

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

O.A.No.1940/2014

Dated 02 day, the 06 day of 2020

PRESENT

Hon'ble Mr.P.Madhavan, Judicial Member

Hon'ble Mr.T.Jacob, Administrative Member

G.Vijayan,

S/o.Govindaraj,

Dismissed Technician Grade-I,

Machine Shop, S & T works Shop,

Southern Railway, Pothanur,

Coimbatore District

... Applicant

By Advocate M/s.P.T.Perumal

Vs

1.Union of India,

Rep., by Secretary,

Ministry of Railways, New Delhi.

2.The Deputy General Manager,

Personal Department,

Southern Railway, Divisional Office, Pothanur,

Coimbatore District.

3.The Chief Works Manager,

Southern Railway,

S&T Works,

Pothanur, Coimbatore District.

4.The Deputy Chief Signal &
Telecommunication Engineer,
Southern Railway,
Pothanur, Coimbatore District.

5.The Disciplinary Authority,
PE/SNT/PRJ,
Southern Railway, Pothanur,
Coimbatore District. ... Respondents

By Advocate Dr.D.Simon

(Order: Pronounced by Hon'ble Mr.P.Madhavan, Member(J))

Heard. The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

"To set aside the order made in SGW/P509/2336 dated 09.01.2013 passed by the 5th respondent along with appeal dated 31.01.2014 in SGW/P227/2336 passed by the 4th respondent and consequently direct the respondents to reinstate the applicant in service with back wages with all the attendant benefits and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

1. The applicant while working as Technician Grade.I in S&T workshop of the respondents, was issued with a charge-memo dt. 12-09-2011 alleging misconduct under Rule 9 of the Railway Servants(Discipline and Conduct) Rules, 1968. The main allegation was fraudulent withdrawal of various amounts of money from the P.F Account of one Nagammal. According to the applicant, the respondent had not properly conducted an inquiry and respondent no.5 had imposed a penalty of termination.
2. According to applicant, the inquiry officer relied upon the alleged admission by the applicant for coming to a finding against him. According to applicant, even though he requested to wait for the outcome of the criminal case, the respondents continued with the proceedings and terminated him. He was not given a chance to appoint a defence assist for his case. The inquiry officer has not examined all witnesses and forensic expert in inquiry. It was due to the compulsions from the higher officials that he signed in the proceedings. The respondents had acted with malice

and ill-will and came to the finding of guilt without proper inquiry. The disciplinary authority who passed the termination order is not having the authority to pass an order of termination. He is a lower officer than the appointing officer.

3. So, the applicant seeks to set aside the termination and to reinstate him in service.

4. The respondents filed a detailed reply stating the facts leading to the disciplinary action and passing of the termination order. According to them, the applicant had fraudulently applied for various amounts of withdrawal from the provident fund account of one Nagammal, Chief Office Supdt. and collected the amount through cheques. The act of the applicant was unbecoming of a railway servant and against Rule 3 (1)(iii) of Railway Servants Conduct rules. After issuing charge-memo, an inquiry was initiated and inquiry started on 18-06-12 at Chennai. The applicant at first appeared and he did not appoint a defence assist. The IO advised him to appoint a defence help, but the applicant did not do the same. Thereafter, inquiry proceeded with. During the inquiry, applicant admitted the guilt out of free will and without any outside force. Accordingly the inquiry officer closed inquiry and filed a report. A copy of the inquiry report was given to applicant on 27-11-12 and he had given a written representation on inquiry report on 13-12-12. The DA after considering the report imposed the penalty of removal as per order dt. 09-01-13(R10). The applicant as per direction of the tribunal in OA1686/13 had

filed an appeal. The appellate authority had considered the appeal and confirmed the order of DA and rejected the appeal. A revision petition was also filed against the appellate order after delay. The revision filed by him was also rejected and he was communicated the same. According to the respondents, the inquiry was conducted in a proper manner and there is no violation of any procedure. Hence OA is liable to be dismissed.

5. We had heard the counsels appearing in both sides and they raised the same arguments raised in their pleadings.

6. We had carefully gone through the various annexures produced from both sides. The main point argued by the counsel for the applicant is that the applicant was not given a chance to appoint a defence assist and his admission of guilt was due to compulsion from higher officials and hence inquiry conducted is vitiated. On a perusal of the inquiry report R1, it is seen that the inquiry officer has ascertained the receipt of all documents by the charged officer and also ascertained whether he had properly understood the charges levelled against him. At first the charged officer denied the charges and inquiry proceeded to the next stage and during the regular hearing, the charged officer had admitted the charges. The inquiry officer had asked a specific question regarding his admission of charges and the charged officer has stated that he admitted the charges unconditionally on his own free will without any outside force and with a clear state of mind. So, it is clear that before accepting the admission of guilt, the IO had ascertained whether it was

voluntarily given or not. It is clear that the argument of the applicant, that it was made under compulsion cannot be accepted as genuine. The IO had also ascertained whether the charged officer had got all documents relied upon before the inquiry started. The copy of IO report was also furnished to the charged officer and the applicant had filed his written objections before the DA. There is no hard and fast rule that the departmental proceedings should not commence before the termination of criminal case pending. The burden of proof in a departmental proceedings is lesser than a criminal case and only material witnesses need be examined. This is a case where the applicant admitted guilt and non examination of forensic expert and non examination of all witnesses has not much relevance. DA had considered all these aspects and passed the impugned order. There is no violation of procedure and principles of natural justice and there is no reason to interfere in the order passed in this case. The penalty imposed is also proportionate to the gravity of the act committed and we find no merit in the arguments of the counsel for the applicant. So, there is no merit in this OA and it has to be dismissed.

7. Accordingly, we dismiss the OA. No costs

**(T.JACOB)
MEMBER (A)**

02.06.2020

M.T.

**(P.MADHAVAN)
MEMBER(J)**