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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKLULAM BENCH**

OA NO.249/2005

WEDNESDAY, THIS THE 14th DAY OF JUNE, 2006

CORAM:

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. K.B.S.RAJAN, JUDICIAL MEMBER**

D.Babukutty
Senior Trackman
Gang No.2, GVU.SSE,P.Way,TCR
Trissur
Residing at : Mambra Thekkethil
Chennithala,Mavelikkara - 5 : Applicant

(By Advocate Ms.Sreelekha Puthalath)

Vs.

1. Union of India represented by General Manager
Southern Railway, Madras
2. Divisional Personnel Officer
Palakkad Division, Southern Railway
Palakkad
3. Assistant Divisional Engineer and Disciplinary Authority
Quilon Section, Trivandrum Division,
Southern Railway, Palakkad
4. Assistant Divisional Engineer and Disciplinary Authority
Southern Railway, Thrissur Section, Palakkad Division,
Thrissur
5. Senior Section Engineer
Permanent way, Thrissur Division
Southern Railway : Respondents

(By Advocate Mrs. Sumathi Dandapani)

The application having been heard on 02.06.2006, the Tribunal ¹⁴⁻⁶⁻⁰⁶ delivered the following :

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ORDER
HON'BLE MR.K.B.S.RAJAN, JUDICIAL MEMBER

Whether cancellation of earlier Charge Sheet with a view to re-issuing the self same charge sheet with a minor correction relating to date of alleged incident is permissible after the delinquent official has disclosed his defence is the question in this case. In the process of re-issuing the charge sheet the list of witnesses has also been modified, omitting that witness whose depositions went in favour of the delinquent.

2. The facts of the case as contained in the O.A. are as under:-

- (a) The applicant, a Senior Trackman was proceeded against under Rule 9 of the Railway Servants (Discipline and Appeal) Rules alleging that the applicant had committed serious misconduct by forcefully entering into the quarters of one Shri P. Thampan, JE/I/PW/MVLK and abused him and assaulted him.
 - (b) The applicant submitted written statement of defence specifically denying the charges levelled against him.
 - (c) An enquiry was conducted on 1.10.04 and evidence of all four witnesses were taken. Applicant cross examined the witnesses.
- The applicant was issued with a copy of the proceedings of the



enquiry conducted on 1.10.04.

- (d) Applicant submitted his written statement of defence and sought to drop the proceedings and exonerate the applicant from the proceedings.
- (e) Applicant was issued with a communication dated 15.12.04 informing him that the disciplinary proceedings is cancelled due to some procedural deficiency without prejudice to any disciplinary action that may be taken against the applicant. Alongwith the said communication a fresh standard form of charge sheet dated 16.12.2004 and memorandum of charge sheet was issued to the applicant on the very same set of facts. On 14.3.2005 yet another communication was issued to the applicant informing him that two of the witnesses shown in the list of witnesses attached to the Memorandum of Charges dated 16.12.2004 have been changed and two new witnesses were introduced, which includes Shri P. Thampan at whose instance the disciplinary proceedings were initiated.
- (f) There is no rhyme or reason to cancel the entire proceedings and issue a fresh charge sheet on the very same set of facts. The same is, therefore, illegal, unconstitutional and putting the applicant to peril.
- (g) The applicant is highly aggrieved by victimisation of this applicant at the instance of responsible officials.



3. The respondents have resisted the OA and their contention as contained in the Counter Affidavit is that a major procedural lapse has been crept in not showing the aforesaid Thampan as witnesses. Since the misconduct was committed in the premises of Thampan's house and his acts were against Shri Thampan, it was inevitable to make him as the prime witness to establish the charge. One of the witnesses, R. Ramesh was already transferred and Shri Prasannan was not a Railway employee who failed to turn up for the enquiry ^{though} was summoned and hence these witnesses were dropped.

4. The alleged incident was stated to have occurred on 25-01-2004 and in fact, though the charge sheet reflected the date of incident on 26-01-2004, in the course of the examination of witnesses, both the dates were taken into account and the deposition of two of the four witnesses (R. Ramesh and G. Prasannan) goes in favour of the applicant. Of course, before the I.O. could render his report, the disciplinary authority chose to issue communication dated 15-12-2004 cancelling earlier charge sheet 'without prejudice to any disciplinary action that may be taken' against the applicant. This was followed by a fresh charge sheet dated 16-12-2004 which had been slightly modified by yet another memorandum dated 14-03-2005. It is by this communication that change of witnesses has been indicated. The reasons for the change have been that of the two witnesses who



were already examined, one had been transferred and the other is not a railway employee and that addition of witnesses is on account of the fact that one of them is a complainant himself who should be a witness.

5. Arguments were heard and documents perused. The counsel for the applicant submitted that the procedure adopted by the authorities is thoroughly illegal. Their attempt is to eclipse the deposition of those witnesses which go in favour of the applicant and some-how or the other punish the applicant. It cannot be that the respondents were not aware of the fact even at the very beginning that Thampan is the key witness in the case as he was the complainant. Nor was it that before the examination of the witnesses or furnishing of the defence brief the authority has brought in the additional witness. Once the defence brief has been furnished, then the logical sequence is to allow the inquiry to proceed or to cancel if the authorities so desired. Conditional cancellation is illegal. The counsel for the applicant has taken us through the deposition of one of the witnesses i.e. P. Ramesh and his deposition, even when glanced through, would go to show that it is well in favour of the applicant. Completely ignoring this evidence and bringing in a fresh witness cannot but mean that the respondents are only trying to fix the applicant. There is full substance in the argument of the applicant's counsel. The respondents have relied on the judgement in Union of India vs. Mohd. Ibrahim (2004) 10 SCC 87. This judgement takes into account the nature of charge which "appear to be grave and serious". Emphasis laid down as to the gravity of



charge could be appreciated from the fact that at least three times it has been referred to in the said judgement. In the instant case, the gravity of charge does not appear that serious.


6. Rules on the subject are contained in Rule 9 and 10 of the DAR. While rules provide for further examination of witnesses and further inquiry, the rules nowhere provide for cancellation of the earlier penalty proceedings and issue of a fresh charge sheet. The reason is obvious. Once the delinquent official discloses his defence, by cancelling the earlier charge sheet, there could be possibility of improving the charge sheet. This cannot be permitted. Of course, inquiry from a particular stage is normally permitted say, after the inquiry report is filed etc., In such cases, there cannot be any possibility of acting against the delinquent after the defence is disclosed. Hence, the cancellation of earlier charge sheet followed by issue of fresh charge sheet and avoiding the witness whose deposition is in favour of the applicant being alien to the disciplinary proceedings, the impugned orders dated 15-12-2004, 16-12-2004 and communication dated 14-03-2005 are all liable to be quashed. We order so.

7. The OA, therefore, succeeds. The respondents are restrained from taking further proceedings in the matter on the strength of charge sheet dated 16/12/04. However, this order does not preclude them from continuing with the earlier charge sheet and from that stage when the charge sheet was cancelled by order dated 15.12.04.



8. Under the above circumstances, there shall be no order as to costs.

(Dated, 14th June, 2006)


KBS RAJAN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

cvt.