

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : BILASPUR

Original Application No.203/00767/2017

Bilaspur, this Friday, the 20th day of September, 2019

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

P.S. Saha, S/o Late D.K. Saha aged about 51 years, presently CSM/CDTI/CYM/BMY prior to 16.07.2011 now waiting for alternative job r/o Rly Qtr no 143A, Zone I BMY 490025, Mob: 9826151671

-Applicant

(By Advocate – Shri Sudeep Johri)

V e r s u s

1. Union of India through General Manager, New GM Building, South East Central Railway, Bilaspur, Chhattisgarh 495004.
2. Chief Personnel Officer, South East Central Railway, Bilaspur, Chhattisgarh 495004.
3. Chief Operation Manager, South East Central Railway, Bilaspur, Chhattisgarh 495004.
4. Sr. Divisional Operation Manager, South East Central Railway, Raipur Chhattisgarh 492008.
5. Chief Yard Master, South East Central Railway, Bhilai Marshalling Yard, Bhilai, Chhattisgarh 490025.
6. Ravish Kumar Singh, Sr. Divisional Operation Manager, South East Central Railway, Raipur Chhattisgarh 492008.

-Respondents

(By Advocate – Shri Vijay Tripathi)

(Date of reserving order: 16.09.2019)

ORDER**By Navin Tandon, AM.**

The applicant is aggrieved by the issuance of charge sheet for unauthorised absence.

2. The brief facts of the case are that the applicant has been issued with a major penalty charge-sheet on 16.08.2017 (Annexure A-1) for unauthorised absence from 18.10.2016 to 10.07.2017. The applicant has filed various documents, in OA as well as in Rejoinder, which were received through RTI to say that he was present during the said period.

3. The applicant has sought for the following reliefs:

“(8). RELIEF SOUGHT:

In view of the above referred facts and grounds the applicant prays for the following reliefs:

(8.1) That, the Hon'ble Tribunal may kindly be pleased to call for entire records pertaining to the case of applicant.

(8.2) That, the Hon'ble Tribunal may kindly be pleased to quash the charge Memorandum No. OPTG/SF-5/PSS/CSM/CDTI/CYM/BMY/350/2017 dated 16.08.2017 (Annexure A-1) issued to the applicant for alleged unauthorized absence.

(8.3) Deleted.

(8.4) That, the Hon'ble Tribunal may kindly be pleased to direct the respondents to release the salary of the applicant from the month of November 2016.

(8.5) Cost of the Original Application be awarded.

(8.6) Any other relief which the Hon'ble Tribunal deems fit and proper may be awarded."

4. The respondents, in their reply, have submitted that the applicant purposefully and unauthorisedly absented himself from duty for a considerably long duration. He was treated as absent from duty and thus, he was marked as absent in muster-roll. As such, he was subjected for disciplinary action, as per Railway Service (Conduct) Rules, 1966 for his conduct being unbecoming of a Railway Employee. Accordingly, a charge memorandum dated 16.08.2017 (Annexure A-1) was issued to the applicant for unauthorised absence from duty from 18.10.2016 to 10.07.2017.

5. Since the relief sought for in Para 8.3 of the O.A has been deleted, therefore, no cognizance is taken from the pleadings related to para 8.3.

6. Heard learned counsel for the parties and perused the pleadings available on record.

7. Learned counsel for the applicant took a lot of pain to explain that the applicant had never absented himself from duty. The charges have been based on fabricated documents, which

cannot sustain scrutiny. The charge sheet is liable to be quashed as it is issued illegally.

8. Learned counsel for the respondents argued that the relief seeking quashment of charge sheet is not sustainable because the charge sheet is not vague. It is very specifically mentioned that it is for unauthorised absence from 18.10.2016 to 10.07.2017. Further, it has been signed by an authority, who is competent to do so. The correctness of the charge sheet cannot be examined by this Tribunal. The Inquiry Officer is the appropriate authority to evaluate the evidences.

9. We have considered the matter.

10. The Hon'ble Apex Court in the case of **Union of India vs. Kunisetty Satyanarayana**, (2006) 12 SCC 28, has held as under:

“(13). It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh [(1996) 1 SCC 327 : JT (1995) 8 SC 331] , Special Director v. Mohd. Ghulam Ghouse [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] , Ulagappa v. Divisional Commr., Mysore [(2001) 10 SCC 639] , State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , etc.

(14). The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or

charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.”

(emphasis supplied by us)

11. In Ministry of Defence Vs. Prabhash Chandra Mirdha, (2012) 11 SCC 565, it has been held by the Hon’ble Supreme Court as under:

“(10). Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the court. (Vide State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , Bihar State Housing Board v. Ramesh Kumar Singh [(1996) 1 SCC 327] , Ulagappa v. Commr. [(2001) 10 SCC 639 : AIR 2000 SC 3603 (2)] , Special Director v. Mohd. Ghulam

Ghouse [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] and Union of India v. Kunisetty Satyanarayana [(2006) 12 SCC 28 : (2007) 2 SCC (L&S) 304].

(11). *In State of Orissa v. Sangram Keshari Misra [(2010) 13 SCC 311 : (2011) 1 SCC (L&S) 380] (SCC pp. 315-16, para 10) this Court held that normally a charge-sheet is not quashed prior to the conducting of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that to determine correctness or truth of the charge is the function of the disciplinary authority. (See also Union of India v. Upendra Singh [(1994) 3 SCC 357 : 1994 SCC (L&S) 768 : (1994) 27 ATC 200].*

(12). *Thus, the law on the issue can be summarised to the effect that the charge-sheet cannot generally be a subject-matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings.”*

(emphasis supplied by us)

12. Thus, the Hon’ble Supreme Court has clearly held that mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. As held by their lordships it is quite possible that after considering the

reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. To determine the correctness or truth of the charge is the function of the disciplinary authority. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

13. In the instant case we find that the applicant has submitted that he had never absented himself from duty and that the charges are based on fabricated documents, which cannot sustain scrutiny. If this is his case, he can very well take all these objections during the course of enquiry and it is quite possible that after holding the enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. But the charge sheet itself cannot be quashed on these grounds as it is the premature stage, as held by their lordships in aforementioned cases. Further, the applicant has not questioned the competence of the authority, who had issued the charge sheet.

14. Keeping in view the law noticed hereinabove and considering the facts of the case, we do not find any justification to interfere with the charge-sheet issued by the respondent department. Accordingly, the O.A is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

rkv/am

(Navin Tandon)
Administrative Member