

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 17th day of November, 2010

ORIGINAL APPLICATION NO. 459/2010

CORAM

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER.

Shri Manish Sharma son of Shri Paras Ram Jangid, aged 21 years, resident of House No. A 43, Kamal Sadan, Akshar Dham Kota, Ex. TADK, Ambala.

.....Applicant

(By Advocate: Mr. S.K. Jain)

VERSUS

1. Union of India through General Manager, North Railway, New Delhi.
2. Assistant Personnel Officer, Ambala Division, Ambala Shri Manoj Ojha.
3. Shri Ravindra Singh, S/WLI, North Railway, Ambala Cantt., Ambala.
4. Shri Y.P. Singh, Ex. DRM Ambala Cantt, now a days Chief Engineer (S&C) (East), Northern Railway, Delhi.

.....Respondents

(By Advocate: Mr. Anupam Agarwal)

ORDER

The applicant has filed this OA thereby praying for the following reliefs:-

- "(a) That by an order or direction, the impugned charge sheet (Annexure A/1) be quashed and set aside.
- (b) That by an appropriate order or direction, the impugned enquiry be declared to be null and void.
- (c) That by an appropriate order or direction, the impugned order of imposition of penalty be quashed and set aside and the applicant be declared to be continuous on the post with all consequential benefits, salary etc.

(d) Any other relief this Hon'ble Tribunal deems fit may also be granted."

2. Briefly stated, facts of the case so far as relevant for the disposal of the case are that the applicant, while working as Substitute Bungalow Luscar, was issued a charge sheet dated 06.08.2010 (Annexure A/1) for major penalty. Pursuant to the said charge sheet, an Inquiry officer was appointed and ultimately vide order dated 16.09.2010 (Annexure A/2), the services of the applicant were terminated with immediate effect. The applicant has made grievance regarding issuance of the charge sheet as well as final order on merit and also on the ground that the order of termination (Annexure A/2) has been passed by the APO/Sr. DPO whereas the applicant was given appointment as Substitute Bungalow Luscar with the approval of DRM.

3. When the matter was listed on 08.10.2010, this Tribunal had granted ex-parte interim stay and the respondents were directed to indicate in the reply affidavit whether the APO, who has terminated the services of the applicant, was the appointing authority of the applicant.

4. The respondents have filed reply. By way of preliminary objections, the respondents have stated that the applicant had suppressed and concealed material information. In fact he had filed OA No. 738/HR/10 before Hon'ble Chandigarh Bench of the Tribunal. The Hon'ble Tribunal vide order dated 03.09.2010 had disposed of the said OA. The respondents have further stated that as per the schedule of

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powers for employees appointed in the pay scale of Rs.2550-3200 (RSRP)/Pay Band I, Grade Pay Rs.1800/- in the Sixth Pay Commission, Assistant Personnel Officer is the appointing authority of the applicant. The respondents have also raised objection regarding non-exhausting of the departmental remedy and have stated that the present OA is liable to be dismissed being pre-mature.

5. The applicant has filed rejoinder in which it has been stated that bar of alternative remedy is not attracted in this case as the question of jurisdiction is involved in issuing the charge sheet/punishment order besides defending the case on merit.

6. We have heard learned counsel for the parties and have gone through the material placed on record. We are of the view that the present OA can be disposed of on the ground that the applicant has not exhausted the statutory remedy available to him by way of appeal and in terms of the decision rendered by the Constitution Bench of the Apex Court in the case of **S.S. Rathore vs. State of M.P.**, AIR 1990 SC 10 thereby considering relevant provisions of the Administrative Tribunal's Act, 1985, and the Apex Court has categorically held that the OA cannot be entertained unless the aggrieved person had not exhausted the statutory remedy. Admittedly, in this case, the statutory appeal under Rule 18 of the Railway (Discipline & Appeal) Rules was available to the applicant and in fact vide impugned order dated 16.09.2010 (Annexure A/2), the applicant was also directed to file an appeal within a period of 45 days. Thus without going into merit

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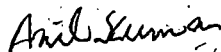
of the case, we are of the view that the present OA can be disposed of at this stage with the direction to the Appellate Authority to decide the appeal of the applicant. From the perusal of the order dated 28.07.2008, it is evident that the applicant was given appointment vide order dated 28.07.2008 and it has been mentioned that "this has the approval of the competent authority". The said order was signed by one Shri V.Sivasamy, APO/II/ Sr. DPO/PGT whereas the order of termination dated 16.09.2010 (Annexure A/2) was passed by the APO. Thus on the face of these two documents, it cannot be precisely concluded that the appointing authority of the applicant was the APO who has passed the order of termination of the applicant. Be that as it may, we are of the view that this question as well as other contentions raised by the applicant can be considered by the Appellate Authority. Accordingly, the Appellate Authority is directed to treat this OA as appeal on behalf of the applicant and shall dispose of the same by passing a speaking & reasoned order. Keeping in view the peculiar facts & circumstances of the case whether the APO can be said to be an appointing authority of the applicant and thus competent to terminate his services, the interim stay granted on 08.10.2010 and continued from time to time shall continue till the final disposal of the appeal. The Registry is directed to send the copy of this order alongwith copy of the Paper book to the DRM, Northern Railway, Ambala, who shall place the copy of the Paper Book of this OA as well as copy of this order before the Appellate Authority for the purpose of deciding the appeal of the applicant in case Divisional Railway

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Manager, Northern Railway, Ambala is not the Appellate Authority of the applicant.

7. We wish to add that OA No. 738/HR/10 filed before the Chandigarh Bench of the Tribunal pertains to the stage when the inquiry proceeding was pending and the same was withdrawn when the fact regarding completion of the inquiry proceeding by the Inquiry Officer and giving copy of the inquiry report to the applicant was brought to the notice of the Bench and it was under these circumstances, the OA was permitted to be withdrawn with liberty to the applicant for making representation against the finding recorded by the Inquiry Officer. As such, concealment of such information by the applicant cannot be said to be suppression of material fact.

8. With these observations, the OA is disposed of with no order as to costs.



(ANIL KUMAR)
MEMBER (A)



(M.L. CHAUHAN)
MEMBER (J)

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