

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 5 day of August, 2008

ORIGINAL APPLICATION No.200/2007

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR.B.L.KHATRI, MEMBER (ADMINISTRATIVE)

D.D.Sharma,
s/o Tara Shankar Sharma,
r/o Q.No.288/3, Road No.1,
Ganpati Nagar, Railway Colony,
Jaipur, presently working as
Section Engineer in C&W Department
Under Sr. D.M.E., N.W.R. at Jaipur

..Applicant

(By Advocate: Shri Shailendra Shrivastava)

Versus

1. Union of India
through General Manager,
North Western Railway,
In front of Railway Hospital,
Jaipur.
2. Divisional Railway Manager,
North Western Railway,
Jaipur
3. Sr. Divisional Mechanical Engineer,
North Western Railway,
Jaipur
4. R.P.Meena,
Sr. D.M.E.,
North Western Railway,
Jaipur.
5. Girish Chaturvedi,
Sr. Section Engineer (In-Charge),
C&W Department of Jaipur Depot, Jaipur

... Respondents

(By Advocate: Shri N.C.Goyal)

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O R D E R

Per Hon'ble Mr. M.L.Chauhan.

The applicant has filed this OA thereby challenging the impugned chargesheet dated 19.12.2006 (Ann.A1). The Gravamen of the charge against the applicant, as can be seen from the chargesheet, is that the applicant being working on supervisory post, it was his duty to take care of primary maintenance of Train No.9776 which was to operate from Jaipur to Bangalore. The train started on 14.11.2005 and reached at Mysore on 15.11.2005 where the secondary maintenance of the train was done. In Coach No. 04205 AB WGSCN NWR, defect of root radius in wheel was found and due to this defect in wheel the Coach was detached. Further, on checking other defects regarding cleaning of the training, internal condition of other coaches etc. it was not found satisfactory. It may be stated that the said chargesheet was issued pursuant to inspection report submitted by the Chief Mechanical Engineer. The grievance of the applicant in this case is that he has filed OA No.221/02 against the seniority given to him before this Tribunal which OA was allowed and it is on account of the bias attitude on behalf of respondents, the applicant is being harassed. It is further averred that in the past also the applicant has also been issued minor penalty

chargesheet on flimsy grounds and punishment has also been inflicted.

When the matter was listed on 6.6.2006, this Tribunal noticed the contention of the applicant that the chargesheet has been issued to the applicant by respondent No.4 on charges which do not warrant imposition of major penalty and also that respondent No.4 is totally bias against the applicant as he has approached the Tribunal by filing Contempt Petition. Thus, according to the applicant, the respondents are trying to punish the applicant in mala-fide manner at the verge of retirement which will cause irreparable loss to him in terms of either job or retirement benefits. After noticing these facts, this Tribunal issued notices to the respondents for filing reply. However, stay was not granted. Subsequently, vide order dated 22.8.2007, this Tribunal directed the respondents not to pass any final order in the inquiry proceedings against the applicant till the next date. The said stay is continuing till date.

3. The respondents have filed reply. In the reply, the respondents have categorically stated that major defects were noticed in the train when secondary maintenance was done at Mysore and it is on the basis of inspection report submitted by the Chief Mechanical Engineer that the competent authority has issued chargesheet against the applicant. It is further

stated that during the period of October, 2005 to May, 2006 there were total 18 Coaches detached at the secondary end. Out of the above 18 coaches detached at other end, 7 coaches were primarily maintained at Jaipur in the supervision of the applicant. Thus, due to slack supervision of the applicant, frequent detachments at other end occurred. Hence, the administration found the negligence of the applicant time and again and he was issued the chargesheet and accordingly penalty was imposed upon him and against this penalty, the applicant himself has not approached the Hon'ble Tribunal. Hence, the penalty has become final. According to the respondents, the charges levelled against the applicant are of such nature which made the Railway subject to criticism and have also caused loss in financial terms in the present era where the Railway has to meet the competition with the other transportation means like Road Transport and Air Transport.

4. The applicant has also filed MA No.184/2007 thereby praying for placing certain documents on record whereby the applicant has requested for change of Enquiry Officer, which request of the applicant was declined.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

6. The learned counsel for the applicant argued that it is a case of mala-fide exercise of power and non-application of mind on behalf of respondent No.4 against whom allegation of mala-fide has been levelled. It is further argued that respondent No.4 has not filed any affidavit thereby controverting the allegations levelled by the applicant, as such, the allegation levelled shall be deemed to have been accepted. Further, it was argued that at any rate it was a case where the chargesheet for minor penalty ought to have been issued instead of major penalty. The learned counsel for the applicant has drawn our attention to page 25 of the paper book whereby the applicant has quoted instances of 9 persons who were found guilty during the secondary checking and against whom the department has not taken any action whereas in the case of the applicant, the respondents have proceeded by issuing major penalty chargesheet. Thus, according to the applicant, this fact itself is sufficient to establish that action of the respondents is mala-fide.

7. We have given due consideration to the submissions made by the learned counsel for the applicant. We are of the view that the matter is at the stage of issuance of the chargesheet. The scope of interference at this stage is very-very limited. This Tribunal cannot go into the sufficiency or otherwise

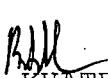
of the allegations levelled against the applicant in the chargesheet. It cannot be said to be a case where from perusal of the allegations levelled in the chargesheet, it can prima-facie be said that it is not a misconduct. The allegation of mala-fide, as noticed above, levelled by the applicant against respondent No.4 is not sufficient to conclude that it is a case of mala-fide exercise of power on behalf of respondent No.4, especially when respondent No.4 has acted on the basis of the report submitted by the Chief Mechanical Engineer. Further, it can neither be said to be a case where the Disciplinary Authority has acted beyond his authority nor such is the case pleaded by the applicant. Simply, because the applicant has obtained favourable order from this Tribunal and also filed contempt proceedings against the respondents, these facts itself does not constitute mala-fide unless something more is established, which is not the case set-up in the instant OA.

8. Thus, we are of the view that in exercise of judicial review, it is not permissible for this Tribunal to interfere with the decision taken by the competent authority for initiating disciplinary proceedings. However, there appears to be some substance in the contention raised by the learned counsel for the applicant that keeping in view the nature of allegation levelled in the chargesheet and

the fact that in the past also 9 persons were found guilty when the secondary maintenance of the train was conducted and none of them were issued chargesheet, it was not a case which warrants initiation of major penalty proceedings. Be that as it may, the issuance of the chargesheet for major penalty does not conclude that the delinquent cannot be imposed minor penalty in case the charges are proved against him. However, this is a matter which is to be taken note of by the appropriate authority at the appropriate stage and we do not wish to express any opinion on this point.

9. The OA is disposed of accordingly with no order as to costs. The interim stay granted on 22.8.2007 and continued from time to time shall stand vacated.

10. In view of the order passed in the OA, no order is required to be passed in MA Nos.184/2007 and 128/2008 which shall stand disposed of accordingly.


(B.L.KHATRI)

Admv. Member


(M.L.CHAUHAN)

Judl.Member

R/