

Central Administrative Tribunal

Principal Bench

LA 1229/95

(11)

New Delhi, the ~~27~~ <sup>May</sup> ~~27~~, 1996.

Hon'ble Shri A.V. Haridasan, VC(J)  
Hon'ble Shri R.K. Ahooja, M(A)

Shri J.L. Bhandari  
S/o Late Shri Bhim Sen  
R/o 256/3A, Padam Nagar,  
Kishan Ganj, Delhi.110007. . .

Applicant

(Advocate: Shri B.T. Kaul )

VERSUS

1. Secretary,  
Ministry of Surface Transport  
Transport Bhawan,  
Parliament Street,  
New Delhi.110001.

Secretary,  
2. Union Public Service Commission  
Dholpur House,  
New Delhi.

Shri K.L. Malik  
3. Superintending Engineer(Mech)  
Room No.31E,  
Ministry of Surface Transport  
( Roads Wing)  
Transport Bhawan, Parliament Street,  
New Delhi.110001. ....

Respondents

(Advocate: Shri M.M. Sudan )

ORDER

Hon'ble Shri R.K. Ahooja, M(A)

The applicant joined the Ministry  
of Surface Transport in 1965 as/ Asstt. Executive  
Engineer. He also got selection grade w.e.f.  
the  
1.1.86. In 1988 he went to/ Indian Railway Construction

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Ltd. (IRCON) on deputation. He came back to his parent office on 12.5.93 but on 21.9.94 he received a chargesheet (Annexure A1) in regard to certain purchases made by him as Senior Manager/ Chief Manager during the year 1989-90. The applicant denied the charges levelled against him. He alleges that his request dated 10.2.94 was placed before the Minister (Surface Transport) and the latter finally came to the conclusion that the chargesheet was issued to harass the applicant when he was due for promotion and there was no need to pursue the case and the same may be closed. The petitioner alleges that because of this order dated 11.11.94 the disciplinary proceedings came to an end on that date and the chargesheet did not survive thereafter. The applicant submits that he came to know that the DPC for considering eligible Supdt. Engineer for promotion to Chief Engineer was held on 10.1.94 when he was also be considered but / respondents resorted to sealed covered procedure which was wrong in view of the decision of the Minister dated 11.11.94, closing the disciplinary proceedings against him. The applicant is aggrieved that though he made a number of representation regarding the ~~illegalit~~ of the procedure in view of the decision of the Minister, the respondents have

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not disposed of his representation nor have rectified the wrong. The applicant suspects on the part of the respondents that the file and the decision of the Minister has been referred to Central Vigilance Commission which is left with no jurisdiction after the decision of the Disciplinary Authority as affirmed by the Supreme Court in case of Nagaraj Shivarao Karjagi vs. Syndicate Bank - 1991 (3) Supreme Court Cases 219 and this Tribunal in the case of Aril Goel vs UOI and another - 1994 (28) ATC 646. The applicant aggrieved by the action of the respondents No.1 and 2 to act upon the decision of the Minister has come to the Tribunal seeking directions for his promotion to the post of Chief Engineer on the basis of the recommendations of the DPC convened by UPSC by opening the sealed cover.

2. The respondent No.1 in reply has taken the stand that as per existing instructions cases of all Gazetted Officers are referred to the CVC for their advice. When ~~the~~ matter was referred after preliminary enquiry to the CVC, the latter advised major penalty proceedings against the applicant. Accordingly, a chargesheet was served on him. On receipt of the written

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statement of defence dt. 10.2.94, the Disciplinary Authority, the Minister for Surface Transport called for the case and ordered that the matter may be closed. But as per the instructions contained in DOP and AR OM No. 118/2/78-AVDI dt. 28.9.78 the case was sent to the CVC for reconsideration of their advice. However, the CVC reiterated the advice tendered by them earlier. On receipt of the advice the matter has been placed before the Disciplinary Authority which <sup>is</sup> yet to take the final decision in the matter. Respondent No.1 therefore contends that since the final decision regarding the disposal of the case has not been taken, therefore, the chargesheet still exists and hence there is no alternative to keeping the recommendations of the DPC in a sealed cover. No reply was filed on behalf of the respondent No.2 UPSC. However, an affidavit has been filed by respondent No.3, Shri R.L. Malik, Supdt. Engineer in which he pointed out that the applicant could not place ~~.....~~ reliance on confidential documents to which the applicant was not supposed to have access. The respondent No.3 also contested the prayer for interim relief made by the applicant that instead of respondent No.1 not to promote respondent No.3 till the

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disposal of the application.

3. We have heard the ld. counsel for the applicant Shri B.T. Kaul at considerable length. In substance, Shri Kaul has argued that once the Disciplinary Authority has come to a conclusion on perusal of the statement of defence, there is no basis for going-ahead with the disciplinary proceedings and the case ~~stands~~ <sup>stands</sup> closed for all intent and purposes. He vehemently argued that the CVC is not a constitutional authority but is a body created by the Cabinet through a Govt. resolution and therefore there is no statutory or legal requirement to consult the CVC as per disciplinary rules; in fact there is no role left for CVC when the disciplinary authority has reached its final conclusion. He submitted that had it been otherwise then a specific provision in respect of the role of the CVC would have been made in the CCS (Conduct) Rules. In view of this there was no requirement for a second reference to the CVC as made out by the respondents and in fact if the Disciplinary Authority came to change its conclusion after the advice of the CVC, then the same would amount to a de novo enquiry and unless conditions for de novo enquiry were fulfilled the respondents were barred from following the sealed cover procedure. He pointed

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out that the decision of the Minister was taken on 11.11.94 while the DPC for promotion to the post of Chief Engineer was held on 10.1.95 and thus the case came to an end before the meeting of the DPC. It was therefore wrong on the part of respondent No.1 and respondent No.2 to keep the recommendation of the DPC in sealed cover.

In support Shri Kaul cited the case of DDA vs H.C. Khurana - 1993 (3) SCC 196 wherein the Supreme Court held that when a decision had been taken to initiate disciplinary proceedings and chargesheet issued to the govt. servant, then the knowledge of the same on the part of the govt. servant, through service of the chargesheet, may not a pre-condition for following the sealed cover procedure. On the same analogy Shri Kaul argued that in this case also the communication of the decision of the Disciplinary Authority to the applicant regarding the closing of the case was also not essential in deciding whether or not the sealed cover procedure was to be followed; the essential point being that decision should have been taken to close the case in the present circumstances before the date of DPC. It was further argued on behalf of the applicant that once the Minister had recorded his views on the

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file, then what remained to be done was only its communication by the authorised officer to the applicant as well as to the other concerned officers. Any delay caused by the action of the officials of the Ministry in sending such communication cannot cause prejudice to the interest of the applicant.

4. Shri M.M. Sudan, 1d. counsel for the respondent No.1 contested the validity of this argument and stated that firstly the requirement of second stage consideration with the CVC [redacted] was founded on valid grounds. The Minister acting as delegatee of the President had to consult all the prescribed authorities including the CVC before recording his final decision. In any case, the order could become final only after it was authenticated by an authorised officer and duly notified.

5. We have given consideration to the arguments advanced by Shri Kaul. In our view, the essential question is whether a decision taken by the Minister on file tantamounts to final order of the Disciplinary Authority. It is correct that the Minister acts as a delegatee of the President. However, the orders passed in the name of the President have to be authenticated by an officer duly authorised in this behalf. It is an admitted fact on both sides that such an order has not been issued so far. In our view the test of finality of the order is whether or not such an

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order on file can be changed by that authority. If it is found that the Minister having recorded his decision on the file cannot change or modulate it then this decision must be considered to be final for the purpose of CCS(CCA) Rules. On this point, however, Shri Kaul was not be able to satisfy us. The reference to CVC implies that the Disciplinary Authority has the option to change its decision in the light of the fresh advice of the CVC. Shri Kaul's argument that the Disciplinary Authority is barred from consulting the CVC once it has taken a final decision is in our view not tenable. The Disciplinary Authority which is a delegatee of the President is also bound by the instructions which subject the exercise of the delegated power. The DOP and AR OM No.118/2/78-AVDI dt. 28.9.78 (R-1) states in para 2 thereof.

"With a view to bringing about greater uniformity in examining on behalf of the President the advice tendered by the CVC and taking decision thereon it has been decided ... (Emphasis supplied)....."

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6. The orders issued by the DOPT are also in exercise of the powers given under allocation of Business Rules. Thus, the Disciplinary Authority is clearly required to follow certain procedures while exercising delegated powers in the name of the President. In any case there is no provision of law and rules brought to our notice by Shri Kaul which would show that the Minister is barred from reconsidering his own decision on file on the advice of CVC or on the advice of his Ministry officials or on his own initiative. In our view so long as the power of revision rests with the Disciplinary Authority to change its opinion, such a decision is not a final decision.

7. In view of the above discussion, we are of the ~~opinion~~ <sup>for</sup> that decision recorded on the file unless it is notified and issued in the proper form in the shape of an order duly signed and authenticated by the Competent Officer is not a final decision. Since admittedly no such final order was issued in this case, it cannot be concluded that the disciplinary proceedings had come to a close on 11.11.94 when the Minister recorded his views on the file. Thereafter, the matter was referred to CVC for <sup>second</sup> opinion. We were also advised by Shri M.M. Sudan, 1d. counsel for respondent No.1 that after the receipt of the second opinion of the CVC, in fact a decision had been taken

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now by the Minister to review the earlier decision and to proceed further with the disciplinary proceedings.

8. In the light of the above discussion, we are therefore of the view that this application has no merit and the same is accordingly dismissed. There shall be ~~no~~ order as to costs.

R.K. Ahooja  
(R.K. Ahooja )  
Member(A)

A.V. Haridasan  
(A.V. Haridasan )  
Vice Chairman(J)

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