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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH.**

Original Application No. 327 of 2002

Dated of order: July 08, 2005.

CORAM:

HON'BLE MR. J K KAUSHIK, JUDL. MEMBER

HON'BLE MR. G R PATWARDHAN, ADM. MEMBER

Chandra Bhushan Singh son of Shri Siya Ram Singh, Caste Brahman, Khalasi T.No. 17 in Railway Stores Depot Jodhpur Care of Shri Shashibhushan Singh Railway Quarter No. L-238C Old Loco Colony, Jodhpur.

...Applicant

Mr. M.K. Shrimali: counsel for the applicant.

V E R S U S



1. Union of India through: General Manager, Uttar Pashchim Railway Headquarter (Old Loco Colony Area), Jaipur.
2. Deputy Controller of Stores, Uttar Pashchim Railway Stores Depot, Jodhpur.
3. Assistant Controller of Stores, Uttar Pashchim Railway Stores Depot, Jodhpur.
4. Enquiry Officer, D.M.S.I. Uttar Pashchim Railway Stores Depot, Jodhpur.

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Respondents

Mr. Kamal Dave, counsel for the respondents.

ORDER

[By Mr. J K Kaushik, Judl. Member]

Shri Chandra Bhushan Singh has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 wherein he has questioned the validity of order dated 25.11.2002 at Annexure A/2 and has sought for a further direction to the respondents not to proceed further with the

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Memorandum dated 21.06.2002 at Annexure A/1 and has also sought for quashing of these orders.

2. We have heard learned counsel for both the parties and have very carefully considered the pleadings and the records of this case.

3. The factual matrix of this case is within a narrow compass. The applicant has approached this Bench of the Tribunal soon after he has been issued with a Memorandum dated 21.06.2002 under Rule 9 of Railway Servant (Discipline and Appeal) Rules, 1968 wherein the set of charges against the applicant has been levied. The main charge against the applicant is that he had been obtained the employment as Casual Labour on the basis of a Casual Labour card wherein the working days for the period 16.03.1978 to 15.09.1978 has been shown. But as per the records, he had never worked during the said period. The re-engagement was to be done only in cases where one has worked earlier to the particular cut off date i.e. 01.07.1978. It has been averred that on an earlier occasion, the services of the applicant came to be terminated which he has successfully challenged before the Central Industrial Tribunal, Jaipur and an award came to be passed in his favour on 24th February 1993 wherein the termination order came to be quashed and the applicant was allowed all benefits including continuity in service. It has also been averred that the matter relating to the bogus card and obtaining the employment on the basis of such card came for adjudication before the Industrial Tribunal and the same has



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been settled but the charge-sheet has been issued in the same matter.

4. A detailed reply has been filed on behalf of the respondents controverting the facts and grounds mentioned in the Original Application and the same is followed by rejoinder wherein almost the facts mentioned in the Original Application have been reiterated and certain portion of the award has been reproduced. The learned counsel for the applicant has contended that in the same subject matter of the charge-sheet, the adjudication took place before the Learned Industrial Tribunal and the same was settled and proceeding in the same matter again tantamounts to the violation of doctrine of double jeopardy. It has also been contended that second enquiry on the same set of charges and the material on records cannot be conducted as per the rules in vogue. In this connection, he has also cited the judgement of the Hon'ble Apex Court in case of **Union of India vs. K.D. Pandey and another** reported in 2003(4) SCT 484 and has submitted that their Lordships of Hon'ble Supreme Court have held that the second enquiry on the same set of charges and the material on records is not permissible. He has submitted that controversy involved in this case is squarely covered on all fours by the said judgement and the issue does not remain res integra.



5. On the contrary, the learned counsel for the respondents has vehemently opposed the contentions raised on behalf of the applicant and has submitted that present one is the independent enquiry and on earlier occasion no such enquiry was conducted

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inasmuch as the applicant was never issued with any charge-sheet and question of having any enquiry does not arise. Our attention was also drawn to certain paras of the award wherein it has been clearly mentioned that the applicant was not issued with any charge-sheet and no departmental enquiry was conducted in the matter. He has, therefore, contended that once no enquiry as per rules was conducted, present one cannot be construed to be second enquiry and the judgement which has been cited by the learned counsel for the applicant does not apply in the instant case. Therefore, the Original Application deserves to be dismissed.



6. We have considered the rival submissions put forth on behalf of both the parties. The only question and ground that has been pressed for our consideration is as to whether the present enquiry should be said to be second enquiry or not. As indicated above, the admitted position of the case is that on earlier occasion the applicant was not issued with any memo or charge sheet and no enquiry was conducted in the matter and this is the only enquiry which is being sought to be conducted. It is clear from the perusal of the award that the termination order came to be quashed only on the ground that there was non compliance of Section 25 (f) of I D Act 1947 and no finding has been given that the entries in the card were not bogus. We may further mention here that even relevant records were not produced before the Industrial Tribunal as such it would be safe to conclude that there was no enquiry in the matter on earlier occasion. If that were so, it would be safe to conclude that the present one is not the second enquiry but it is the first charge-sheet and it is the

enquiry for the first time. In this view of the matter we are unable to accept the contentions of the learned counsel for the applicant and the judgement in ***Union of India vs. K.D. Pandey and another*** (supra) has absolutely no application in the instant case. There is no force in this Original Application.

7. Looking the matter from yet another angle, the law on the point of interfering at the stage of issuance of the charge-sheet is by now well settled in the case of ***Union of India and Others vs. Upendra Singh*** reported in 1994 Supreme Court Cases (L&S) 768 wherein it has been clearly said that the Tribunal or any Court for that purpose should not lightly interfere in the matter of disciplinary proceedings at the stage of issuing of the charge-sheet or before completion of the proceedings even certain observations have been given for limited scope of judicial review. Para 6 of the said judgement is relevant and the contents of the same are reproduced as under (only relevant portion):



" 6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court."

8. In view of what has been said and discussed above, we find that this Original Application is devoid of any merits and

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substance. The same stands dismissed, accordingly. The parties are directed to bear their own costs. The interim order granted earlier stands vacated forthwith.



(G R PATWARDHAN)
Administrative Member

(J.K.KAUSHIK)
Judicial Member

Kumawat

Part II and III destroyed
in my presence on 10.11.14
under the supervision of
section officer (I) as per
order dated 18/11/13-

Alt
Section officer (Record)
10/11/14

Copy of order sent
to Counsel for Pet
by Speed post Regd AD
Wale no. 191
alt 19.7.05

*Re
K. S. 17/12*