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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH.

O.A. No. 594 of 2011.

Sri Prasanta Mondal.

son of Late Sunil Mondal, ~~age~~ about 49 years

Village - Mukundanagar, P.O. Poradanga.

P.S. Chakdah, District - Nadia,

Gate Keeper under Sectional Engineer,

P.W., Bangaon, Eastern Railway,

Sealdah Division.

APPLICANT

+ Versus -

1. Union of India, service through
the General Manager, Eastern Railway.

Fairly Place, 17th Netaji Subhas Road,
Kolkata - 700 001.

2. Divisional Railway Manager,
Eastern Railway, Sealdah, Sealdah
Division.

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3. Senior Divisional Engineer,
(Co-ordination). Eastern Railway,
Sealdah, Sealdah Division.

4. Assistant Engineer, Eastern
Railway, Barasat, Sealdah Division.

4. B.N. Saha,
Ex-Deputy Chief Accounts Officer,
Kancharapara, Eastern Railway.

.... The Enquiry Officer.

..... RESPONDENTS.

No. O.A. 350/00594/2011

Date of order: 07/09/2017

Present: Hon'ble Mr. S.K. Patnaik, Judicial Member
 Hon'ble Dr. Nandita Chatterjee, Administrative Member

For the Applicant : Mr. A. Chakraborty, Proxy Counsel

For the Respondents : None

ORDER

Dr. Nandita Chatterjee, Administrative Member:

This matter has been taken up given its pendency since 2011, and
 Written arguments have been received on behalf of the petitioner.

2. The applicant's case is that a purported disciplinary proceeding was initiated against the applicant on the basis of a second charge-sheet dated 22.1.2007 in spite of the fact that the first charge-sheet dated 9.1.2006 on self-same and identical grounds was cancelled by the disciplinary authority without assigning any reason for the same.

3. That the disciplinary authority has no power and jurisdiction to issue the second charge-sheet on identical grounds. That there are procedural irregularities and illegalities in the decision making process.

4. The case of the respondents as deciphered from the records is that the petitioner had been appointed to Railways fraudulently vide AEN, Barasat's letter No. EG/2/BT dated 15.2.1994. The impugned letter was based on two fictitious letters viz. Sr. DPO/SDAH's letter No. E-4/Sub/Posts/93/Pt.II dated 28.10.1993 and Sr. DEN/SDAH's letter No. SDEN/CON/W/Staff/Officer dated 9.2.1994.

5. Accordingly he was suspended w.e.f. 15.6.2005 and a major penalty chargesheet was issued to him on 9.1.2006 on account of certain typographical and technical mistakes in the said letter and fresh chargesheet was issued on 22.1.2007. Upon completion of the inquiry report the disciplinary authority sent one copy of inquiry report to the

Ans:

applicant and received the same on 11.5.2008. Although allowed 15 days time to respond, the applicant kept silent and did not submit any reply to the findings of the report. Thereafter the disciplinary authority passed an order of dismissal from service removing the applicant from service vide order dated 3.7.2008.

6. The applicant preferred an appeal to the appellate authority against the dismissal notice dated 3.7.2008 and the appellate authority disposed of the same on 6.2.2009 and the said order was served to the applicant by registered post with acknowledgement.

7. The main disputes raised in this case are as follows:-

(i) Whether, while issuing the second chargesheet vide memorandum dated 22.1.2007, sufficient reasons were recorded for issue of fresh memorandum. In this case, the memorandum dated 20.1.2007 has been examined, which categorically states as follows:-

"The above chargesheet issued against you is withdrawn without any prejudice due to the technical reasons:-

- 1) All the article pages annexed with SF-5 issued on 9.1.06 has not been signed for each article and they are not separated from each other.
- 2) The Railway Service Conduct Rule, 1966 was erroneously typed as 1968 in the previously issued SF-5 which will be rectified vide fresh order issued.
- 3) In Annexure - II a draft word has been included.

In view of the above technical and typographical mistake mentioning wrong date and other causes vide SF-5 No. EG/17/BT(PM) dt. 9.1.06 is hereby cancelled and withdrawn."

Hence, the respondent authorities had adequately clarified the reasons for issue of the fresh memo namely, that, all the article pages annexed with SF 5 had not been signed for each article, the year of the service conduct rules have been typed erroneously and a draft word has been included. Hence the fresh memo has been issued to rectify technical

[Signature]

and typographical mistakes as apparent in the earlier memo dated 9.1.2006.

The applicant has referred to WPCT No. 2010 of 2008 in the case of Alok DeyRay v. Union of India & ors. to substantiate their case. In the same, the Hon'ble Court had held that the respondent Railway authorities are not debarred from issuing appropriate charge memo after specifying sufficient reasons in the charge-memo itself in issuing the fresh charge-memo. As the fresh charge memo dated 21.1.2007 in the instant case clearly specifies the reasons for the amendment, the ruling does not stand in the way of the respondent authorities from issuing a fresh charge memo in this context.

(ii) The second issue is that on staleness of charge stating that the Disciplinary Proceeding have been initiated against the applicant after the expiry of more than 13 years on the basis of an incident that took place in the year 1993. Reliance has been placed on (2006) 5 SCC 88 M.B. Bijlani v. Union of India & ors. In Para 25 the Court has stated as follows:-

"25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

In the instant case, none of the factors enlisted in the Bijlani's case have been established by the applicant. As it is not the applicant's case that the respondent authorities took into consideration any irrelevant fact, had

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refused to consider relevant facts, had shifted the burden of proof or rejected the relevant testimony to witnesses on the basis of surmises and conjectures, nor was the enquiry made into allegations with which the delinquent officer had not been charged.

The applicant also relied upon the case of **Oryx Fisheries (P) Ltd. V. Union of India (2010) 13 SCC 427** where it has been held that notice must state charges only and not definite conclusions of alleged guilt.

In the case of Oryx Fisheries, the show-cause notice was against proposed cancellation of certification of registration as an exporter. In the instant case, in the show-cause notice issued by the respondent authorities there is not a whiff of any statement of potential dismissal which was concluded upon finally by the disciplinary authority.

Hence the comparison stops short of analogy.

Further reliance has been placed in the matter on undue delay which is now barred on grounds of estoppels. When the applicant had represented to the appellate authority, he had not raised the issue of delay in proceedings by the disciplinary authority. At this stage, this issue cannot be brought up any more by the applicant.

8. Having considered the issues and the legal references, we are of the view that as held by the Hon'ble High Court of Judicature at Bombay **v. Shashikant S. Patil [(2000)1SCC 416]** none of the grounds of judicial review have been satisfied in this case. Reliance is also placed on **(2017) 2 SCC 528 Chief Executive Officer, Krishna District Cooperative Central Bank Limited & anr. v. K. Hanumantha Rao & anr.** The Ld. Apex Court has held that:

"Held, decision qua nature and quantum of punishment is prerogative of disciplinary authority and courts while exercising power of judicial review do not sit as appellate authority – Only in exceptional circumstances based on doctrine of proportionality, where penalty/punishment awarded by disciplinary authority is found wholly

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disproportionate so as to shock conscience of Court, Court can interfere therewith."

Thus this Tribunal refrains from interfering with the process and the punishment as decided by the disciplinary authority."

9. Hence, the O.A. does not succeed and is accordingly dismissed.

(Dr. Nandita Chatterjee)
Administrative Member

(S.K. Patnaik)
Judicial Member

SP

