IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

OA/020/92/2018 **Date of Order: 09.03.2018**

Between:

P.V. Ramana,
S/o. late P. Tavitayya,
Aged 49 years,
Occ: Loco Pilot (Goods) (Group 'C'),
O/o the Chief Crew Controller,
East Coast Railway, Waltair Division,
Visakhapatnam.

... Applicant

And

1. Union of India rep. by
   The General Manager,
   East Coast Railway,
   Chandrasekharpur,
   Bhubaneshwar.

2. The Divisional Railway Manager,
   Waltair Division,
   East Coast Railway,
   Visakhapatnam.

3. The Additional Divisional Railway Manager,
   Waltair Division,
   East Coast Railway,
   Visakhapatnam.

4. The Senior Divisional Electrical Engineer (OP),
   Waltair Division,
   East Coast Railway,
   Visakhapatnam.

... Respondents

Counsel for the Applicant ... Mr. K.R.K.V. Prasad
Counsel for the Respondents ... Mr. S.M. Patnaik,
SC for Railways

CORAM :

THE HON'BLE MR.JUSTICE R.KANTHA RAO, JUDL. MEMBER
THE HON'BLE MRS. MINNIE MATHEW, ADMN. MEMBER

ORAL ORDER

{ Per Hon'ble Mr.Justice R.Kantha Rao, Judl. Member }

Heard Shri K.R.K.V. Prasad, learned counsel appearing for the Applicant and Shri S.M. Patnaik, learned Standing Counsel for Railways appearing for the Respondents.

2. Since the Reply Statement is filed and the Interim Relief and the Main Relief prayed for in the O.A. are one and the same, we are inclined to dispose of the O.A. itself at the stage of admission.

3. The Applicant was issued with a charge memo on 24.8.2011. The gist of the charges is as follows:

> "The Applicant while working as a Loco Pilot (Goods) under the administrative control of the 4th Respondent was booked to work in Train No.DN/E/Steel/ Empty handled with Electrical Locos No.28189, 28294 (WAG7/Augul) from Simhachalam North to Palasa on 12.7.2017. The Train was stopped at Urlam station on Route No.4 at about 22.45 hrs for giving precedence to coaching trains. But at about 23.17 hrs the Loco Pilot started the train without obtaining any authority to proceed and passed the Urlam Route No.4 (Loop Line) starter signal in danger i.e. in ON position and entered into sand hump and dashed with dead end causing derailment of leading loco No.28189 violating General Rule 4.35 (1). As such the applicant contravened the provisions of Rule 3.1 (ii) & (ii) of Railway Services (Conduct) Rules, 1966 which envisage that every Railway Servant at all times shall maintain devotion to duty and do nothing which is unbecoming of a Railway servant."

4. The inquiry against the Applicant was proceeded by examining the witnesses by the Department and exhibiting some documents. The Applicant also submitted a defence brief on 25.11.2017 after the inquiry is over. At that stage, the Disciplinary Authority issued proceedings dated 30.11.2017 dropping the charge memo and issuing a fresh charge memo dated 12.12.2017 in respect of the same charges. Obviously, the department proposed to

examine the very same witnesses in respect of the very same charges in the inquiry pursuant to the fresh charge memo appointing the very same Inquiry Officer. The Applicant submitted a representation to cancel the fresh charge memo on the ground that it is not permissible under the Rules. But the very same Inquiry Officer who had conducted inquiry earlier in respect of the very same charges vis-a-vis the very same evidence has been appointed to conduct inquiry once again. The Applicant appeared in the preliminary hearing and sought permission to appoint a defence counsel in the first instance. However, upon consultation he decided to challenge the impugned proceedings as they would be detrimental to his interest, also in violation of principles of natural justice and cause serious prejudice to his case. Under these circumstances, the Applicant filed the present O.A. seeking a declaration that the action of the Respondents in cancelling the Charge Memorandum dated 24.8.2017 after completing the disciplinary inquiry and issuing another Charge Memorandum dated 12.12.2017 which is the replica of the first Charge Memorandum for the purpose of holding the disciplinary inquiry again by calling the very same witnesses is illegal, arbitrary, unjust and in violation of principles of natural justice and consequently to set aside the Charge Memorandum dated 12.12.2017, duly setting aside the letter dated 30.11.2017 to the extent of right of the administration to issue a fresh Charge Memo and direct the Respondent Railways to drop the disciplinary proceedings in respect of the Applicant. An Interim Order was sought directing the Respondents to stay all further proceedings in pursuance of Memo dated 12.12.2017. The version of the Applicant is that no tenable grounds have been communicated by the Respondents for issuing a fresh charge memo in respect of the same charges and, therefore, it is not valid in

the eye of law and no disciplinary proceedings in pursuance of fresh charge memo can be allowed to be continued.

5. The Respondents inter-alia contended in their Reply Statement that the situation arose for issuance of a fresh charge memo, because the Respondent No.4, who is the Senior Divisional Electrical Operations, Waltair Division issued the earlier charge memo as a Disciplinary Authority and the same was objected to by the Applicant in the course of the inquiry stating that he participated in the Fact Finding Inquiry as one of the Members. Therefore, according to the Applicant, he is incompetent to issue the charge memo. The Respondents after receiving the said objection from the Applicant, appointed Respondent No.3 i.e. the Additional Divisional Railway Manager as Disciplinary Authority and he issued a fresh charge memo in respect of the very same charges proposing to examine the very same witnesses, who were already examined, in the course of the fresh inquiry. However, we are only concerned with the issue as to whether having regard to facts and circumstances of the present case after completing the inquiry the Respondents can issue a fresh charge memo for the purpose of initiating disciplinary inquiry in respect of the very same charges by examining the very same witnesses.

6. Shri K.R.K.V. Prasad, learned counsel appearing for the Applicant vehemently contended that the action proposed by the Respondents by issuing a fresh charge memo is contrary to the Railway Board instructions and, therefore, a fresh charge memo as was done by the Respondents cannot be issued to the Applicant. The learned counsel filed a copy of the Railway Board instructions which was also filed by the Respondents as one of the

annexures to the Reply Statement. A perusal of the Railway Board instructions shows that withdrawing a charge memo, if no reasons therefor were given and it was only stated that the charge sheet was being withdrawn for issuance of a fresh charge memo subsequently, is not tenable. In one of the cases, the Central Administrative Tribunal, Bombay quashed the charge memo on the aforementioned ground i.e. no reasons were given while withdrawing the charge memo. Therefore, the Railway Board issued instructions to the Disciplinary Authorities stating that once the proceedings initiated under Rule 9 or Rule 11 of Railway Services (D&A) Rules, 1968 are dropped, the Disciplinary Authorities would be debarred from initiating fresh proceedings against the delinquent officers unless the reasons for cancellation of the original Charge Memorandum for dropping the proceedings are appropriately mentioned and it is duly stated in the order that the proceedings were being dropped without prejudice to further action which may be considered in the circumstances of the case. Therefore, referring to the above mentioned instructions, learned counsel appearing for the Applicant would contend that in the instant case also, no reasons were given by the Respondent Railways and, therefore, the subsequent charge memo is liable to be quashed.

7. Learned counsel appearing for the Applicant also relied on a decision of the Central Administrative Tribunal, Calcutta Bench in OA No.1762/2017 which is an interim order. The Calcutta Bench of the C.A.T. took a view that it was prima facie a fit case for grant of interim relief because on the same set of charges, a fresh charge memo was issued and inquiry was proposed when the earlier proceedings were about to be finalized which is not permissible under the Rules.

8. Learned counsel appearing for the Applicant further relied on an order of the C.A.T., Hyderaabad in **P. Veeraswamy vs The Chief Electrical Loco.. dated 12.6.2007** wherein a view was taken that it is not enough for the Respondents to reserve a right to issue a fresh charge memo but they have to indicate the reasons for cancellation and reserving a right to issue a fresh charge memo in the impugned order. Therefore, the Tribunal held that since the Respondents have not complied with the first instruction i.e. giving reasons which is mandatory, the 2nd charge memo is not valid in the eyes of law.

9. Learned counsel appearing for the Applicant relied on **Raja Ram Verma vs UOI** wherein it was held as follows:

> ".....we have taken the judicial notice of the practice which seems to be prevalent in the Railways in as much as the draft charge sheets are prepared by the vigilance authorities, directions are issued for appointing a particular person as inquiry officer and presenting officer for conducting inquiries. The disciplinary authority in such circumstances cannot be expected to apply its independent mind in the particular disciplinary cases. Such interference by the vigilance tantamount to thrust upon its own whims on the authorities and principles of fair play and natural justice is given good bye. It may result in demoralising the disciplinary authorities in particular and the delinquent official in general. Any interference with the functioning of statutory authorities gives rise to mal-administration and the possibilities of victimisation of innocent employee also cannot be ruled out. Such practice is required to be curbed forthwith and we expect the Railway authorities to take note of it and take suitable action in the matter."

Since a fresh charge memo in respect of the very same charges after dropping the earlier one can be issued or not being the question for determination, the decision relied on has no relevance for the present case.

10. In the instant case, the impugned order dated 30.11.2017 reads as under:

> "S.F. 05 No.WAT/EL/RSO/D&A/PVR/989 (A) dated 24.8.2017 is hereby dropped on technical grounds and the cancellation is without prejudice to the right of the administration to issue a fresh charge sheet."

11. Referring to the said order, learned counsel appearing for the Applicant submits that except stating that on technical grounds the earlier charge memo was dropped and a fresh one would be issued, nothing was indicated and, therefore, the subsequent charge memo is not valid in the eyes of law. On the other hand, learned Standing Counsel appearing for the Respondents would submit that only on the objection taken by the Applicant about the competency of the Disciplinary Authority, a fresh charge memo was issued, it was well within the knowledge of the Applicant as to what the technical ground would mean and, therefore, it is not permissible for him to argue that no reasons were indicated in the impugned order.

12. However, we wish to examine the contentions urged by both the counsel and the applicability of the orders relied on by the learned counsel appearing for the Applicant in the light of certain principles enunciated by the Hon'ble Supreme Court on the very same subject in various cases.

I. In AIR 1962 SC 1334 in the case of **Devendra Pratap Narain Rai Sharma v. State of Uttar Pradesh & Others**, the Hon'ble Supreme Court held as follows:

> "After an order passed in an inquiry against a public servant imposing a penalty is quashed by a Civil Court, a further proceeding can be commenced against him if in the proceeding in which the order quashing the inquiry was passed, the merits of the charge never investigated. Where the High Court

decreed the suit of the public servant on the ground that the procedure for imposing the penalty was irregular, such a decision cannot prevent the State from commencing another enquiry in respect of the same subject matter."

II. In AIR 1979 SCC 1923 in the case of **Anand Narain Shukla vs State of Madhya Pradesh** in Civil Appeal No.467/1979 dated 2.8.1979 the Hon'ble Supreme Court held as follows:

"2. Mr. D.N. Mukherjee, learned counsel for the appellant urged only two points before us; (1) that after the earlier order of reversion was quashed by the High Court and after the appellant was reinstated, no second enquiry on the very same charges could be held and no second order of reversion could be legally and validly made; and (2) that appellant was entitled to the full salary for the period of suspension.

3. We find no substance in either of the points urged on behalf of the Applicant. The earlier order was quashed on a technical ground. On merits a second enquiry could be held. It was rightly held. The order of reinstatement does not bring about any distinction in that regard. The Government had to pass that order because the earlier order of reversion had been quashed by the High Court. Without reinstating the appellant, it would have been difficult, perhaps unlawful to start a fresh inquiry against the applicant".

III. In (1996) 9 SCC 322 in the case of **State of Punjab & Others vs Dr.Harbhajan Singh Greasy**, the Hon'ble Supreme Court held as follows:

"It is seen that the Inquiry report is based on the alleged admission made by the Respondent but the Inquiry Officer has not taken his admission writing. Subsequently, the Respondent has denied having made any admission. As against the denial of the delinquent, we have only the statement of the Inquiry Officer which is not supported by any statement in writing taken from the Respondent. Under these circumstances, High Court may be justified in setting aside the order of dismissal. It is now a well settled law that when the inquiry is found to be faulty, it could not be proper to direct reinstatement with consequential benefits. Matter requires to be remitted to disciplinary authority from the stage at which the fault was pointed out and to take action according to law."

13. The Hon'ble Supreme Court on the identical issue had taken a consistent view that if the inquiry is found to have been conducted on faulty grounds or suffers from any technical defect, the Department can initiate fresh

inquiry in respect of the same charges and the charged employee cannot complain any prejudice.

14. In the instant case though the inquiry was completed, later on it was found on the objection raised by the Applicant himself that the Disciplinary Authority who issued the first charge memo is not competent enough to issue the same as he is one of the Members of the Fact Finding Committee. Therefore, on account of the said technical defect, the Department cannot be totally precluded from conducting a fresh inquiry on the ground that the case of the Applicant would be prejudiced. Not only in the judgements referred to above but also in several of its other decisions, the Hon'ble Supreme Court had categorically held that merely because the inquiry conducted initially by the Inquiry Officer suffers from certain procedural or technical infirmities, a fresh inquiry on the same set of charges is not barred. Even in cases where the reports of the Inquiry Officers are set aside and the charged employees are reinstated and when the matters reached up to the Supreme Court, the Supreme Court, having regard to the facts of the respective cases, held categorically that in spite of the reinstatement of the charged employee, a fresh inquiry is not barred.

15. From the above judgements rendered by the Hon'ble Supreme Court, what all can be understood is that if the charge is trivial in nature, a fresh inquiry in respect of the very same charge is not desirable since it causes much hardship to the charged employee. However, if the charge is grave in nature, the charged employee cannot be allowed to escape from the clutches of law on the same ground of some technical or procedural irregularities. Therefore, in cases where the charge is of grave character, the Hon'ble

Supreme Court and also various High Courts took the view that the Department can proceed with a fresh inquiry in respect of the very same charge. In the instant case the charge is of serious nature and the Applicant shall not be allowed to escape fresh disciplinary proceedings by raising technical pleas.

16. The Railway Board Circular dated 1.12.1993 relied on by the learned counsel appearing for the Applicant as also by the learned Standing Counsel for the Respondents seems to have been issued by way of abundant caution. The reason for issuing the instructions is indicated in the instructions itself. Since the Tribunals have been interfering with conducting fresh inquiry on the very same charge, the Railway Board cautioned the authorities to give adequate reasons while directing a fresh inquiry in respect of the very same charge. The judgements of the Hon'ble Supreme Court referred to above do not indicate any such caution. The judgements of the Hon'ble Supreme Court were not within the knowledge of the Railway Board while issuing the said Circulars nor the settled legal position enunciated by the Supreme Court which has been referred to hereinbefore was brought to the notice of the Co-ordinate Benches of the Tribunal while they passed the orders relied on by the learned counsel appearing for the Applicant. Further, in the instant case, the Applicant raised an objection to the jurisdiction of the Disciplinary Authority on the ground that he was a Member of the Fact Finding Committee which investigated into the alleged misconduct resorted to by the Applicant. Since the Applicant raised the said objection, the Respondents dropped the earlier charge memo and issued a fresh one to conduct the disciplinary proceedings afresh. The reason mentioned by them in the

proceedings is that the same was done because of technical reasons. Since the Applicant himself raised the issue of incompetence of the Disciplinary Authority, it cannot be said that by the proceedings issued by the Respondent Railways contemplating fresh disciplinary enquiry, he was taken by surprise. In any event, it is now well settled that when the disciplinary inquiry originally initiated was conducted on faulty grounds and suffers from any technical defects, the Department can always conduct a fresh inquiry and the charged employee has no right to object for such a fresh inquiry. This Tribunal is bound by the law laid down by the Hon'ble Supreme Court and, therefore, the orders passed by the Co-ordinate Benches of the Tribunal relied on by the Applicant are of no help to him.

17. For the foregoing reasons, we are of the considered view that there are no merits in the O.A. and accordingly we dismiss the same without any order as to costs.

(MINNIE MATHEW)
ADMN. MEMBER

(JUSTICE R.KANTHA RAO)
JUDL. MEMBER

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