

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

ORIGINAL APPLICATION NO.170/00749/2018

DATED THIS THE 19TH DAY OF MARCH 2019

HON'BLE DR. K.B. SURESH, MEMBER(J)

HON'BLE SHRI CV.SANKAR MEMBER (A)

Harish Kumar M.S
S/o. Shri. Shantha Ram Rao
aged about 31 years
working as Track maintainer
o.o: Senior Section Engineer (P.Way)
Engineering Department
South Western Railway
Whitefield
Bangalore.

... Applicant

(By Advocate Shri Izzhar Ahmed)

vs.

1. Additional Divisional Engineer
(Central)
South Western Railway,
Bangalore Division,
Bangalore.23

2.Union of India
through the General Manager
South Western Railway
Gadag Road
Hubli.

...Respondents

(By Shri N.Amaresh ... Sr. Panel Counsel)

ORDER (ORAL)

HON'BLE DR. K.B. SURESH, MEMBER (J):

1. Heard. The question is that if in the interregnum between one charge sheet and another charge sheet seemingly on same line, if a new information has come to the Disciplinary Authority, can he amend and issue another charge sheet is in question, following a Calcutta Bench decision which the Railway Board seems accepted. But Shri Izzhar Ahmed would say that in that case it is the 2nd charge sheet which should be quashed.
2. The matter relates to leakage of question papers in which CBI had arrested the applicant and registered a regular case against him and he was in jail for 5 days. Following this the respondents seems to have acted immediately, suspended him and issued charge sheet with reference to incarceration alone.
3. But then later on wisdom dawned on them and they found out that the mountain as they saw earlier is much more larger than they perceived it earlier. Vigilance report indicated that applicant is also involved in it and therefore action must be pertaining to the activity of the applicant as an accused in the matter and not on the ground of incarceration alone. Therefore they had amended and issued another charge sheet on the new ground.

4. The question thus arises is that whether new charge sheet will survive or not on the basis of Railway order which says that unless earlier charge sheet is withdrawn and cancelled whether new charge sheet can be given or not.

5. The question is not that which engaged the attention of the Railway Board in this. On that time of issue of first charge sheet the magnitude of the issue was not in the knowledge of the Railway. They came to know about it only after Vigilance reported that applicant is also involved in the other infractions also. (We are not saying anything more about infraction here for it may affect the prospect of the applicant in another forum). But then the fact remains that first charge sheet and 2nd charge sheet are not on the same lines and fundamentally different.

6. Then in the reply the Railway submits that they have withdrawn the first charge sheet . Shri Izzhar Ahmed, learned counsel challenges it saying that they cannot do so because the matter is subjudice. Now he would clarify his statement by saying that fresh charge sheet should date back only from the date of withdrawal and not from the earlier date. Fundamentally it has no effect because charge sheet will date back from the date of infraction of the offence and not from any subsequent date. Therefore, withdrawal of first

charge sheet or

not will have no significant effect at all. But since the first charge sheet already withdrawn we need not say anything more on it. But 2nd charge sheet is valid, operable and will remain as it is. Therefore, OA does not have any merit, but whether the continuation of charge sheet correct or not is another matter. We will grant liberty to the applicant to raise it at the appropriate time.

7. OA dismissed. No order as to costs.

(CV.SANKAR)
MEMBER (A)

(DR. K.B. SURESH)
MEMBER (J)

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Annexures referred to by the applicant in OA No.749/2018

- Annexure- A-01. A copy of FIR dated 29.06.2014.
- Annexure- A-02. A copy of suspension order dated 14.08.2015
- Annexure- A-03.A copy of charge memo dated 02.09.2015
- Annexure- A-04. A copy of reported duty dated 04.09.2015.
- Annexure- A-05.A copy of defence reply dated 11.09.2015.
- Annexure- A-06.A copy of charge sheet of CBI dated 28.09.2015.
- Annexure- A-07.A copy of charge memo dated 15.11.2017.
- Annexure- A-08.A copy of defence reply dated 30.11.2017.
- Annexure- A-09. A copy of letter dated 26.03.2018.
- Annexure- A-10.A copy of Railway Board's order dated 01.12.1993.
- Annexure- A-11.A copy of extract Rule 9 of Rule 1968.
- Annexure- A-12.A copy of Railway Board's order dated 03.04.1986.
- Annexure- A-13.A copy of Railway Board's order dated 02.07.2004.
- Annexure- A-14. A copy of Railway Board's order dated 23.09.2008.
- Annexure- A-15. A copy of Railway Board's order dated 04.08.2009.
- Annexure- A-16. A copy of Para 18 of Master Circular - 67
- Annexure- A-17. A copy of Railway Board's order dated 07.06.1995.
- Annexure- A-18.A copy of Railway Board's order dated 06.02.2009.
- Annexure- A-19. A copy of Railway Board's order dated 09.10.2007.
- Annexure- A-20. A copy of order dated 04.12.2008 in OA-718/2006

Annexure referred to by the Respondents in the reply

- Annexure R1: Copy of letter dated 12.5.2017
- Annexure R2: Copy of letter dated 10.10.2017

Annexure referred in Rejoinder

Annexure Re-20: Copy of reply under RTI dt. 23.05.2018

Annexure Re-21: Copy of letter dated 26.10.2018

Annexure Re-22: Copy of Rule 19(4) of AT Act-1985

Annexure Re- 23: Copy of SLP-6661/06 dated 15.12.2009

Annexure Re- 24: Copy of order dated 25.7.2005 of HC

Annexure Re-25: Copy of order dated 6.5.2003 om OA/14/2001

Annexure Re-26: Copy of Railway Board's order dated 27.11.2007

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