

**ORIGINAL APPLICATION NO.110 OF 2009****ORDER DATED 20th April 2009**

The applicant has filed this Original Application seeking the following relief:

- “(A) To issue notice to the Respondents;
- (B) To quash the departmental proceeding & order of suspension under Annexure-2 and 11 respectively;
- (C) To declare/hold that the contemplated departmental proceedings under Annexure-2 initiated by the respondent No.4 is without jurisdiction, illegal exercise of power, void ab initio which may be quashed;
- (D) To direct the respondents to make payment of full arrear salary w.e.f. 25.12.99 till his re-instatement with other consequential financial benefits within a stipulated time as this Hon'ble Tribunal may deem fit and proper for the greater interest of justice and equity;
- (E) To direct the respondent No.4 to make payment of balance arrear amount of salary from 1.9.94 to 26.11.94 to which the applicant is entitled to within stipulated time;
- (F) To pass any other order(s) direction(s) as this Hon'ble Tribunal may deem fit and proper;”

2. The facts in brief are that the applicant while working as Head Clerk (Stores & Accounts)/S.E.Rly./Talcher, on the allegation of having demanded and accepted illegal gratification, was issued with charge memo dated 31.4.1995 (Annexure-2) under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968, in consequence of which, the applicant was removed from service. However, the appeal preferred by the applicant having not yielded any fruitful result, he moved this Tribunal in



4 2

O.A.No.131/2000 challenging the order of removal. The said O.A. having been dismissed by this Tribunal, the applicant moved the Hon'ble High Court of Orissa in O.J.C.No.2948/01. The Hon'ble High Court, as per judgment dated 11.10.2007 allowed the Writ Application and the following order was passed:

“In the result, the writ petition is allowed in part. The impugned order passed by the Tribunal the departmental proceeding conducted from 29.12.1997 and the order of removal as well as the appellate order are quashed. It will be open to the opposite parties to conduct de novo enquiry as directed above after providing opportunity to the petitioner to defend himself in accordance with rules. However, if the proceeding is not started within a period of three months from the date of production of a copy of this order, the petitioner shall be entitled to reinstatement with all consequential service benefits”.

However, the applicant being aggrieved by the action of the respondents in appointing inquiry officer and fixing the date of inquiry without reinstating him in service, moved this Tribunal in O.A.No.172/08 praying for a direction to the Respondents to reinstate him in his post and complete the de novo inquiry within a stipulated time. This Tribunal, as per order dated 25.6.2008 dismissed the O.A. Challenging the order of this Tribunal, the applicant moved the Hon'ble High Court of Orissa in W.P.(C) No.10638/08 which was disposed of as per judgment dated 25.9.2008 observing and holding as under:

dm

"The order of removal from service having been set aside by this Court in the aforesaid writ application, the petitioner should have been relegated to the post which he was holding on the date of removal from service. If on the date of removal from service he was continuing, he should be allowed to continue and if on the said date he was under suspension, he should be paid subsistence allowance. The learned counsel for the opposite parties inform us that pursuant to the direction of this Court, a de novo inquiry has already commenced. It is, therefore, further observed that it is open for the opposite parties to pass orders for placing the petitioner under suspension pending disposal of the departmental proceeding. However, this observation may not be considered as a direction".

After the disposal of the above writ petition by the Hon'ble High Court, the present Original Application has been filed by the applicant with the prayers referred to above.

3. The question to be decided in this O.A. is whether the applicant is justified in approaching this Tribunal.

4. It is the case of the applicant that the initiation of disciplinary proceedings against him on the basis of the charge sheet at Annexure-A/2 is illegal and arbitrary, and the Respondents are estopped to proceed any further against him departmentally. Further, the applicant has also raised the question of propriety of initiation of disciplinary proceedings against him as per Annexure-A/2.

5. Admittedly, the applicant had been served with the charge sheet at Annexure-A/2 on the allegation of having demanded and accepted illegal

gratification. Although the matter was tried before this Tribunal as well as the Hon'ble High Court, as aforementioned, the Hon'ble High Court had never quashed the charge sheet under Annexuyre-A/2 in either of the Writ Petitions. In W.P.(C) No.10638 of 2008, the Hon'ble High Court, after hearing the parties, as per order dated 25.9.2008 observed as follows:

“.....The learned counsel for the Opposite Parties inform us that pursuant to the direction of this Court a de novo inquiry has already been commenced. It is, therefore, further observed that it is open for the opposite parties to pass orders for placing the petitioner under suspension pending disposal of the departmental proceedings. However, this observation may not be considered as a direction”.

Now, it appears that the applicant has been placed under suspension as per the impugned order passed by the disciplinary authority. At this stage, it is also to be noted that O.A.No.131/2000 filed by the applicant for quashing the punishment order of removal having been dismissed by this Tribunal, the matter was carried in appeal before the Hon'ble High Court in O.J.C.No.2948 of 2001 and the High Court, although quashed the order of removal, directed the opposite parties to conduct de novo enquiry, which means the inquiry on the basis of charge sheet at Annexure-A/2 to be continued from charge levelled and there is no question of quashing any proceedings initiated against the applicant on the basis of the order of the Hon'ble High Court, and thus the charge sheet under Annexure-A/2 has to



X S

be acted upon. If so, the present O.A. is nothing but ~~abusive~~ of the process of law and thereby the applicant is hoodwinking both this Tribunal and also the authorities by filing cases after cases, and therefore, it is only proper for the Tribunal to reject this O.A. at the stage of admission with costs of Rs.1000/- (Rupees one thousand only) on the applicant to be remitted in favour of the Orissa State Legal Services Authority, Cuttack, within three months from the date of receipt of this order. If the amount is not remitted, the same shall be recovered from the applicant by way of fine invoking the provisions of Revenue Recovery Act and Rules thereunder.

A copy of this order be sent to the Secretary, Orissa State Legal Services Authority, Cuttack, for information.

Ordered accordingly.

  
(C.R.MOHAPATRA)  
ADMINISTRATIVE MEMBER

  
(K.THANKAPPAN)  
JUDICIAL MEMBER