

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 1711/2016

New Delhi, this the 5th day of December, 2016.

HON'BLE MR. V. AJAY KUMAR, MEMBER (J)
HON'BLE MR. P.K. BASU, MEMBER (A)

Kunwar Fateh Singh,
(Aged about 54 years)
S/o Shri Tannu Singh,
R/o 118/6, Shivaji Bridge,
New Delhi
Working as SWLI (Group 'C')
Under Dy.CPO/HQ, New Delhi.

.. Applicant

(By Advocate : Shri P.S. Khare)

Versus

1. Union of India through
The Chairman,
Railway Board,
Rail Bhawan,
New Delhi.
2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. Deputy Chief Personnel Officer,
Northern Railway Head Quarter,
Baroda House,
New Delhi.

.. Respondents

(By Advocate : Shri R.N. Singh)

ORDER (ORAL)

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

Heard both the sides.

2. Questioning the impugned Annexure A-1 dated 08.10.2015 and Annexure A-2 dated 18.04.2016, the applicant, who is an SWLI (Group 'C') under the respondents, filed the present O.A.

3. The respondents issued a charge memo dated 08.12.2009 to the applicant. Questioning the same, the applicant filed O.A. No.63/2011. This Tribunal vide its order dated 28.01.2015 allowed the said O.A., and the operative portion of the same reads 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.”

4. Aggrieved by the said order, the respondents filed WP(C) No.6395/2015 and the Hon'ble High Court of Delhi by its order dated 29.07.2015, while disposing of the said writ, stated 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.”

5. In pursuance of the aforesaid orders of the Hon’ble High Court, the applicant made a representation and the same was considered by the respondents vide the impugned Annexure A-1 dated 08.10.2015, and the relevant part of the same reads as under:

“5. In your disciplinary proceeding, Shri K.K. Agarwal was initially appointed as Inquiry Authority who expressed his inability to conduct inquiries. Later on Shri Ranjan Singh was appointed who fixed several dates of inquiry which you did not attend. Afterwards, another Inquiry Authority, Shri Mukesh Kumar, was appointed as Sh. Ranjan Singh had been repatriated in the cadre. He also fixed inquiry dates in which you did not turn up. You attended one Inquiry proceeding on 11.05.2012. However, later since a Stay on Inquiry proceedings by Hon’ble Court was obtained by you, you stopped attending Inquiry proceedings. Later on, you requested for change of Inquiry Authority, Sh. Mukesh Kumar, on the grounds of bias. This too was accepted by the Revisionary Authority (the AGM) and Sh. Santosh Kumar was appointed as new Inquiry Authority.

6. The Railway Servants (Disciplinary and Appeal) Rule, 1968 provides many opportunities to the Charged official to defend his case and put forth evidences in his support. At this interim stage when the Inquiry Officer is in midst of statutory inquiry, I cannot prejudge the charges. There is no way I can, comment or adjudicate, on the merits of charges at this point of time. D&AR procedure is a statutory requirement which must be allowed to run through its full course and the charge sheet cannot be dropped at this stage. During the statutory inquiry, you would be provided all entitled opportunities to prove your innocence or otherwise. Therefore, you are advised to participate in statutory process. ”

6. In continuation of the same, the respondents issued impugned Annexure A-2 dated 18.04.2016, which reads as under:

“In reference to above, it is affirmed that in compliance to the directions of Hon’ble High Court in CWP No. 6395/2015, I have gone through all the contents of your application dated 13.8.15 thoroughly and reply you in a very detail, specific and clear manner vide letter dated 8.10.15. In my view all the points raised by you in your application dated 8.10.15 has been addressed and no contents whatsoever, has been left out. It is further reiterated that no new points raised by you in your application dated 11.3.16 also. As replied already in this office letter dated 8.10.15, the merit of the charges imposed cannot be commented or debated upon at this stage when the inquiry procedure is still going on. It would be premature to adjudicate on the charges levelled against you at this stage.

Other than the merits of the charges all other contents of your representation dated 13.8.15 have been replied to you with utmost clarity in compliance to the directions of Hon’ble High Court in CWP No.6395/2015. There is nothing further to add to your representation dated 11.3.16 as no new point has been raised.

You are advised to co-operate with the inquiry proceedings as you would be given opportunities to plead your case. Non co-operation will result in ex-parte decision by Inquiry Authority.”

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.

(P.K. BASU)
Member (A)

(V. AJAY KUMAR)
Member (J)

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