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**(2008) 04 RAJ CK 0037**  
**In the Rajasthan High Court**

Dharam Chand Lamba

APPELLANT

Vs

R.S.R.T.C. and Others

RESPONDENT

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**Date of Decision :** 22-04-2008

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2008) 119 FLR 503 : (2008) 4 RLW 3282

**Hon'ble Judges :** Gopal Krishan Vyas, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

Gopal Krishan Vyas, J.—In this writ petition, petitioner is seeking direction to declare impugned charge sheet dated 11/2/1991 (Annex.7) illegal and unconstitutional so also prayed that the said charge sheet may be quashed and further prayed that respondents may be directed to grant selection grade and other admissible benefits to the petitioner.

2. The brief facts of the case are that petitioner was appointed as Conductor on 21/7/1977, thereafter, he was confirmed on the said post. According to petitioner he always performed his duties with zeal and dedication. On 20/6/1983 (Annex. I) he was charge sheeted by the Divisional Manager, Bikaner and after inquiry services of petitioner were terminated vide order dated 25/1/1985.

3. Petitioner preferred a civil suit before learned Addl. Chief Judicial Magistrate No. 3, Jaipur City against his termination and the said suit was allowed and decree was passed in his favour in which the order of termination was set aside and petitioner was directed to be reinstated in service with all consequential benefits. Said suit was decided on 27/7/1989.

4. Against the judgment and decree dated 27/7/1989, an appeal was preferred by the respondent Department before the Addl. District Judge No. 5, Jaipur, however, the said appeal was dismissed being time barred vide order dated 8/2/1994.

5. Against the judgment passed in appeal, second appeal was preferred before the High Court at Jaipur Bench and the said second appeal was also dismissed vide order dated 27/10/1994. The petitioner's contention in this case is that after final adjudication, he was allowed all consequential benefits vide order dated 21/8/1996, however for the same charges another charge sheet was issued to him vide Annex.7 dated 11/2/1991. Against the said charge sheet Annex.7, the petitioner filed civil suit but the said suit was dismissed by the learned Addl. Civil Judge (Jr.Div.) & Judicial Magistrate No. 5, Jaipur City vide order dated 12/12/1995 against which an appeal was preferred before the learned District Judge which was transferred to learned Addl. District Judge No. 2, Jaipur City and in that appeal the judgment and decree passed by the learned trial court was set aside and petitioner was granted liberty to approach the labour court. However, petitioner preferred this writ petition before this Court challenging the charge sheet Annex.7.

6. Learned Counsel for the petitioner vehemently argued that for same charges respondent cannot initiate inquiry twice. The regular inquiry was conducted earlier and termination order was passed but said termination order dated 25/1/1985 was challenged in civil court and vide Annex. 3 dated 27/7/1989 the suit was decided in favour of petitioner and thereafter first and second appeal filed by the respondent department were dismissed and petitioner was ordered to be reinstated in service and that order was complied with but for the same charges second charge sheet was issued which is not permissible under the law. Learned Counsel for the petitioner submitted that once inquiry was conducted and finally decided by competent courts then there is no question of initiating fresh inquiry upon same charges because no person can be punished twice for the single charge, therefore, initiation of second inquiry for same charges vide Annex.7 deserves to be set aside.

7. Learned Counsel for the petitioner submitted that once the matter is finally adjudicated upto High Court with regard to alleged misconduct committed on 26/5/1983 then petitioner again cannot be charge sheeted for the same charges levelled against him earlier, therefore, respondents are estopped to take action against petitioner on the principle of promissory estoppel.

8. Per contra, learned Counsel for the respondents raised preliminary objection that after dismissal of civil suit filed by the petitioner against which he preferred appeal before the Addl. District Judge No. 5, Jaipur and that appeal was allowed on the ground that civil court had no jurisdiction to entertain the dispute raised by the petitioner in the suit, therefore, while following the judgment of Hon'ble Apex Court in case of RSRTC v. Krishna Kant granted liberty to the petitioner to raise the dispute before the labour court. As per respondents the judgment of appellate court has attained finality and the petitioner is not entitled to invoke extra ordinary jurisdiction under Article 226 of the Constitution of India while bypassing the remedy available to him under the Industrial Disputes Act. According to the respondents, petitioner did not chose to avail remedy under the

Industrial Disputes Act for about two years since passing of the judgment by the appellate court, therefore, at this stage petitioner cannot be allowed to assail the validity of charge sheet by way of this writ petition. In reply almost all the facts narrated by the petitioner are admitted with regard to earlier litigation but in reply to para No. 9 it is stated that charge sheet dated 11/2/1991 was issued to the petitioner in which three charges were levelled against him which were not subject matter of earlier inquiry, therefore, there is no wrong in initiating departmental inquiry vide charge sheet dated 11/2/1991. Argument of petitioner that initiation of inquiry by the respondents vide charge sheet Annex.7 amounts to disobedience and contempt of court is absolutely misconceived, more so, petitioner cannot invoke extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India because appellate court has granted liberty to him to raise industrial dispute, which is alternative remedy provided under the Industrial Disputes Act, 1947.

9. I have perused the order passed by this Court on 8/3/2006. Although the concerned officer was directed to remain present in the Court to explain the reason as to why fresh inquiry was initiated for the same charges after delay of many years but in pursuance of order dated 8/3/2006 no officer-in-charge appeared before the Court but an additional affidavit has been filed along with certain documents on 12/3/2008 by Shri Suraj Bhan Meena, Settlement Officer, Tonk in which it is stated that first charge sheet No. 2237 dated 20/6/1983 for committing misconduct by the petitioner was related to occurrence which took place on 26/5/1983 and 27/5/1983 and as per allegation 11 and 29 passengers respectively were found traveling without tickets in the bus in which the petitioner was posted as conductor. Second charge sheet No. 995 dated 8/3/1984 was also issued to the petitioner for misconduct committed on 26/5/1983 by depositing less amount of Rs. 2129.40 in the corporation. In para No. 11 of the additional affidavit it is stated that in pursuance of legal advice the Divisional Manager, Bikaner issued charge sheet No. 1809 dated 11/2/1991 for above misconduct committed by the petitioner. As per this additional affidavit since the learned trial court has declared the termination order of the petitioner illegal on count of violation of principle of natural justice inasmuch as due procedure was not followed while holding inquiry and passing the order of punishment without recording the finding that the charges against the petitioner are not duly proved, therefore, in these circumstances the matter was referred to the legal Inspector, RSRTC, Bikaner for furnishing its opinion in the matter, and thereafter, fresh charge sheet was issued for conducting inquiry against the petitioner for the same charges which were levelled against him earlier. Therefore, action has been taken as per legal advice of legal Inspector, RSRTC, Bikaner and therefore charge sheet dated 11/2/1991 was issued for alleged misconduct in which there is no illegality and action has already been taken by the department against the petitioner, therefore, no interference is required in this case. Further, it is submitted that petitioner is at liberty to approach labour court for redressal of his grievance but this writ petition is not maintainable in

view of the order passed by appellate court.

10. After hearing both the parties in this case admittedly petitioner was charge sheeted vide charge sheet dated 20/6/1983 in which regular inquiry was conducted and service of petitioner was terminated vide order dated 25/1/1985. The said order was challenged by way of filing civil suit before the civil court and vide judgment dated 27/6/1989 (Annex.3) said suit was allowed and termination order was set aside and petitioner was ordered to be reinstated in service. Upon perusal of the said judgment, it is clear that no order was passed by the civil court for granting liberty to the respondents to hold fresh inquiry against the petitioner.

11. The judgment rendered by civil court on 27/7/1989 was further challenged by way of appeal before the "Addl. District Judge No. 5, Jaipur City, which was also dismissed. Second appeal was also dismissed by the High Court vide judgment dated 27/10/1994. It is very strange that in additional affidavit, upon specific query made by this Court that how second charge sheet has been issued for the same charges, it is submitted that after the judgment in civil suit dated 27/7/1989 and first appeal by the ADJ No. 5, Jaipur City so also decision in second appeal by the High Court the matter was referred to Legal Inspector, RSRTC, Bikaner for furnishing his opinion in the matter. From para 10 of the additional affidavit filed by settlement officer, RSRTC, Bikaner it is clear that fresh inquiry was initiated upon legal advice given by legal Inspector. In para No. 11 of the additional affidavit it is expressly stated that impugned charge sheet dated 11/2/1991 was issued in pursuance of legal advice by the Divisional Manager, Bikaner which is in accordance with law and no interference is required. Para 10 and 11 of the said additional affidavit are as follows:

10. That since the learned trial court has declared the termination order of the petitioner illegal on count of violation of principle of natural justice in as much as due procedure was not followed while holding enquiry and passing the order of punishment without recording the finding that the charges against the petitioner are not duly proved therefore, in these circumstances the matter was referred to legal Inspector R.S.R.T.C., Bikaner for furnishing its opinion in the matter who after examining the matter opined that a fresh inquiry could be conducted in the matter looking to the facts and circumstances as well as legal position of the case.

11. That in pursuance of the aforesaid legal advice, the Divisional Manager, Bikaner after examining the matter issued the fresh charge-sheet No. 1809 dated 11.2.91 of the above misconducts committed by the petitioner, a copy whereof is produced herewith and marked as Exhibit-A/R/9 for ready reference and kind perusal of this Hon"ble Court.

12. Meaning thereby, knowing well that in earlier suit against termination, learned Civil Judge set aside the termination order dated 25/1/1985 without granting liberty to hold fresh inquiry and likewise first and second appeals both

were dismissed without any liberty to hold fresh inquiry but for the same charges again charge sheet was given on the basis of legal advice given by legal Inspector of RSRTC which in my opinion is totally baseless and against the settled principle of law. An employee can be charge sheeted for any specific misconduct only once and there is no provision for taking fresh action after adjudication of controversy upto High Court but in this case arbitrarily and illegally respondents again initiated inquiry as per legal advice of Legal Inspector. This fact itself speaks that competent authority has issued second charge sheet without application of mind, which is not permissible under the law. Therefore, for the reason mentioned above, it is obvious that for the same charges upon which petitioner has faced the inquiry and finally exonerated after marathon of litigation has been charge sheeted vide second charge sheet dated 11/2/1991 which is illegal and unconstitutional.

13.The contention of respondents that writ petition is not maintainable is not tenable and has no force in the eye of law. On the one hand, respondents are accepting the judgment passed by civil court which had attained finality after dismissal of first and second appeal and on the other hand against illegal second charge sheet for the same charges it is urged that petitioner shall approach the labour court which is alternate remedy provided under the law, therefore, conduct of respondents goes to show that respondents are flouting the adjudication made by civil court, which had attained finality upto High Court and while indulging petitioner in fresh inquiry upon same charges raising voice for availing alternative remedy which is totally contrary to law.

In these circumstances, this writ petition is allowed. The charge sheet dated 11/2/1991 (Annex.7) issued upon same charges is set aside and respondents are directed to grant all consequential benefits including selection grade to the petitioner within a period of three months from the date of submission of certified copy of this order.