

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17879 of 2017

=====

Raj Kumar, son of Late Antoo Ram, retired Deputy Chief Operating Manager (C&S), East Central Railway, Mahendrughat, Patna, resident of village – Talpara, P.O. – Bharcha, District – Chandauli.

.... Petitioner

Versus

1. The Union of India, through the Chairman, Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.
2. The Secretary, Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.
3. The General Manager, East Central, Railway, Hajipur.
4. The Deputy Chief Personnel Officer (Gazetted), East Central Railway, Hajipur.
5. The Financial Advisor 7 Chief Accounts Officer, East Central Railway, Hajipur.
6. Sri Arun Bhagra, Retired Additional General Manager, South Central Railway cum Inquiry Officer, Sai Mansarover, 357, 13th A Main, Yelhanka, New Town, Bangalore – 560064.

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Munna Pd Dixit, Advocate
Mr. S.K. Dixit, Advocate
Mr. Sanjay Kr. Choubey, Advocate
Ms. Swastika, Advocate

For the Respondent/s : None.

=====

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

And

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 19-12-2017

Heard learned counsel for the petitioner.

The order dated 10.10.2017 passed by Central Administrative Tribunal, Patna Bench, Patna in O.A. No. 516/2014 and M.A. No. 386/2014 is under challenge because the O.A. as well as the M.A. application has been dismissed.



Service of memo of charge and decision for initiation of a departmental enquiry including appointment of an Inquiry Officer for certain charges of omission and commission became the cause of action for the present petitioner to move the Central Administrative Tribunal.

There were primarily two grounds which were taken against the issuance of the charge memo, one was delay, and the second was that the charge memo has not been issued by the competent authority. The Tribunal answered both the questions in following terms:

“11. There are numerous judgments of the Hon’ble Supreme Court that no hard and fast rule can be laid down as to how much delay would vitiate a disciplinary proceeding and each case has to be decided on the basis of facts in that case. In any case, we are holding that there is no protracted delay in this matter. Therefore, the ground of delay is rejected.

12. As regards the question of a lower authority than the appointing authority issuing a charge memo, the cited judgment of the Hon’ble Supreme Court itself mentions in several paragraphs that a lower authority than the appointing authority can issue a charge memo. Only



the dismissal/removal shall not be by an authority subordinate to the appointing authority. It is useful to quote the relevant paragraphs from that judgment.

“Para-6- In Inspector General of Police & Anr.V. Thavasiappan, AIR 1996 SC 1318, this Court reconsidered its earlier judgments on the issue and came to the conclusion that there is nothing in law which inhabits the authority subordinate to the appointing authority to initiate disciplinary proceedings or issue charge memo and it is certainly not necessary that charges should be framed by the authority competent to award the punishment or that the inquiry should be conducted by such an authority.

Para-7- In Steel Authority of India & Anr. v. Dr. R.K. Diwakar & Ors., AIR 1998 SC 2210, and State of U.P. & Anr. v. Chandrapal Singh & Anr., AIR 2003 SC 4119, a similar view has been reiterated.

Para-8-In Transport Commissioner, Madras-5 v. A Radha Krishna Moorthy, (1995) 1 SCC 332, this Court held:

“In so far as initiation of enquiry by an officer subordinate to the appointing authority is concerned, it is well settled now that it is unobjectionable. The initiation can be by an officer subordinate to the appointing authority. Only the dismissal/removal shall not be by an authority subordinate to the appointing authority. Accordingly, it is held that this was not a permissible ground for quashing the charges by the Tribunal.”

13. Thus, this citation is clearly contrary to the stand taken by the applicant and the law is clearly settled that there is no



objection to a lower authority than the appointing authority issuing a charge memo.

14. We must also note that in the same judgment, the Hon'ble Supreme Court have also referred to several earlier judgments and observed that law does not permit quashing of a charge memo in a routine manner. A disciplinary proceeding initiated must be allowed to run its normal course.

15. Finally, we cannot help observing that the applicant has been able to stall disciplinary proceeding for about three years by approaching the Tribunal, which is also a reflection that the Tribunal either because of pressure of cases or other reasons is not able to dispose of such cases expeditiously even when they ought to be dismissed at the admission stage itself.”

Even before this Court the same two grounds are urged i.e. the delay and the authority issuing charge memo not being competent.

The learned Tribunal has passed its decision on the basis of authority of the Hon'ble Apex Court while rejecting both the grounds, and those grounds are cogent and



valid grounds, which, in our opinion, has been rightly appreciated by the Tribunal in the words which have been reproduced in earlier part of the order.

We are also of the opinion that the whole effort of the petitioner is to derail the disciplinary proceeding at the threshold, which we do not grudge, but we cannot be a party to the game plan.

This writ application has no merit. It is dismissed.

(Ajay Kumar Tripathi, J.)

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CA V DATE	NA
Uploading Date	20.12.2017
Transmission Date	NA

