
(2018) 11 CAT CK 0007

In the Central Administrative Tribunal

Case No : Original Application No. 210, 00202 Of 2017

Sardar Joti Nigade

APPELLANT

Vs

Union of India And Ors

RESPONDENT

Date of Decision : 14-11-2018

Acts Referred:

Citation : (2018) 11 CAT CK 0007

Hon'ble Judges : Bhagwan Sahai, J; R. N. Singh, J

Bench : Division Bench

Advocate : R. G. Walia, V. S. Masurkar

Final Decision : Disposed off

Judgement

1. In this O.A. the applicant Shri Sardar Joti Nigade working as Loco Pilot Mail/ Express (Group 'C' post) under Senior D.M.E., Central Railway, Solapur seeks direction to the respondents not to act on the charge-sheet dated 04.02.2016 and not to take further action on Inquiry Officer's Report dated 13.02.2017, and quash and set aside that charge-sheet.

2. Facts of the case stated in brief:

2(a). The applicant was initially appointed as Assistant Loco Pilot in 1989, and then promoted as Goods Driver, Passenger Driver and Mail Driver. The applicant claims that he is conscientious, hardworking and sincere employee and has received many awards for his performance. He was issued a charge-sheet on 04.02.2016 by Respondent No.3 i.e. Sr.DME, Solapur Divisio, Solapur. He filed his statement of defence on 30.07.2016 stating therein that he had observed the required speed restriction of 30 kmph.

2(b). He claims that the Memorandum of Charge-sheet served on him is illegal and false. He further claims that the Disciplinary Authority was biased against him because of which, without issuing the charge-sheet, in the very first instance when information was submitted about an event that Authority recorded his

decision to the effect that major penalty to be imposed on him. The departmental enquiry conducted against him was a mere formality. The Guard of the train was examined during the inquiry when he clearly pointed out that the applicant had observed the required speed restriction of 30 kmph and there was no over speeding.

2(c). The Station Master of Hunsihudgil Railway Station has stated in the Examination-in-Chief that the applicant had observed the speed restriction and that the Permanent Way Inspector was not present on the spot at that time. The Inquiry Officer has rendered illegal and arbitrary findings holding the applicant guilty. Hence the O.A.

3. Contentions of the parties:

In the O.A. memo, rejoinder and arguments, the applicant and his counsel have stated that -

3(a). the charge-sheet has been issued to the applicant with a closed mind as even before its issuance the Disciplinary Authority had already concluded for imposing major penalty on him. Therefore, the charge-sheet issued is by a biased and closed mind;

3(b). the decisions of the Delhi High Court in the case of Union of India and Ors Vs. Dr.V.T. Prabhakaran on Writ Petition © No.2292/2010 decided on 26.07.2010 and The Secretary, Ministry of Urban Development Vs. Shri Tej Ram on Writ Petition No.559/2010 decided on 26.07.2010, para 23 of which cited another decision of the Hon. Apex Court reported as 1999(7) SCC 739 Yoginath D. Bagde Vs. State of Maharashtra and Ors., are applicable to the present O.A. in which it has been held that the disciplinary authority should not prejudge the gravamen of the allegations and should not use language which shows that the disciplinary authority has already made up its mind.

In para 26 of the above decision it has been held that the correct principle of law is that the stage for the disciplinary authority to hold that it is a case of a grave misconduct is when the penalty is inflicted and at no prior stage. Since in the present case the Disciplinary Authority had already made up its mind to impose major penalty on the applicant even before issuing the charge-sheet, its action is against the view taken in the above mentioned caselaws; and

3(c). as has been held in Ranjit Thakur Vs. Union of India and others dated 15.10.1987 (Para 2) while dealing with requirements of natural justice, that it has to be done by impartial persons, acting fairly and without bias and in good faith, and while delivering judgment, the Judge should not look at his own mind but look at the mind of the party before him.

In view of above facts and position in law, the applicant contends that the O.A. should be allowed.

In reply to the O.A. dated 29.06.2017 and during the arguments, the

respondents have stated that -

3(d). after receipt of the Inquiry Report of the Inquiry Officer, the applicant has raised preliminary issues in this O.A. instead of replying to the Inquiry Report;

3(e). as held by the Hon. Supreme Court in the case of Ministry of Defence Vs. Prabhash Chandra Mirdha {(2013) 1 SCC (L&S) 121}, the law does not permit quashing of charge-sheet in a routine manner and if the delinquent employee has any grievance in respect of the charge-sheet he must raise the issue by filing a representation and wait for the decision of the Disciplinary Authority. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be premature to deal with the issue;

3(f). they would like to rely on other Apex Court decisions such as Union of India Vs. Govind Manish in C.A.No.1442/2011 and Anant R. Kulkarni Vs. Y.P. Education Society and others {(2013) 6 SCC 515} in which it has been held that Courts/Tribunals should not generally set aside the departmental enquiry and quash charges on the ground of delay in initiation of disciplinary proceedings, as such power dehors limits of judicial review and the Court must take into consideration all relevant facts and weigh them to determine if it is in the interest of clean and honest administration to terminate the proceedings. The present O.A. is clearly in contravention to the above position taken by the Apex Court. Hence it should not be entertained and the proper course to be adopted by applicant is to file reply to the charge-sheet and wait for decision of the Disciplinary Authority thereon; and

3(g). the statement of the Guard has been examined by the Inquiry Officer and he has recorded his findings on it. Similarly the statements/depositions of Station Master of Hunsihudgil and concerned PWI have also been considered by the Inquiry Officer and all other facts related to this case have been considered. The Inquiry Officer has conducted the inquiry in an impartial manner and provided opportunity to the applicant to cross-examine the witnesses. Therefore, the contentions of the applicant in the present O.A. are after thoughts and unfounded apprehension at a premature stage. Therefore, the O.A. is devoid of merit and should be dismissed with cost.

4. Analysis and conclusions:-

We have perused the O.A. memo and its annexes, rejoinder of the applicant, reply filed by the respondents, various caselaws cited by the parties and considered the arguments advanced by both of them.

4(a). An examination of facts of the case reveals that when information about the alleged incident was placed before the disciplinary authority on 04.02.2016 it recorded on it that major penalty be imposed. With respect to this recording of the Disciplinary Authority, the contention of the applicant is correct - that he prejudged the issue of penalty before issuing the charge-sheet. In fact it was a mistake of the Disciplinary Authority to opine about the penalty at that stage. We understand that the Disciplinary Authority seems to have made this mistake due

to his lack of awareness about the interpretational subtlety and nuances of such an action. He should have refrained from recording his opinion on the quantum of penalty and should have mentioned only for initiating disciplinary proceedings.

4(b). Then a charge-sheet was issued to the applicant on 04.02.2016 and the disciplinary proceedings based thereon have been conducted. The Inquiry Officer has also submitted his Inquiry Report. Since this O.A. has challenged the charge-sheet itself, it was at a premature stage of the proceedings. In fact the applicant ought to have waited for the final decision of the Disciplinary Authority based on the Inquiry Report and after availing of the statutory remedies available to him under provisions of the relevant rules, he could have filed the O.A. But on filing of this O.A. at the initial stage of issuance of charge-sheet itself, interim relief also came to be granted by this Tribunal on the very first date of hearing on admission on 23.03.2017 directing the respondents not to take any final decision in respect of the inquiry report. This interim relief has continued from 23.03.2017 till now, because of which the Disciplinary Authority has so far not been able to take a decision on the Inquiry Report.

4(c). The core issue raised by the applicant in this O.A. is that the Disciplinary Authority had already made up its mind to impose major penalty on him when only the information about an event recorded on 01.02.2016 was submitted to him stating therein that LP had not correctly observed the caution of 30 kmph imposed in HHD yard and he had passed the spot at excessive speed. Therefore, the applicant contends that serving of the charge-sheet on him subsequently and conducting of the departmental enquiry were based on prejudging of the matter and with biased mind of the Disciplinary Authority.

4(d). However, in this case it is also revealed that the applicant has himself participated in the course of disciplinary proceedings. Because of direction of this Tribunal to the Disciplinary Authority not to take further steps on the Inquiry Report, the quantum of likely punishment to be finalized by the Disciplinary Authority is still not known.

4(e). Also, about the kind of punishment to be imposed the Disciplinary Authority is expected to take final decision on the report of the Inquiry Officer by considering the evidence based findings and all relevant facts of the case. Therefore, such a decision on the punishment to be imposed may also be at variance with the initial, preliminary view formed by it when information about the incident of over speeding of the train by the applicant was placed before it. Hence the fear of the applicant that the Disciplinary Authority would necessarily impose on him only major penalty seems hyperapprehension.

4(f). In view of these facts of the case, reliance of the respondents on the caselaws mentioned in para 3 (f) above is correct. Therefore, at this stage we feel that it would be proper and just to dispose of this O.A. without expressing any opinion on the merits of the case so that the concerned Disciplinary Authority can finalize its decision on the disciplinary proceedings. However, while

deciding on the punishment, the Disciplinary Authority should not be guided by its preliminary view formed by it before issuing the charge-sheet. After such decision of the Disciplinary Authority gets served on the present applicant, he may represent on his grievance, if any, by availing of statutory and other remedies available to him under provisions of law.

5. Decision :

The O.A. is disposed of in view of observations recorded in para 4 above.