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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH : JODHPUR

Date of order : 12.10.2001

O.A. No. 253/2001

Shri Nand Kishore son of Shri Hazari Lal aged 41 years resident of C/o. Shri Kishan Sharma, near water supply, Rampur Post Office, Patodi District Gurgoan (Haryana) at present working as Lamp Man under the Station Superintendent, Patli Northern Railway, Bikaner Division, Bikaner.

... Applicant.

v e r s u s

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Bikaner.
3. The Divisional Personnel Officer, Northern Railway, Bikaner.
4. The Station Superintendent, Northern Railway, Parli District, Gurgoan, Haryana.

... Respondents.

Mr. H.R. Soni, Counsel for the applicant.

Mr. Salil Trivedi, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. A.P. Nagrath, Administrative Member

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

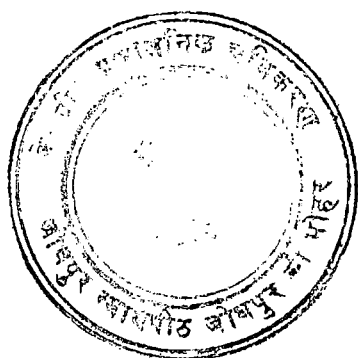
This is a further round of litigation by the applicant. Earlier, the applicant had approached this Tribunal in OA No. 261/2000, complaining that he has not been taken on duty. But the department was contending that the applicant himself was absent and he himself was not present with the certificate of DMO as to his fitness. In those

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circumstances, we directed the respondents to take him on duty on production of such medical certificate, leaving open to the Department to conduct the departmental proceedings, if any, initiated against the applicant without expressing any opinion on the disputes raised by both the parties.

2. It is submitted by the applicant that a charge-sheet was filed against the applicant as per Annexure A/10 dated 6.10.2000. But vide Annexure A/22 dated 01.02.2001, the same has been dropped. Therefore, fresh charge-sheet vide Annexure A/1 could not have been issued, and hence, the order Annexure A/1 is liable to be quashed. But we are unable to accept this contention of the applicant. What is stated vide Annexure A/22 is that the earlier charge-sheet vide Annexure A/10 is cancelled " निरस्त किया जाता है ". The applicant cannot read it as dropped. Moreover, it is within the powers of the employer to cancel the charge-sheet and issue a fresh one if any employer finds any formal defect in the charge-sheet already issued. At any rate, the power of the Department to withdraw the charge-sheet and issue a fresh charge-sheet cannot be disputed. Therefore, the prayer of the applicant for quashing the order Annexure A/1 cannot be accepted.



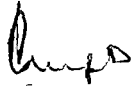
3. The learned counsel for the applicant further contended that there should be a direction to take the applicant on duty and there should also be a direction to the respondents to pay his back wages etc. But we are unable to accept this contention. Why the applicant remained absent etc. is for the department to consider in the departmental enquiry. If the applicant has any grievance, he may approach the competent authority to pass an appropriate order. The department contends that the applicant himself had not appeared before the enquiry officer. This disputed question cannot be examined at this stage, when the enquiry itself is in progress.

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4. The learned counsel for the applicant further contended that the allegations made in the charge sheet that he was absent, is not correct, since the applicant is always willing to do his duty, and the department is not taking him on duty. But in our considered opinion, these are the matters to be considered in the enquiry. Therefore, we do not go into the merits of the allegations made in the charge-sheet, since they are the matters ultimately to be decided by the department only. We further add that the applicant shall co-operate with the enquiry, so that the enquiry would be concluded as early as possible.

5. For the above reasons, we do not find any merit in this application. Accordingly, we pass the order as under:-

"The O.A. is dismissed at the stage of admission."



(A.P. NAGRATH)  
Adm. Member



(JUSTICE B.S. RAIKOTE)  
Vice Chairman

cvr.