

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A.No.1320/99

New Delhi: this the 24th day of August, 1999.

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

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J).

Shri S.K. Agarwal,
S/o Late Shri Piara Lal,
working as Senior TIA/Chief Vigilance Inspector,
Northern Railway,
Baroda House,
New Delhi,
R/o 61-A, Patal Garden,
Kakrola Mor,
New Delhi - 110059 Applicant.

(By Advocate: Shri S.K. Sahu).)

Versus

1. Union of India
through
General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. Chief Vigilance Officer (T),
Northern Railway,
Baroda House,
New Delhi

..... Respondents.

(By Advocate: Shri H.K. Ganguani).

ORDER

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

Applicant seeks a direction to respondents to appoint an officer of his parent department to act as the Disciplinary Authority in the departmental proceedings instituted against him, and meanwhile to consider revocation of his suspension and enhancement of his subsistence allowances.

2. Applicant joined service in Northern Railway as Accounts Clerk on 27.5.76 and was promoted as Senior

2

Travelling Inspector of Accounts. Thereafter he was appointed on the ex-cadre post of Chief Vigilance Inspector w.e.f. 25.10.96. Respondents state that while working as such, a complaint was received from one Shri Deepak Kumar that applicant was demanding illegal gratification from him in return for help in a vigilance case against him. Thereupon a trap was laid on 23.2.98 and respondents aver that applicant was caught red-handed accepting illegal gratification of Rs. 3000/- from the said Shri Deepak Kumar upon which he was immediately suspended and departmental proceedings were initiated against him, vide charge Memo dated 30.4.98 (Annexure-A1).

3. The question for adjudication is whether the CW(T) who has signed the aforesaid charge Memo should continue to function as the Disciplinary Authority in this case or not. Respondents themselves admit in their reply that at the time of the alleged incident applicant was under the administrative control of the CW(T) in the Vigilance Department and was reporting to him. Shri Sawney however relies on respondents' Circular dated 30.7.91 (Annexure-A5) on the subject of whether disciplinary cases can be dealt with by the competent Disciplinary Authority, although they have dealt with the same matter while working in the Vigilance Organisation. To avoid any allegation by the delinquent that such vigilance officer who later became a Disciplinary Authority had a predetermined mind about the delinquent's guilt or otherwise, it has been stated that it would be prudent if such Vigilance Officer turned Disciplinary Authority do not deal with the disciplinary cases but

pass it on to the next higher authority. Shri Sawhney has also relied upon respondents' circular of October, 1980 (Annexure-A3), which lays down that a Railway Servant belongs to only one department (in this case Shri Sawhney asserts that applicant belongs to Accounts Department) and it is only that department which exercises administrative control over him, even though he may violate rules/regulations administered by another department.

4. While it is true that this is not a case where the Disciplinary Authority had dealt with the same matter while working in the vigilance department, the objective of respondents' circular dated 30.7.91 (Annexure-A5) is to obviate instances where the delinquent can allege that the disciplinary authority had a preconceived mind while dealing with the departmental inquiry. In the present case, it has come out during cross-examination of Shri Deepak Kumar (Annexure-A4) that he handed over his complaint to the CW(T) who in turn arranged the vigilance team which allegedly trapped the applicant. Under the circumstance the chance of similar allegations being made in the present case cannot be ruled out in the event the departmental proceeding finally goes against the applicant.

5. Therefore, in the interest of justice, and in the conspectus of the facts and circumstance of this particular case which shall not be treated as a precedent, we direct respondents to entrust the departmental enquiry to an officer not lower in rank than the CW(T) in a department of the Northern Railway

other than the vigilance department. This should be done within 2 months from the date of receipt of a copy of this order. Meanwhile in terms of the above orders, the interim orders passed earlier are vacated.

6. In so far as the question of revocation of applicant's suspension and payment of subsistence allowance is concerned, relevant rules and instructions require the same to be reviewed at periodic and stated intervals. These rules and instructions should be adhered to by respondents.

7. The OA is disposed of in terms of paras 5 and 6 above. No costs.

Lakshmi Swaminathan
(MRS. LAKSHMI SWAMINATHAN)
MEMBER (J).

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

/ug/