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**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

Order reserved on: 02.07.2014

**ORIGINAL APPLICATION NO. 060/00063 of 2014
Chandigarh, this the 4th day of July, 2014**

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**CORAM: HON'BLE MS. RAJWANT SANDHU, MEMBER (A)
HON'BLE DR. BRAHM A. AGRAWAL, MEMBER (J)**

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Mohit Kumar, Gateman, son of Shri Surinder Kumar, resident of
House No. 10/2, Old Alu Godown, Ambala Cantt. (Haryana).

...APPLICANT

BY ADVOCATE: SHRI GAURAV SETHI

VERSUS

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Secretary, CCM/Headquarters Office, Baroda House, New Delhi.
3. The ACM/HQ Headquarters Office, Baroda House, New Delhi.

...RESPONDENTS

BY ADVOCATE: SHRI YOGESH PUTNEY

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ORDER**HON'BLE DR. BRAHM A. AGRAWAL, MEMBER(J):-**

Under challenge in the instant O.A. is the charge sheet dated 18.11.2013 (Annexure A-13), which is sought to be quashed, on the ground that the same has resulted into double jeopardy because the applicant suffered earlier disciplinary proceedings initiated with the charge sheet dated 08.06.2010 (Annexure A-5) on the same allegation, which ended with the appellate authority setting aside the punishment of dismissal imposed by the disciplinary authority, vide the order dated 25.05.2012 (Annexure A-7) and the applicant thereupon resumed his duty on 04.06.2012 (Annexure A-8). The allegation is the same as in both the charge sheets, the applicant has been stated to have unauthorisedly absented from duty w.e.f. 04.05.2010.

2. In the earlier O.A. filed by the applicant against the previous disciplinary proceedings, he was relegated to approach the appellate authority, vide this Tribunal's Order dated 08.04.2011 (Annexure A-6).

3. The applicant did so and the appellate authority passed the following order on 25.05.2012:

"Sub: Appeal against punishment of dismissal from service imposed by Disciplinary Authority through his letter no. CCM/S&FM/ D&AR/09 dt. 22.7.10.

Ref: Your appeal dt. 21.7.2011 addressed to Dy. CCM/FM-I as Appellate Authority.

I have gone through the appeal as Appellate Authority as also the SF-5 No. Comml./CCM/S&FM/TADK/2010 dated 08.06.2010 issued by SCM/Services as also the D & AR Inquiry Report of the Inquiry Officer and decision of the Disciplinary Authority as conveyed to CO on 22.07.2010.

I find that the proper procedure for D & AR Action has not been followed in the subject case in as much as there is no document to substantiate pasting of the charge-sheet at the known address of the CO nor advertised in any Newspaper. The nomination of IO has to be issued by the Disciplinary Authority through SF-7 which has not been done in this case. The IO has also failed to hold the Inquiry by giving notice to the CO for appearance in the inquiry. The rule provides for that before imposition of the punishment the Disciplinary Authority is required to supply the CO a copy of the Inquiry Report giving an opportunity to the CO to offer his defense within the prescribed period before taking the decision which has not been done in this case.

In view of above, the punishment imposed of dismissal from service by the Disciplinary Authority is set aside."

4. Relying on the principle of double jeopardy, the learned counsel for the applicant has submitted that the setting aside of the punishment of dismissal by the appellate authority is on merits and the second charge sheet, stayed through our interim order dated

24.01.2014, is not sustainable. He has in this connection referred to the judgment of the Delhi High Court in R.N. Atri Vs. UOI (1979 SLJ 12). It was held by the Hon'ble High Court as under:

"if a person has been prosecuted for the same offence previously he cannot be prosecuted for it again, irrespective of whether he was acquitted or convicted in the earlier enquiry. Constitution forbids double jeopardy. Thus, if a proper enquiry has been held, and finding given in that enquiry whether of guilt or innocence, no power is left with the Government to hold again a second enquiry on the same charges."

5. The learned counsel for the respondents, on the other hand, has submitted that the appellate authority set aside the punishment of dismissal, not on merits, but on technical grounds, and therefore, an authority above him ordered a de novo enquiry.

6. A perusal of the above-quoted order of the appellate authority shows that he found fault in the procedure adopted starting with service of the charge sheet dated 08.06.2010 (Annexure A-5), but the charge sheet itself was not faulted. So, even if a de novo enquiry was ordered by a superior authority, where was the need or occasion to issue the impugned fresh charge sheet dated 18.11.2013 (Annexure A-13)? In this view of the matter, the present O.A. seems to succeed, as we feel that the charge sheet



dated 18.11.2013 (Annexure A-13) and further proceedings following the same, should be set aside, and we do so.

7. The O.A. is allowed accordingly. No order as to costs.

(DR. BRAHM A. AGRAWAL)
MEMBER(J)

(RAJWANT SANDHU)
MEMBER(A)

Dated: 04.07.2014
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