

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/813/2020

HYDERABAD, this the 9th day of March, 2021

Hon'ble Mr. AshishKalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member



Raj Kumar Mandal,
S/o. Ramjee Mandal,
Aged about 35 years,
Occ: Commercial Supervisor,
Adilabad Railway Station, S.C. Railway,
Nanded Division, Adilabad Dist, Telangana.

...Applicant

(By Advocate: Sri M.C. Jacob)

Vs.

1. Union of India rep. by
The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
2. Senior Divisional Commercial Manager,
South Central Railway, Nanded Division,
Divisional Office, Nanded.
3. Inquiry Officer & Enquiry Inspector,
Head Quarters, Room No.12, Ground Floor,
Rail Nilayam, Secunderabad.

....Respondents

(By Advocate: Sri S.M. Patnaik, SC for Railways)

ORAL ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:

2. The OA is filed with the following prayer:



“...to call for the records pertaining to proceeding No. G.77/II/PSV/07/18/NED mdt.10.03.2020 issued by the 3rd respondent directing the applicant to attend further enquiry against charge memorandum No. N/C/DAR/SF-5/2018/01 dt.14.09.2018 from the stage of relied upon documents taking on records and rejection of his representation dt. 12.03.2020 against the same issued by the 2nd respondent in Proceeding No. N/C.DAR/SF-5/2018/01, dt.08.06.2020 and to set aside the same declaring it as illegal, unjust, arbitrary and in violation of the provisions of Railway Servants (Disciplinary and Appeal) Rules, 1968...”

3. Brief facts of the case are that the applicant while working as Commercial Supervisor in the respondents organization was issued a charge memo dated 14.9.2018 under Rule 9 of RS (D&A) Rules on the charge that the applicant paid Rs.2 lakhs to the S.I. of RPF, Aurangabad to protect him from being prosecuted in a tout case. Applicant denied the charges. Inquiry Officer (IO) as well Presenting Officer (PO) were appointed. The PO brief was received by the applicant and applicant replied on 9.9.2019 seeking dropping of the charges. Thereafter, applicant was awaiting the Inquiry report and instead, Disciplinary authority has directed the IO to conduct further inquiry from the stage of examination of documents. Applicant represented on 12.3.2020 against the same, which was rejected and hence the OA.

4. The contentions of the applicant are that the disciplinary authority cannot order further inquiry without assigning reasons. Rule 10 (1) (a) & (b) of Railway Servants (Discipline & Appeal) Rules, 1968 have been

violated. Applicant cited the judgment of the Hon'ble Apex Court in ***K.R. Deb vs. Collector of Central Excise, Shillong (1971 AIR SC 1447)***, and that of the Hon'ble Principal Bench in ***Gulab Singh v U.O.I*** to support his contentions. Representation submitted was rejected without giving reasons and considering the judgments cited.



5. Respondents *per contra* state that the action was taken as per para 16 of Master Circular No.67 wherein it is stated that the if there are any irregularities noticed in the Inquiry proceedings, then the matter can be remitted back to the IO for conducting the inquiry from the stage at which the irregularity has been noticed. The action has been taken as per Rule 9 (25) of RS (DA) Rules, 1968 and in accordance with Railway Board order 98/96. The disciplinary authority has ordered further inquiry and not fresh inquiry.

6. Heard both the counsel and perused the pleadings on record.

7. I. The dispute is about the decision of the disciplinary authority to order further enquiry from the stage of examination of documents. Applicant claims that the said decision is against Rule 10 of the RS (DA) Rules 1968. The said rule is hereunder extracted for reference and to resolve the dispute:-

“10. Action on the inquiry report:-

(1) If the disciplinary authority:-

(a) after considering the inquiry report, is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, it may recall the said witness and examine, cross-examine and re-examine the witness;

(b) is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold further inquiry according to the provisions of rule 9, as far as may be.”

As is seen from the above Rule, the disciplinary authority is competent to order further inquiry, but with the proviso that reasons have to be given for issuing such an order. The impugned order dated 8.6.2020 is extracted here under:



“I have gone through your representation dated 12.03.2020. In terms of Rule 10(1)(b) of D&A (Rules), 1968 your case has been remitted to the inquiring authority for further inquiry and report. Accordingly inquiring authority has been advised to proceed to hold further inquiry according to the provision of Rule-9. As such, the objections raised in your representation are not worth considering, hence rejected. No further correspondence shall be entertained on this score.

Therefore, you are hereby directed to attend the inquiry as and when fixed by the inquiring authority. “

II. The impugned order is not even a semblance of a reasoned order except to quote the Rule. Hence, it is invalid. RS (DA) Rules are statutory in nature and prevail over the executive instructions issued through the Master Circular referred to by the respondents. Statutory instructions cannot be ignored by the respondents. Further, the observations of the Hon’ble Apex Court/ Principal Bench in the cases cited supra are relevant material to the case, which have to be borne in mind while taking a decision in the matter.

III. Therefore, the respondents are directed to issue a reasoned and speaking order as to why further inquiry is ordered in the matter keeping in view Rule 10 of RS (DA) Rules 1968 and the Hon’ble Supreme Court/

Hon'ble Principal Bench verdicts relied upon by the applicant. For complying with the above direction, respondents are granted 4 weeks time from the date of receipt of this order. Till a decision is taken as directed, further inquiry shall not be conducted by the respondents.



IV. With the above direction, the OA is disposed of with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVEMEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/evr/