के.प्र.अ. (प्रक्रिया) ... के अन्तर्गत नि: शुल्क प्रति

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Jodhpur, this the 2nd day of February, 2015

CORAM

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

Original Application No. 363/2013

Hyder Khan s/o Shri Kasam Khan, aged 55 years, r/o Near Christan Kabristan, Chand Mari, Abu Road, District Sirohi; Helper, in the office of the Diesel Foreman, North Western Railway, Abu Road, District Sirohi.

.....Applicant

By Advocate: Mr. Vijay Mehta

Versus

1. The Union of India through the General Manager, North Western Railway, Jaipur
2. Divisional Mechanical Engineer (Diesel), North Western Railway, Abu Road, District Sirohi.
3. Senior Divisional Mechanical Engineer (Diesel), North Western Railway, Abu Road, Sirohi.

.....Respondents

By Advocate : Mr. Manoj Bhandari assisted by Mr. Sunil Purohit

Original Application No. 364/2013

Laxman Lal s/o Shri Gamana Ji, aged 57 years, r/o Menawas, Gandhi Nagar, Ward No.18, Abu Road, District Sirohi; Helper, in the office of the Diesel Foreman, North Western Railway, Abu Road, District Sirohi.

.....Applicant

By Advocate: Mr. Vijay Mehta

Versus

1. The Union of India through the General Manager, North Western Railway, Jaipur

2. Divisional Mechanical Engineer (Diesel), North Western Railway, Abu Road, District Sirohi.

3. Senior Divisional Mechanical Engineer (Diesel), North Western Railway, Abu Road, Sirohi.

.....Respondents

By Advocate : Mr. Manoj Bhandari assisted by Mr. Sunil Purohit

Original Application No. 365/2013

Amer Chand s/o Shri Ram Deo, aged 54 years r/o near Old ITI School, Gandhi Nagar, Abu road, District Sirohi; Helper, in the office of the Diesel Foreman, North Western Railway, Abu Road, District Sirohi.

.....Applicant

By Advocate: Mr. Vijay Mehta

Versus

1. The Union of India through the General Manager, North Western Railway, Jaipur

2. Divisional Mechanical Engineer (Diesel), North Western Railway, Abu Road, District Sirohi.

3. Senior Divisional Mechanical Engineer (Diesel), North Western Railway, Abu Road, Sirohi.

.....Respondents

By Advocate : Mr. Manoj Bhandari assisted by Mr. Sunil Purohit

Original Application No. 246/2013

Ashok Kumar s/o Shri Bhom Ji, aged 54 years, r/o Luniapura, Regar Mohalla, Abu Road, District Sirohi; Helper, in the office of the Diesel Foreman, North Western Railway, Abu Road, District Sirohi.

.....Applicant

By Advocate: Mr. Vijay Mehta

Versus

1. The Union of India through the General Manager, North Western Railway, Jaipur

2. Divisional Mechanical Engineer (Diesel), North Western Railway, Abu Road, District Sirohi.

3. Senior Divisional Mechanical Engineer (Diesel), North Western Railway, Abu Road, Sirohi.

.....Respondents

By Advocate : Mr. Manoj Bhandari assisted by Mr. Sunil Purohit

ORDER (ORAL)

Per Hon'ble Mr. K.C.Joshi

For the purpose of convenience, we are deciding all these 4 OAs by a common order as the facts and points involved in all these OAs being common in nature.

2. All the applicants have challenged the order dated 20.3.2013 (Ann.A/1 in all the OAs) and prayed that this Hon'ble Tribunal may be pleased to modify order Ann. A/1 by deleting words "without prejudice to further action being taken" mentioned in the last line of the impugned order and order dated 21.9.2013 (Ann.A/3 in all the OAs) may kindly be quashed.

3. For the sake of convenience, brief facts of OA No.363/2013, as stated by the applicant, are taken. A chargesheet was issued to the applicant on 4.4.2002 and the applicant was dismissed from service vide order dated 19.7.2004 holding the charges as proved. The appeal

filed against the punishment order was also dismissed. Aggrieved of the above, the applicant has challenged the punishment order and the order on his appeal by filing OA before this Tribunal and this Tribunal relying on the order passed in the OA No.315/2004 dated 7.3.2008 quashed the order of dismissal as well as the appellate order with consequential benefits. However, liberty was granted to the respondents to proceed against the applicant afresh with respect of the said charge sheet. In compliance of the order, the applicant was reinstated in service on 10.11.2008 and a departmental inquiry was again commenced with respect to the charge sheet dated 4.4.2002. The Inquiry Officer vide inquiry report held that the charges have not been proved and cannot be proved. The respondent No.2 while concurring with the findings of the Inquiry Officer held that the charges against the applicant have not been proved and can not be proved. The respondent No. 2 exonerated the applicant from the charges and dropped the charges vide order dated 20.3.2013. However, the respondents No.2 had dropped the charges without prejudice to further action being taken. Aggrieved by the last lines of order Ann.A/1 to the effect that charges are dropped without prejudice to further action being taken, the applicant submitted appeal under Rule 18 of the Railway Servants (Discipline and Appeal) Rules, but the respondent No.3 has rejected the appeal vide order dated 21.9.2013 (Ann.A/3). Therefore, aggrieved of the action on the part of the respondents, the applicant has filed this

OA praying for modification of order Ann.A/1 and for quashing the order Ann.A/3.

4. In reply to the OA, the respondents have denied the right of the applicant and submitted that of course, the applicant has been exonerated and there is no further action required to be taken and the language which has been used by the Disciplinary Authority is only a normal and routine language which is not relevant insofar as the present case, because the charges have been dropped. The applicant's apprehension is absolutely baseless and misconceived for the reason that in future any action can always be taken in any case whatsoever. In such circumstances, the apprehension of the applicant is absolutely incorrect and misconceived. The respondents cannot be restricted not to take action against any person including the applicant in future in any other case. The respondents have further submitted that the Appellate Authority has passed a speaking and reasoned order and the language used in judgment is necessary to uphold judicial process. In this case, all hearings have been taken place and the applicant has been heard during inquiry. As evidences are lacking to prove him guilty, charges were dropped without prejudice to further action being taken. The Hon'ble Tribunal in its earlier order has categorically mentioned that respondents will be at liberty to proceed against the applicant in accordance with rules, law and principles of natural justice and that has been done as per D&AR Rules. Therefore, the OA is liable to be dismissed.

5. In rejoinder, while reiterating the averments made in the OA, the applicant has submitted that the line mentioned in Ann.A/1 that "the charges are dropped without prejudice to further action being taken" does not pertain to the present case but pertains to any other case and no case is pending against the applicant, therefore, this line is misconceived and deserves to be deleted from order Ann.A/1.

6. Heard both the parties. Counsel for applicant contended that while exonerating the applicant, the Disciplinary Authority vide order Ann. A/1 (in OA No.363/2013) passed the following order:-

> ''प्रशासनिक अधिकारी के रूप में यह आदेश देता हूँ कि कर्मचारी श्री हैदर खान पुत्र श्री कासिम खान को आरोप मुक्त किया जाता है। Charges are dropped without prejudice to further action."

7. Counsel for applicant submitted that when the applicants have been exonerated from the charges leveled against them, there is no ground to reserve such rights with the Disciplinary Authority for any further action being taken. He further contended that for the same misconduct no such fresh inquiry can be held and keeping such a right reserved is arbitrary and against the rules of dealing with the disciplinary proceedings, and further this order has been upheld by the appellate authority vide Ann. A/3, which is also not legal or sustainable in the eyes of law.

8. Counsel for respondents contended that the Disciplinary Authority has kept this right reserved as a precautionary measure and

if any further action is required in the matter, the Disciplinary authority may initiate any inquiry.

9. Considered the rival contentions and also perused the record. In our considered view, once the delinquent officer or Govt. servant is exonerated from the charges no fresh inquiry can be conducted for the same charges and, therefore, in our considered view, such a right reserved in last para of Ann. A/1 is per se illegal and against the provisions of law. Therefore, without interfering with the whole order Ann. A/1in all the OAs, the following portion of Ann. A/1 is quashed:-

> "Charges are dropped without prejudice to further action being taken."

10. In the similar way the appellate order passed by the appellate authority at Annex. A/3 is also quashed to the extent of upholding these lines. Accordingly, all the OAs are allowed with no order as to costs.

Copy of the order be kept in each of the case file.

COMPARED & CHECKED

[Meenakshi Hooja]
Administrative Member

[Justice K.C.Joshi]
Judicial Member

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CERTIFIED TRUE COPY
Dated 09/2/2015

Section Officer (Judl.)
Central Administrative Tribunal
Jodhpur Bench