

Central Administrative Tribunal
Principal Bench

O.A. No. 649 of 1999

New Delhi, dated this the 1st JANUARY 2002

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri G.C. Gupta,
Sr. Civil Engineer (Constn.) (Retd.),
Northern Railway,
Kashmere Gate,
Delhi.

.. Applicant

(By Advocate: Shri B.S. Mainee)

Versus

Union of India through

1. The Secretary,
Ministry of Railways,
Rail Bhawan, New Delhi.
2. The General Managerr,
Northern Railway,
Baroda House,
New Delhi.
3. The Chief Administrative Officer (Constn.),
Northern Railway,
Kashere Gate,
Delhi.
4. The Secretary,
Union Public Service Commission,
Dholpur House,
New Delhi-110011.

.. Respondents

(By Advocate: Shri R.L. Dhawan)

ORDER

S.R. ADIGE, VC (A)

Applicant impugns the disciplinary authority's order dated 10.2.99 (Annexure A-1) imposing a penalty of 25% cut in pension for three years.

2. Applicant was proceeded against departmentally vide Charge Memo dated 22.10.92 (Annexure A-2) under Rule 9 Railway Servants

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(Disciplinary & Appeal) Rules, 1968 on four Articles of Charge relating to the construction of a model station building at Meerut City, while working as Sr. Civil Engineer (Construction), Saharanpur, U.P.

3. Applicant denied the charge upon which an enquiry was ordered. The E.O. in her findings dated 8.3.1996 (Annexure A-16) held charge No. I, III and IV as proved, and charge No. II as partly proved.

4. A copy of the E.O.'s report was furnished to applicant on 4.4.97 (Annexure A-16) for representation if any within 15 days, failing which it would be presumed that applicant did not wish to make any representation.

5. Applicant submitted his representation on 24.4.97.

6. The impugned order dated 10.2.99 reveals that the General Manager, Northern Railway after considering the case, held Charge I and II as not proved, while holding Charge III and IV as proved against applicant. He forwarded the case to the Railway Board recommending cut in applicant's pension who meanwhile had retired on superannuation.

7. The matter was referred to UPSC for their advice who in their letter dated 27.1.99 agreed that while Articles I and II of the charge were not proved, Articles III and IV were proved to the extent

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described in the aforesaid letter. Agreeing with the UPSC's advice, the disciplinary authority (President) by impugned order dated 10.2.99 imposed the penalty of 25% cut in pension for three years, which has been challenged in the present O.A.

8. The first ground pressed during hearing was that applicant was illegally asked by the E.O. to give detailed reasons refuting the charges enunciated in the Charge Memo on the second hearing itself held on 10.6.94, even before any of the PWs were examined which has vitiated the proceedings. It is true that at that stage, applicant could only be called upon to state whether he admitted or denied the charges. In fact applicant had already submitted his written statement denying the charges and he was not required to give detailed reasons to refute the charges, but it is noticed that at that stage applicant himself asked for certain additional documents to establish his innocence, and it cannot be said that even if applicant was asked to give the detailed reasons refuting the charge, he complied with the same at that stage, and thereby prejudiced his own defence in the D.E. Hence this ground fails and the ruling in 1993 (1) SCC 13 relied upon by Shri Mainee does not advance applicant's case.

9. The next ground taken is that after inspection of relied upon documents, applicant had sought for supply of certain additional documents for his proper defence, but while some of those additional documents were supplied, supply of other

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documents was either disallowed, or were allowed but not supplied, which prejudiced him in his defence. In this connection, the additional documents which applicant had sought for are listed in his note dated 16.6.94 (Annexure A-5), which reveals that he had sought for documents listed at 1(a), 1(b), 2, 3, 4 and 5 therein. After examining the relevance of the aforesaid documents the E.O. vide letter dated 15.7.94 (Annexured A-6) permitted applicant to inspect the aforesaid documents with the exception of document No.3 namely the reply given by Shri K.B. Goel the then Dy. C.E./D/TKG to a questionnaire sent to him by Vigilance. Thereupon applicant was supplied with copies of the documents listed at 1(a) and 2, but the document listed at 1(b) was not supplied as it was ^{not} available on the record. Document No.4 which was the agreement of Bhiwani Station Building and 2nd Agreement No. 6-W/BNW dated 22.10.86 as well as document No.5 which was the plans of roof and because of Meerut City Station Building and Biwani Station Building were also not supplied on the ground that they were not considered essential to the enquiry (refer para 3.11 of the enquiry report dated 8.3.96) although earlier in letter dated 15.7.94 these two documents had been held relevant to the enquiry.

10. In this connection it is important to note that the E.O. in her letter dated 15.7.94 had allowed applicant access to documents No.4 and 5 after examining their relevance and satisfying

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herself that the same were relevant for the prupose of the enquiry. However, in Para 3.11 of the enquiry report dated 8.3.96 it is stated thus

Regarding documents at Sl. No.4 and ⁷5 these documents are not considered essential for the inquiry and hence applicant was not allowed access to the same during the enquiry."

11. In this connection Rule 14 (11) and 14(12) of CCS (CCA) Rules are relevant. Rule 14 (11) (iii) require the charged officer to give notice for the production of documents other than those to be relied upon by the prosecution and listed as per Rule 14(3). Rule 14(12) required the E.O. to requisition those documents from the authority ⁱⁿ whose custody or possession those documents lie, but the proviso to Rule 14(12) permits the E.O. for reasons to be recorded in writing to refuse to requisition such of the documents as are in its opinion not relevant to the case (emphasis supplied).

12. In this connection Government of India instructions below Rule 14 CCS (CCA) Rules contained in Swamy's Compilation of CCS (CCA) Rules Muthuswamy and Brinda 22nde Edition 1996 are also very relevant. Instruction No.23 (2)(3)and (4) of those instructions read as follows:

2. "The right of access to official records is not unlimited and it is open to the Government to deny such access if in its opinion such records are not relevant to the case, or not desirable in the public interest to allow such access. The power to refuse access to official records should, however, be very sparingly exercised. The question of relevancy should be looked as

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from the point of view of the defence and if there is any possible line of defence to which the document may, in some way, be relevant, though the relevance is not clear to the Disciplinary Authority at the time that the request is made, the request for access should not be rejected. The power to deny access on the ground of public interest should be exercised only when there are reasonable and sufficient grounds to believe that public interest will clearly suffer. Cases of the latter type are likely to be very few and normally occasion for refusal of access on the ground that it is not in public interest should not arise if the document is intended to be used in proof of the charge and if it is proposed to produce such a document before the Inquiry Officer, if an enquiry comes to be held. It has to be remembered that serious difficulties arise when the Courts do not accept as correct the refusal by the Disciplinary Authority, of access to documents. In any case, where it is decided to refuse access, reasons for refusal should be cogent and substantial and should invariably be recorded in writing.

3. Government servants involved in departmental enquiries often ask for access to and/or supply of copies of--
- (1) documents to which reference has been made in the statement of allegations;
 - (2) documents and records not so referred to in the statement of allegations but which the Government servant concerned considers are relevant for the purpose of his defence;
 - (3) statements of witnesses recorded in the course of--
 - (a) a preliminary enquiry conducted by the department; or
 - (b) investigation made by the Police;
 - (4) reports submitted to Government or other competent authority including the disciplinary authority, by an officer appointed to hold a preliminary inquiry to ascertain facts; and
 - (5) reports submitted to Government or other competent authority including the disciplinary authority, by the Police after investigation.

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4. A list of the documents which are proposed to be relied upon to prove the charge and the facts stated in the statement of allegations should be drawn up at the time of framing the charge (this will incidentally reduce the delay that usually occurs between the service of the charge-sheet and the submission of the written statement). This list should normally documents like the First Information Report if there is one on record. Anonymous and pseudonymous complaints on the basis of which inquiries were started need not be included in the list. The list so prepared should be supplied to the officer either long with the charge-sheet or as soon thereafter as possible. The officer should be permitted access to the documents mentioned in the list, if he so desires.

5. If the officer requests for any official records other than those included in the list, the request should ordinarily be acceded to in the light of what has been stated inabove.

6. While there is no doubt that the Government servant should be given access to various official records like documents to which reference has been made in the statement of allegations and documents and records which the Government servant concerned considers are relevant for the purpose of his defence though the relevancy is not clear to the disciplinary authority, doubts very often arise whether official records include the documents mentioned.....above."

13. There are no materials on record to indicate that while deciding to reject access to documents No. 4 and 5, the E.O. kept the aforesaid instructions of Government in view. The rejection of access to documents No. 4 and 5 ~~was~~ by a bald, cryptic order extracted in Para 10 above, which gives no reason as to why the E.O. did not consider them essential for the enquiry. This omission is all the more glaring when the E.O. in her letter dated 15.7.94 had, after examining the relevance of these documents, permitted applicant access to the same, as she considered them relevant for the inquiry.

14. Indeed applicant had raised this objection in para 6 of his representation dated 24.4.97 on the findings contained in the E.O. report addressed to the disciplinary authority but the same appeared to have escaped the attention of that authority.

15. During the course of hearing Shri Mainee relied upon the rulings in Kashi Nath Dikshit Vs. Union of India AIR 1986 SC 2118 and S.K. Jain Vs. Union of India ATR 1990 (2) page 256 to buttress his contention that denial of access to Documents No.4 and 5 amounted to denial of reasonable opportunity and vitiated the proceedings. The ruling in Kashinath Dikshit's case (supra) deals with the non-supply of relied upon documents, and as documents No.4 & 5 were not relied upon, that ruling may not be directly applicable, but in S.K. Jain's case (supra) the important point which has been made is that the refusal of the E.O. to give to the delinquent officer the documents required by him amounts to denial of reasonable opportunity and vitiated the entire proceedings. Nothing has been shown to establish that the aforesaid ruling in S.K. Jain's case (supra) has been stayed, modified or set aside, and indeed that ruling is squarely on all fours with respondents own instructions extracted above. Furthermore the failure to record reasons as to why the E.O. considered the supply of/ access to documents 4 and 5 not essential, when she herself had earlier held that they ^{were} relevant for the purpose of the

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enquiry establishes that the mandatory provisions contained in the proviso to Rule 14(12) CCS (CCA) Rules requiring reasons to be recorded, where the E.O. considers documents called for as being not relevant to the case, has not been followed.

16. We have thus no hesitation in holding that applicant has been denied reasonable opportunity for his proper defence and the proceedings, therefore, stand vitiated.

17. Other grounds have also been raised to challenge the disciplinary proceedings, but in our considered opinion, without going into the merits of those other grounds, the foregoing ^{discussion} ~~decision~~ is itself sufficient to establish that the O.A. warrants judicial interference.

18. Accordingly the O.A. succeeds and is allowed and the impugned order dated 10.2.99 is quashed and set aside. Normally after quashing the impugned order dated 10.2.99 we would have remanded the matter back to the respondents to take up the proceedings from the stage where the infirmity was detected, but in the facts and circumstances of this particular case, which should not be treated as a precedent, as applicant has already retired from service on superannuation, we do not remand the case back. Instead we direct respondents to restore to applicant his pension with arrears within three

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months from the date of receipt of a copy of this
order as if the impugned order had not been passed.
No costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member (J)

karthik

S.R. Adige

(S.R. Adige)
Vice Chairman (A)