

3

3

O.A.No. 139/07.

Order dated 25.04.2007.

Record reveals that as a result of a disciplinary proceedings initiated against the Applicant, a Token Porter in the Railways, he was removed from service vide order No. T/39/CKP/SUB.TP/20/99 dated 27/31.07.2001. On becoming unsuccessful in his appeal preferred before the Respondent No.4, he approached this Tribunal in OA No. 649/2001 challenging the disciplinary proceedings initiated against him as also the order of punishment. The said Original Application was heard along with two other OAs filed by similarly circumstanced Railway employees. This Tribunal in its order dated 5th January, 2004 disposed of all the three cases; relevant portions of which are quoted herein below:

“...In this view of the mater, we hold that the Respondents have miserably failed to bring home the charge against the applicant. We have, therefore, no hesitation to accept the submission of the Learned counsel for the applicant that the enquiry report was based more on suspicion rather than on material proof. We also agree

R

4

(4)

that the I.O. could not have imported his personal knowledge to substitute the requirement of concrete evidence. In view of the observations made above and in view of the fact that the applicant was denied reasonable opportunity to prove the authenticity of the service certificate produced by him, we remand the case to the disciplinary authority to start de novo inquiry into the matter from the inquiry stage. We, however, direct that this inquiry will be limited to the examination of Shri S.C.Ghosh, the then Permanent Way Inspector (Construction), Bandamunda to prove his signature on the document produced by the applicant as service certificate issued by the said Shri Ghosh and to the production of the Live Casual Register, Bandamunda, where the name of the applicant would be available. Pending finalization of the inquiry and the disciplinary proceeding, the applicant is ordered to be reinstated in service”.

Being aggrieved by the above directions of this Tribunal the Union of India/Respondents/Railways carried the matter to Hon'ble High Court of Orissa in W.P. (C) No.656 of 2005. Their Lordships of the Hon'ble High Court of Orissa heard this Writ Petition along with WP (C) No.657 & 658 of 2005 (Union of India v. Y.Ajay Kumar) and in a common order dated 04.05.2005 disposed of all these three Writ Petitions; relevant portions of which are quoted herein below:

✓

9

"We fail to understand the intention of the Tribunal by using the word "de novo enquiry from the enquiry stage". Any how since the Tribunal has remanded matter to the Disciplinary Authority, we are of the opinion that fresh enquiry should be started in continuance from the stage of recording of evidence meaning thereby that the charge-sheet and the reply to the charge-sheet already submitted and the evidence of witnesses and documents produced and relied upon by the respective parties which are already on record of the earlier proceedings shall form part of the enquiry proceedings. Needless to say that the prosecution as well as the defence would be free to produce as many documents and witnesses as they want, which are relevant in the opinion of the Enquiry Officer, after obtaining his permission. It will also be open for them to make application to the Enquiry Officer to recall a witness and if such application is moved, the Enquiry Officer may pass appropriate orders thereon. It is further directed that the opposite parties shall go back to their position as it was immediately before passing of the order removing them from service meaning thereby that if the opposite parties were under suspension (as informed by the learned counsel for the parties) they shall be deemed to be continuing under suspension. However, it will be the discretion of the appointing authority to reinstate them pending continuance of the enquiry proceeding or not

9. The order passed by the Tribunal shall stand modified to the above extent. Since in the meantime about six years have elapsed from the date of initiation of the Departmental proceeding, the writ Petitioners/the Enquiry Officer as well as the Disciplinary Authority shall take appropriate step to conclude the

2

6

proceeding as early as possible. The opposite parties are also directed to cooperate for early conclusion of the proceeding. It is made clear that in case the charged official/opposite parties do not cooperate in the proceeding, the Enquiry Officer would be at liberty to proceed in the matter in accordance with law."

In compliance of the directions of the Hon'ble High Court, quoted above, pending finalization of the disciplinary proceedings, the Applicant was ordered to be under deemed suspension vide order dated 05.12.2005(Annexure-7) which is the subject matter of challenge in his OA.

It has been argued by the Learned Counsel for the Applicant that since the Applicant was not under suspension prior to the order of removal dated 27/31.07.2001, as per the orders of the Hon'ble High Court as also Rules, the Applicant ought not to have been placed under deemed suspension. To buttress that the order placing the Applicant under deemed suspension is bad, he has placed reliance on order of this Tribunal dated 25th February, 2007 passed in OA No.449/23006 (Y.Ajay Kumar vs. Union of India and others). He has submitted that in similar situation this Tribunal held that the order of deemed suspension is

7

7

liable to be quashed. Hence he has fervently prayed for issue of notice to the Respondents and pending final decision on this AO, as an ad interim order, the Respondents be directed to reinstate the Applicant.

On the other hand Mr. Ojha, Learned Standing Counsel for the Respondents has argued that this OA is not maintainable; because the Applicant has straightaway approached this Tribunal without availing himself of the opportunity of appeal provided under the Rules. He has argued that in case this OA is entertained then floodgate will be open to the employees to come to this Tribunal without exhausting other remedies available against an order passed by Disciplinary Authority. As regards the order of this Tribunal in the case of Y.Ajay Kumar (supra), it has been stated that irrespective of the observation, ultimately this Tribunal disposed of the OA by giving liberty to the Applicant (Y.Ajay Kumar) to prefer appeal which would be considered by the Appellate Authority on merits.

Having heard the submissions made by Learned Counsel for the Applicant and Mr. S.K.Ojha, Learned Standing Counsel for the Respondents, I have gone through

h

8

(8)

the order of this Tribunal made in the case of Y.Ajay Kumar. In the said case, the Respondents, in their counter, did not controvert, the stand of the Applicant that he was not under suspension prior to the order of punishment of removal; for which it was held that Annexure-7 was liable to be quashed. But this Tribunal declined to quash it as the Applicant approached this Tribunal without availing himself of the departmental remedies available to him. I have also gone through the order dated 13.04.2007 produced by the Applicant in court today. The said order is not the subject matter of challenge in this OA and, therefore, I refrain from making any remarks thereon.

In the light of the discussions made above, it is clear that though there is a provision of appeal, without availing himself of the said opportunity, the Applicant has approached this Tribunal in the present Original Application. Hence I am not inclined to entertain this OA at this stage.

In the result, this OA is disposed of being not maintainable. There shall be no order as to costs.

P

9

9

Send copies of this order along with OA to
the Respondents and free copies of this order be given to
Learned Counsel for both sides.

Dist. 2
Member (A)

copy of order
with copy of OA
may be sent to
all respondents
and copy of order
may be given to
both counsels.

7.5.07

In
S. 7/9/07