

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.3579/2017
MA No.3805/2017

Reserved on: 11.12.2017
Pronounced on:14.12.2017

Hon'ble Mrs. Jasmine Ahmed, Member (J)
Hon'ble Mr. Uday Kumar Varma, Member (A)

Kunwar Fateh Singh (Aged about 54 years)
S/o Sh. Tannu Singh
R/o 964-A, Old Vijay Nagar,
Sector-9, Near Children Academy School,
Samrat Chowk, Ghaziabad – 201009 (UP)
Working as SWLI (Group C)
Under Dy. Chief Engineer/Bridge Line,
Tilak Bridge, New Delhi.
(By Advocate: Sh. P.S. Khare)

...Applicant

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 Engineer/Bridge Line,
Northern Railway,
Tilak Bridge, New Delhi.

...Respondents

(By Advocate: Shri VSR Krishna and Sh. K.K. Sharma)

O R D E R

By Hon'ble Uday Kumar Varma, Member (A):

This is the fourth round of litigation by the applicant, who has filed the present OA under Section 19 of the Administrative Tribunals Act, 1985 seeking to quash the Chargesheet dated 13.09.2017 (wrongly mentioned as 13.07.2017 by the applicant in OA) issued to him as also

order dated 07.09.2017 passed by the respondents to the extent of issuing the chargesheet in compliance of the Tribunal's order dated 28.01.2015 passed in OA No.63/2011 whereas no liberty was granted to them to issue the impugned chargesheet.

2. Brief facts of the case are that the applicant initially joined the respondents as Wireless Maintainer Grade-III on 09.02.1987 and was subsequently promoted to the post of Welfare Inspector w.e.f. 04.10.1996. On 26.05.2006, the applicant was issued a chargesheet under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 on account of irregular appointments under the Vocational Course in the Railway Commercial Scheme on the following Articles of Charges:-

"That Shri K.F. Singh while working in Recruitment Section during 2001-2005 committed misconduct in as much as he has made appointments of 11 such candidates under scheme of vocational course in Railway Commercial who obtained less than 55% marks (45% in case of SC/ST/OBC) in aggregate in prescribed subjects excluding additional subject in contravention of Railway Board's instructions issued for scheme.

By his above action of omission and commission said Shri K.F. Singh failed to maintain devotion to duty and acted as unbecoming of a Railway Servant thereby contravened Rule 3(1) (ii) & (iii) of Railway Services (Conduct) Rules 1966".

3. Aggrieved, the applicant preferred OA No.1897/2006, but since the matter of irregular

appointments was taken up by Vigilance Organization and investigation was going on, the respondents themselves decided to withdraw the impugned chargesheet dated 26.05.2006, which came to be withdrawn vide order dated 02.11.2006 (Annexure A-3). Resultantly, OA No.1897/2006 was dismissed.

4. It is the case of the applicant that the respondents again issued a chargesheet dated 08.12.2009 under the Railway Servants (Discipline & Appeal) Rules, 1968 followed by a corrigendum dated 01.09.2011 on the same allegations after lapse of more than 3½ years alleging therein that the applicant failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Government servant. Against the aforesaid chargesheet, the applicant approached the Tribunal by way of OA No.63/2011 which was allowed vide order dated 28.01.2015 and the impugned chargesheet dated 08.12.2009 and corrigendum dated 01.09.2011 were quashed and set aside with a direction to the respondents to comply with the directions contained therein within two months from the date of receipt of copy of that order.

5. The respondents challenged the Tribunal's order dated 28.01.015 before the High Court of Delhi by filing WP(C) No.6395/2015 which was disposed of vide order dated 29.07.2015 with the following observations:-

"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."

Accordingly the applicant preferred a detailed representation dated 13.08.2015 which was disposed of vide order dated 08.10.2015, concluding part whereof reads as under:-

"6. The Railway Servants (Discipline & Appeal) Rules, 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. DEAR 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. The applicant filed yet another representation dated 11.03.2016, which was also disposed of vide order dated 18.04.2016 on the ground that there was nothing further to add to his representation as no new point had been raised. Therefore, the applicant was advised to cooperate with the inquiry proceedings as he would be given opportunities to plead his case. He was also informed that his non-cooperation would result in *ex parte* decision by the inquiry officer.

7. Both the above orders dated 08.10.2015 and 18.04.2016 passed by the respondents on applicant's representations were challenged by the applicant by filing yet another Original Application bearing OA No.1711/2016. The Tribunal, taking into account the background of the case as also the order dated 29.07.2015 passed by the High Court of Delhi in WP(C) No.6395/2015, allowed the OA vide order dated 05.12.2016 by quashing the impugned orders dated 08.10.2015 and 18.04.2016 to the extent of proceeding to enquire the quashed charge memo dated 08.12.2009, with liberty to the respondents to issue fresh chargesheet

and proceed against the applicant as per the modified orders of the High Court. The applicant was also directed to cooperate for early finalization of the proceedings initiated against him. The respondents passed order dated 07.09.2017 conveying that the quasi-judicial proceedings initiated under chargesheet dated 08.12.2009 against him is cancelled from the stage of issue of chargesheet in compliance of Tribunal's order dated 28.01.2015 in OA No.63/2011 as modified by the High Court of Delhi, and finally the respondents in compliance of the Tribunal's order dated 05.12.2016 passed in OA No.1711/2016, issued a fresh chargesheet to the applicant vide order dated 13.09.2017 on the following Articles of Charges:-

"The Ministry of Railways had initiated a job linked vocational course in Railway commercial working (VCRC) started from the year 1991-92 vide D.O. letter No.E(W)89ED1-13 dated 16.11.90. The course consists of following subject:-

- I. English*
- II. Business study or second language offered by the school.*
- III. Economics,*
- IV Railway Commercial Working*
- V Accountancy*

The students have an option to study an additional subject to be among the following Elective (Except the one offered in lieu of the second language) subjects:-

- I. Mathematics*
- II. Business Studies (if not already offered in lieu of the second language)*

III. Introductory Computer Science

IV. Psychology

The candidates who passed the course by securing at least 55% in case of General and 45% in case of SC/ST&OBC) in Railway Commercial Working as well as in the aggregate in the subjects i.e. English, Business Study or second language offered by the school, Economics & Accountancy were to be offered as Commercial Clerk & Ticket Collectors.

Shri K.F. Singh, SWI scale Rs.5500-9000, Rectt. Cell under Dy. CPO/R was assigned with the work of making list of the candidates and further processing the case for appointment as per the Railway Board's under VCRC. But he had processed the cases for recruitment very casually as the same has become evident from the preventive check by Vigilance deptt, which found that as many as eight ineligible candidates were appointed in Railways due to his sheer negligence.

In the following cases he did not make the list as per Railway Board's guidelines and took into consideration the marks of additional subjects for calculating the aggregate marks. As a result of which the following eight candidates who were not eligible were considered for appointment on Railways:-

S. No.	Name of the candidates S/Shri/Kumari	Category	Minimum aggregate % required as per Board's guidelines	Aggregate % obtained by candidates
1	Shalendra Kumar	OBC	45	43.2
2	Yogendra Kumar	General	55	54.5
3	Nagendra Pratap Yadav	OBC	45	41.8
4	Km. Nahida	General	55	41.4
5	Dhirendra Singh	OBC	45	42.8
6	Jang Bahadur	SC	45	43
7	Vinod Bhagat	ST	45	43
8	Manish Kumar Patel	OBC	45	42.8

By the above act of omission and commission Shri K.F.Singh while working as S&WI failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Railway Servant, thereby contravened the provisions of Rule 3.1(i), (ii) & (iii) of Railway Service Conduct Rules, 1966."

This is the chargesheet which has now been challenged by the applicant in the instant OA on the grounds that the chargesheet dated 08.12.2009 having been quashed and set aside by the Tribunal, inquiry in the present chargesheet on the same set of allegations cannot be conducted and the disciplinary authority is debarred from issuing such a vague chargesheet; as the instant chargesheet pertains to the incident of 1999-2000, the same is hopelessly barred by limitation as the respondents have failed to conclude the issue even after lapse of 17 years; the controversy in question has already been settled by the Ministry of Railways in the matter of Rameshwar Prasad & Other cases and even the chargesheet dated 08.10.2015 and corrigendum dated 18.04.2016 have already been quashed and set aside by the Tribunal vide its order dated 05.12.2016 passed in OA No.1711/2016, the impugned chargesheet is bad in law. The applicant, therefore, prays that the impugned chargesheet issued by the respondents on the same set of charges contained in the earlier chargesheets, which all have already been quashed and set aside, may be quashed and set aside and the OA be allowed.

8. The respondents have filed the counter affidavit stating that the impugned chargesheet has been issued to the applicant for the pending charges against him that too in compliance of the directions of the Tribunal and High Court of Delhi as has been mentioned in the body of the OA. The respondents further submitted that representations filed by the applicant either in compliance of the orders of the High Court/Tribunal or on his own have been decided by passing speaking and reasoned orders.

9. Insofar as the limitation is concerned, the respondents submit that the delay, if any, occurred in settling the issue involved in the chargesheet is not due to the act of the respondents rather it occurred due to pending litigation and, therefore, the impugned chargesheet issued is in compliance of the judicial pronouncements. Therefore, it does not lie in the mouth of the applicant to say that the instant chargesheet is hopelessly barred by time. The respondents further submit that it is the applicant who does not wish to comply with the directions of the Tribunal and, instead of cooperating in the enquiry proceedings so as to reach early finalization, has approached the Tribunal and filed

the OA at a premature stage. The respondents submit that the applicant cannot escape from the charges levelled against him, though the same relate to the year 1999-2000, and he will have to face the enquiry and will be bound by the fate of the enquiry. Therefore, the learned counsel for the respondents prays that the OA being premature deserves to be dismissed.

10. We have carefully gone through the pleadings of the case and patiently heard the arguments so advanced by the learned counsel for the parties.

11. The key issue to be decided is whether the impugned Chargesheet dated 13.09.2017 is maintainable or not?

12. The basic case of the applicant is that the impugned chargesheet is illegal because it has been issued without complying with the orders of the High Court in WP(C) No.6395/2015 dated 29.07.2015, which stipulated as follows:-

"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."

13. The fact of the matter is that following the High Court's order, the applicant made representations dated 13.08.2015 and 11.03.2016 and these were considered and decided by the respondents vide orders dated 08.10.2015 and 18.04.2016 respectively. It is the contention of the applicant that these two letters do not actually decide his representations as they do not deal with the issues raised in the representations and, therefore, these letters were challenged in another OA No.1711/2016 before this Tribunal. The Tribunal after considering the whole matter passed an order, which is reproduced as under:-

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 6 OA 1711/2016 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."

14. The argument of the applicant is that since these two orders dated 08.10.2015 and 18.04.2016 have been quashed by the Tribunal, it leads to an eventuality where the respondents are deemed to have not decided his representations on merit. Therefore, since the decision on his representations is pending with the respondents, issuance of a fresh chargesheet dated 13.09.2017 is arbitrary, illegal and violative of High Court directions contained in order dated 29.07.2015 passed in WP (C) No.6395/2015.

15. On the contrary, the learned counsel for the respondents argued that quashing of orders dated 08.10.2015 and 18.04.2016 is partial only to the extent of proceeding to enquire the quashed charge memo dated 08.12.2009 and further that the respondents have been given the liberty to issue a fresh chargesheet. In other words, the learned counsel for the respondents pleaded that the High Court's directives in this regard have been complied with and there is no illegality whatsoever in issuing fresh chargesheet dated 13.09.2017.

16. Essentially, therefore, the issue boils down to the interpretation of the Tribunal's order dated 05.12.2016 passed in OA No.1711/2016. Having gone through the whole order we are not inclined to agree with the contention of the applicant that the orders dated 08.10.2015 and 18.04.2016 have been quashed completely. In fact, from the wording of the order, it is very clear that quashing is only to the extent of proceeding to enquire the quashed charge memo dated 08.12.2009. There is no finding of the Tribunal holding that the representations of the applicant are deemed to be still pending before the respondents.

17. It may be argued that the wordings of the letters dated 08.10.2015 and 18.04.2016 give an impression that proper decision on the issues raised by the applicant in his representations has not been given in these letters. However, if the applicant were dissatisfied on account of the fact that the decision on his representations has not been taken on merit and that the respondents have skirted the issues, proper course for him was to seek execution of High Court's order or to file even a contempt petition against the respondents. Instead, the applicant chose to approach this Tribunal by way of a fresh OA.

Therefore, in our view, the argument advanced on behalf of the applicant that representations of the applicant have not been decided at all is not justified. The fact also remains that if the applicant felt that issue of fresh chargesheet dated 13.09.2017 was in contravention and violation of Tribunal's order dated 05.12.2016 in OA NO.1711/2016, he still had the option to come before the Tribunal in execution or contempt. However, he has chosen to do neither. Instead, he has come before the Tribunal through a fresh OA challenging the chargesheet dated 13.09.2017. Our interpretation of the Tribunal's order dated 05.12.2016 is that the Tribunal had only quashed the decision on the applicant's representations to the extent of proceeding to carry out with the enquiry based on charge memo dated 08.12.2009. This being our interpretation, issuing a fresh chargesheet by the respondents do not amount to violating the directions of this Tribunal in OA No. 1711/2016 nor the directives of the High Court of Delhi in WP(C) No.6395/2015.

18. Given the above facts and the analysis, we are of the view that the prayer made by the applicant in this OA lacks merit and deserves to be dismissed and is accordingly dismissed. MA No. 3805/2017 seeking

exemption from filing translation and typed documents in the OA also resultantly stands dismissed. No costs.

(Uday Kumar Varma)
Member (A)

(Jasmine Ahmed)
Member (J)

/AhujA/