

Reserved

**Central Administrative Tribunal
Lucknow Bench, Lucknow**

Original Application No.411/2007
This the 29th day of October, 2012

Hon'ble Sri Justice Alok Kumar Singh, Member (J)
Hon'ble Sri S.P. Singh, Member (A)

Jitendra Srivastava aged about 41 years, s/o Shri K.K. Srivastava, R/o B-1, 8/69, Sector-K, Aliganj, Lucknow.

...Applicant.

By Advocate: Sri Pankaj Kumar Awasthi.

Versus.

1. Union of India through the Secretary, Railway Board, Ministry of Railways, Government of India, Rail Bhawan, New Delhi.
2. Secretary, Railway Board, Ministry of Railways, Government of India, Rail Bhawan, New Delhi.
3. Director General, Railway Staff Collage, Lal Baug, Vadadara.

... Respondents.

By advocate: Sri S. Verma.

(Reserved on 15.10.2012)

ORDER

By Hon'ble Sri Justice Alok Kumar Singh, Member (J)

The following reliefs have been sought in the O.A.:-

“(i). To set aside the order dated 15.02.2007 (Annexure No.1) to this Original Application).

(ii). To issue direction to the respondents not to enforce the order dated 15.02.2007 (Annexure No.1 to the Original Application).

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(iii). To issue direction to the respondents to continue the applicant in service of India Railway Traffic Service, a Group 'A' Service, ignoring the order dated 07.11.1994, 30/31.08.2001 and the order dated 15.02.2007 (Annexure No.1 to this Original Application) with arrears of salary including increment, revision of pay w.e.f. 01.01.1996, promotion etc. at par with the members of the Indian Railway Traffic Service, Group 'A', who were selected and appointed on the basis of the Civil Services Examination, 1989."

2. Briefly, the pleadings contained in the O.A. are that Respondent No.1 and 2 offered appointment to the applicant as Probationer in the Indian Railway Traffic Service on the basis of Civil Service Examination, 1989 through letter dated 21.01.1991 (Annexure-3). He completed his training at Lal Bhadur Academy from 16.09.1991 to 22.12.1991 and then reported for further training at Railway Staff College, Lal Baug, Vadodara on 23.12.1991. He underwent training under Railway Staff College, Vadodara from 23.12.1991 to 12.01.1993. From 13.01.1993 to 11.04.1993, the applicant was on sanctioned leave without pay. From 12.04.1993 to 11.06.1993, he again underwent training. Meanwhile, on 18.01.1993, he submitted an application for permission to appear in Civil Services Examination, 1993 but, the respondents kept the same pending (Annexure-4). He therefore submitted a reminder on 15.02.1993 to the Senior Professor (Traffic Training), Railway Staff College, Vadodara (Annexure-5). While, he was undergoing project training at Bokaro Steel Plant at Bokaro from 17.05.1993, he received information from his parents from Allahabad on 10.06.1993 about receiving of his 'Admit Card' for Civil Services Examination, 1993. The applicant tried to contact Senior Professor (Traffic Training), Railway Staff College, Vadodara on phone from

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Bokarao but without any success. Thereafter, he left Bokarao for Allahabad on 11.06.1993 and also submitted an application on 13.06.1993 seeking leave from 14.06.1993 to 24.06.1993 so as to enable him to appear in the said Examination. On 13.06.1993 however, he fell ill at Allahabad and was under treatment of Dr. Sharad Kumar till 12.10.1993. He sent the relevant medical certificate for the period to the authorities concerned. He also informed the Chief Medical Officer, Railway Hospital, Allahabad about this vide letter dated 21.06.1993. From 12.10.1993 to 27.10.1993, he was under treatment of Medical Superintendent, Railway Hospital, Allahabad. While remaining sick at Allahabad, he received his termination order dated 07.11.1994 from Respondent No.1 and 2 on 08.12.1994 (Annexure-11). He therefore filed an O.A.No.746/1995 before Central Administrative Tribunal, Allahabad. It was dismissed vide order dated 19.05.1999 (Annexure-12). He then filed Writ Petition No.36393 of 1999 before Hon'ble High Court, Allahabad claiming the same relief. The Hon'ble High Court, Allahabad through its judgment dated 06.12.2000 quashed the termination order dated 07.11.1994 and the judgment dated 19.05.1999 of Tribunal with liberty to the respondents to pass such order as may be deemed fit after affording opportunity of hearing. Then the respondents through letter-dated 13.03.2001 directed the applicant to submit his representation. He submitted his representation on 19.04.2001 requesting a personal hearing, which was given to him on 07.06.2001. But the applicant services were again terminated through order dated 30/31.08.2001 w.e.f. back date i.e. 07.11.1994 (Annexure-16). The applicant filed Writ Petition No.42699

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of 2001 challenging his termination order. His writ petition was allowed on 17.04.2002 and the termination order was quashed. However, it was kept open to the respondents to give charge sheet and hold full-fledged inquiry against the applicant giving full opportunity of hearing. The Hon'ble Court also provided that if charge sheet is not given within 6 weeks, then the petitioner will be reinstated immediately after the expiry of period of six weeks (Annexure-17). Consequently, a Memorandum dated 13.05.2002 under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 was served alleging five charges against him (Annexure-18). He submitted his representation dated 27.05.2002 and also requested that he may be reinstated with full back wages. He submitted another representation dated 20.01.2003 requesting for disbursement of pay and allowances so that he may be able to attend the departmental inquiry. Both the above representations were not responded. Thus, the applicant was compelled to attend the departmental inquiry without any payment from 01.06.1993. The Inquiry Officer submitted his findings on 21.01.2004 (Annexure-23). But, the Respondent No.3 disagreed with the findings pertaining to the Article of Charge No.1 and therefore supplied the disagreement note to the applicant. He submitted his representation-dated 30.08.2005. When no decision was taken by Respondent No.1 and 2, he filed C.C.P. No.3213 of 2006 before the Hon'ble high Court alleging the contempt of Hon'ble High Court's order dated 17.04.2002. This petition was decided on 18.08.2006. The applicant then submitted a representation dated 30.08.2006 alongwith the copy of said order and another representation dated 08.11.2006.

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The Respondent No.1 and 2 have finally passed the impugned order dated 15.02.2007 removing him from service. The contention of the applicant is that Respondent No.3 was not competent to issue charge memorandum dated 13.05.2002 and therefore complete proceedings of inquiry are illegal and bad. According to the applicant he being an officer of Group-'A' service his appointing authority is the President of India.

3. A detailed Counter Affidavit has been filed on behalf of the answering respondents saying that the applicant was found to be indulging in various irregularities like absenting himself unauthorizedly, reporting sick by submitting certificate from Private Medical Doctors without following the Railway Medical Rules, not taking prior permission for appearing in Civil Services Examination, appearing in MBA entrance test etc. For these reasons his probation of the applicant was terminated by the Railway Board vide order dated 07.11.1994, which was upheld by Central Administrative Tribunal, Allahabad. But, from the Hon'ble High Court, Allahabad the applicant got relief. Nevertheless, the respondents were given liberty to pass order afresh after affording an opportunity of hearing to the petitioner. It has been admitted that fresh memorandum dated 13.03.2001 was issued inviting his representation, if any, against the termination order dated 07.11.1994. The representation was submitted by the petitioner on 10.04.2001 and he was also granted personal hearing on 07.06.2001. Finally, the competent authority upheld the decision of termination issued earlier. The applicant again filed a writ petition before the Hon'ble high Court

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for quashing the termination order dated 31.08.2001. The Hon'ble High Court allowed the petition saying that the termination order was illegal as neither any charge sheet was given nor any inquiry was held. However, the Hon'ble High Court left it open to the respondents to give a charge sheet to the applicant and hold a full fledged enquiry against him after giving full opportunity of hearing with the condition that if the charge sheet was not given within six weeks from the date of order, the petitioner would be reinstated immediately. Consequently, under Rule-9 of the Railway Servants (Discipline & Appeal) Rules, 1968 proceedings were initiated against the applicant under Charge Memorandum dated 13.05.2002 containing the following charges;-

“Article-I

That Shri Jitendra Srivastava, while undergoing Probation of IRTS (Civil Service of 1989 Exam Batch) remained absent unauthorizedly, reported private sick without following the Railway medical rules and failed to report to the Chief Medical Supdt/ Allahabad for medical examination when directed. Thereby it is alleged that he had violated Rule No.3 (1) (ii) and (iii) of Railway Services (Conduct) Rules, 1966 and Rule Nos. 538 B and 547 of Railway Medical Manual Vol-1 of 2000 Edition. Old para No.537 and 546 of 1981 Edition.

Article-II

Without taking the prior permission from the Railway Administration, Shri Jitendra Srivastava applied and appeared in the Civil Service Preliminary Examination, 1993 (Roll No.141368) and also applied for admission to MBA. Thereby it is alleged that he had violated Rule No.3 (1) (i) and (iii) of Railway Services (Conduct) Rules, 1966.

Article-III

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That Shri Jitendra Srivastava, while undergoing Probation of IRTS (Civil Service of 1989 Exam Batch) misled the railway Administration informing that he was suffering from acute back ache, sciatica pain, chronic bronchitis, allergy to cold and humid weather by brining a medical certificate from Dr. Sharad Kumar, of Motilal Nehru Hospital, Allahabad who recommenced rest and leave in favour of Shri Jitendra Srivastava for two months from 13.06.1993 whereas Shri Jitendra Srivastava appeared in Civil Services Preliminary Examination on 13.06.1993. Thereby it is alleged that he had showed lack of integrity violating Rule No.3 (1) (i) of Railway Services (Conduct) Rules, 1966.

Article-IV

That Shri Jitendra Srivastava failed to intimate the loss of Duty Card pass, submit the copy of FIR and submit the copy of money receipt. Thereby it is alleged that he had violated Rule No.13 (i) Annexure-B of Railway Services Pass Rules, 1986 and exhibited a conduct unbecoming of a Railway Servant and violated Rule No.3 (1) (ii) and (iii) of Railway Services (Conduct) Rules, 1966.

Article-V

That Shri Jitendra Srivastava vide his letter dated 25-9-1993 had intimated Railway Staff College, Vadodara that he had lost the duty Card Pass in September, 1992 while at New Delhi Railway Station. He had not submitted the copy of FIR filed at New Delhi Railway Station and penalty towards loss of DCP as required under the Rules. It is seen from the records that he had performed official tours in September, 1992 and October, 1992 at various places. The official tour cannot be undertaken without utilizing official travel authority. By this way Shri Jitendra Srivastava is alleged to have misled the Railway Administration and violated Rule No.3 (1) (i) of Railway Service (Conduct) Rules, 1966.”

4. After completion of the inquiry, the Inquiry Officer submitted his report dated 21.01.2004. He held Article No.1 of the charge as substantially proved, Article II and IV as fully proved while Article III and V of the charge as not proved. The case was forwarded to the Railway Board by the Director General/Railway Staff College, as the

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intended penalty was not within his competence. The Disciplinary Authority disagreed with the findings of the Inquiry Officer in respect of Article No.1 of the charge and held this Article of charge to be fully proved. Finally, the President of India in due consultation with the U.P.S.C. decided to impose a penalty of Removal from Service and accordingly this penalty was imposed by way of reasoned and speaking order issued by the competent authority. In all this protracted process right from issuance of charge sheet, holding of enquiry, affording ample opportunities to the applicant to defend himself by presenting his witnesses, giving his statement of defence/representation and so on, up to the culmination of the punishment of termination of his services/removal from service, the answering respondents have only complied with the directions of the Hon'ble High Court.

5. In parawise comments, it has been specifically denied that he was on sanctioned leave from 13.01.1993 to 11.04.1993. He sent a telegram dated 20.01.1993 saying that "Mother critical, extend leave till 31st January". In response thereof, he was advised by the Senior Professor (Traffic Training) vide letter dated 29.01.1993 to report to Railway Staff College. But, he utterly failed to report to the Railway Staff College till 11.04.1993. Thereafter, he submitted an undated application and sought for regularization of his leave right from 13.01.1993 to 09.04.1993. Since, he failed to get his leave sanctioned in advance, the entire period of his absence was treated as 'Leave without pay'. It is further said that Phase-II training Review was from 12.04.1993 to 14.05.1993 and not up to 11.06.1993 as

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averred in the O.A. From 17.05.1993 upto 18.06.1993 he was supposed to report to the Railway Staff College at Vadodara for the Induction Course No.I-3 from 21.06.1993 to 30.07.1993. But, the applicant failed to undergo project work and remained absent from 17.05.1993 onwards. He also failed to seek permission from the competent authority for appearing in the Civil Services Examination, 1993. His antedated application dated 18.01.1993 was received by the Senior Professor (Traffic Training) on 27.07.1993. The alleged application dated 15.02.1993 is not available on record. The applicant submitted another antedated letter dated 13.06.1993 seeking leave from 14.06.1993 to 26.06.1993, which was duly received in the office on 29.06.1993 for appearing in Civil Services (Prel) Examination scheduled on 13.06.1993 and for MBA interview about a week later on 24.06.1993. He also flouted Rule 538 & 547 of Indian Railway Medical Manual by producing medical certificate from a private Doctor. The said rule prohibits a Gazetted Officer to report sick with a Private Medical Practitioner. It has been admitted that the applicant obtained medical treatment from Medical Superintendent, Railway Hospital at Allahabad from 12.10.1993 to 14.10.1993. He was discharged on 14.10.1993 and advised rest for two weeks. But, thereafter, he neither attended the Railway Hospital nor sent any information thereafter; hence he was discharged from the sick list w.e.f. 27.10.1993. He was advised vide office letter dated 05.01.1994 that his absence after 14.10.1993 was being treated as unauthorized. He was also advised to report at Railway Hospital, Allahabad on 25.03.1994, but the applicant

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failed. Thereafter, he was advised vide letter dated 18.04.1994 that Railway Board was being apprised of his long absence. Vide another letter dated 24.05.1994, he was asked to report at the Railway Staff College by 6th June 1994 failing which the Railway Board would be advised for termination of his service. But, he failed to report at the Railway Staff College, Vadodara for continuance of his training. In respect of last order of Hon'ble High Court dated 17.04.2002, it has been said that the direction was that if charge sheet is not given within six weeks from the date of order then only the petitioner will be reinstated. Accordingly the charge sheet was given within the stipulate period. Thus, there was no question of his reinstatement and payment of wages etc.

6. A Rejoinder Affidavit has also been filed reiterating the pleadings contained in the O.A. and denying the averments made in the Counter Affidavit.

7. A Supplementary Counter Affidavit to the Rejoinder Affidavit filed by the respondents has also been filed saying that the applicant was on unauthorized and reckless absence during his probation, quite unbecoming of his dignified status as an official in his capacity as an IRTS Probationer in the Group 'A' cadre of Indian Railway Traffic Services. Therefore for such gross indiscipline and dereliction of his duties, the punishment was rightly imposed of termination from Railway Service at the probationary stage commensurate to his gross misconduct and indiscipline. All the averments made in the rejoinder affidavit have been denied and the

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pleadings contained in the counter affidavit have been reiterated.

8. We have heard the learned counsel for the parties and perused the entire material thoroughly.

9. The learned counsel for the applicant has made the following submissions;-

(i). Since the last termination order dated 30/31.08.2001 passed by the respondents was quashed by the Hon'ble High Court vide judgment dated 17.04.2002 passed in Writ Petition No.52699/2001, the applicant ought to have been reinstated first alongwith salary/ arrears etc. and then only the inquiry should have been proceeded under the Railway Servants (Discipline & Appeal) Rules, 1968 treating him to be railway servant.

(ii). The charge sheet was not issued by the competent authority.

(iii). The advice rendered by the U.P.S.C. was though relied upon while passing the impugned termination order, but it was supplied alongwith termination order instead of supplying it in advance enabling him to have an opportunity of rebuttal as per law laid down in the case of **Union of India Vs. S.K. Kapoor reported in 2011 (4) SCC-591.**

10. Regarding first submission, suffice would to say that it is in the teeth of the above judgment dated 17.04.2002 of the Hon'ble High Court itself. It is true that the termination order passed against the applicant was quashed by the Hon'ble High Court but it did not give

any direction whatsoever for reinstatement or payment of salary etc. to the applicant. On the contrary the Hon'ble High Court simply kept it open to the respondents that if they are so advised they can give charge sheet to the petitioner and hold full fledged inquiry against him giving him full opportunity of hearing including opportunity to present his witness and cross-examination of the witness against him. It was also directed that if the authority concerned does not give charge sheet within 6 weeks from the date of order, then only the petitioner will be reinstated immediately after the expiry of the period of 6 weeks. The date of this judgment of Hon'ble High Court is 17.04.2002. The charge sheet in question was admittedly issued on 13.05.2002 i.e. within almost 4 weeks, which was well within the stipulated period of 6 weeks. Therefore, there was no occasion for the respondents to have reinstated the applicant contrary to the specific directions contained in the aforesaid judgment of Hon'ble High Court which had admittedly attained finality. Consequently, there was also no question of payment of any salary/ arrears etc. This submission therefore cannot be accepted.

11. Secondly the learned counsel for the applicant would argue that the applicant being Group-'A' Gazetted officer, the Appointing Authority was the President of India therefore, the charge sheet should have been issued by him instead of D.G. Railway Staff Collage. This again is misconceived submission. A charge sheet is required to be served by a Disciplinary authority who may be different from an appointing authority. The disciplinary authorities have been notified almost in every the

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Discipline & Appeal Rules. In this regard the learned counsel for the applicant would refer to Rule-9 (7) of the Railway Servants (Discipline & Appeal) Rules, 1968 read with Schedule 3. But, on the other hand, as correctly pointed out by the learned counsel for the respondents, Rule-2 deals with definitions and its Sub-Rule 1 (c) (II) read with Rule-8 makes it clear that the charge sheet in question has been rightly issued by Director General, Railway Staff College, Lal Bagh, Vadodara (Annexure-18), who being the Disciplinary authority was the competent authority. Therefore, this point is also decided against the applicant.

12. In order to decide the third submission, we will have to carefully go through the impugned punishment order dated 15.02.2007 (Annexure-1). A careful perusal of para-10 of this order reveals that while passing the punishment order besides giving careful consideration to the charge memorandum, inquiry report, proceedings of inquiry, Memorandum of disagreement, representation of the delinquent officer on inquiry report as well as memorandum of disagreement and other relevant records/aspects relevant to the case, the Hon'ble President also consulted with the U.P.S.C. and reached to the conclusion that the charges are proved against the delinquent officer for the detailed reasons given in the U.P.S.C. advice communicated vide letter dated 29.11.2006, which were indicative of commission of grave misconduct on the part of the delinquent officer. Finally, therefore while accepting the advice of the U.P.S.C. the President decided to impose the penalty of removal from

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service. The relevant para-10 of the removal order is extracted herein below;-

“Para-10

And now therefore, after giving careful consideration to the Chare Memorandum, Inquiry report, proceedings of inquiry, ‘Memorandum of Disagreement’, representation of Shri Srivastava on IO’s report as well as ‘Memorandum of Disagreement’ and also other records/aspects relevant to the case, the President, in due consultation with the Union Public Service Commission (UPSC) a statuary body, has come to the conclusion that the charges proved, against the said Shri Jitendra Srivastava for the detailed reasons given in the UPSC’s advice communicated vide their letter No.F.3/96/06-S1 dated 29-11.2006 (copy enclosed) are indicative of commissioning of grave misconduct on the part of the said Shri Jitendra Srivastava and therefore while accepting the advice of UPSC, it has been decided by the President that ends of justice would be met if a penalty of ‘Removal from Service’ is imposed on him”

13. Learned counsel for the applicant would draw the attention of this Tribunal that in the above paragraph, it has been clearly mentioned that the copy of advice dated 29.11.2006 has been enclosed alongwith this removal order itself. From the perusal of the above paragraph, it clearly comes out that the President had relied upon the advice rendered by the U.P.S.C. According to the law laid down in the case of S.K. Kapoor (Supra) the requirement of the principle of natural justice is that if an advice of the U.P.S.C. has been relied upon then its copy must be supplied to the delinquent before hand so that he may have an opportunity of rebuttal. Concededly, it was not done in the present case. Therefore we find substance in this submission made on behalf of the applicant. The preposition of law laid down in the aforesaid case of S.K.

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Kapoor squarely applies with full force in the case in hand. This point is decided in favour of the applicant.

14. In view of the above, this O.A. deserves to be partly allowed. The reliefs regarding reinstatement /continuances in service and payment of salary/ arrears etc. are declined particularly because the same being contrary to the directions of the Hon'ble High Court given in Writ Petition No.42699/2001 dated 17.04.2002. However, the impugned order dated 15.02.2007 is set-aside to the extent it is contrary to the law laid down in the case of S.K. Kapoor (Supra). The respondents are directed to give a reasonable opportunity of rebuttal in writing to the applicant in the light of the advice rendered by the U.P.S.C., [a copy whereof had already been served upon the applicant alongwith the said impugned order] and then to pass an appropriate order afresh expeditiously in accordance with law. The entire exercise shall be completed expeditiously preferably within 4 months from the date of this order. No order as to costs.

S.P. Singh
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(S.P. Singh)
Member (A)

Alok Kumar Singh
29.10.12
(Justice Alok Kumar Singh)
Member (J)

Amit/-