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CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH

CIRCUIT CAMP : INDORE

ORIGINAL APPLICATION NO. 443 of 2005

Indore, this the 21st day of April, 2006

Hon'ble Dr.G.C.Srivastava - Vice Chairman

Hon'ble Shri K.B.S.Rajan - Judicial Member

O.R.Phanse,

Retired Deputy Chief Engineer,

Western Railway,

"PAVAS", 281 Saket Nagar,

INDORE

- APPLICANT

(By Advocate - Shri S.L.Vishwakarma)

VERSUS

1. Union of India through

Secretary, Railway Board ,

NEW DELHI.

2. General Manager,

N.W.Railway,

JAIPUR

- RESPONDENTS

(By Advocate - Shri Anand Nagarkar)

ORDER

By K.B.S. Rajan, Judicial Member

The short but sharp question for consideration in this case is whether the respondents could initiate disciplinary proceedings on an alleged misconduct which dates back to 1985-87, on the strength of the liberty given by the High Court to issue 'fresh' charge sheet, in accordance with the Rules applicable to the persons who have retired from service.

2. A vignette of the facts of the case is as under:-

(a) The applicant superannuated on 31<sup>st</sup> October, 1992 and a few days before his retirement, a charge sheet was framed and attempted to be served upon him and in view of his non availability a copy of the charge sheet was stated to have been pasted on the door of his address. However, the applicant was allowed to retire, granted provisional pension and it was when he asked for the terminal benefits that the respondents informed him about the penalty proceedings. The applicant challenged by way of OA No. 87/94 the very legal validity of the issue of charge sheet, especially the mode of service and the Tribunal by order dated 21-06-2004 held that the issue of charge sheet was illegal and that there was no valid service of the same. Thus, by the order of the Tribunal, the respondents were completely precluded from proceeding ahead with the disciplinary proceedings and also from issue of fresh charge sheet. However, when the respondents had taken up the matter with the Hon'ble High Court in CWP No. 1902/2000, the Hon'ble High Court by order dated 21-04-2004, upheld the decision of the Tribunal to the extent of illegality in the service of the charge sheet but in so

far as the issue of charge sheet was concerned, it gave the liberty "to issue a fresh charge sheet to the Respondent No. 1 (i.e. the applicant herein) in accordance with the Rules that may be applicable to him." In pursuance of the aforesaid order of the High Court, the respondents had issued an order dated 05-10-2004 which reads as under:-

"Whereas it has been alleged that Shri O.R. Phanse, (since retired) while working as Sr. DEN(II)-KN/Western Railway from the period from August, 1985 to June, 1987 exhibited lack of devotion to duty amounting gross misconduct and acted in a manner unbecoming of a Railway servant in contravention of the provisions of Rule-3(1), (i) & (iii) of the Railway Services (Conduct) Rules, 1956.

2. Now, therefore, in exercise of the powers conferred on him by Rule-9 of the Railway Services (Pension) Rules, 1993, and also in pursuance of Hon'ble High Court, Indore Bench's order dated 21.4.2004 in Writ Petition No. 1902/2004 the President hereby accords sanction for instituting the departmental proceedings against the said Shri O.R. Phanse.

3. The President further directs that the said departmental proceedings shall be conducted by Railway Board in accordance with the procedure laid down in Rule-9 of the Railway Servants (Discipline & Appeal) Rules, 1968.

By order and in the name of the President."

(b) The applicant has resisted the proceedings and represented on 08-11-2004 that the High Court order is clear that initiation of fresh charge sheet shall be in accordance with the rules applicable to him and as he had retired from service w.e.. 01-11-1992, the proceedings shall have to be strictly in accordance with Rule 9 of the Railway Service Pension Rules, 1993 (corresponding to Rule 2308 of IREM.) which reads as under:-

"9- Right of the President to withhold or withdraw pension.



(1) The President reserves to himself the right of withholding or withdrawing a pension or gratuity, or both, either in full or in part, whether permanently or for a specified period and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Railway, if in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement;

Provided that the Union Public Service Commission shall be consulted before any orders are passed.

Provided further -----per mension.

(2) The departmental proceedings referred to in sub rule (1)

(a) if instituted while the railway servant was in service, whether before his retirement or during his re-employment shall after the final retirement of the railway servant, be deemed to be proceedings under this rule and shall be concluded by the authority by which they were commenced in the same manner as if the railway servant had continued in service.

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording it's finding to the President;

(b) if not instituted while the railway servant was in serve, whether before his retirement or during his re-employment, -

i) shall not be instituted save with the sanction of President;

ii) shall not be in respect of any event which took place more than 4 years before such institution; and

iii) shall be conducted -----during his service.



(c) On the strength of the above, the applicant contended that no charge sheet can be issued to him after 12 years of his retirement.

(d) The respondents, however, have rejected the representation by order dated 08-12-2004 and stated that on the strength of the liberty given to them by the Hon'ble High Court vide order dated 21-04-2004, after obtaining the approval of the Minister on behalf of the President of India, proceedings have been instituted against the applicant. It is this order that the applicant has challenged in this O.A.

3. The respondents have contested the OA. Their contention is that the OA is premature inasmuch as statutory provisions exists for exhaustion of remedies and that the same have not been exhausted. They have further contended that the rule applicable in this case is Rule 9(1) and not 9(2) as charge sheet against the applicant stood issued on 19-10-1992 itself and the same could not be proceeded further due to the grant of stay by the Tribunal in OA 87/94 which was decided in 2000 and later on due to pendency of the writ petition in the High Court from 2000 to 2004. As such, on the basis of the liberty granted, after obtaining the approval of the Minister for Railways on behalf of the President "fresh charge sheet has been issued as per rules applicable to the applicant after retirement".

4. Arguments were heard and documents perused.

5. First, as to the contention that the application is pre-mature. The counsel for the respondents submitted that statutory remedies should be exhausted and filing of representation is not provided for in the statute.

What the applicant challenges here is the very legality in the issue of charge sheet, for which there is no departmental remedy. If the charge sheet is within the four corners of law and the allegations contained in the charge sheet are disputed, then the applicant could well deny the charges and thus, statutory remedy thereof is available. In a number of cases, judicial intervention has been pressed into service in quashing and setting aside the very charge sheet at the threshold level and in this regard, the applicant has relied upon the following cases:-

- (a) Bani Singh vs State of M.P. 1990 Supp SCC 738.
- (b) State of A.P. vs N. Radhakrishnan (1998) 4 SCC 154
- (c) P.V. Mahadevan v. MD, T.N. Housing Board,(2005) 6 SCC 636

6. We entirely agree with the arguments of the applicant in this regard and thus, the preliminary objection raised by the counsel for the respondents is rejected.

7. For deciding the issue involved as stated in para 1 above, certain satellite questions also arise. These are as under:-

- (a) When is a departmental proceeding said to have 'instituted'?
- (b) Could the charge sheet initially framed in October, 1992 be said to be alive under the facts and circumstances of the case and is the current proceeding a continuation of the earlier proceedings?
- (c) If not, whether the action taken by the respondents are within the provisions of Rule 9 of the Railway Service (Pension) Rules 1993 or Rule 2308 of IREM?

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8. The proceedings are stated to be initiated at the time when the decision to initiate proceedings has been taken and the charge sheet is signed. Initiation of proceedings is independent of Service of charge sheet upon the delinquent. This is the law laid down by the Apex Court in the case of State of M.P. v. Onkar Chand Sharma,(2001) 9 SCC 171 wherein the Apex Court had the occasion to interpret the term 'initiated' while interpreting a particular rule. The discussion and decision of the Apex Court is as under:-

**“5. The second proviso to Rule 3 of the Rules reads as under:**

“Provided further that, where a State Government passes an order placing under suspension a member of the service against whom disciplinary proceedings are contemplated, such an order shall not be valid unless before the expiry of a period of forty-five days from the date from which the member is placed under suspension, or such further period not exceeding forty-five days as may be specified by the Central Government for reasons to be recorded in writing, either disciplinary proceedings are initiated against him or the order of suspension is confirmed by the Central Government.”

6. A perusal of the said provision shows that what is required is that the disciplinary proceedings should be initiated against the member of the service who has been placed under suspension before the expiry of forty-five days from the date from which he has been placed under suspension. It is not disputed that the respondent was placed under suspension on 22-3-1983, the charge-sheet was framed on 5-5-1983 and it was served on the respondent on 6-5-1983. The question is whether disciplinary proceedings can be said to have been initiated by framing of the charge-sheet or only after the charge-sheet has been served on the delinquent employee. In our opinion, disciplinary proceedings can be held to have been initiated on the day the charge-sheet has been prepared and signed by the competent authority. In the present case, the charge-sheet had been prepared on 5-5-1983 inasmuch as it was appended to the order dated 5-5-1983 whereby the respondent was required to submit his written statement of defence to the charges. It can, therefore, be said that disciplinary proceedings had been initiated against the respondent on 5-5-1983. Even if the day on which the respondent was placed under suspension is counted, we find that the disciplinary proceedings had been initiated within forty-five days from the date of order of suspension. We are unable to agree with the view of the High Court that the date of initiation of disciplinary proceedings against the respondent was 6-5-1983 on

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which date the order dated 5-5-1983 as well as the charge-sheet were served on the respondent. The High Court was, therefore, in error in quashing the order of suspension on the ground that the disciplinary proceedings had not been initiated against the respondent before the expiry of forty-five days from the date of the order of suspension. Although we are not in agreement with the reason given by the High Court for quashing the order of suspension but having regard to the fact that more than 10 years have elapsed since the said order of suspension was quashed by the High Court, we do not consider it an appropriate case in which the said order of suspension should be restored by setting aside the direction given by the High Court quashing the order of suspension. We, therefore, maintain the said direction of the High Court."

9. The above clearly goes to show that once a charge sheet has been signed, the same would mean that the proceedings have been initiated. In the case of *Delhi Development Authority v. H.C. Khurana, (1993) 3 SCC 196* also, the Apex Court has held the same view. It has been held therein:

".... the service of the charge-sheet on the government servant follows the decision to initiate disciplinary proceedings, and it does not precede or coincide with that decision. **The delay, if any, in service of the charge-sheet to the government servant, after it has been framed and despatched, does not have the effect of delaying initiation of the disciplinary proceedings**, inasmuch as information to the government servant of the charges framed against him, by service of the charge-sheet, is not a part of the decision-making process of the authorities for initiating the disciplinary proceedings." (Emphasis supplied)

10. Thus, answer to question (a) above is that disciplinary proceedings are stated to have been initiated at the time when the charge sheet has been signed by the competent authority and the same is independent of service of the charge sheet.

11. In the instant case, the original charge sheet was issued on 19-10-1992. when the applicant was in service. In that event, the proceedings under Rule 9(1) could continue after retirement even without specific

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sanction of the President. However, here arises the crucial question. The very basis of proceeding further with the Disciplinary proceedings in this case is the liberty granted by the High Court. This is the admitted position. Although, the High Court has not quashed the earlier charge sheet, it has not given liberty to the respondents to proceed with the earlier charge sheet. Instead the liberty given is for issue of "fresh charge sheet" and that too in accordance with the Rules applicable to retired employees. The respondents have proceeded against the applicant on the basis of a fresh charge sheet that has been issued, invoking the provisions of Rule 9(2). The order dated 5.10.2004 of the respondents through which the charge sheet was issued, explicitly <sup>mentions</sup> that "the President hereby accords sanction for instituting the departmental proceedings against the said Shri O.R. Phanse." As such, the proceedings, which started against the applicant on 5.10.2004, were not continuation of the old proceedings, which were initiated on 9.10.1992, but new proceedings initiated on 5.10.2004. As such, the answer to question (b) above is in negative. As regard to question at (c) above, the matter has to be examined strictly in accordance with rule 9(2). According to the said rule, where proceedings have not been initiated, it shall not be instituted save with the sanction of the President, nor shall it be in respect of any event which took place more than 4 years before such institution. It is only when the above twin conditions are fulfilled concurrently that proceedings against a railway servant can be instituted. With the above rule position, the authorities have sought permission from the Railway Minister on behalf of the President. Though the applicant's counsel argued that the initiation of proceedings shall be with a specific approval of the President only and not the Railway Minister, in our opinion under the delegated powers the respective Ministers are authorized to accord sanction. As such one

condition can be stated to have been fulfilled. However, as regards the second condition, namely no proceeding shall be instituted in respect of any event which took place more than 4 years before such institution, it would reflect that the alleged incident had taken place as early as 1985-1987 and 4 year period after the alleged incident took place <sup>expired</sup> in 1991. Since the applicant retired on 31<sup>st</sup> October, 1992, the four year period anterior to his date of retirement expired on 31<sup>st</sup> October, 1988. As such any incident prior to 31<sup>st</sup> October, 1988 of which charge sheet is sought to be issued after his retirement cannot fulfill this statutory condition. The High Court's order does not give any relaxation of this mandatory requirement, rather emphasis in the said order is that fresh charge sheet shall be issued in accordance with the rules applicable to the applicant and it has been reiterated that since the applicant stood already retired, the rules that may be applicable to retired employee would now be applicable to the facts of the present case. Accordingly, the answer to question (c) above is also in the negative.

12. We are in full agreement with the contention of the applicant that in this case even as on 1<sup>st</sup> of November, 2002 proceedings could not have been initiated against the applicant. As such the issue of the charge sheet on the basis of fresh institution of disciplinary proceeding's is violative of the mandatory provisions contained in Rule 9(2)(b)(ii) and hence the charge sheet cannot be legally sustained.

13. In view of the above the OA succeeds. Order dated 8.12.2004 and 5.10.2004 are hereby quashed and set aside. It is declared that the applicant is entitled to the terminal benefits including computation of pension as any other railway servant. The respondents are directed to release the withheld terminal benefits to the applicant within a period of one month from the date

*[Signature]*

of communication of this order. If the applicant chooses to commute the pension he may make necessary application in this regard and subject to fulfilling conditions attendant in respect of the same the respondents shall allow commutation in accordance with rules.

14. Though the applicant has claimed interest, as the matter has been pending in the Court for a substantial period the respondents cannot be held responsible for any delay. As such prayer for interest is rejected.

15. No costs.

  
(K.B.S. Rajan)

Judicial Member

  
(Dr. G.C. Srivastava)

Vice Chairman

To,

- ① Applicant Counsel
- ② Respondents Counsel

  
25.4.06