

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

Dated this Monday the 5th day of August, 2002

O.A.106 of 2001

Coram: Hon'ble Shri Birendra Dikshit - Vice Chairman
Hon'ble Shri B.N.Bahadur - Member (A)

Santosh Kumar P.Pandey,
Head Booking Clerk,
Bombay Central (Local),
MCTO/Grant Road, Mumbai Division,
Western Railway, Bombay Central,
Mumbai.

(By Advocate Shri G.S.Walia) - Applicant

Verus

1. Union of India
through the General Manager,
Western Railway Headquarters Office,
Churchgate, Mumbai.

2. Divisional Railway Manager,
Mumbai Division, Western Railway,
Bombay Central, Mumbai.
(By Advocate Shri V.D.Vadhavkar)

- Respondents

ORAL ORDER

By Hon'ble Shri Justice Birendra Dikshit - Vice Chairman -

This OA is directed against issue of a major penalty charge sheet dated 29.1.2001 by Divisional Commercial Manager, Cochin whereby the objection has been raised by the Applicant that as he was made to defend himself in respect of same matter for which a charge sheet was served on him on 17.8.1994, no second charge sheet can be issued by Disciplinary Authority in respect of same incident, the subject matter.

2. The facts giving rise to this Application, in brief, are that while working as Head Booking Clerk at Kandivali Station of Western Railway in 1994, the Applicant was served with a charge sheet on 17.8.1994 for misconduct due to irregularities alleged therein. The charges were, beside others, that the Applicant tampered with the stock of tickets resulting in loss of

B. Dikshit

Rs.1,72,000/- to Railways. Some ticket numbers were also mentioned in the charge sheet and it was stated that those tickets were missing for which the applicant was responsible. The Applicant, who was suspended, claims that he had to face a fulfilled enquiry at which he was finally exonerated by order dated 10.2.1997 and the charges were, dropped and the period of his suspension was treated as period spent on duty. Nothing significant took place thereafter till 22.12.2000 when the Divisional Commercial Manager (in short 'DCM') ordered recovery of Rs.1,48,000/- from the salary of Applicant in instalments. The DCM also issued a charge sheet dated 29.1.2001.

3. It is admitted case of parties that the charge sheet is in respect of misconduct arising out of same incident, the charges also being the same. However, the contesting Respondents stated in the written statement that the charge sheet dated 17.8.1994 was issued for lack of integrity, lack of devotion to duty and for acting in a manner unbecoming of a Railway servant for violation of Rule 3 (1) (i) (ii) and (iii) of the Railway Servants (Conduct) Rules, 1966 beside causing pecuniary loss amounting to Rs.1,72,000/- by tampering with tickets stock. The Respondents' justify present charge-sheet by taking stand that a joint enquiry committee consisting of DCM (CTG)/BCT/DAO-BCT/ASC-I-BCT was nominated to enquire into the matter which examined 17 witnesses belonging to Railways and

P. Vinit

...3/-

Police Department and it was after going through available documentary and circumstantial evidence that the Committee came to conclusion that conspiracy was hatched and executed by one Shri S.P.Pandey and his associates to pocket out sale of money of tickets. Though the Respondents submit that charges of both the charge-sheets are same but they claim that so far charges of first charge sheet are concerned, the charges were dropped due to want of evidence and now the second charge sheet has been framed on the basis of Joint Enquiry Committee's Report in which the fraud amounting to Rs.1,48,000, had been established.

4. The Learned Counsel for Applicant has argued that as an enquiry has taken place in respect of incident, which is the subject matter of present charge sheet, wherein the Applicant stands exonerated of the charges levelled against him resulting in revocation of suspension and his reinstatement, and no second disciplinary proceedings can be initiated in respect of same matter, that too after a lapse of seven years. The Learned Counsel has placed before us letter of RBE No.171/93 dated 1.12.1993, the subject matter of this letter being mentioned as "Issuing fresh charge memorandum after cancellation/withdrawal of original charge memorandum or after dropping disciplinary proceedings". The learned counsel for Applicant relied on a part of letter, which is as under:

" The matter has been examined and it is clarified that once the proceedings initiated under Rule 9 or Rule 11 of the R.S. (D&A) Rules, 1968 are dropped, the initiating fresh proceedings against the delinquent

B. Singh

....4/-

officers unless the reasons for cancellation of the original charge Memorandum or for dropping the proceedings are appropriately mentioned and it is duly stated in the order that the proceedings were being dropped without prejudice to further action which may be considered in the circumstances of the case. It is, therefore, necessary that when the intention is to issue a fresh charge sheet subsequently, the order cancelling the original one or dropping the proceedings should be carefully worded so as to mention the reasons for such an action indicating the intention of issuing charge sheet afresh appropriate to the nature of the charges."

In view of the said direction of Railway Board, he argued that no fresh charge-sheet could be issued in absence of any indication in the order dropping the proceedings under earlier charge sheet. According to him, mis-conduct alleged which was the subject matter of earlier charge sheet cannot be examined again.

The learned counsel for the Respondents contended that fresh charge sheet could be issued although the charges relate to same incident. The contention of the learned counsel for the Respondents is that the charges in the present charge sheet are distinct from earlier, the difference being that:

(i) In first charge sheet only 4 witnesses were examined during DAR enquiry whereas in the second charge sheet 14 witnesses are to be examined during DAR enquiry.

(ii) In the second charge sheet the accused was charged for giving false name as Shri Chetan Narayan Sharma to the Police Inspectors and Constables as per Kandivilli City Police Station (West) record but the same charge was not mentioned in the earlier charge sheet.

B. V. S. R.

(iii) In the first charge sheet the accused was charged for the pecuniary loss of Rs.1,72,000/- which involves missing of card tickets of 3 different destinations and season tickets of one destination station whereas in the second charge sheet the accused was charged for permanent misappropriation of Railway Revenue for Rs.1,48,000/- (as per Joint Enquiry Committee Report) for fraudulently selling out of series (missing) tickets of 3 different destination involving 2 card tickets and one season ticket without accounting the same in the DTC-cum-Summary Book and later, some of these out of series tickets were collected by the concerned checking staff and entered in the Daily Ticket Collection Register as per station record.

(iv) In the second charge sheet the accused has been charged for violating the provision of Paras 268 and 705 of IREM Vol.I 1992 Edition and Para 278 of Station Accounts Manual, the charges which were not framed in the earlier charge sheet.

(v) Except item No.1 & 6 of the documents of the second charge sheet, which are being relied upon, the remaining items differs from the earlier charge sheet.

5. We have examined the Joint Enquiry Committee report, which has been made available to us by the Railway Board. It is admitted case of parties that Applicant was charge sheeted on 17.8.1994 and suspended but ultimately the Inquiry Officer and the Disciplinary Authority exonerated him of the charges on
B. G. S. S.

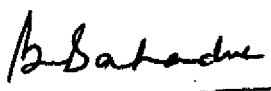
.....6/-

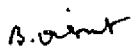
10.2.1997. He was reinstated on revocation of suspension on 17.3.1997, treating the suspension period from 18.3.1994 to 7.9.1994 as spent on duty. There is nothing in the order dropping the proceedings to indicate that the Railway administration wanted to draw fresh disciplinary proceedings against the Applicant while dropping the charges of misconduct under the first charge sheet. The case of the Applicant is fully covered under the Railway Board's Establishment Order No.171/93. Its clear terms state that once the proceedings initiated under Rule 9 or Rule 11 of the Railway Servants (Discipline & Appeal) Rules, 1968 are dropped, the disciplinary authority would be debarred from initiating fresh proceedings against the delinquent officers unless the reasons for cancellation/dropping are duly mentioned to the effect that the proceedings were being dropped without prejudice to further action. Thus, in absence of observation of disciplinary authority in order dropping disciplinary proceedings, no further disciplinary proceedings can be held by Disciplinary Authority in respect of the same subject matter. Our view finds support from the case of R.B.Parmar Vs. Union of India & others , 1987 (2) ATJ 4 cited by the learned counsel for the Applicant due to which it was not open to the Divisional Commercial Manager to initiate fresh disciplinary proceedings for alleged misconduct in absence of observation of disciplinary authority, dropping the proceedings initiated under earlier charge sheet against the Applicant. Thus, the charge sheet under challenge is liable to be quashed.

B. Singh

7. Beside said aspect, we are also of the view that the charges levelled by present charge sheet dated 29.1.2001 pertain to an incident which occurred in the month of March, 1994, i.e. the enquiry is going to be held after a lapse of about 7 years since his misconduct was known. It is well settled that the authorities are required to initiate proceedings, if they consider it necessary, within a reasonable period, from a date when the facts come to their knowledge. In the instant case, the learned counsel for the Respondents stated that it is on the basis of the report of the Joint Committee that disciplinary proceedings were initiated against the Applicant and therefore delay took place. There is no reason as to how and why Committee could not consider such a petty matter within a reasonable time and department allowed it to linger for so many years. There appears no justification for such a delay. The delay in the enquiry is also a sufficient ground to quash the disciplinary proceedings.

7. For reasons aforesaid, we quash the charge sheet dated 29.1.2001. The order dated 22.12.2000 (Annexure-A-2) whereby it has been ordered to recover an amount of Rs.1,48,000/(Rupees One lakh, forty eight thousand only) is also set aside. There is no orders as to costs.


(B.N. Bahadur)
Member(A)


(Birendra Dikshit)
Vice Chairman