

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR,
JABALPUR

Original Application No. 785 of 2004

Bilaspur, this the 16th day of March, 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Jagdish Prasad Soni, aged about 59 years,
S/o. late Shri Gannu Lal Soni, presently working
As Senior Clerk in the office of Senior Section
Engineer (M) (P. WAY) (South) West Central
Railway, Harda (M.P.).

.... Applicant

(By Advocate – Shri L.S. Rajput)

Versus

Union of India, through

1. General Manager,
West Central Railway,
Near Railway Station, Indira
Market, Jabalpur (MP) 482001.
2. Divisional Railway Manager,
West Central Railway,
Habibganj, Bhopal (MP).

.... Respondents

(By Advocate – Shri S.P. Sinha)

ORDER

By Madan Mohan, Judicial Member –

By filing this Original Application the applicant has claimed the following main reliefs :

“(b) to quash impugned punishment orders Ann. A-1 to Ann. A-5 holding the same to be arbitrary, illegal and ab-initio-void,

(c) to direct the respondents to restore the applicant to his original post & grade as Head-Clerk Grade Rs. 5000-8000 (RSRP) with all consequential benefits including arrears of pay for the



intervening period from the date of removal to the date of reinstatement,

(d) to quash any other order or orders passed by the respondents against the interest of applicant during the pendency of the presence case."

2. The brief facts of the case are that the applicant is presently working as Senior Clerk in the office of the respondents. While working as such he was served with a charge sheet dated 31.8.2000. He submitted the reply and requested to supply the documents mentioned in the charge sheet. The enquiry officer has not conducted the enquiry according to the rules and on 7.8.2001 the enquiry officer advised the applicant that as per letter dated 1.8.2001 from the Divisional Engineer (S), Bhopal, the charge sheet dated 31.8.2000 issued by ADEN has been cancelled and the enquiry proceedings have been dropped unconditionally. The Divisional Engineer (S) Bhopal afterwards sent a fresh charge sheet for major penalty dated 2.8.2001 to the applicant with the same allegations/charges like the charge sheet dated 31.8.2000 and ordered for a fresh enquiry by appointing another enquiry officer. The enquiry officer who played the role of presenting officer also recorded the statement of the applicant and the prosecution witness on different dates. Thereafter, the disciplinary authority passed the order of removal from service on the applicant vide order dated 27.3.2002. He filed an appeal against this order which was rejected vide order dated 21.8.2002. He also preferred a revision petition and the revisional authority modified the punishment order reinstating the applicant in service by reverting him from the post of Head Clerk to the post of Senior Clerk on the minimum of the grade for a period of two and a half years with cumulative effect treating the intervening period from the date of removal to the date of reinstatement as Dies-non. Hence, this Original Application is filed.

3. Heard the learned counsel for the parties and carefully perused the pleadings and records.



4. It is argued on behalf of the applicant that as per the letter dated 1.8.2001 from the Divisional Engineer (S), Bhopal, the charge sheet dated 31.8.2000 was cancelled and the enquiry proceedings were dropped unconditionally. But subsequently the Divisional Engineer (S), Bhopal sent a fresh charge sheet of major penalty on the applicant dated 2.8.2001 with the same allegations like that of the earlier charge sheet. This action of the respondents is apparently illegal. Our attention is drawn towards the order passed by the Tribunal in O.A. No. 797/1995 – Smt. S.A. David Vs. Union of India & Ors. decided on 23rd October, 2000 and argued that the facts of the present case are exactly similar to the aforesaid case. Hence, the OA deserves to be allowed.

5. On the other hand the learned counsel for the respondents argued that the Divisional Engineer (S), on learning of the issue of the charge sheet by an incompetent officer, cancelled the charge sheet on 1.8.2001 and closed the enquiry being conducted on the incompetent charge sheet and issued a fresh charge sheet on 2.8.2001. This was the first charge sheet issued by the competent authority. He further argued that the respondents have conducted the enquiry according to the rules and the impugned orders are passed according to the law and the case is not covered by the decision of the aforesaid OA as argued by the learned counsel for the applicant.

6. After hearing the learned counsel for the parties and on careful perusal of the pleadings and the judgment cited by the learned counsel for the applicant, we find that the respondents have cancelled the first charge sheet dated 31.8.2000 and the enquiry proceedings were dropped unconditionally vide order dated 1.8.2001 and further on the same allegations/charges as mentioned in the charge sheet dated 31.8.2000 fresh charge sheet was issued for major penalty on 2.8.2001. This fact is not denied by the respondents. On perusal of the order cited by the learned counsel for the applicant in the case of Smt. S.A. David (supra), we find

that the facts of the present case are exactly similar in all fours to the facts of cited case. The Tribunal in the aforesaid case has observed as under :

“6. In view of what has been discussed above, the issuance of the third charge sheet on the same charge is bad in law and ab-initio void as such the order passed by the disciplinary authority and the appellate authority are hereby quashed. The applicant will be given all the benefits for which she may be entitled to and the entire period of absence during which she was not allowed to perform duties including the period when she was placed under suspension shall be treated as on duty for all purposes, within a period of three months from the date of receipt of a copy of this order.”

Hence, the aforesaid quoted decision so taken by the Tribunal shall mutatis mutandis applicable to the present case.

7. Accordingly the Original Application is allowed and the impugned orders dated 2.8.2001 (Annexure A-1), 27.3.2002 (Annexure A-2), 21.8.2002 (Annexure A-3), 24.5.2003 (Annexure A-4) and 3.2.2004 (Annexure A-5) are quashed and set aside. The applicant will be entitled for all the consequential benefits flowing from quashment of the aforesaid orders. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

“SA”

पृष्ठांकन सं ओ/ज्या.....जबलपुर, दि.....
सदर लिपि जारी दिनांक.....

- (1) सचिव, उच्च न्याय न्यायालय, जबलपुर
- (2) आवेदक श्री/श्रीमती, सु.....के कार्यालय
- (3) प्रत्यर्थी श्री/श्रीमती/श्री.....के कार्यालय
- (4) बॉयपाल, कोषा. जबलपुर न्यायालय

सूचना एवं आवश्यक कार्यवाही हेतु

23/3/05

S.P. Singh
23/3/05

Issued
On 23.03.05