Central Administrative Tribunal,
Lucknow Bench, Lucknow.

Original Application No.425 of 2007

Reserved on 12.12.2013
Pronounced on 28th January, 2014.

Hon'ble Mr. Navneet Kumar, Member-J
Hon'ble Ms. Jayati Chandra, Member-A

Smt. Alka Srivastava, aged about 36 years, W/o late Sri Vinod Kumar Srivastava, R/o House No. 293 Modha Dakion, LIG-1 Kushalpuri Faizabad

.....Applicant

By Advocate: Sri Praveen Kumar.

Versus.

1. Union of India through Secretary Ministry of Railways, New Delhi.
2. The General Manager, NER, Gorakhpur.
3. Additional DRM, NER, Lucknow Region, Lucknow.
4. Sr. Divisional Commercial Manager, NER, Lucknow Division, Lucknow.
5. Divisional Commercial Manager, NER, Lucknow Division, Lucknow.

.....Respondents

By Advocate: Sri D.K. Mishra.

O R D E R

Per Ms. Jayati Chandra, Member-A

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, 1985 seeking the following relief(s):-

"8.a. *to quashing the impugned punishment order dated 30.11.2006, passed by the respondent no.5, impugned appellate order dated 20.2.2007, passed by respondent no.4 and the impugned revisional order dated 19/20.7.2007 passed by the respondent no. 3 (as contained in Annexure nos. A-1, A-2 and A-3 to this Original Application respectively).*

8-b issue any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

8-c Allow this Original Application with costs."

J. Chandra

2. At the outset, it may be stated that during the pendency of this Original Application, the applicant died on 6.12.2009 and in his place, Smt. Alka Srivastava, widow of deceased has been incorporated.

3. The facts, as disclosed, in the Original Application are that the husband of the applicant (hereinafter referred to as applicant) was engaged as Part Time Mobile Booking Clerk (MBC) at Gonda between 2.11.1983 to 26.4.1984. The services of the applicant as Part Time MBC was brought to an end alongwith certain other MBCs. However, consequent upon the Railway Board's order of those of the Part Time MBCs, who had worked upto 17.11.1986 were re-appointed and the applicant was taken back in service as MBC vide office order dated 25.2.1992 (Annexure-4). He was served with a chargesheet dated 3.12.1993 on the charges that he had obtained his appointment as MBC on the basis of fraudulently obtained certificate for having worked between 2.11.1983 to 26.4.1984. The applicant was removed from service vide order dated 22.12.1997 (Annexure-8). The applicant preferred an appeal before the Senior Divisional Commercial Manager against the punishment order dated 22.12.1997. The award of punishment of removal from service was withdrawn and a fresh chargesheet dated 25.3.1998 (Annexure-10) was served upon the applicant. He had filed Original Application No. 713 of 1998 before Allahabad Bench of the Tribunal challenging the punishment order dated 22.12.1997 as well as fresh chargesheet dated 25.3.1998. It is averred that S/Sri Ajit Kumar Srivastava, Rajendra Pratap Choudhary, Ashok Kumar Verma, Suresh Chandra Verma, Rajesh Kumar, Deen Dayal Pande, Girijesh Kumar Srivastava, Promod Kumar Pandey and Vinod Kumar Srivastava, being similarly situated persons, whose services had been similarly terminated and fresh chargesheets were issued had also filed various Original Applications before the same Bench of this Tribunal. All these O.As were clubbed and heard together and the same were dismissed by means of a common judgment and order dated 12.4.2001. The applicants in the above O.As challenged the said order before Hon'ble High Court by filing Writ petition No. 28346 of 2001 and interim order was passed providing that "inquiry proceedings may continue, but no final

order on the enquiry shall be passed". Later-on the Writ petition was dismissed.

4. The respondents continued with the department inquiry resulting in the removal order dated 30.11.2006. The appeal and revision petition filed by the applicant have been dismissed by the appellate and revisional authorities respectively by orders dated 20.2.2007 and 19/20.7.2007.

5. The applicant had challenged the inquiry proceedings on the basis of which his services were terminated. It is averred that the inquiry suffers from illegality as it was conducted by Sri Mustaq Ali, retired railway officer. Under rules 9(2) of Railway Servants (Discipline & Appeal Rules) 1968, no inquiry can be held by an officer who is retired.

6. Further, during the course of inquiry, the applicant was not afforded an opportunity to examine any defence witness and without having been supplied copy of documentary evidence cited in the chargesheet, the impugned orders have been passed. The inquiry officer also failed to appreciate the contradictory testimony of PW-1 (Jaishree Prasad) and PW-II (Ram Narayan Gupta).

7. The respondents have filed their Counter Reply the averments made in the Original Application. Their contention is that under Railway Board letter dated 29.7.1998 (Annexure CA-1) it is open to the railways to draw a panel of retired railway officer for appointment as Enquiry Officer for conducting DAR enquiries against non-gazetted railway employees. More-over, initially appointment of Inquiry Officer was made in favour of one Sri A.K. Trivedi, who was in service, but due to allegation of bias made by the applicant, he was changed in favour of retired railway officer namely Meena Shah. As the said Sri Meena Shah did not hold any inquiry between 23.12.2002 to July, 2004, the third Inquiry Officer Sri Mustaq Ali was nominated on 15.7.2004. The applicant had never raised about allegation about his bias. The contention of the applicant that Sri Ram Narain Gupta PW-2 and Sri Jaishree Prasad Singh PW-1 are wrong as P.W-1 was Sri Ram Ujagar Dwivedi, retired Station Superintendent who had been cross examined by the applicant The appellate and revisional

J. Chandra

authorities had passed their orders after fully satisfying themselves and have upheld the order of the disciplinary authority through reasoned and speaking order. Lastly, the respondents have pleaded that there is no merit in the O.A. and the same is liable to be dismissed.

8. The applicant has filed Rejoinder Reply rebutting the averments made by the respondents in their Counter Reply and reiterating the averments made in the Original Application. After the death of the original applicant, Smt. Alka Srivastava has been substituted in place of original applicant and has filed Supplementary Affidavit on 2.5.2013 by which she stated that similarly situated persons namely S/Sri, Rajesh Kumar, Suresh Chandra Verma R.P. Chauhan who had also been removed from service alongwith the husband of the applicant had approached Principal Bench of this Hon'ble Tribunal by filing O.A. no. 2186 fo 2007, 2235 of 2007 and 2282 of 2007. The said Original Applications were allowed mainly on account of non-supply of document sought by the applicant vide judgment and order dated 19.9.2008, 23.9.2008 and 25.9.2008 respectively. The Operative portion of the order reads as under:-

> "Resultantly, for the foregoing reasons, O.A. is partly allowed. Impugned orders are set-aside. As a result thereof, respondents are directed to forthwith reinstate the applicant in service as per law with all consequential benefits. However, this shall not preclude the respondents to furnish the documents to the applicant, if so advised and to proceed afresh against him in such an event law shall take its own course. No costs."

This order was challenged by the respondents before Hon'ble High Court at Delhi by means of Writ petition No. 307/09 and connected Writ petitions. The Hon'ble High Court dismissed the Writ petition vide judgment and order dated 6.8.2010. The operative portion of the order reads as under:-

> *"We would be highlighting one fact, being that, a list was successfully brought on record, from the record of the petitioner, authenticity whereof is not in dispute, as per which list the names of all the respondents stand recorded as persons who had worked as Mobile Booking Clerks. The said list containing the names of 85 persons records the names of three respondents at serial No.10 (D.D.Pandey), serial No.70 (S.C.Verma) and serial No.81 (R.P.Chauhan).*
>
> *21. Thus, we dismiss all the writ petitions.*

S. Chandra

22. We would like to bring to the notice of the Competent Authority of the petitioner that though permission has been granted to the petitioner to recommence the inquiry in all the four cases, but the same has to be upon the condition that the documents production whereof has been sought by the respondents are brought on record. In para 7 above we have noted what those documents were and indeed we find them to be most relevant documents for they contain the contemporaneous memorandum of the events i.e. proof of what stands certified in the certificates produced by the respondents. It would be a futile exercise to conduct an inquiry without producing the said documents. If they are available only then it would be advisable to hold an inquiry, failing which the Competent Authority should consider the desirability of closing the matter as it is.

23. We wish to highlight that the instant writ petitions highlight the desirability of speedy inquiries and prompt issuance of charge-sheets when a misdemeanor is alleged. As noted above, the certificates, authenticity whereof has been disputed by the petitioner, were filed by the respondents in the year 1991. The charge-sheet in respect whereof the petitioner

W.P.(C) Nos.307, 11275, 11637 & 11653/2009 Page 8 of 9 seeks to nail down the respondents was issued in the year 1998, notwithstanding the allegation of the petitioner that it detected the misdemeanor in the year 1993 when charge-sheets were issued, but were withdrawn on some technical infirmities therein. What has happened is that in the meanwhile, relevant record has gone missing.

24. No costs."

9. Similarly situated person Sri Pramod Kumar Pandey who had also been dismissed as a result of second charge sheet filed against him by the respondents had filed O.A. no. 367 of 2007 before this Bench of the Tribunal. His Original Application was initially dismissed by this Tribunal vide its order dated 18.9.2009, but on filing of Review Application No. 46 of 2009, the earlier order dated 18.9.2009 was quashed vide judgment and order dated 16.4.2013. The operative portion of the order reads as under:-

"Consequently, therefore, in view of the aforesaid new important matter/evidence, the Review Application deserves to be and is partly allowed. Accordingly, the order/judgment passed on 18.9.2009 is hereby reviewed. The O.A. is partly allowed in view of the above discussion. Consequently, the impugned order dated 3.10.2006 removing the applicant from service and also the impugned orders dated 14.2.2007 and 20.7.2007 passed by the appellate authority and Revisionary authority are quashed. No order as to costs."

Another similarly situated person Ashok Kumar Verma had filed O.A. No. 114 of 2007 and Ajit Kumar Srivastava had filed O.A. No. 389 of 2007. Both the O.As were decided as per direction

J. Chandra

of Writ Petition No. 307 of 2009 and other connected Writ Petitions.

10. We have heard the learned counsel for the parties and have perused the pleadings on record.

11. It is seen that total nine persons including the husband of the applicant namely Ajit Kumar Srivastava, Rajendra Pratap Choudhary, Ashok Kumar Verma, Suresh Chandra Verma, Rajesh Kumar, Deen Dayal Pande, Girijesh Kumar Srivastava, Pramod Kumar Pandey and Vinod Kumar Srivastava, were appointed on various time in various places as Part Time MBCs. Their services were terminated and later-on they were taken back as MBCs by the respondents. All of them were served with second chargesheet, which had been challenged before Allahabad Bench of this Tribunal by means of Original Application No. 713 of 1998, which was dismissed vide judgment and order dated 12.4.2001. Against the said orders, the Writ petitions were filed and the same were also dismissed. Later-on, all the applicants were removed from service in 2006. The second set of removal order were successfully challenged before Principal Bench of this Tribunal and this Bench through O.As, as detailed in para no.8 above. In the instant case, the husband of the applicant was removed from service vide order dated 30.11.2006. The appeal of the husband of the applicant was dismissed vide order dated 20.2.2007 and revision petition was also dismissed vide revisional order dated 19/20.7.2007. The husband of the applicant had also raised the points about non-supply of relied upon documents in his representation dated 21.8.2006 filed before but the disciplinary authority has passed the order without taking the cognizance of the points raised. This is same to the procedure adopted in the case of one of the similarly aggrieved person i.e. Sri Rajesh Kumar, who filed O.A. No. 2186 of 2007 before Principal Bench and his removal order was quashed by Principal Bench of this Tribunal. We are of the considered view that the ratio laid down in the case of Rajesh Kumar (supra) would also be fully applicable in the case of the present applicant as well.

S. Chandra

12. In view of what has been stated above, O.A. succeeds. Impugned orders dated 30.11.2006, 20.2.2007 dated 19/20.7.2007 are quashed and set-aside. Since the original applicant died during the pendency of this O.A., he would be deemed to have been in service till his death with all consequential benefits as per rules and regulations except the back wages on the principle of "No work No Pay". The present applicant would be entitled to all benefits so accruing in accordance with the relevant rules and regulations. No costs.

J. Chandra

(Ms. Jayati Chandra)
Member (A)

V.K. Agrawal

(Navneet Kumar)
Member (J)

Girish/-