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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.808 of 2011
Cuttack this the 19th day of March, 2015

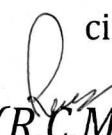
Gouranga Charan Rout...Applicant

-VERSUS-

Union of India & Ors. ...Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? Yes
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ? Yes


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
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CORAM
HON'BLE SHRI A.K.PATNAIK, MEMBER(A)
HON'BLE SHRI R.C.MISRA, MEMBER(A)

Gouranga Charan Rout
Aged about 58 years
S/o.Nakula Charan Rout
Senior Clerk
Office of W.P.O./C.R.S.
East Coast Railway
Mancheswar
At/PO-Mancheswar
Bhubaneswar
Dist-Khurda

...Applicant

By the Advocate(s)-Mr.D.K.Mohanty

-VERSUS-

Union of India represented through

1. The General Manager
E.Co.Rly. Rail Vihar
Chandrasekharpur
Bhubaneswar
2. The Chief Workshop Manager & Appellate Authority
Carriage Repair Workshop
East Coast Railway
At/PO-Mancheswar
Bhubaneswar
Dist-Khurda
3. Workshop Personnel Officer
Carriage Repair Workshop
East Coast Railway
At/PO-Mancheswar
Bhubaneswar
Dist-Khurda

...Respondents

By the Advocate(s)-Mr.S.K.Ojha

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ORDER
R.C.MISRA, MEMBER(A):

Applicant is presently working as Senior Clerk under the Respondent-Railways. In this Original application, he has sought for the following relief.

- i) ...to quash the D&A proceedings initiated by the Respondent No.3 vide No.CRW/MCS/Pers/D&A/GCR/4 dated 20.04.2010 under Annexure-A/4 and the order under Annexure-A/6 of the Appellate Authority.
- ii) And pass any other order/orders this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case.

2. The brief background leading to filing of this Original Application runs thus: While working as Senior Clerk, applicant was issued with a Memorandum of Charge dated 1.2.2008. In response to this, he submitted an explanation retaliating the allegations leveled against him. His explanation not being convincing, the Disciplinary Authority directed an inquiry to be conducted and accordingly, an inquiry was concluded on 18.5.2009. However, applicant was not supplied with copy of the report of the I.O. and on the advice of the Workshop Personnel Officer (Res.No.3), he submitted his final brief on 2.7.2009 to the Disciplinary Authority. While the matter stood thus, applicant received a communication dated 17.4.2010(A/3) by virtue of which Memorandum of Charge



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dated 1.2.2008 stood withdrawn. Thereafter, another Memorandum dated 20.4.2010 containing the same set of charge was issued to him. Aggrieved with the above, applicant submitted his explanation dated 14.5.2010 to Respondent No.3, inter alia, stating that the 2nd charge memo on the self-same allegation was not maintainable. Since he did not receive any response, he submitted an appeal dated 23.3.2011 to the Chief Workshop Manager(Res.No.2). His appeal being unheeded to, he moved this Tribunal in O.A.No.431 of 2011 for quashing the D&A proceedings initiated vide Memorandum dated 20.04.2010, with a further direction to Respondent No.2 to dispose of the appeal dated 23.3.2011. This matter was taken up for admission on 7.7.2011, when this Tribunal directed notice to Respondents on the question of admission. Thereafter, on a Memo being filed by the learned counsel for the applicant, vide order dated 7.9.2011, this Tribunal allowed withdrawal of O.A.No.431/2011 by granting liberty to the applicant to file a better O.A. In the meantime, applicant received a communication dated 16.7.2011(A/7) in response to his appeal dated 23.3.2011, which reads as under.

"I have gone through your representation under reference along with the relevant records.

As such, on verification of the relevant records from case file, it is found that the charges framed against you is under enquiry by the Inquiry Officer and no enquiry findings so far has been received.



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In accordance with sub rule-9 of DAR rules 1968 keeping the above fact and considering your appeal dated 23.3.2011, it is not feasible to drop/withdraw the charges as framed against you rive Charge Memorandum dated 30.04.2010.

Accordingly, your appeal is hereby disposed off".

3. In the above background, applicant has moved this Tribunal in this O.A. seeking relief as aforementioned.

4. In support of his claim, applicant has urged the following points.

- i) As per Railway Board's letter dated 1.12.1993 the Disciplinary Authority has the power to withdraw the charge sheet, but withdrawal of the same without any reason is bad in law.
- ii) Withdrawal of 1st charge sheet after completion of enquiry without assigning any cogent reasons and issuance of fresh charge sheet on the self-same allegation is without any authority.
- iii) There is no provision to conduct fresh enquiry.
- iv) There has been considerable delay in initiation of proceedings.

5. Respondent-Railways have opposed the prayer of the applicant by filing a detailed counter. In the counter, Respondents have submitted that based on a complaint regarding the genuineness of High School Certificate in respect of the applicant, Vigilance investigation was made. After receipt



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of communication dated 14.1.2008 from the Superintendent of Police, Vigilance as well as the clarification issued by the Board of Secondary Education, Orissa vide letter dated 8.1.2008, a major penalty proceeding was initiated against the applicant vide Memorandum dated 1.2.2008(A/1) on the ground that he had submitted a fake Higher Secondary Certificate, which, however, was later on withdrawn vide letter dated 17.4.2010 and corrigendum dated 1/6.09.2010 was issued reserving the right to issue fresh charge sheet to the applicant. Subsequently, another charge sheet was issued not on the self-same charge – rather on another charge of submission of fake certificated issued by the Board of Secondary Education (Matriculation Certificate) at the time of selection. According to Respondents, charge sheet dated 20.4.2010 has not been issued on the self-same charge as had been indicated in the charge sheet dated 01.02.2008. It is the case of the Respondents that the applicant has suppressed the material facts of issuance of corrigendum subsequent to order dated 17.4.2010 withdrawing the Memorandum of Charge dated 1.2.2008 wherein it was indicated to the applicant that the word "withdrawn" appears in the letter dated 17.04.2010 may be substituted "**withdrawn without any prejudice to issue a fresh charge sheet**". Hence the issuance of charge sheet subsequent to dropping of the charge sheet dated 1.2.2008 does not in any way infringe any of the provisions of D & A Rules or Board's instructions.

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6. With these submissions, Respondents have prayed that the O.A. being devoid of merit is liable to be dismissed.

7. Applicant has not filed any rejoinder to the counter.

8. We have heard the learned counsel for both the sides and perused the materials on record. We have also gone through the written notes of submission filed by both the sides. Having regard to the pleadings of the parties, the sole point that emerges for consideration is:

i) Whether after withdrawal of the original charge memo dated 1.2.2008, Respondent-Railways were within their rights to issue fresh Charge Memo dated 20.4.2010.

ii) Whether the charges leveled against the applicant vide Memorandum dated 1.2.2008 are the same as that of the Memorandum of Charge dated 20.4.2010.

iii) Whether there has been any delay in initiating disciplinary proceedings against the applicant.

9. In order to issue the point in issue No.(i), we would like to quote hereunder the relevant provisions of Board's letter No.E(D&A)93RG6-83 dated 1.12.1993, as relied on by the applicant.

"If the amendment to the charge sheet is of a major nature, it will be advisable to cancel the first charge sheet clearly indicating in the order cancelling of the original charge

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sheet with the intention of issuing a new charge sheet thereby stating the proceedings de novo. ***It may be clarified here that the order cancelling the original charge-sheet or dropping the proceedings should 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. If adequate reasons for cancelling/withdrawal of the original charge sheet are not indicated, issue of another charge sheet on the same facts after withdrawing the first one will be considered entirely without authority***

10. However, it has been submitted in the counter reply that by issuing Corrigendum dated 1/6.9.2010, the intention regarding issuance of further Charge Memo has been expressed. On a close scrutiny, it comes to light that the said Corrigendum has been issued on 1/6.9.010, i.e., ^{2nd} ^{long} after the issuance of Memorandum of Charge dated 20.4.2010. Therefore, the question to be determined is whether the Corrigendum dated 1/6.9.2010 could be read into the order dated 17.4.2010 withdrawing the earlier Memorandum of charge dated 1.2.2008 after the issuance of fresh charge Memo dated 20.4.2010. This position could have been accepted had the Respondents taken steps prior to issuance of 2nd Memorandum of charge dated 20.4.2010. To the contrary, the corrigendum so issued gives a delicate hint that the said action of the Respondents is an afterthought. Therefore, after having issued the 2nd Memorandum of charge, they cannot supplement their intention by issuing corrigendum dated 1/6.9.2010 with



reference to order dated 17.4.2010 while withdrawing the earlier Memorandum of Charge.

11. Learned counsel for the applicant during the course of hearing has placed reliance on the decision of this Tribunal in O.A.No.316 of 2012 disposed of on 23.7.2014. In that matter, this Tribunal dealt with RBE No171/93 dated 1.12.93 issued by the Railway Board, which reads as under.

"Subject: Issuing fresh charge memorandum after cancellation/withdrawal of original charge memo or after dropping disciplinary proceedings.

It has come to the notice of the Railway Board that in one of the Zonal Railways, the memo of charges issued to an employee was withdrawn by the disciplinary authority with the intention of issuing fresh detailed charge memo. However, while withdrawing the charge-sheet, no reasons therefor were given and it was only stated that the charge sheet was being withdrawn. The issue of a fresh charge memo subsequently was challenged by the employee before C.A.T. Bombay. The C.A.T. on hearing the case have quashed the same charge memo holding that unless there is a power in the disciplinary authority by virtue of the rules or administrative instructions to give another charge sheet on the same facts after withdrawing the first one, the second charge sheet will be entirely without authority.

2. The matter has been examined and it is clarified that once the proceedings initiated under Rule-9 or Rule 11 of RS(D&A) Rules, 1968, are dropped, the disciplinary authorities would be debarred from imitating fresh



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proceedings against the delinquent officers unless the reasons for cancellation of the original charge memo for dropping the proceedings were appropriately mentioned and it is duly stated in the order that the proceedings were being dropped without prejudice to 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 subsequently, the order cancelling the original one or dropping the proceedings should be carefully worded so as to mention the reason for such an action indicating the intention of issuing charge sheet afresh appropriate to the nature of the charges".

12. Having regard to the above, the Tribunal held as under.

"The import of the above quoted RBE is self-evident. The issue involved in the present O.A. has to be addressed against the criteria laid down in these guidelines. In the present case, vide order dated 6.3.2012, the charge sheet against the applicant was dropped due to some procedural lapses, and there was no expression of intention to issue any fresh charge sheet. Besides, this order was placed before the Tribunal in course of hearing in O.A.No.1 of 2012, based upon which the Tribunal passed orders that there remains nothing further to be proceeded against in the disciplinary proceedings on the subject matter in question.

Against this background, and the position of Rules laid down in the RBE No.171/13 dated 1.12.93 of the Railway Board, the authorities are not justified in

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issuing a fresh charge sheet on the self-same grounds by Memorandum dated 26.3.2012 and also in ordering an inquiry vide Memo dated 12.5.2012. These two orders are therefore, quashed and the prayer of the applicant, as a result, is allowed".

13. Considering the rule position in the matter of issuance of fresh charge sheet, as quoted above, it cannot be held that the Respondents were ~~not well~~ within their rights to issue fresh Charge Memo dated 24.4.2010 after withdrawal of original charge memo dated 1.2.2008, without expressing their intention to issue charge sheet afresh ~~to the~~ appropriate to the nature of the charge. Point in issue No.(i) is thus answered.

14. As regards the point in issue No. (ii), it is to be noted that there is no bar for issuing fresh charge memo on the grounds of some other misconduct over and above the charge memo already issued and/or cancelled/dropped/withdrawn. In that behalf there is no need to express any intention by the Disciplinary Authority. But in the instant case by withdrawing the earlier charge sheet, the Respondents have issued a charge sheet afresh apparently, appropriate to the nature of charge. This action is corroborated by them by issuing corrigendum dated 1/6.9.2010 wherein they have expressed their intention to issue fresh charge memo. In the circumstances, it cannot but be held that the charges leveled against the applicant vide Memorandum dated 1.2.2008 are the same as that of the

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Memorandum dated 1.2.2008 are the same as that of the Memorandum of Charge dated 20.4.2010.

15. Learned counsel for the Respondents has pleaded that the second charge sheet is not based upon the same charges as the first charge sheet. Charge sheet dated 1.2.2008 was issued to the applicant with the charge that the applicant had produced Higher Secondary Certificate at the time of his promotion, and this was found to be fake. The Respondents relied upon the document "Extract of Higher Secondary Certificate bearing Roll No.37S451/1987". The second charge sheet dated 20.4.2010 was on the charge that the applicant produced fake Matriculation passed certificate bearing Roll No.37S451/87 said to be issued by Board of Secondary Education. However, Respondents have failed to establish that the second charge sheet was based upon a different document. The claim of the Respondents is unsubstantiated by records, and therefore is not acceptable. On the other hand, learned counsel for applicant has argued that in both charge sheets the same allegation has been made that HSCE certificate issued by the Board was fake. We have examined the charge sheets. In the first charge sheet under Article of Charges, Higher Secondary Certificate bearing Roll No.37S451/1987 has been mentioned, and in the second charge sheet Matriculation passed certificate bearing Roll No.37S451/87 (same Roll No.) has been mentioned. It was upon the Respondents to establish the



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distinction between the charges as well as the documents relied upon. But they have failed to do so. Except making a bland statement that both charge sheets are on different charges, they have failed to go any further. This forces upon us the conclusion that both charge sheets were issued on self-same charges, and the issue No.(ii) is answered positively in favour of the applicant.

16. The point in issue No.(iii) is that the 1st charge sheet was issued on 01.02.2008 on the allegedly fake certificate produced on 3.12.2001 before the competent authority when the applicant was promoted as Junior Clerk. The initiation of proceedings after a period of seven years is challenged by the applicant as mala fide. However, the initiation of proceedings was based upon a letter of S.P.(Vigilance) dated 14.1.2008 in which the result of investigation into a complaint was intimated. The S.P.(Vigilance) found the certificate to be forged. There is no bar under the law that such a complaint cannot be investigated just because the certificate was produced seven years back. The action of the respondents cannot be nullified by the delay. The respondents were well within their right to take appropriate disciplinary action whenever a complaint is verified and found to be having a *prima facie* basis. This issue is therefore answered in favour of the respondents. However, any disciplinary action initiated has to conform to the procedures as established under the law, and departure from the Rules is

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liable to nullify such proceedings. The discussion on issues No.(i) and No.(ii) reveals that the authorities have not acted in this case as per the Rules.

17. In the conspectus of points discussed above, we are of the considered view that the Memorandum of Charge^l dated 20.4.2010(A/4) issued by the Disciplinary Authority was without any authority. Consequently, we declare the order dated 16.7.2011 under Annexure-A/7 of the Appellate Authority null and void. Annexures-A/4 and A/7 are therefore, quashed and set aside.

In the result, the O.A. is allowed. No costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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