

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 81/2011

Jodhpur this the 12th January, 2015

CORAM

**Hon'ble Mr. Justice Kailash Chandra Joshi, Member (Judicial),
Hon'ble Ms. Meenakshi Hooja, Member (Administrative)**

Surendra Malviya S/o Late Shri Gourishankar Malviya aged about 57 years resident of railway Bunglow No. L-1, Rly Colony, Churu, at present employed on the post of Junior Engineer-I (Loco) Churu under Sr. DME Bikaner, N/W Railway.

....Applicant

By Advocate: Mr J.K. Mishra.

Versus

1. Union of India through General Manager, North Western Railway, Jaipur.
2. Sr. Divisional Mechanical Engineer, North Western Railway, Bikaner Division, Bikaner.

By Advocate : Mr Kamal Dave.

.....Respondents

ORDER

Per Justice K.C. Joshi, Member (J)

Shri Surendra Malviya, the applicant has filed this Original Application under section 19 of Administrative Tribunals Act, 1985



and challenged the charge sheet dated 21.07.2008 (Annex. A/1) issued by respondent No. 2 and sought following reliefs :

- i) That impugned charge sheet dated 21.07.2008 (Annex. A/1), passed by the 2nd respondent and all subsequent proceedings thereof, may be declared illegal and the same may be quashed. The respondents may be directed to allow all consequential benefits as if no such disciplinary proceedings were ever in existence.
- ii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- iii) That the costs of this application may be awarded.

2. The brief facts to adjudicate the matter, as averred by the applicant, are that when the applicant was working on the post of Section Engineer (Loco) at Sadulpur, North Western Railway in Bikaner Division a raid/surprise check was conducted by the CBI Jaipur at RDI Sadulpur (Loco) on 27.04.2007 on the information received from reliable source regarding misappropriation of Diesel and it registered an FIR No. RC JAI 2007 A 0008 on 30.04.2007 against the applicant and six other persons under section 120 B r/w 406, 407, 409, 420 & 477-A IPC and under section 13(2) r/w 13(1) (c) & (d) of Prevention of Corruption Act (Annex. A/3). The challan/charge sheet No. 08 dated 05.06.2008 has been filed in the case by CBI before Special Judge, CBI Cases, Jaipur and the trial court has already started its proceedings and the applicant was granted bail. The respondent No. 2 vide memo dated 21.07.2008 issued a charge sheet under Rule 9 of Railway Servants (Discipline &

Appeal) Rules, 1968 hereinafter referred as RSDA Rules and the subject matter of the charge sheet relates to the same incident and based on the same set of facts and law. The applicant submitted a representation dated 9/10.02.2009 (Annex. A/2) to respondent No. 2 and requested to not to proceed with the charge sheet/inquiry as on the same fact the criminal case is pending and his defence would be disclosed and the criminal case is likely to be prejudiced and affected adversely. The applicant also demanded certain documents to make effective reply to charge sheet. The inquiry officer did not proceed with the inquiry after receipt of representation from the applicant. Now, the evidence has been started in the criminal case and new inquiry officer in the departmental inquiry issued a letter dated 03.03.2011 to the applicant to appear before inquiry officer in inquiry scheduled to be held on 08.03.2011 and the applicant appeared but no effective proceeding could be done and no witness has been examined in the department inquiry till date and the case is adjourned for examination of witnesses on 28.03.2011 and the inquiry officer is adamant to complete the inquiry before finalization of the criminal case. The evidence in criminal case has been started and two witnesses have been examined and three witnesses have been summoned for evidence on 28.04.2011. It has been averred by the applicant in the OA that he has always been present in the criminal case and has not delayed the case which is now likely to be finalized soon. It has been further averred by the applicant that he has falsely been implicated in the case due to some extraneous reasons without any material against him and no evidence is

available on record to prove the charges which are quite vague as he has not committed any misconduct and even the so called charges do not constitute any misconduct. He has not violated any rules as he has entered in the stock register DS-6 immediately, the actual quantity of HSD oil received by him on 27.04.2007. Further, no loss has been caused to the department and involvement of the applicant cannot even be presumed. It has also been averred in the OA that to prove the charges certain witnesses including the departmental charge sheet to which the applicant has fundamental right to cross-examine in criminal trial, if these witnesses are cross-examined in departmental proceeding by the applicant before their cross-examination in criminal trial, applicant on foreclosure reserves his right to cross-examination in disciplinary proceedings, the procedure envisaged under rules 14 of the RSDA Rules would be adopted to proceed ex-parte. In such an event, the prejudice shall be caused to him in disciplinary as well as in criminal proceedings. In this case, complicated questions of law and facts are involved in as much as about 38 witnesses are to be examined on behalf of prosecution and about 56 documents are to be examined besides the defence documents and witnesses, therefore, the applicant has prayed for the reliefs as extracted above.

3. By way of reply, the respondents have averred that the applicant has no prima facie case, in view of the fact that the parameters in criminal case and departmental inquiry are quite different. The applicant himself indulged in a criminal act culminating

into CBI raid/surprise check wherein the applicant was caught red handed and arrested by the CBI on 30.04.2007 and was granted bail by the Hon'ble High Court on 08.06.2007. The misconduct indicated in the charge sheet relates to failure on the part of the applicant to maintain devotion to duty and lack of integrity towards his assigned duties resulting in misappropriation of diesel. The charge sheet is noting but initiation of process affording opportunity to the delinquent to put his defence in respect of the charges and hence the process affording opportunity to defend cannot be a cause of relief being aggrieved person as the charge sheet is issued in fulfillment of the requirement of principle of natural justice and fair play in affording opportunity to the delinquent. The applicant claimed his fundamental right of cross examining in the criminal trial whereas he failed to represent himself by way of reply before the inquiry officer and it is settled legal proposition that the criminal trial and the department inquiry can go hand in hand. In view of the submissions, the respondents have submitted that the applicant is not entitled to get any reliefs sought for and have prayed for the dismissal of the OA.

4. Heard counsel for both the parties. Counsel for applicant contended that from the bare perusal of the charge sheet, no misconduct is made out and the applicant has been falsely implicated in the above misconduct. He further drew our attention towards Annex. A/1 charge sheet and contended that in para No. 1 of the charge sheet it has not been mentioned that how much amount of

the HSD oil was short in quantity which the applicant received on 27.04.2007 in road tanker No. RJ 25 G 0641 and how he is responsible for receiving short quantity of HSD oil when he has mentioned the real amount of HSD oil received from the tanker. Further, counsel for applicant submits that in the absence of any specific charge there are reasonable grounds to quash the charge sheet and in para No. 7 of the OA it has been averred that the applicant has been falsely implicated in such and charge and he has not committed any misconduct and even the so called charges do not constitute any misconduct and no loss has been caused to the department and involvement of applicant cannot even be presumed. He further drew our attention to reply to para 7 of OA that 'the bare reading of the charge sheet clearly indicate that he himself indulged in a criminal case and departmental inquiry as submitted above relate only to misconduct of applicant.'

5. Per contra, counsel for respondents contended that the applicant is involved in criminal case also and the criminal case is pending in CBI Court Jaipur. He further contended that the Memo of charges (Annex. A/1) clearly shows that the applicant has committed a misconduct which requires to be enquired by the competent authority.

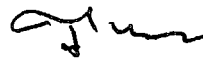
6. We have considered the rival contentions of both the parties. It is well established proposition of law that charge sheet in the disciplinary proceedings can only be quashed when the facts

narrated in the charge sheet do not constitute any misconduct or it has been served by authority who is not competent to do so. But, in the present case from perusal of Annex. A/1 it is clear that the charges framed by the competent authority require to be enquired into and further, the applicant must take all these grounds before the competent authority in his reply to the charges during disciplinary proceedings. After decision of the competent authority in the same, the applicant will have a right of appeal and further remedies as per law. Therefore, in our considered view, the charge sheet cannot be said to be vague or issued by the authority which is not competent to do so. So, we are not inclined to interfere with the charge sheet.

7. Consequently, OA is dismissed with no order as to costs. However, since the applicant has retired after attaining the age of superannuation, the respondents are directed to complete the disciplinary proceedings within 4 months from the date of receipt of this order.



(MEENAKSHI HOOJA)
Administrative Member



(JUSTICE K.C. JOSHI)
Judicial Member

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