

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

O.P.A. No. 799 of 1996

Present : Hon'ble Mr. Justice A.K. Chatterjee, Vice-Chairman

Hon'ble Mr. M.S. Mukherjee, Administrative Member

V. Prasan Kumar, S/o Sri V.E. Patnaik,  
aged about 24 years working as Khalasi,  
under Dy.CME(WM), S.E. Railway, Kharagpur,  
now residing at Block-2/E-1, Unit No.3,  
Old Settlement, Kharagpur, Dist. Midnapore,  
West Bengal.

.... Applicant

-Versus-

- 1. Union of India, service through  
General Manager, S.E. Railway, Garden  
Reach, Calcutta-43 ;
- 2. General Manager, S.E. Railway, Garden  
Reach, Calcutta-43 ;
- 3. Chief Project Manager(WM), S.E. Rly.,  
Kharagpur ;
- 4. Dy. Chief Mech. Engineer(WM), South  
Eastern Railway, Kharagpur.

.... Respondents

Counsel for the applicant : Mr. B.C. Sinha

Counsel for the respondents : Mr. S. Choudhury

Heard on : 3.4.1997 - Order on : 25.4.1997

O R D E R

A.K. Chatterjee, VC

The petitioner was appointed as a Khalasi in the Wagon Shop under the control of Deputy CME(WM), Kharagpur, South Eastern Railway on 7.1.94 and after about nine months, he received a charge-memo dt. 21.10.94 containing an allegation that he had produced an invalid adoption deed, on the basis of which he had secured appointment as Khalasi. A notice of removal from service

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was issued, which the petitioner challenged in O.A.1290 of 1994. This was disposed of on 14.7.95 by which the notice of removal was quashed and the respondents were given liberty to proceed against the petitioner on the basis of the charge-memo according to law. Subsequently, he was reinstated in service and the charge-memo was withdrawn on 2.4.96. However, on 9.6.96, another charge-memo was issued containing identical allegation, which the petitioner has challenged in the present application, inter alia, on the ground that the previous charge-sheet having been withdrawn, no fresh charge-sheet could be given and the same has been issued maliciously and in malafide exercise of power. He has, therefore, prayed to quash the charge-memo.

2. The respondents in their counter contend that a circular was issued calling for applications from the children of serving/retired/deceased railway employees with requisite qualification for appointment to certain post, in response to which the petitioner had applied claiming eligibility on the basis of an invalid adoption deed. After the petitioner was appointed in January, 1994, an investigation was made by the Vigilance Department in August, 1994 and the C.P.O. advised to terminate the service of the petitioner. A major penalty charge-sheet was accordingly issued on 21.10.94 and he was removed from service with effect from 1.11.94. However, after the order of termination was quashed in O.A.1290/95 with liberty to proceed on the basis of the charge-memo according to law, it was found that it contained some defects regarding list of documents and so it was withdrawn without any prejudice and a fresh charge-memo was issued on 9.6.1996. The respondents contend that it is quite competent to proceed against the petitioner on the basis of the fresh charge-sheet and there is no merit in the application filed by the petitioner.

3. We have heard the Ld.Counsel for both the parties and perused the records before us. The Ld.Counsel for the petitioner has stated that the circular calling application exclusively from the sons/daughters of ex-employees of the railways has been held to be unconstitutional and therefore, the petitioner could not be proceeded against for securing an appointment allegedly on the basis of an invalid adoption deed in support of his eligibility. We are not impressed with this argument because whether such eligibility is upheld or not, it does not mitigate the misconduct of furnishing a false document by an applicant in support of his candidature. Therefore, the charge-memo cannot be quashed on any such ground. It may also be noted in this connection that the unconstitutionality of the order was adjudicated in several cases including O.A. 767/92 of this Bench on 19.12.94 long before O.A. 1290/94 was disposed of on 14.7.95. Thus, it was quite open to the petitioner to seek quashing of the charge-memo on the ground of unconstitutionality of the order, which, however, was never canvassed. In such circumstances, we do not think that the charge-memo can be quashed on the ground under consideration.

4. However, the Ld.Counsel for the petitioner has urged that after the previous charge-sheet was withdrawn, ~~it was~~ it was no longer open to the respondents to issue a fresh charge-sheet on the same allegation. It has been argued that it was only if the previous charge-sheet was cancelled that a second charge-sheet on the same allegation could be issued. The record reveals that an order was made on 2.4.96 withdrawing the charge-memo without prejudice. There is hardly any substantial difference between the withdrawal and cancellation and we are unable to hold that fresh charge-sheet is incompetent after another charge-sheet on the same allegation is withdrawn. It is also found that in the same order,

it has been stated that the withdrawal of the charge-sheet was made without any prejudice meaning thereby that the authorities reserved right to issue a fresh charge-sheet on the same allegation. Now, the Ld.Counsel has referred to a decision of this Bench in Bhupati Kr. Sardar vs. Union of India(1989) 10 ATC 209 and several other decisions more or less to the same effect. Here it was held that issuance of the 2nd charge-sheet without recording reasons and without formally dropping the earlier charge-sheet is dis-approved. In the said case, as the judgment reveals, it could not be shown before the Tribunal that the first charge-sheet was dropped before the second charge-sheet was issued. And on the top of it, the petitioner of that case wrote to the authorities about the fate of the first charge-sheet to which he was not favoured with any reply and instead a fresh charge-sheet was issued on the same allegation. On the other hand, in the case before us, there was a specific order withdrawing the charge-sheet without any prejudice and it has been explained under what circumstances withdrawal was made and a fresh charge-sheet was issued. We do not see any reason how the petitioner could be prejudiced in any way by the issuance of 2nd charge-sheet after the earlier one was withdrawn. We are also unable to gather any malice or malafide as the foundation for issue of the 2nd charge-sheet.

5. The Ld.Counsel for the petitioner has referred to us to a decision of the Hon'ble Supreme Court, reported in (1995) 29 A.T.C. 113. We have gone through this decision and it is totally irrelevant in the context of the present case as nothing was canvassed before the Lordships regarding validity of a 2nd charge-charge-sheet, which is the issue under adjudication in the case before us.

6. For reasons stated above, we see no merit in this application, which is, therefore, rejected. No order is made as to costs.

*Mukherjee*  
( M.S. Mukherjee )  
Member (A)

*A.K. Chatterjee*  
( A.K. Chatterjee )  
Vice-Chairman