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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 82 OF 2002
Cuttack, this the 12th day of July, 2005.

R.CHANDRA SEKHARAM

APPLICANT

VERSUS

UNION OF INDIA & ORS.

RESONDENTS.

FOR INSTRUCTIONS.

1. Whether it be referred to the reporters or not? *yes*
2. Whether it be circulated to all the Benches of CAT, or not? *yes*

(B.N.SOM)
VICE-CHAIRMAN

Chand
(M.R.MOHANTY) 12/07/05
MEMBER(JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH:CUTTACK.

Original Application No. 82 OF 2002
Cuttack, this the 12th day of July, 2005.

C O R A M:-

**THE HON'BLE MR. B.N.SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR. M.R.MOHANTY, MEMBER(JUDICIAL)**

Sri R. Chandra Sekharam, aged about 58 years,
Son of late R.V.Ramana Murthy,
Village-Vadama,PO-Palakunda,PS-Palakunda,
Dist-Srikakulam(Andhra Pradesh)
At present working as Senior Divisional Electrical
Engineer(G), South Eastern Railways,Khurda Road
PS/Dist. Khurda.

APPLICANT.

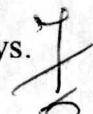
For the Applicant:M/s.B.S.Mishra-2,M.R.Misra,
A.P.Dhirsamant,A.R.Mishra,
Advocates.

VERSUS

1. Union of India represented through the Secretary,
Ministry of Railways, New Delhi.
2. General Manager,
South Eastern Railways,
At/PO: Garden Reach,Kolkata-43.....

RESPONDENTS.

For the Respondents:- Mr. Ashok Mohanty,
Sr. Counsel for Railways.



O R D E R

MR. MANORANJAN MOHANTY, MEMBER(JUDICIAL):-

Applicant, while working as Sr.DEE (Con) at Bilaspur under South Eastern Railway, was issued with a Memorandum of charges under Annexure-2 dated 7th March, 1998. In the midst of the said Departmental proceedings an order under Annexure 4 dated 12.07.2000 was passed substituting charge No.5. Under Annexure 5 dated 11th September, 2000, the competent authority dropped the charge sheet that was issued under Memorandum dated 07-03-1998 and amended on 12-07-2000) and simultaneously; issued a Memorandum of charges under Annexure 6 dated 11th September, 2000 on the self same allegations; which is the subject matter of challenge in this Original Application filed under section 19 of the Administrative Tribunals Act, 1985.

2. Respondents- Railways have filed a counter contesting the case of the Applicant; to which the Applicant has also filed a rejoinder.

3. We have heard Mr. B.S.Mishra-2, Learned counsel appearing for the Applicant and Mr. Ashok Mohanty, Learned Senior Counsel appearing for the Respondents-Railways and perused the materials placed on record.



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4. Learned counsel for the Applicant has submitted that the second memorandum of charges under Annexure- 6 dated 11th September, 2000 is not sustainable in the eye of law inasmuch as there is no rule to issue second memorandum of charges (on the self same allegation) upon dropping of the earlier one. He has submitted that this second memorandum of charges has been issued only to stall the promotion of the Applicant to higher post at the fag end of his service career. He has further submitted that though the Applicant represented to the Authorities for supply of some documents, basing on which the charges were framed, no orders were passed on the same and the authorities have gone ahead with the enquiry. It was submitted by him that only to bring home the charges, a law knowing officer of the Central Bureau of Investigation has been appointed as Presenting Officer and the Applicant, being not a law knowing officer, will seriously be deprived of defending his case in proper manner and even though the Applicant has represented against such appointment of PO, no orders has been passed on that representation and the Respondents want to chase the Applicant for no fault of his by issuing the charges for the second time.

5. On the other hand, learned Senior Counsel appearing for the Respondents has submitted that the Respondents are within their rights and competence in issuing the charge-sheet under Annexure-A/6. Since the

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charges are grave/serious in nature and was required to be investigated into by the CBI, it became necessary to deal with the matter separately and therefore, the earlier charges were dropped without prejudice to the right of the administration to issue a new charge sheet on the same charges, under the authority of Railway Board's Circular No. E(D&E)93/RG-6/83 dated 01-12-1993 and CPO/SE Railway's Estt.S1.No.5/94 and simultaneously, on the same day, fresh charge-sheet was issued to the Applicant by giving detail reasons. It has been submitted by the learned Senior Counsel appearing for the Respondents that the Applicant should not be so much of apprehensive that as the PO is a law knowing person and that, he will not be able to face him. It has been submitted by him that in case the Applicant is innocent, let him face the proceedings without any fear and in case a law knowing person has been appointed as PO, he will be provided the Defence assistant as per the Rules in case he prays for the same. By stating so, he strongly opposed the prayer of the Applicant.

6. Having heard the learned counsel for both sides, we have considered the materials placed on record minutely. We have also perused the Railway Board's circular No. E (D&A) 93 RG 6-83 dated 1st December, 1993 - gist of which is quoted herein below:-

"ISSUE OF FRESH CHARGE-SHEET AFTER DROPPING THE EARLIER CHARGE-SHEET:

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"When the proceedings initiated under Rule 9 or Rule 11 are dropped, the disciplinary authority will be debarred from initiating fresh proceedings unless the reasons for cancellation of the original memorandum are appropriately mentioned and it is duly stated in the order that the proceedings were cancelled without prejudice to the 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 charge-sheet the order dropping the original one must be carefully worded so as to mention the reasons for such an action indicating the intention of issuing charge-sheet afresh appropriate to the nature of the charges".

Reading the above instructions, it is clear that the Disciplinary Authority has the competence and jurisdiction to drop the proceedings issued to one Railway employee and again issue another charge-sheet. Of course with the reasons with the rider that the proceedings were cancelled without prejudice to the further action which may be considered in the circumstances of the case. While dropping the first proceedings under Annexure-5 dated 11th September, 2000, the Disciplinary Authority passed the following orders:-

"No. DCPO(G)/CON/RCS/98/MJR/801 dated 11-9-2000
M E M O R A N D U M

The article of charge No.5 brought against Shri R.C. Sekharam, Dy. CEE (Con)/S.E. Railway/Bilaspur under memorandum of charge-sheet for major penalty of even number dated 07-03-1998 and as modified under corrigendum of even number dated 12-07-2000 is hereby

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dropped from the said memorandum of charges without prejudice to the right of the administration to issue a new charge sheet on the same charge which may be considered in the circumstances of the case.

Shri R.C. Sekharam, Dy. CEE (Con)/S.E. Railway/Bilaspur should acknowledge receipt of this Memorandum".

Therefore, while dropping the first proceedings, the Authorities reserved their right to issue fresh charge sheet and, on the same day, issued the fresh charges under Annexure-6 dated 11th September, 2000 with the detailed reasons. Therefore, since the entire gamut were as per the Rules/Instructions of the Railway Board, question of estoppel as claimed by the Applicant does not arise. Such a question came up for consideration before the Hon'ble High Court of Madras in the case of **STATE OF TAMIL NADU vrs. S. VASUDEVAN reported in 1984 Lab. IC 1875** and Their Lordships of the Madras High Court

have held that 'when a charge-sheet was given and thereafter the charges were dropped and a fresh charge-sheet was issued then this is within the power of the disciplinary authority to do so and that if, however, the charge-sheet is merely cancelled then it could be assumed that the disciplinary

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authority considered that it was not necessary to continue the disciplinary proceeding and that when cancellation of the charge-sheet is accompanied by fresh charge-sheet then there can be no such assumption'.

In the present case, since the authorities, while dropping the first charge sheet, simultaneously issued the second charge sheet on the same day, applying the principles laid down in the case of State of Tamil Nadu (Supra), the plea of the Applicant that the Authorities are estopped to do so (issue second charge sheet on self same allegation) is not sustainable in the eye of law.

7. That apart Disciplinary Proceedings Rules also do empower the authorities to frame additional charges, totally different from the set of charges already drawn up, in the midst of the proceedings and such powers having been vested with the Disciplinary Authority to do so, mere dropping of the earlier charge sheet (simultaneous to the service of another charge-sheet on the self same allegation) is definitely not out side the competence of the Authority.

8. Further, merely framing of the charge does not amount to holding an employee guilty of the charges. He is bound to be provided with adequate opportunity to defend his case. As regards the plea of the Applicant that PO being a law knowing person and he has the acumen to examine and

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cross examine the witnesses; which the Applicant does not have; it is to be noted that under Railway Board's instructions, he can also avail the opportunity of defence counsel in that way. We have also gone through the decisions relied on by the learned counsel for the Applicant; which do not give any support to the case in hand as the facts of those cases are different than this one.

9. Simultaneously one can not lose sight of the fact as stated in the counter, that the offence alleged against the Applicant is of very serious in nature involving huge financial loss to the Government (Railways) which has been *prima facie* substantiated in the CBI investigation as well as Railways' Vigilance investigation. We are therefore of the view that merely because no reason was assigned under Annexure-5 (which is, of course, available under Annexure-6, the new charge-sheet) it does not make the new charge sheet bad. On such technicality, if the new charge sheet is quashed, then the public money will be squandered and thereby giving scope to others. The Applicant, therefore, should face the charges/allegations leveled against him in the charge Memo under Annexure-6 dated 11-09-2000.

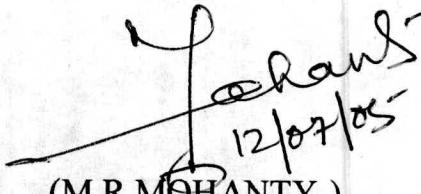
10. In view of the discussions made above, none of the grounds urged by the Applicant for quashing the second charge sheet is

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sustainable. Therefore, this Original Application being devoid of any merit,
stands dismissed. No costs.


(B.N.SOM)
VICE-CHAIRMAN


(M.R.MOHANTY)
MEMBER(JUDICIAL)
12/07/05