicant is in possession of the house. The applicant was reverted from the grade of ₹ 2750-4000/- to the grade of ₹ 2610-3540/- on the pretext of his transfer from Kannauj to Mathura on request. But it was done due to ulterior motive. O.A. No. 1222 of 2004 was filed before the Tribunal and the O.A. was decided on 25.10.2004 with a direction to the respondents that the

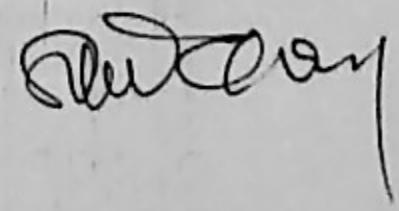
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fresh representation of applicant be decided afresh by a reasoned and speaking order within the stipulated period. All the facts were pleaded in the representation but the representation of applicant was not decided by the respondents as per directions of the Tribunal. Then, a Contempt Petition was moved and notices were issued to the respondents. Thereafter, under pressure of the Union, allotment order of the applicant was cancelled, and the house was allotted to Sri Raj Pal Singh. It is alleged that this order was illegal. It has also been alleged that later on applicant was transferred from Mathura Cantt. to Fatehgarh but he did not vacate the accommodation. Thereafter, he filed the O.A. No. 1539 of 2004, and the Tribunal granted the interim stay order on 31.01.2005. The transfer order as well as order of vacation of accommodation was stayed. The respondents failed to implement the stay order, and by hook and crook wanted to harass the applicant. It is alleged that they have issued the charge sheet during the period when the stay order granted by this Tribunal, had been continuing. Hence, the O.A.

3. The respondents contested the O.A. and filed the Counter Reply. It has been alleged that the applicant was spared from Section Engineer/PW/Mathura Cantt. to

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Fatehgarh Sub division in the pay scale of ₹ 2650-4000/- as a Gateman on dated 14.08.2004. The lien and seniority of class IV has been maintained in sub divisional office. The applicant was not appointed as Time Scale Khalasi on dated 17.11.1983 but he was regularized as a Gangman on dated 16.02.1985. Considering the educational qualification of the applicant, he was appointed as Time Scale Khalasi and thereafter regularised as Gang man. No question arises to permit the applicant to work as Office Clerk on account of high education. The applicant was initially appointed as a Class-IV employee. Notifications were issued by the respondents to fill up the post of Junior Clerk and the applicant participated in the Written Examination but it is wrong to allege that the applicant was declared successful in the written examination. The applicant was not found suitable finally so his name was not included in the panel. It is a fact that the applicant was deployed as a Clerk on ad hoc basis but it was not due to his selection. The applicant was not found suitable finally in the selection, and the applicant continued to work as Gangman. The applicant was transferred on request in view of provisions of I.R.E.M. with bottom seniority. The applicant was wrongly promoted as Senior Trackman in the pay scale of ₹ 2750-



4400/- vide order dated 20.10.2001 and when it was noticed by the Union then, a corrigendum was issued in that connection. It is a fact that type-II quarter was allotted to Sri Raj Pal Singh but he did not accept that allotment. It is wrong to allege that Sri Raj Pal Singh used influence for allotment of the house. It has also been alleged that after reversion, applicant was not entitled to retain the Type-II quarter, and he was required to change the accommodation but the applicant did not obey the Railway Rules. The applicant filed O.A. No. 1539 of 2004 challenging the order of transfer as well as shifting of accommodation dated 12.08.2004 and 17.06.2004, and stay order was granted only for a period of four weeks with a rider that if they ~~are~~ ^{have} ² not given effect. The applicant was already spared vide order dated 14.08.2004, and conditional order was passed by the Tribunal. The applicant committed misconduct hence a major penalty charge sheet was served upon the applicant. It has also been alleged that the Court cannot interfere in the matter of issue of charge sheet. O.A. lacks merit and is liable to be dismissed.

4. RA has also been filed by the applicant in response to the CA filed by the respondents.

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5. We have heard Sri S.S. Sharma, Advocate for the applicant and Sri K.P. Singh, Advocate for the respondents and perused the entire facts of the case.

6. Both the parties narrated the facts in very detail. Although, in our opinion, pleadings should have been more precise and to the point but for the reasons best known to the parties, pleadings have been too lengthy, which is not required. Very narrow controversy involved for adjudication by this Tribunal. Although so many facts have been alleged regarding initial appointment of the applicant, holding selection of Junior Clerk but we are not concerned to consider all those facts for disposal of this O.A. The question for adjudication in this O.A. is that whether the respondents are justified in issuing a major penalty charge sheet on dated 26/27-03-2007 for long unauthorized absence from duty i.e. w.e.f. 12.08.2004. Further allegations have been made against the applicant that by concealing the facts that he has been assigned bottom seniority, he manipulated the allotment of railway accommodation in irregular manner, for which he was not entitled. It is an admitted fact that the applicant was transferred from Mathura Cantt. to Fatehgarh vide order dated 12.08.2004. It is the contention of the respondents that in pursuance of the

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Order of transfer, applicant was relieved and spared on 12.08.2004.

7. It has been argued by learned counsel for the applicant that in order to challenge the order of transfer and shifting of the accommodation, he filed the O.A. No. 1539/2004 and in that O.A., an interim order was passed by the Tribunal on 31.01.2005. The respondents also admitted this fact that in order to challenge the order of transfer and shifting of the house, applicant filed O.A. No. 1539 of 2004. Annexure A-16 is the copy of the Order passed by the Tribunal on dated 31.01.2005. While passing the Order on 31.01.2005, the Tribunal also granted the interim relief to the effect that "the order of transfer as well as the order of shifting of accommodation dated 12.08.2004 and 17.06.2004 are hereby stayed for a period of four weeks provided they are not given effect to already." The contention of applicant's Advocate that as the stay was granted in favour of the applicant hence he was not required to hand over the charge that as stay was granted in favour of the applicant hence he was not required to hand over the charge at Mathura Cantt. so as to join at Fatehgarh and he was also not required to vacate the accommodation, allotted to him.

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8. However, learned counsel for the respondents argued that the interim order was passed to the effect that the order of transfer as well as shifting of accommodation shall remain stayed provided the orders were not given effect to already, and it is the main contention of the respondents in the O.A. that the applicant was spared on 12.08.2004 in pursuance of the transfer order and hence the interim order passed by the Tribunal is of no effect, and no benefit can be given to the applicant on the basis of the interim order passed by the Tribunal. From perusal of the order passed by the Tribunal, it is evident that a proviso has been made in the Order that if the orders were not given effect then same will remain stayed. But it is the main contention of the applicant that he was not spared or relieved in pursuance of the Order of transfer till the interim order was passed by the Tribunal and, thereafter applicant continued to remain posted at Mathura Cantt. and retained the house on the strength of interim order. But when a fact has been alleged by the applicant and the same has been disputed by the respondents then, the finding must be recorded by the Tribunal to that effect. A specific plea ought to have been taken on behalf of the respondents that he had already been relieved hence the interim order is of no effect or an application for retention of house on the basis of interim order is liable to be rejected.

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vacation of stay order, ought to have been moved. In that context, a finding ought to have been recorded.

9. It has also been contended by Sri S.S. Sharma, Advocate that O.A. No. 1539 of 2004 was decided finally on 02.08.2010 and the O.A. was dismissed, and the interim order granted earlier, was vacated. On this ground, it has been argued by learned counsel for the applicant that till the O.A. was decided finally by the Tribunal, interim order was continuing, and it may be presumed that the applicant was not spared or relieved from Mathura Cantt. in pursuance of the transfer order. ~~on 01.01.2010 and~~ This was a matter directly substantial^{ly} in issue in the O.A. ~~on 01.01.2010 and~~ that whether the applicant was spared on 12.08.2004 and there ought to have been a finding. We have perused the Order of the Tribunal and there is no such finding recorded on ~~31.01.2005~~ ^{2.8.2010} that the applicant had already been relieved, and the order ought to have been modified. We will not like to comment regarding the possession over the disputed accommodation because it has not been disputed by the respondents that the applicant had already vacated the disputed accommodation allotted to him and regarding the accommodation also a stay order was granted, and that continued up to the dismissal of the O.A.

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10. Learned counsel for the applicant argued that the order passed by the Tribunal in the O.A. has been challenged before the Tribunal in Writ Petition No. 63419 of 2010 and an interim order was passed by the Hon'ble High Court on 22.10.2010. The orders passed by the respondents were stayed. Learned counsel for the applicant expects from us that we may presume that after the order passed by the Hon'ble High Court, stay is continuing. At this stage, it was not possible for us to record a categorical finding contrary to what has been alleged by the applicant. We have to decide on the basis of the circumstances that what the position was. As an interim order was granted on 31.01.2005, and this order continued up to dismissal of the O.A. on 02.08.2010 and thereafter the order was passed by the Hon'ble High Court on 02.08.2010. From all these circumstances, only inference can be drawn that as no order was passed by the Tribunal, vacating the stay order, hence it is to presume that the interim order was holding good.

11. It is a fact that a charge sheet was served on the applicant on 26.03.2007, which is annexure A-1 of the O.A. and the charges have been leveled against the applicant that he was transferred under ADEN,

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Fatehgarh and he received the copy of transfer order but he remained ^{on 12} unauthorized absent w.e.f. 12.08.2004 and also retained the railway quarter at Mathura Cantt. in irregular manner. Needless to say that the order of transfer as well as the order of vacating the accommodation was stayed by the Tribunal by an interim order and we have commented about the position of facts. If a person knocked the door of the judicial forum and an order has been passed in his favour then the respondents are not entitled to punish him on the ground that he violated their earlier order because implementation of that order has been stayed by the Tribunal. Hence the applicant continuing in possession of accommodation as well as continue to remain at Mathura on the strength of the Order passed by the Tribunal. We will not be able to decide this fact conclusively, as stated above, because the matter is subjudiced before the Hon'ble High Court and the Hon'ble High Court may adjudicate the matter. We have to decide ^{for 8} the purpose of the charge sheet as the applicant continued to remain at Mathura, as alleged by the applicant, on the strength of the interim order then it cannot be said that he had been committing any misconduct. Although it is the subject matter to be decided by the Hon'ble High Court but, at this stage the

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applicant continued to remain at Mathura and remained in occupation of house on the strength of the interim order passed by the Tribunal. In order to maintain the sanctity of the Order passed by the Tribunal, it is highly improper on the part of respondents to serve a charge sheet on the applicant for the misconduct for not complying the order of transfer and not vacating the house, which has already been stayed by the Tribunal.

12. It has also been alleged by the respondents that the applicant by concealing the facts, manipulated the allotment of Type-II accommodation whereas he was not entitled for Type-II accommodation rather he was entitled for Type-I quarter. We have perused the pleadings of parties of O.A. No. 1539/2004, and from perusal of pleadings of the respondents, as is evident from the Order passed by the Tribunal that the same pleas were raised by the respondents that he manipulated allotment of Type II accommodation at Mathura hence this matter was directly ^{and R} substantialⁱⁿ issue and if a finding not recorded on that point then also it may be treated that the matter stand decided finally because it was directly ^{and R} substantialⁱⁿ issue, as required by Section 11 of the CPC. O.A. No. 1539 of 2004 was dismissed on different grounds and moreover

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that matter is still subjudiced before the Hon'ble High Court.

13. It has been argued by learned counsel for the respondents that this Tribunal has got no jurisdiction to quash the charge sheet and in this connection reliance has been placed on the Judgments of the Hon'ble Supreme Court, which are as under: -

[i] J.T. 1995 (2) SC page 18 State of Punjab and others Vs. Chaman Lal Goyal;

[ii] J.T. 1995 (8) S.C. page 447 Managing Director, Madras Metropolitan Water Supply and Sewerage Board and another Vs. R. Rajan etc.

We are in full agreement with the Judgments of the Hon'ble Supreme Court but, we have to compare the facts of the case before the Hon'ble Supreme Court as well as the facts of present case in order to ascertain whether the law laid down by the Hon'ble Supreme Court is applicable to the facts of present case. As we have stated above, that the facts of present case are peculiar. The charge sheet has been served on the applicant, as alleged by the respondents, because he violated the order of transfer as well as vacation of accommodation. As we have stated above that an interim order was passed by the Tribunal staying

ANSWER

implementation of the Order passed by the Tribunal and misconduct has been alleged that the applicant failed to obey the order of transfer and he continued with the possession of accommodation at Mathura. For both these allegations, an interim order was granted by the Tribunal as well as by the Hon'ble High Court. Because the applicant continued to enjoy the fruits in pursuance of the Order passed by the Tribunal hence, the Judgments of the Hon'ble Supreme Court are not applicable to the present case otherwise the Court cannot interfere in the matter of serving the charge sheet on an employee. But considering the peculiar facts of the case, no benefit can be given to the respondents on the basis of these Judgments of the Hon'ble Supreme Court.

14. For the reasons mentioned above, we are of the opinion that the applicant continued to remain at Mathura on the strength of the interim order passed by the Tribunal, and moreover after dismissal of the O.A. interim order was also granted by the Hon'ble High Court on 22.10.2010 staying the order of transfer as well as order of cancellation of allotment of accommodation. In these circumstances, it was not justified on the part of the respondents to serve a charge sheet upon the

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applicant for the misconduct committed by the applicant for not obeying the order of transfer as well as the order of vacation of accommodation. O.A. deserves to be allowed. This finding is only relevant for deciding the present O.A.

15. O.A. is allowed. The charge sheet for major penalty dated 21/26-03-2007, issued by the Senior Divisional Engineer-I, N.E. Railway, Izzatnagar is quashed. Applicant shall be entitled for consequential benefits subject to the direction of Hon'ble High Court. No order as to cost.

J. Chandra

Member - A

Shri Ranay Ray
Sr. J.M./H.O.D.

Engineer I
/M.M/

App. No. 37

7th/2007 and 21st/2007

to be done