

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No.O.A.364/1996

Present : Hon'ble Mr. D. Purkayastha, Judicial Member

Hon'ble Mr. G.S. Maingi, Administrative Member

GOPA BOSE

VS.

UNION OF INDIA & OTHERS

For the applicant : Mr. B. Sarkar, counsel

For the respondents : Mr. S. Choudhury, counsel

Heard on : 31.3.2000

Order on : 31.3.2000

ORDER

D. Purkayastha, J.M.

In this O.A., the applicant, Gopa Bose, Sr. Clerk under the respondents, has challenged the validity of the second chargesheet dated 27.10.93 issued to her by the respondent No.5, the Security Commissioner(Staff)-RPF, South Eastern Railway, 11, Gardenreach Road, Calcutta-700043(Annexure A-5), the enquiry report and the order of punishment passed by the disciplinary authority on various grounds.

2. We have heard the 1st. counsel for both sides. 1st. counsel for the applicant, Mr. B. Sarkar submitted that the respondents acted without jurisdiction by issuing the second chargesheet to the applicant after dropping of the first chargesheet dated 14.7.93(Annexure A-13) issued by the respondent No.8 in this O.A. He also submitted that there were other grounds for quashing the departmental proceeding initiated against the applicant. Respondents have filed written reply denying the allegations made by the applicant in the B.A.

But we find that we need not traverse the entire facts of this application. It is admitted fact that the applicant was served with charge-sheet dated 14.7.93 (Annexure A/13) issued by the respondent No.8 on the allegation that during the suitability test for promotion to the rank of Head Clerks held at KGP on 19.12.92, Smt. Gopa Bose was caught by the DSC/WAT while copying the answer to the question No.3 from the guide book and the above act tantamounts to serious misconduct. Ld. counsel for the applicant has submitted that the said charge-sheet was dropped by a letter dated 24.11.93 without assigning any reason whatsoever and thereafter the second charge sheet dated 27.10.93 has been issued to the applicant on the same allegations. He also submitted that the second charge-sheet cannot be issued against the applicant in view of the Railway Board's Circular embodied at page 236 and 237 of the Railway Servants (Discipline & Appeal) Rules, 1968 of Bahri Brothers wherein it is stated that when the proceedings initiated under Rule 9 or 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. 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 charges (Railway Board's No. E (D & A) 93 RG 6-83 of 1.12.93, RBE 171/93). It is further mentioned in page 236 of the said book of Bahri Brothers that where it is decided to drop a charge-sheet and issue a fresh one, the disciplinary authority must give the reasons for cancellation of the original charge - sheet to the delinquent and also intimate that the charges were being dropped without prejudice to the right of

right of the administration to issue the fresh charge-sheet. It remain undisputed in this case that the said Railway Board Circular has statutory force as decided by the Hon'ble Apex Court in a judgment reported in AIR 1997 SC 284.

3. We have considered the submissions made by the 1d. counsel for both sides and have perused the records. On a perusal of the letter dated 24.11.93 (Annexure A/15) we find that the department dropped the first charge-sheet against the applicant stating that the Security Commissioner (Staff) GRC vide his letter No. DA/R.Major/GB/9-93/10760 dated 27.10.93, has dropped the charge-sheet against him issued by the ASC/RPF, Shalimar. We also find that the applicant acknowledged the said letter on 1.12.93 (Annexure A/15). On the face of the records we find that no reason has been assigned by the respondents and mandatory provisions have not been followed at the time of dropping of the earlier charge-sheet and they have issued another charge-sheet after dropping of the first charge-sheet on the same issue. We are satisfied that the respondents acted in contrary to the instructions and thereby acted without jurisdiction by issuing second charge-sheet against the applicant after dropping the first one which was issued on same grounds. It is submitted by the 1d. counsel for the applicant that the allegations in respect of copying answers in respect of question No.3 from guide book at the time of examination is baseless. We are not inclined to discuss this point. Since the respondents dropped the first charge-sheet against the applicant without assigning reason, we are of the view that they have no right to issue second charge-sheet on the same grounds which they could not prove.

4. In view of the aforesaid circumstances, we are of the view that the second charge-sheet dated 27- 10-93 has been issued against the applicant violating the rules in this regard. So, we quash the second charge-sheet dated 27.10.93 (Annexure A/15). Consequentially the enquiry report and the order of punishment on the basis of the

said charge-sheet are also liable to be set aside. However, we are not inclined to express our view in respect of the allegations brought against the applicant. We set aside the charge-sheet and enquiry report and order of punishment based on the said charge-sheet. It may be mentioned here that she shall be entitled to all the consequential benefits under the rules. It may be mentioned here that if she is found successful in the selection test, she shall be considered for promotion to the post of Head Clerk on the basis of the aforesaid selection test for which she was charge-sheeted in accordance with the extant rules. With these observations the application is disposed of without any order as to costs.

S. Swaraj
31.3.2009
MEMBER (A)

MEMBER (J) 21/3/2022