

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
 AT HYDERABAD

ORIGINAL APPLICATION NO. 212/99

DATE OF ORDER : 26.7.1999

Between :-

R. Subhan

... Applicant

And

1. The General Manager, SC Rlys,
 Rail Nilayam, Sec'bad.
2. Chief Works Manager, Carriage Repair
 Shop, SC Rlys, Tirupati.
3. Asst. Works Manager, Carriage Repair
 Shop, SC Rlys, Tirupati.

... Respondents

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Counsel for the Applicant : Shri M.V.Krishna Mohan

Counsel for the Respondents : Shri N.R. Devaraj, SC for Rlys

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CORAM:

THE HON'BLE SHRI JUSTICE D.H.NASIR : VICE-CHAIRMAN

THE HON'BLE SHRIH. RAJENDRA PRASAD : MEMBER (A)

(Order per Hon'ble Shri Justice D.H.Nasir, Vice-Chairman).

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(Order per Hon'ble Justice Shri D.H.Nasir, Vice-Chairman).

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The applicant was initially engaged as a Casual Khalasi in the Engineering Department under Inspector of Works, Special Works, Guntakal Division, SC Rlys on 24.5.1978. Temporary Status was conferred on him from 1.1.1984. On 5.8.1987 a major penalty charge memorandum was served upon him by the Sr.Divisional Engineer, Tirupati alleging that the applicant gained employment as Casual Labourer by producing a false labour card. The allegations were denied by the applicant. However, the Department chose to initiate Departmental Enquiry against the applicant and for that purpose enquiry Inspector, Sec'bad was appointed as Enquiry Officer vide order dated 7.9.1987. However, the Disciplinary Authority cancelled the aforesaid chargememo with a remark as follows :-

"without prejudice to any DAR action at later date".

2. Subsequently a major penalty charge memorandum dt.18.4.88 was issued by Asst.Engineer (C)I Carriage Repair Shop, Tirupati. The charge in both the charge memos were identical. However, no clarification was made by the Respondents what necessitated the issuance of a second charge memo after cancelling the first charge memo. The applicant made a representation dt.9.5.88 questioning the maintainability of the second charge memo and under a pretext that major disciplinary action was pending against the applicant he was denied absorption in the mechanical Branch inspite of having been declared fit for such absorption. Since the representations did not find any favour with the respondents, the applicant filed OA 1172/91 in this Tribunal praying for quashing

of the Disciplinary Proceedings against him and directing the respondents to absorb him in the technical category with all consequential benefits. The same was disposed of by an order dt.28.12.1992 by which the respondents were directed to implement the result of the screening test and to absorb the applicant in the Technical category with effect from the date on which his juniors were absorbed. The Respondents were left free to proceed further in the matter of disciplinary proceedings against the applicant.

3. The said order was duly complied with by the respondents. But the applicant was not promoted as semi-skilled Khalasi/Helper on par with his juniors in 1993 or as skilled fitter grade III in 1996 on the pretext that the Disciplinary proceedings ~~were~~ ^{were} pending against him. Further according to the applicant he requested the Enquiry Officer to allow the applicant to appear with his defence counsel. However, according to the applicant, the defence helper was not called when the sitting took place on 7.3.1996. The applicant expressed his inability to defend himself without his defence counsel and in fact no sitting took place on 7.3.1996 or thereafter.

4. Further according to the applicant he was asked by the authorities at Tirupati to remain present on 11.12.1997. When the applicant went there a team of Vigilance from Sec'bad took him to their office where an Inspector and some tother Railway Police were present. According to the applicant they threatened him that a criminal case of fraud would be foisted ~~to~~ against him if he did not give statement as may be directed

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by them. The applicant therefore gave a statement as required by them. On return to Tirupathi, the applicant orally submitted to Respondent No.3 about the incident and requested him to do the needful. However, the applicant was assured that since the enquiry proceedings had already commenced, no harm would be done to him.

5. However, according to the applicant after about 6 months the applicant received memo dt.25.5.1998/2.6.1998 issued by the Respondent No.3 withdrawing the second charge memo dt.18.4.1988 by an order dt.4.9.95 stating that the same was without prejudice to the disciplinary action. Subsequently the applicant received a major penalty charge sheet memo dt.25.5.98/2.6.98 under the signature of the Respondent No.3 with the same charges as in the previous charge memo, but they were a bit more specific. The documents and witnesses were different from those in the earlier charge memo dt.18.4.1988. Aggrieved by the same the applicant submitted a representation on 8.7.1998 on the first respondent. The respondents issued a letter dt.14.11.1998 by which the applicants' representation dt.8.7.1998 was treated as an explanation and referred the same to Sr.Dy.General Manager/Vig/Sec'bad who held that the actions so far taken against the applicant were correct. The applicant thereafter submitted a further representation dt.23.11.1998.

6. According to the respondents it was revealed from the Vigilance enquiries that the casual labour card produced at the time of entry into service was not genuine because neither the card was issued by the Inspector concerned nor the applicant's

name was found in the LTI Register maintained by that Inspector.

7. With reference to delay in continuing the disciplinary action against the applicant, the respondents came up with a contention that the office of construction Wing in Carriage Repair Shop, Tirupati had been abandoned due to completion of Construction work of Carriage Repair Shop. The delay took place according to the respondents, for administrative ~~reasons~~ ^λ and there was no intentional delay in the matter.

8. It is not disputed by the respondents that the first sitting was held on 7.10.1995. However, according to the respondents, the enquiry was postponed on account of the fact that the applicant in reply to question No.3 stated that ~~the~~ his application dt.25.9.1995 submitted to Respondent no.3 was not disposed of. It is further contended by the Respondent that it was for the applicant to bring his defence assistant to defend his case. The applicant vide letter dt.28.2.96 nominated one Mr.Verkey, retired Station Master and Advocate as his Defence Asst. to defend his case without obtaining consent from the said retired employee as required under the Discipline & Appeal Rules and it was not possible to summon the Defence Asst. for enquiry on 7.3.1996 (within a span of 7 days) by sending passes to his residence at Kottayam, Kerala State to enable him to attend the enquiry on 7.3.1996. Moreover according to the respondents in the absence of the consent letter, the question of summon^{ing} the Defence Asst. did not arise and for this reason the enquiry which was fixed on 7.3.1996 had to be postponed.

9. On the above pleadings, the main questions which arise for our consideration in this OA could be stated as follows :-

- (i) whether the enquiry is vitiated on the ground that abnormal delay took place since the initiation of the enquiry proceedings;
- (ii) whether the enquiry can also be treated as vitiated on account of the fact that the cancellation of earlier charge sheets were made without assigning any reason and without putting the applicant on notice with regard to the same.

10. On the question of delay it appears that the Disciplinary proceedings were initiated against the applicant as far back as in 1987 and the proceedings stood protracted under one pretext or another. The main case for delay appears to be the fact that the respondents found certain infirmities in the charge and therefore the charge had to be altered. The applicant was denied promotion inspite of having been screened and found fit, on the ground that Departmental action was pending against him. In an earlier proceeding taken by the applicant before this Tribunal by filing OA 1172/91 which was disposed of by an order dt.28.12.92, the Tribunal observed that the manner in which the respondents had been proceeding in the matter relating to the Disciplinary Enquiry against the applicant clearly disclosed that for no fault of the applicant the threat of disciplinary action against him had been prolonged inordinately and the applicant was made to suffer the consequences such as denial of his ^{promotion} absorption for which he was duly screened and found fit.

11. This attitude on the part of the respondents is directly hit by the decision of the Supreme Court in State of Madhya Pradesh Vs. Bani Singh & another reported in 1990(2)SLR 798. In para-6,

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the Supreme Court observed that if the Departmental enquiry had reached the stage of confirming of charges after a prima facie case had been made out, the normal procedure followed as mentioned by the Tribunal was sealed cover procedure. However, the Supreme Court observed that if the Disciplinary proceedings had not reached that stage of confirming the charge after prima facie case was established, the consideration for promotion to the selection grade could not be withheld merely on the ground of pendency of such disciplinary proceedings. The Supreme Court also held, as stated in para-8 that the Tribunal considered the question of delay in detail and held that since the representation for the year 1980 was pending till 1986 and there was an allegation that the respondents had been making representations to the government in this regard and in fact one such representation ~~which~~ was accepted and it was on that basis, inspite of the fact that the facts and situations remaining same in the year 1982, that the respondents were selected for selection grade with effect from 4.3.1982 and in those circumstances the Tribunal said that they were not ~~interested~~ ^{inclined} to dismiss the application on the ground of laches and it was decided on merits.

12. On the question of cancellation of charge sheet ~~en~~ and issuing a fresh charge sheet instead, the learned counsel for the applicant placed reliance on the decision of the Jabalpur Bench of this Tribunal in OA 7/88 decided on 30.8.1988 (Chandra Seth & another Vs. Union of India & others). In para-7 of the said decision the Bench observed that one of the arguments advanced before the Bench was that the applicant was appointed by the General Manager and therefore he cannot be removed from

service by a lower authority but the Tribunal found that there was no force in this contention raised by the Department.

13. The Tribunal further observed in para-7 that earlier on the same allegation charge sheet under SF-5 had been given to the applicant on 4/8-12-1986 and the applicant replied to it on 11-12-1986. This memo dt. 4/8-12-1986 was cancelled on 16-12-1986 vide lr.No.EN:308/SR.TCS/86/12-4 and therefore a fresh charge-sheet on the same allegation could not be issued in the light of the decision in 1982 (2)SLJ 97. This contention, according to the Tribunal was not without merit. The counsel further asserted before the Jabalpur Bench that after receiving the charge sheet dt.16-12-1986 the applicant requested the Disciplinary Authority on 20.12.1986 to supply him the related documents. The applicant again moved an application to the Enquiry Officer to supply documents including complaints and statements of Iqbal Mohammed but the same were not supplied. Only photo copy of the statement of Mr.Iqbal Modh.Qureshi was given to him on 19.1.1987. With that situation in ~~the~~ view, the Bench held that non supply of the statement prejudiced the ~~statement~~ ^{case} of the delinquent employee.

14. It appears that in the above case before the Jabalpur Tribunal the applicant alleged that a charge sheet was served on him on 8.12.86 prior to the service of memo dt.16.12.86. The earlier charge sheet dt.8.12.86 contained the same allegations. It was cancelled vide order dt.16.12.86. Earlier also a memo dt.11.8.86 was served on him requiring him to show cause against the purchase of potatos and onions at a higher rate and an order was issued to him by the Railways. He informed the authorities

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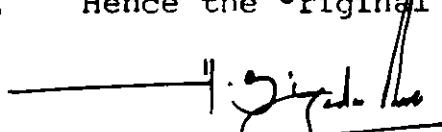
that the purchase of potatos and onions had been effected after accepting the lowest quotation of Rs.4.40 per Kg. for Potato and Rs.1.25 per Kg for Onion. The quotation was generally accepted by him and Catering Accounts Inspector, Mr. Poorna Singh had requested the Divisional Accounts Officer to regularise the amount. After receiving reply dt.13.8.1986, no action was taken against him before issuance of first charge sheet dt.8.12.86. The Enquiry Officer enquired into allegations made in charge memo dt.16.12.1986. The complainant Iqbal Mohd. Qureshi was examined during the enquiry. One Shri Gulam Mohd. was also examined who was not listed as witness in the memo, without affording the applicant proper opportunity to defend himself. The applicant was held guilty and punished. The punishment had to be set aside.

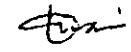
15. The learned counsel for the applicant also drew our attention to Railway Board's memorandum No.E(D&A)93 RG6-83 of 1.12.1993, RBE/171/93 containing instructions to the effect that under Rule-9 the Disciplinary Authority ~~will be~~ ^{is} debarred from initiating fresh proceedings unless reasons for cancellation of original memorandum are properly mentioned and it is duly stated in the order that the proceedings were cancelled without prejudice to further action which may be considered in the circumstances of the case.

16. In the case before us it cannot be disputed that neither any reason ^{has} ~~have~~ been cited for canceling the earlier charge sheet nor the applicant is heard before cancelling the earlier charge sheet.

17. Considering all the above facts and circumstances we believe that there is no reason why the reliefs claimed by the applicant in this OA should not be granted. This OA is therefore allowed. The impugned memorandum TR/P.227/RS dt.27/29-6-1998 is hereby quashed and set aside. Since the major penalty charge memo was issued as far back as 5-8-1987 and more than 11 years have passed since the passing of the charge memo, we believe that no useful purpose would be served by directing a denovo enquiry to be held against the applicant as it is quite likely that sufficient evidence at this stage may not be available and the applicant may be exposed to serious prejudice if a fresh enquiry is now directed to be held after the lapse of 11 years.

18. Hence the ^Original Application is allowed. No costs.


(H. RAJENDRA PRASAD)
Member (A)


(D.H. NASIR)
Vice-Chairman

Dated: 26 July, 1999.

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1st AND 2nd COURT. *9/8*

COPY TO :-

1. HON. J.

TYPED BY
COMPIRED BY

CHECKED BY
APPROVED BY

2. H.R.P. M(A)

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH, HYDERABAD.

3. H.C.S.J.P. M(J)

4. D.R. (A)

5. SPARE

THE HON'BLE MR. JUSTICE D.H. NASIR
VICE - CHAIRMAN

THE HON'BLE MR. H. RAJENDRA PRASAD.
MEMBER (ADMN)

THE HON'BLE MR. R. RANGARAJAN :
MEMBER (ADMN)

THE HON'BLE MR. D.S. JAI P. PARAMESHWAR :
MEMBER (JUDL)

ORDER: Date. 26/7/99

ORDER / JUDGMENT

MA./RA./CP.NC

IN

DA. NO. 212/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED.

C.P. CLOSED

R.A. CLOSED.

D.A. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED / REJECTED

NO ORDER AS TO COSTS.

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केन्द्रीय अधिकारिक अधिकारी
Central Administrative Tribunal
प्रेषण / DESPATCH

- 2 AUG 1999

हैदराबाद आधारी
HYDERABAD BENCH