

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH



No. OA 350/1768/2016

Date of order : 15. 06. 2018

Present: Hon'ble Ms. Manjula Das, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative Member

**JAI SHANKAR PRASAD**

S/o Late Dashrath Prasad,  
Working as Asst. Goods Clerk,  
Eastern Railway,  
Sainthia,  
Now dismissed from service,  
R/o 12 Barin Ghosh Lane,  
PO & PS-Sheoraphuli,  
Dist.-Hooghly,  
Pin-712223.

APPLICANT

VERSUS

1. The Union of India, through  
The General Manager,  
Eastern Railway,  
17 N.S.Road,  
Kolkata-700001.
2. The Chief Personnel Officer,  
Eastern Railway,  
17 N.S.Road,  
Kolkata-700001.
3. The Divisional Railway manager,  
Eastern Railway,  
Howrah-PO, PS & Dist.,  
Howrah-711101.
4. The Sr. Divisional Commercial Manager,  
Eastern Railway,  
Howrah-PO, PS & Dist.,  
Howrah-711101.
5. The Divisional Commercial Manager,  
Eastern Railway,  
Howrah-PO, PS & Dist.,  
Howrah-711101.
6. The Sr. Divisional Personnel officer,  
Eastern Railway,  
Howrah-PO, PS & Dist.,  
Howrah-711101.
7. Shri S.K.Bhaduri,  
The then Asst. Commercial Manager  
& the Enquiry Officer,  
Eastern Railway, Howrah,  
Now Sr. Commercial Manager,

Eastern Railway,  
3 Koilaghat Street,  
Kolkata-700001.

RESPONDENTS.

For the applicant : Sk. S.H.Molla, counsel

For the respondents: Mr.M.K.Bandyopadhyay, counsel

O R D E R

Per Ms. Manjula Das, Judicial Member

By this OA the applicant approached before this Tribunal seeking the following reliefs :

- a) An order do issue upon the respondents particularly upon the Sr. Divisional Commercial manager, Eastern Railway, Howrah to issue order to reinstate the applicant by cancelling and/or quashing ex parte enquiry report, impugned punishment order and the appellate authority's order in Annexure A/15, A/18 and A/22;
- b) An order do issue upon the respondents cancel/rescind/withdraw the false and fictitious charge sheet herein in Annexure A/1 with this application;
- c) An order do issue upon the respondents for the payment of all consequential benefits for the period of dismissal forthwith and regularize the service period;
- d) An order do issue upon the respondents to produce entire documents in original before the Tribunal for conscientiable of justice;
- e) And any other order/orders as YourLordship may deem fit and proper.

2. We heard both the ld. Counsels and perused the pleadings and materials placed before us.

3. The main plank of argument advanced by the ld. Counsel for the applicant is that the applicant was a Railway employee and working as Assistant Goods Clerk, Eastern Railway, Sainthia was proceeded with a major penalty charge sheet No. COM/MISC/D&AR/AF/05/HBO/2011 dated 19.5.2011 issued by the respondents No.5 levelling 4 Nos. of article of charges.

It was submitted by the ld. Counsel for the applicant replied to the charge sheet dated 1.6.2011. He performed his duties up to 3.5.2012 and became seriously ill and remained unauthorized absent from 4.5.2012 to 30.8.2015 for which the applicant submitted regular medical certificates to the competent authority including the disciplinary authority as well as the Enquiry

Officer in course of time. A detailed reply was made by the applicant on 22.8.2015 which was very much acknowledged by the disciplinary authority as well as Enquiry Officer. According to the ld. Counsel the disciplinary authority did not appoint any presenting Officer on behalf of the prosecution since. The Enquiry Officer by arranging the some questions and answers by himself and putting the same to the prosecution witnesses, prepared an ex parte Enquiry Report when the applicant was on sick leave and submitted regular sick certificate to the authority concerned. According to the ld. Counsel the charge memorandum was served on the applicant without enclosing the relied upon listed documents by violating the well established principles of service law. He made a request to the authority to supply the relied upon documents. However, the respondent authorities appointed an Enquiry officer inspite of supplying the relied upon documents to the applicant.

As the applicant has stated above the applicant fell seriously ill he could not proceed with the hearing of the enquiry till the recovery of the applicant as he has been suffering from multiple disease and the doctors advised him to take absolute bed rest for a long time for his recovery. It is also stated that the decision taken by the respondents is whimsical and arbitrary and the respondents sat tight over the issue of the seriously illness of the applicant and in a closed mind conducted the enquiry in a mechanical and ultra vires manner.

4: According to the ld. Counsel, the applicant approached this Tribunal in OA 197/2012 by challenging the illegal proceeding and false and fabricated charge sheet in question without supplying the relied upon documents. After hearing this Tribunal vide order dated 7.1.2014 directed the respondents to produce the original Daily Transaction and Cash Summery Book (DTCS book) which is the cardinal document for all miscalculation and/or wrong calculation by the respondents, before this Tribunal. It is submitted by the ld. Counsel for the applicant that the respondents did not produce the original DTCS book before this Tribunal and ignoring all the well settled principles of law the Enquiry Officer decided to proceed the enquiry ex parte. At this juncture the



matter was once again heard by the Tribunal on 17.6.2014, when after hearing the matter this Tribunal was pleased to direct the respondents not to pass any final order without the leave of this Tribunal. It is submitted by the applicant that the OA was disposed of on 5.8.2015 by giving direction to the applicant to file a reply to the charges within 15 days from the date of receipt of the copy of this order. In compliance of the order passed by this Tribunal the applicant filed a reply on 2.8.2015 to the Disciplinary authority through Speed Post. It was submitted that the disciplinary authority proceeded ex parte proceeding when he was sick and the ex parte enquiry report was prepared on 20.8.2015 by establishing all the charges as proved and was delivered to the applicant on 18.5.2016.

5. Against the said order passed by the Tribunal in OA 197/2012 the respondents approached Hon'ble High Court in WPCT 96/2016 where the Hon'ble High Court vide order dated 11.5.2016 confirmed the decision of this Tribunal. The Writ Petition was accordingly disposed of. In compliance to the order of the Hon'ble High Court after receiving the report, the applicant made a representation to the ex parte enquiry report by making the ground of non-sustainability of the enquiry report and the order of dismissal from service vide order dated 8.8.2016 which was imposed on the applicant. The applicant made an appeal to the Appellate Authority and as the appeal was not disposed of, the applicant approached before this Tribunal in OA 1593/2016 and during pendency of the OA, the Appellate Authority disposed of the appeal by upholding the decision of the Disciplinary Authority. As a result the applicant withdrew the OA 1593/2016.

6. According to the Id. Counsel for the applicant, the charges levelled against the applicant are not sustainable under the law in as much as the disciplinary authority in his findings whimsically and arbitrarily relied on the ex parte enquiry report and passed the order of punishment dated 8.8.2016. It was submitted by the Id. Counsel that in the instant charge sheet the prosecution side brought four false and fabricated charges in Annexure I of the charge sheet and the disciplinary authority purposefully and arbitrarily



brought all these additional charges for sustaining the principal alleged charges after receiving the defence statement of the charged official in reply to the ex parte enquiry report. According to the ld. Counsel none of the competent authorities enquired/investigated into the matter. From the DTCS book it is clearly transpired that the applicant sold 187 tickets @ Rs.100 whereas in the charge sheet it was shown and considered 73 tickets @ Rs.100. This makes a huge difference in the calculation of total amount in the DTCS book. It was submitted that the applicant will suffer irreparable loss and injury if the respondents are not directed to re-instate the applicant in service by quashing the ex parte enquiry report as well as the punishment order of dismissal of disciplinary authority and the appellate authority's order upholding the punishment of dismissal, because the order of dismissal is absolute disproportionate punishment which is not sustainable in the eye of law and the application deserves to be allowed.

7. On the other hand ld. Counsel for the respondents argued that the charged officer after receiving the charge sheet dated 19.5.2011, on 20.5.2011 reported sick under private medical certificate w.e.f. 21.5.2011 and remained unauthorisedly absent. It was submitted by the ld. Counsel that the applicant was requested by the disciplinary authority to inspect the relief upon documents as per Annexure A/3 of the charge sheet vide letter dated 1.7.2011 but he failed to do so.

Moreover the charged official i.e. the applicant concerned was requested to submit his reply to the charge sheet enclosing the relied upon documents vide letter dated 12.8.2011 to give him opportunity to submit his reply. According to the ld. Counsel, in response to this letter dated 12.8.2011 the applicant submitted his representation other than reply to charge sheet dated 30.8.2011 and 2.9.2011 stating "None of such papers is authenticated and also they happen to be not fit to be acted upon".

8. It was submitted by the ld. Counsel that several opportunities have been given to the charged official i.e. the applicant to supply photocopies of relied upon documents and requested him to inspect but the applicant never utilised



the opportunities given to him. Altogether there were three preliminary hearings and 10 regular hearing proceedings in the relevant disciplinary proceeding by the appointed Enquiry officer and all the hearing notices have been sent to the charged official's last known residential address through registered post and special messengers which the applicant acknowledged through his representatives but in not a single hearing proceeding he has turned up. It was submitted by the ld. Counsel that after going through all documentary evidences, enquiry proceedings, findings of the enquiry officer, defence reply of the charged official and merit and gravity of the charges, the Disciplinary Authority dismissed the charged official from service without compassionate allowance w.e.f. 11.8.2016. It was submitted by the ld. Counsel that the applicant approached this Tribunal by challenging the major penalty charge sheet vide OA 197/2012 where this Tribunal dismissed the said OA. Thereafter the applicant approached before the Hon'ble High Court challenging the order passed by this Tribunal which was registered as WPCT 57/2013 and vide order dated 6.5.2013 remanding back the matter to this Tribunal for fresh hearing. This Tribunal vide final order dated 5.8.2015 disposed of the OA by giving liberty to file reply to the charge memo within 15 days and after 15 days the respondents will be at liberty to proceed with the charge sheet. Thereafter the Railway administration challenged this order vide WPCT 96/2016 where the Hon'ble High Court vide order dated 11.5.2016 passed in WPCT 96/2016 directed to supply the enquiry report to the charged official within one week and the decision will be taken on enquiry officer and charged official in accordance with law.

The Railway administration forwarded the order of the Hon'ble High Court and acted on the same accordingly. The enquiry officer conducted the proceedings ex parte following Rule 9(23) of RS(D&A) Rules and observed that it was found by the checking team in the applicant's counter that total govt. cash was proceeded in the applicant's counter up to 5.20 hours i.e. upto the check that Rs.7425/-, but total govt. cash found from the applicant's counter was Rs.,18,825/- i.e. Rs.11,400/- was found excess in booking. All the



prosecution witnesses (PW)s made their clarificatory statements in regard to the check and excess Govt. cash and other serious irregularities on the part of the applicant which were shown in RUD 9 in Annexure A/III of the charge sheet. The excess amount was deposited in Government sundry cash after giving memo to the charged official on 1.5.2011. During the enquiry proceedings all the prosecution witnesses substantiated the charges against the applicant. According to the ld. Counsel as per the Court's order the enquiry proceeding was conducted and the enquiry report was prepared and communicated to the applicant and thereafter the disciplinary authority imposed the punishment of dismissal from service of the applicant vide punishment order dated 78.8.2016 without compassionate allowance. The applicant made appeal before the Appellate Authority where the Appellate Authority upholding the decision of the Disciplinary Authority. According to the ld. counsel for the respondents as there was no procedural lapse on the part of the respondent authorities and the punishment was imposed based on the materials facts and evidences which is established, the OA deserves to be dismissed.

9. Having heard the ld. Counsels for the parties and perusing the pleadings and materials placed before us, the points to be decided are-

- i) whether the relief sought for are hit by principles of res judicata under Section 11 of the CPC
- ii) whether the punishment order as well as appellate order imposed by the Disciplinary Authority and Appellate Authority respectively challenged by substantiating the cogent reason.

10. From the arguments advanced by both the parties more particularly the factual aspects, we note it proper to go into the merits by giving a thoughtful consideration of the legal aspects. For coming to a logical conclusion as to the points raised for taking up the decision, we need to ascertain the case of OA 197/2012 filed by the applicant.

11. This Tribunal vide order dated 22.1.2013 dismissed OA 197/2012. Being aggrieved the applicant approached Hon'ble High Court in WPCT 457/2013



where the Hon'ble High Court vide order dated 6.5.2013 set aside the order of this Tribunal dated 22.1.2013 and remanded the matter to this Tribunal for fresh hearing.

In compliance of the order of Hon'ble High Court the matter was then heard afresh where this Tribunal after hearing both the parties vide order dated 5.8.2015 ordered as hereunder :

5. We failed to decipher any reason to hold that the proceedings have been initiated in violation of principles of natural justice or the accusations did not constitute a misconduct, or were vague etc. In view of the legal proposition as enumerated hereinabove, we feel it appropriate to dismiss the present OA with liberty to the applicant to file a reply to the charge memo within 15 days from the date of receipt of a copy of this order, in case the applicant so desires. After 15 days even if no reply is filed the respondents shall be at liberty to proceed with the charge sheet.

6. The OA is dismissed. No order is passed as to costs."

Being aggrieved Union of India approached Hon'ble High Court in WPCT 96/2016 against the order of this Tribunal dated 5.8.2015 where the Hon'ble High Court vide order dated 11.5.2016 affirmed the decision rendered by this Tribunal in OA 197/2012 passed on 5.8.2015.

12. From the above it is crystal clear that the present applicant earlier approached this Tribunal vide OA 197/2012 assailing the memo of charge dated 19.5.2011 which is again sought to be challenged vide the present OA. Section 11 of the Civil Procedure Code embodies doctrine of res judicata which means that a final judgment of a competent Court of Law may not be disputed on the issue it has finally settled by the parties or their successors in any subsequent legal proceedings. The doctrine of res judicata is based on the maxim '*interest republicae ul sit finis litium*' and '*nemo devet vis vexari pro una et eadem cause*'.

Thus, firstly we hold the present case is hit by principle of res judicata and the issue which has already been decided cannot be entertained again.

Secondly we hold that in the present case the applicant in the prayer did not challenge the punishment order dated 11.8.2016 as well as the order of the disciplinary authority dated 8.8.2016 are affirmed and upheld by the appellate authority's order dated 5.10.2016.



Thus from the above two legal aspects without any hesitation we hold that the application is devoid of facts and law to entertain and interfere.

13. Accordingly the OA stands dismissed. No order as to costs.

(DR. NANDITA CHATTERJEE)  
ADMINISTRATIVE MEMBER

(MANJULA DAS)  
JUDICIAL MEMBER

in