

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 386/2001

(6)

New Delhi: this the 5th day of September, 2001

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A)

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

S. S. Bose,
Office Superintendent (II),
Personnel Branch,
Divisional Rly. Manager's Office,
Northern Railway,
State Entry Road,
New Delhi

....Applicant.

(By Advocate: Shri B. S. Maini)

Versus

Union of India
through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Divisional Rly. Manager,,
Northern Railway,
State Entry Road,
New Delhi.

3. The Senior Divl. Personnel Officer,
Divisional Railway Manager's Office,
Northern Railway,
State Entry Road,
New Delhi

....Respondents.

(By Advocate: Shri P. M. Ahlawat)

ORDER

S. R. Adige, VC (A):

Applicant impugns respondents' order dated 31.1.2001 (Annexure-A1), on the ground that thereby they are initiating a fresh enquiry against him, which they are not legally entitled to do.

2. Heard both sides.

3. Applicant was proceeded against departmentally vide memo dated August, 1997 (Annexure-A2) on the charge that on 30.5.97 while working as O.S.II he demanded and accepted illegal gratification in a case

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when a candidate had sought appointment on compassionate ground.

4. The Enquiry Officer submitted his report to the Disciplinary Authority on 22.11.99, who did not agree with the findings and now proposes to take action on the inquiry report in terms of Rule 10(1) Railway Servants (Disc. & Appeal) Rules, 1968 which is extracted below and which has been framed under Article 309 of the Constitution.

"10(1) If the disciplinary authority, having regard to its own findings where it is itself the inquiry authority, or having regard to its decision on all or any of the findings of the inquiring authority, is of the opinion that the penalty warranted is such as is within its competence, that authority may act on evidence on the record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, recall the witnesses and examine, cross-examine and re-examine the witnesses and may impose on the Railway servant such penalty as is within its competence, in accordance with these rules. Where such disciplinary authority is of the opinion that the penalty warranted is such as is not within its competence, that authority shall forward the records of the inquiry to the appropriate disciplinary authority who shall act in the manner as herein-after provided."

pursuant to which impugned order dated 31.1.2001 has been issued.

5. Applicant's counsel Shri Maina has contended that respondents are thereby initiating a fresh inquiry which is illegal and in this connection relies upon the Hon'ble Supreme Court's ruling on K.R. Deb Vs. Collector, Central Excise AIR 1971 SC 1447. Respondents have however clarified in their reply and this clarification has been reiterated by their counsel Shri Ahlawat during hearing that it is not a fresh inquiry that is being held, but

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only a further inquiry, which is fully permissible in accordance with Rule 10(1) supra, which permits recall of witnesses followed by their examination, cross-examination and re-examination. Merely because the word "enquiry" is used in impugned order dated 31.1.2001 does not necessarily make it a fresh enquiry, and in the light of the contents of respondents' reply, which has been reiterated by their counsel during hearing, we have prima facie no reason to doubt that the enquiry will be in the nature of a further enquiry, which is permissible in law.

6. The OA therefore warrants no interference. It is dismissed. No costs.

A Vedavalli
(DR.A.VEDAVALLI)
MEMBER(J)

S.R.Adige,
(S.R.ADIGE)
VICE CHAIRMAN(A)

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