

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

**C.P. No. 39/2019 IN
O.A. No. 471/2012
R.A. No. 10/2018
R.A. No. 11/2018**

Date of decision: 25.07.2019

**Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhyay, Member (A)**

S.K.Nagarwal aged 49 years S/o Late Sh R.D.Nagarwal r/o B-90, Siddharth Nagar, Jaipur 302017 presently working as Dy.CE/Construction/Survey/Jaipur, North Western Railway, Mobile No.9461300667.

....Petitioner
(Petitioner in person)

Versus

1. Sh.T.P.Singh the then G.M., N.W.Railway Presently, G.M. Northern Railway, Boroda House, New Delhi-110001.
2. Sh.Rajesh Tiwary, G.M., N.W.Railway, HQ Office,

...Respondents.

ORDER (ORAL)

Per: A.Mukhopadhyay, Member (A):

The present Contempt Petition, (CP), has been preferred by the petitioner alleging non compliance of this Tribunal's order dated 02.08.2018 in O.A. No.

471/2012 by the respondents. The operative portion of the Tribunal's order reads as follows:

Therefore, without going into the merits of the case, we find that the mandatory and obligatory consideration of the written statement of defence submitted by the applicant has not been carried out by the disciplinary authority in this case. The issue of major penalty Memorandum No.E-174/V/DAR/Engg./10/14 dated 05.08.2010 and the appointment of an Inquiry Officer vide order dated 16.06.2011 are, therefore, found to be violative of prescribed procedure and the rules and are hereby set aside. The entire matter is remitted to the respondent-disciplinary authority with the direction to proceed afresh with consideration of the applicant's written statement/defence and thereafter process the case in accordance with the procedure prescribed in the rules and instructions. We make it clear that no observation is being made by this Tribunal on the merits of the case.

2. The petitioner contends that the respondents have only complied with this order in part, in that they issued an order No.E-174/V/DAR/Engg/10/14 dated 28.12.2018, (Annexure CP/3), vide which the appointment orders of Inquiry Officer in the departmental enquiry, (DE), in question as well as the Presenting Officer were cancelled. The petitioner avers that the respondents were also required to cancel the memorandum of charges,

(3)

(chargesheet) issued to him in the DE in question but that they have deliberately and willfully not done this in order to harass the petitioner.

3. In support of his contention as above, the petitioner points out that the respondents sought a review of the impugned order vide Review Application No.11/2018 which was dismissed by this Tribunal vide order dated 24.09.2018; (Annexure-CP/2). In this order, the Tribunal observed as follows:-

A plain reading of the Tribunal's directions as reproduced above make it clear that it is the issue of major penalty memorandum in question and the subsequent appointment of an Inquiry Officer in pursuance thereof which has been quashed and set aside and not the memorandum, (charge-sheet), *per se*. Thus there is nothing at all self-contradictory in the directions to the respondents to proceed afresh with consideration of the applicant's written statement/defence in accordance with the procedure prescribed in the relevant rules and instructions.

4. The petitioner however contends that where the Tribunal has used the phrase that the issue of major penalty memorandum in question has been quashed, it

(4)

means that the major penalty memorandum itself stands quashed, (para 5.2 of CP refers), and that even after he brought this to the notice of the respondents through his representation dated 04.02.2019, the respondents have persisted with their contemning order of 28.12.2018, (Annexure-CP/3), which states as follows:

In pursuance of Hon'ble CAT/JP's order referred above the earlier order to remit the case to inquiry and appointment order of Inquiry Officer of even no. dated 13.11.2017 and Presenting Officer of even no. dated 09.05.2018 are hereby cancelled as directed by Hon'ble CAT/JP. The case will be proceeded afresh from the stage of consideration of written statement of defence of the charge officer.

5. Thus, according to the petitioner, there is a deliberate attempt on the part of the respondents to harass the petitioner in contempt of this Tribunal's order of 02.08.2018 in OA No.471/2012 as read with the clarification of the same which forms part of the Tribunal's order in RA No.291/11/2018 dated 24.09.2018.

(5)

6. The petitioner was heard and the material available on record was perused.

7. At the outset, it was pointed out to the petitioner that the Tribunal's order in RA No.291/11/2018 dated 24.09.2018 which has been relied upon by him specifically states that "**it is the issue of major penalty memorandum in question and the subsequent appointment of an Inquiry Officer in pursuance thereof which has been quashed and set aside and not the memorandum, (charge-sheet), per se.**"

Given that the respondents have cancelled the appointment of the Inquiry Officer and the Presenting Officer in the DE in question and have directed, (Annexure CP/3 refers), that "**the case will be proceeded afresh from the stage of consideration of written statement of defence of the charge officer**", the petitioner was asked to explain the basis on which he states that the memorandum of charges in the said DE should also be dropped/cancelled as both in the 02.08.2018 order in OA No.471/2012 as well as in the 24.09.2018 order in review of the same, it has been

(6)

expressly reiterated that the memorandum of charges, (chargesheet), in the DE has not been quashed or set aside.

8. Confronted with this fact, the petitioner had no answer except to reaffirm, (para-6 of CP also refers), that the existence of this memorandum of charges, (chargesheet), may affect his future promotions and therefore that keeping this pending appeared to be an act of malice on the part of the respondents intended to cause severe injury to the petitioner.

9. It appears abundantly clear from a perusal of the order of this Tribunal in OA No. 471/2012, as reproduced by the petitioner as Annexure CP/1, read with its order dated 24.09.2018, (Annexure CP/2), on the RA preferred against the OA order, that the impugned order of this Tribunal in OA No. 471/2012 directs only the setting aside of the **issue** of memorandum of charges, (chargesheet), in the DE in question to the petitioner and does not set aside the memorandum of charges, (chargesheet), *per se*. Thus, the action taken by the

(7)

respondents in compliance by cancelling the appointment of the Inquiry Officer and Presenting Officer in the DE and directing that action on the memorandum of charges, (chargesheet), which still stands against the petitioner, be continued "**from the stage of consideration of written statement of defence of the charge officer**" denotes a correct and comprehensive compliance of the order of this Tribunal. Thus no case is made out for any kind of contempt of this Tribunal's order by the respondents.

10. The CP is therefore dismissed as being without force or substance of any kind at the admission stage itself.

(A.Mukhopadhyaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

/kdr/