

796

## **CENTRAL ADMINISTRATIVE TRIBUNAL JODHPUR BENCH, JODHPUR**

O. A. No. 244/Jodhpur/2010

Date of decision: 09.08.2012

**CORAM :**

HON'BLE MR. G. SHANTHAPPA, JUDICIAL MEMBER

HON'BLE MR. B.K.SINHA, ADMINISTRATIVE MEMBER.

Dinesh Kumar Nagar S/o Shri Mahesh Kant Nagar aged 54 years, resident of 16-B, Ambedkar Colony, Near Mahavir Cinema, Abu Road, District Sirohi, (Raj) (Posted as Jen-II Drawing, Assistant Divisional Engineer Office, Abu Road, North Western Railway).

: Applicant

[By Mr. K.K.Shah, Advocate]

**Versus**

1. The Union of India through General Manager, North Western Railway, Jaipur.
2. Divisional Railway Manager, Divisional Office, North Western Railway, Ajmer.
3. Senior Divisional Engineer, (Co-ordinate), North Western Railway, Ajmer.
4. Assistant Divisional Engineer, North Western Railway, Abu Road, District Sirohi.

....Respondents

[By Mr. Kamal Dave, Advocate]

**O R D E R**

**[PER HON'BLE MR. G. SHANTHAPPA, JUDICIAL MEMBER]**

The above application is filed under Section 19 of the Administrative Tribunals Act, 1985, challenging the legality and propriety of the Charge Memo No. 175/E/Engg./05/10/1 dated 11.06.2010, and for further relief to hear this case along with O.A. No. 228/2010 ***Dinesh Kumar Nagar Vs. Union of India and Ors.***

2. We have heard the learned counsel for the respective parties.
3. The learned counsel for the applicant submits that O.A. No. 228/2010 has been disposed of on 15.07.2011, the said O.A. was filed by the present applicant. It is stated that the documents filed in the said O.A., may also be referred in the present O.A. Those



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documents are filed today (on the date of hearing) in the open Court, which are taken on record.

4. It is an admitted fact from either side that a copy of the memo of charges dated 11.06.2010 was served along with the listed documents. Without submitting his representation, the applicant has filed the present O.A. The applicant had submitted his representation dated 16.08.2010 and requested to supply some of the records. Subsequently, filed the present O.A.

5. It is the grievance of the applicant that the charge memo is illegal and against the law. It was alleged that the applicant remained absent after investigation of the case by a Railway Doctor on 12.04.2010 and the applicant has not joined duty till date, was relieved on 09.10.2009 in pursuance to the transfer order dated 16.09.2009 and since then not joined duties at the place of transfer and he has been sick under private medical Doctor. Along with the charge memo, list of documents i.e. transfer order, letter of the Chief Medical Officer and the letter of Assistant Divisional Engineer, Abu Road, dated 16.03.2010 have been listed. The applicant was not relieved on 09.10.2009. The letter dated 16.03.2010 would reveal that the relieving order dated 09.10.2009 was sent to the residential address of the applicant, the same was refused by the family members of the applicant. The applicant has been regularly informing the office of the 4<sup>th</sup> respondent by submitting sick memo by registered AD post and all the medical certificates have been forwarded to the respondent No. 3. The applicant submitted his application dated 16.08.2010 under the Right to Information Act to make available the statements of witnesses as well as copy of the relieving order and other letter as shown in the memorandum dated 09.10.2009. There was no whisper regarding relieving of the



applicant in the said letter. The applicant was suffering from L-3 Nerve Root Compression in the Lumber Spine leading to the pain in the right lower Limp. The Medical Officer, who examined the applicant, never gave information regarding complete fitness of the applicant and it was only a recommendation that the applicant may resume his duties. The applicant submits that there has been manipulation in the documents, else there could not have been any doubt in the minds of the respondents as to the place of the working of the applicant. The medical certificates so submitted are required to be examined, however, it can be rejected only after verification by the Railway Medical Officer on his advise. The respondents have not taken cognizance of the opinion of the medical officer. There are some disputed facts those can be verified from the records. Hence, this Tribunal may decide the issue challenging the charge memo.

6. The respondents have filed reply statement, vehemently opposed the O.A. and refuted the averments made in the O.A. The present O.A. is filed only on the ground that the relieving order dated 09.10.2009 was never served on the applicant, that he has submitted a sick certificate issued by RMP which ought not to have been considered as application for leave, the sick certificates were sent and were not doubted, hence, it cannot be said that the applicant is absent since 09.10.2009, the information of the Railway Doctor, who examined him and found fit. The main objection of the respondents is that the O.A. is premature and without filing representation to the charge memo, he has no legal right to challenge the memo of charges. The applicant has alternative remedy available under Rule 9 of the Railway Servants (Discipline & Appeal), Rules, 1968. The O.A. is premature in view of the



judgments of the Hon'ble Supreme Court in the case of **Union of India Vs. Ashok Kacker** reported in 1995 Suppl. (1) SCC 180 and **Secretary to Government Prohibition & Excise Department Vs. L. Srinivasan** reported in (1996) 3 SCC 157 and the case of **Dy. Inspector General of Police Vs. K.S. Swaminathan** reported in (1996) 11 SCC 498. The O.A. is thus liable to be dismissed. The O.A. No. 228/2010 filed by the applicant has been disposed of on 15.07.2011. The documents in the said O.A. are not relevant to the present case, the documents which are relied upon along with the list of documents, they can only be relevant documents to the charge memo. There is no legal ground available to the applicant disbelieving the information of the Doctor in view of the judgment of the Hon'ble Supreme Court in the case of **V.K. Majotra Vs. Union of India and Ors.** reported in (2003) 8 SCC 40. The applicant has no case. The issuance of the chargesheet is nothing but, part of the inquiry to extend opportunity in adherence to principles of natural justice before arriving at a conclusion in respect of imposition of penalty. The applicant was transferred vide order dated 16.09.2009 and he was relieved on 09.10.2009. The applicant was examined by the Railway Doctor on 12.04.2010 at his home (as applicant failed to resent him for medical examination before the Doctor) and the Railway Doctor declared that the applicant himself is fit to resume duty. In view of being relieved on 09.10.2009, the applicant failed to report for duty. Hence, a chargesheet was issued by the competent authority. The relieving order dated 09.10.2009 was sent to the applicant to his house address, the family members refused the same in the presence of the employees of the Railways. Unless the truth is come-out from



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the inquiry, the applicant cannot challenge the charge memo. The applicant has remedy to exonerate after conducting the inquiry.

7. The applicant filed a rejoinder. There is no clarification to the reply statement except which is in the form of repetition of the O.A. In his rejoinder, he has stated that there is no bar to challenge the charge memo, there is statutory remedy as contended by the applicant, is not correct.

8. We have carefully considered the submissions of the learned counsel from either side. On the admitted facts narrated in the preceding paragraphs, it is evident that the applicant has not submitted his representation to the charge memo. Rule 9 of the Railway Servants (Discipline & Appeal) Rules, provides after service of the charge memo, the applicant has to submit his representation taking all his legal grounds to challenge the averments made in the memo of charges. After submission of the representation, the disciplinary authority will go through the stand taken by the applicant and also after going through the charge memo, he will opine whether he can appoint the inquiry officer to inquire into the charges. The provisions of Rule 9 (a) (iv) of the Railway Servants (Discipline & Appeal) Rules, are extracted below :-

**"9(a)(iv) If the disciplinary authority, after consideration of the written statement of defence, is of the opinion that the imposition of a major penalty is not necessary, it may drop the proceedings already initiated by it for the imposition of major penalty, without prejudice to its right to impose any of the minor penalties, not attracting the provisions of sub-rule (2) of Rule 11. Where the disciplinary authority so drops the proceedings but considers it appropriate to impose any of the minor penalties, not attracting the provisions of sub-rule (2) of Rule 11, it may make an order imposing such penalty and it will not be necessary to give the Railway servant any further opportunity of making representation before the penalty is imposed."**

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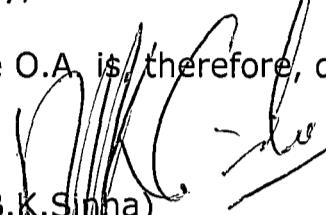
9. According to the facts and circumstances of this case, the stage under the said rules has not attained. The counsel for the applicant submits that there are disputed facts in respect of service of relieving order and the opinion given by the Railway Doctor and the RMP.

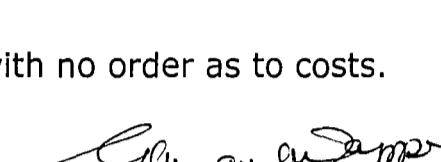
10. We have carefully examined the rule position and also facts of this case. The counsel for applicant relied-upon certain documents which were filed in 228/2010 decided on 15.07.2011. We have verified the documents at Annex. A/5 to Annex.A/11 of those documents are the documents which are relied upon in the list of documents and other documents, unless the applicant submit his representation to the charge memo explaining the reasons for withdrawing or quashing the charge memo, ~~the~~ disciplinary authority cannot take decision on the representation to be filed, hence, the present O.A. cannot be entertained. In this aspect, the Hon'ble Supreme Court has held in ***Ashok Kakkar, L. Srinivasan and Swamynathan's*** case supra, the said judgments are applicable. Under what circumstances the applicant can challenge the charge memo? The applicant requested the respondents for supply of certain documents, those documents are already available with the applicant which are produced along with the M.A. The applicant can submit his representation to the charge memo. The applicant has not exhausted the remedy available under Rule 9 of the Railway Servants (Discipline & Appeal) Rules. Hence, we are of the considered view that the O.A. is premature. As held by the Hon'ble Supreme Court the charge memo can be challenged, if an incompetent authority has issued the charge memo, the charges are vague, the charge-sheet is issued with mala fide intention and in violation of the statutory provisions. In the facts and circumstances



of this case, none of the above mentioned grounds are established by the applicant, hence, the applicant has not made-out a case for grant of relief. The respondents have justified in their reply statement relying on the judgment of the Hon'ble Supreme Court. Accordingly, the O.A. is liable to be dismissed.

11. The O.A. is, therefore, dismissed with no order as to costs.

  
(B.K.Sinha)  
Administrative Member

  
(G. Shanthappa)  
Judicial Member

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