

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

C.P. No. 859/2017
O.A. No. 1711/2016

New Delhi, this the 2nd day of January, 2018

HON'BLE MR. V. AJAY KUMAR, MEMBER (J)
HON'BLE MS. NITA CHOWDHURY, MEMBER (A)

Kunwar Fateh Singh
(Aged about 55 years)
S/o Shri Tannu Singh
R/o 964-A, Old Vijaya Nagar, Ghaziabad,
Working as SWLI (Group 'C')
Under Dy.CE/B/Line Tilak Bridge,
New Delhi.

.. Petitioner

(By Advocate: Shri P.S. Khare)

Versus

1. Shri Ashwani Lohani
Chairman,
Railway Board,
Rail Bhawan,
New Delhi.
2. Shri Vishwesh Chaube
General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. Smt. Renu Yadav
Dy. Chief Personnel Officer,
Northern Railway Head Quarter,
Baroda House, New Delhi.
4. Shri Pradeep Kumar
Dy. Chief Engineer/B/Line,
Tilak Bridge, New Delhi.

.. Respondents

ORDER (ORAL)

By Mr. V. Ajay Kumar, Member (J)

Heard the learned counsel for the petitioner.

2. O.A. 63/2011 filed by the applicant was disposed of by this Tribunal vide order dated 28.01.2015 as under:

“25. We, in the above facts and circumstances of the case, allow this OA and quash and set aside the impugned Memorandum dated 08.12.2009 and the Corrigendum dated 01.09.2011. The Respondents shall also pass appropriate orders complying with the aforesaid directions within a period of 2 months from the date of receipt of a copy of this order. There shall be no order as to costs.”

3. The WP(C) No. 6395/2015 filed by the respondents against the orders of this Tribunal also disposed of by the Hon’ble High Court vide order dated 29.07.2015 as under:

“4. Mr. Puneet Agarwal, learned counsel for the petitioner submits that order of the learned Tribunal be modified to the extent that leave be granted to the petitioner to initiate fresh action against the respondent as the OA filed by the respondent has been allowed only on technical grounds. Learned counsel for the respondent does not oppose this prayer, however it is submitted that the respondent be permitted to make a detailed representation initially and said representation may be considered by the competent authority prior to initiating fresh action as the respondent is confident that he would be able to satisfy the respondents and prove his innocence.

5. In the light of above stand taken by the parties, the petition stands disposed of. The representation be made within two weeks from today and the same shall be decided within four weeks thereafter. In case, the representation is rejected, the petitioner would be at liberty to take action in accordance with law.”

4. Thereafter, when the applicant filed another O.A. No.1711/2016, the same was disposed of on 05.12.2016 as under:

“7. The learned counsel for the applicant submits that when once the charge memo dated 08.12.2009 was quashed by this Hon’ble Tribunal, the respondents cannot proceed with the same charge sheet by way of the impugned proceedings. The learned counsel submits that the Hon’ble High Court, while modifying the said order, only permitted the respondents to issue fresh proceedings, but the respondents, on the other hand, now trying to proceed with the quashed charge memo dated 08.12.2009, which is illegal and against the orders of the Hon’ble High Court itself.

8. On the other hand, learned counsel for the respondents would submit that once the Hon’ble High Court modified the orders of this Tribunal by permitting the applicant to make a representation and directed the respondents to consider the same, they are right in issuing the impugned proceedings and that they can proceed with the charge memo dated 08.12.2009 to enquire into the charge memo dated 08.12.2009 itself.

9. On careful examination and perusal of the orders of the Hon’ble High Court, we fully agree with the submission made by the learned counsel for the applicant. Since the Hon’ble High Court, while disposing of the Writ Petition, had not set aside the orders of the Tribunal and the only modification done by the Hon’ble High Court is to permit the respondents to issue fresh proceedings, which means that they can issue a fresh charge sheet since there was no charge sheet in existence, as the earlier charge memo dated 08.12.2009 was already quashed by this Tribunal, however, after considering the representation of the applicant about the necessity or otherwise of initiating fresh action against the applicant. Initiating fresh action means to issue a fresh charge sheet.

10. In the circumstances, the O.A. is allowed and the impugned proceedings dated 08.10.2015 and 18.04.2016 are quashed, to the extent of proceeding to enquire the quashed charge memo dated 08.12.2009. It is made clear that the respondents are at liberty to issue fresh charge sheet and proceed against the applicant, as per the modified orders of the Hon’ble High Court, in accordance with law. In such an event, the applicant shall cooperate for early finalisation of the proceedings to be initiated against him. No order as to costs.”

5. In terms of the aforesaid orders and the liberty granted by the Hon’ble High Court, the respondents have issued the impugned

Memorandum dated 13.09.2017 framing charges against the applicant. Being aggrieved by the same, the applicant filed the instant CP.

6. A bare perusal of the order dated 29.07.2015 in WP (C) No. 6395/2015 of the Hon'ble High Court, which modified the order dated 28.01.2015 of this Tribunal in O.A. No.63/2011, and order dated 05.12.2016 in O.A. No.1711/2016 of this Tribunal clearly indicate that leave has been granted to the respondents to initiate fresh action against the applicant, however, the same can be done after the applicant's representation is considered by the competent authority.

7. The respondents vide letters dated 08.10.2015 and 18.04.2016 have considered the representation of the applicant, however not satisfied with the same, initiated the fresh action against the applicant by issuing the impugned Charge memorandum dated 13.09.2017.

8. In the circumstances, since the action of the respondents is in terms of the orders of the Hon'ble High Court, we do not find any contemptuous act on the part of the respondents in issuing the impugned Charge Memorandum. On the other hand, it appears that the applicant himself is acting against the orders of this Tribunal,

by trying to delay the disciplinary proceedings through vexatious litigation. Accordingly, the CP is dismissed.

(NITA CHOWDHURY)
Member (A)

(V. AJAY KUMAR)
Member (J)

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