

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

OA/050/00595/2019

With

MA/050/00065/2020

Reserved on: 13/01/2021

Pronounced on: 16/2/2021

C O R A M

HON'BLE MR. M.C. VERMA, JUDICIAL MEMBER

HON'BLE MR. SUNIL KUMAR SINHA, ADMINISTRATIVE MEMBER



Ugrasen, son of Shri K.N.P. Shrivastava, Deputy Chief Mechanical Engineer/Safety, East Central Railway, Hajipur, P.O.- Digghi Kalan, P.S.- Hajipur Town, District- Vaishali at Hajipur, Pin Code-844102 (Bihar).

.... Applicant.

By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India through the Secretary, Railway Board, Ministry of Railway, Government of India, Rail Bhawan, New Delhi-110001.
2. The General Manager, East Central Railway, Hajipur, P.O.- Digghi Kalan, P.S.- Hajipur Town, District- Vaishali at Hajipur, Pin Code- 844102 (Bihar).

.... Respondents.

By Advocate(s): - Mr. S.K. Ravi

ORDER

Per S.K. Sinha, A.M:- The applicant has preferred this OA assailing the order dated 16.05.2019 (Annexure A/10) of General Manager (GM), East Central Railway (ECR) to resume proceedings in

a Departmental Inquiry which had been earlier stayed under the direction of Tribunal (Annexure A/8) .

2. The applicant has prayed for following reliefs in the OA .

“8.1) That your Lordships may graciously be pleased to declare the impugned order dated 16.05.2019 issued by Respondent No. 2 as contained in Annexure - A/10 as illegal, without his competence, non-application of his independent quasi-judicious mind, against the principle of Promissory Estoppel and also contrary to his own order dated 27.03.2018 as contained in Annexure A/8 which is based on judicial order of this Hon’ble Tribunal dated 18.01.2018 and 15.02.2018 as contained in Annexure A/5 and A/7 respectively.

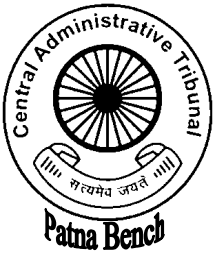
8.2) That your Lordships may graciously be pleased to set aside the impugned order dated 16.05.2019 issued by Respondent No. 2 as contained in Annexure- A/10 accordingly.

8.3) That the Respondents be further directed to grant all consequential benefits in favour of the Applicant for which he is legally entitled to. The respondents be further directed to allow the applicant to at par with his juniors.

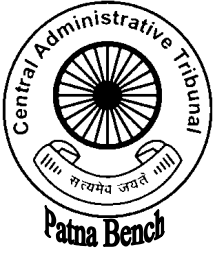
8.4) That Your Lordships may graciously be pleased to declare the Inquiry Proceeding as yet to be conducted by the Respondent No. 3 at this belated stage as unwarranted and liable to be declared as null, void and ab-initio wrong due to undisclosed reason of prolong delay and non supply of required documents such as Verification Report with mobile number used for this purpose and Mobile/Phone Numbers used by the Applicant while demanding alleged illegal gratification.

8.5) Any other relief or reliefs including the cost of the proceeding may be allowed in favor of the Applicant.”

The applicant has also requested for interim relief to stay the impugned order dated 16.05.2019 (Annexure A/10).

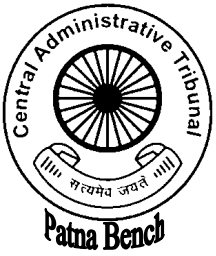


3. At the notice stage hearing, the respondents contested the OA on the grounds of maintainability and filed Written Statement. The applicant also filed Rejoinder in response to the Written Statement. The respondents and applicants, both subsequently filed MAs to supplement their pleadings and furnish additional documents.



4. This case relates to the order of Disciplinary Authority (GM, ECR) dated 16.05.2009 to resume the proceedings in Departmental Inquiry which he had earlier stayed on 27.03.2018 under directives of the Tribunal. The Departmental Inquiry was initiated in December 2008 under Rule 9 of the RS (D&A) Rules, 1968 on allegations of demanding and accepting illegal gratification of Rs 1,25,000/- from one Anand Raj .

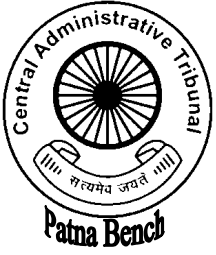
4.1. Earlier, in 2007, CBI had registered an FIR against the applicant on a complaint from Anand Raj alleging demand of bribe. Later, CBI had laid a trap and arrested the applicant and one Anil Kumar (Senior DEN/II/Danapur). CBI filed charge sheet before the Special CBI Court which took cognizance of the case on 11.09.2008 and started judicial proceedings in the Special Case (No.08 of 2007 arising out of R.C. No. 12A of 2007).The applicant then approached the Hon'ble High Court Patna with Criminal Misc. No14016 of 2013 and the Hon'ble High Court vide its order dated 23.06.2016 stayed further proceeding in the Special CBI case(Annexure A/1).



4.2 During the Departmental Proceeding, the applicant as Charged Officer (CO) demanded some papers including the verification report from the Inquiry Officer on 06.08.2009 and 29.10.2009. The IO rejected his request and decided to proceed with the Departmental Inquiry. However, between 2009 and 2017 several IOs were changed without any tangible progress in the inquiry. The next IO held the preliminary hearing (PH) on 07.12.2017 and the applicant approached the Tribunal with OA No 050/77/2018. Disciplinary Authority, in light of directive of the Tribunal, stayed the proceeding in the Departmental Inquiry on 27.03.2018 till disposal of the CBI case. Later on 16.05.2019, the Disciplinary Authority based on the the advice of CVC and DoP&T's guidelines issued vide OM dated 21.07.2016, decided to resume the proceedings in the inquiry. Aggrieved with this order, the applicant filed the instant OA with prayers as mentioned at Para 2 above.

4.3. During the notice stage hearing on 07.06.2019, Ld. counsel for the applicant stated that in another departmental inquiry initiated for similar allegations against Shri Anil Kumar, who was arrested along with the applicant in the CBI case, Jabalpur Bench of CAT had granted ad interim vide order dated 29.05.2019. The Tribunal, observing that the two departmental inquiries were initiated on similar allegations and that Jabalpur Bench of Tribunal had granted stay in the departmental inquiry against Shri Anil Kumar,

decided to stay the further proceedings in the Departmental Inquiry relating to the current OA. The proceeding in the Departmental Inquiry has remained in abeyance since the interim order of Tribunal on 07.06.2019.



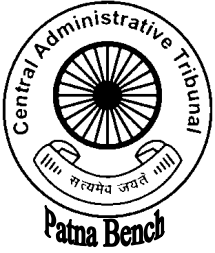
5. The applicant has pleaded that the CBI case against him was false because it was filed by Anand Raj in connivance with some CBI officials. He has submitted that Anand Raj, who was earlier awarded the Vehicles Contract in the ECR, was unhappy with him (the applicant) because he had put up a note of recovery against him for excess payment earlier due to erroneous agreement. Anand Raj was also not awarded the Vehicle contracts in the Tender for 2006 and 2007. Applicant has pleaded that falsity of the CBI case is proven by the order of Hon'ble Patna High Court in Criminal Misc. No. 14016 of 2013 which he had filed after the Special CBI Judge took cognizance of the case. Hon'ble High Court ordered on 23.06.2016 to stay further proceeding in the Special CBI case RC-12(A)/2007 so far as the applicant was concerned (Annexure A/1) and also raised questions about his involvement in the recovery of bribe money.

5.1 The applicant has further submitted that the Inquiry Officer has not provided him the verification report on the basis of which FIR was registered and the mobile numbers which were allegedly examined in the verification despite his request. Thus they were depriving him of the documents needed to defend himself. The



applicant has further pleaded that the decision of Disciplinary Authority (GM, ECR) to stay the departmental proceedings till decision in the Spl. CBI case issued on 27.03.2018 was in compliance of the directive of the Tribunal. The subsequent decision of Disciplinary Authority to resume the departmental inquiry was not in accordance with the law. An order of Disciplinary Authority is quasi-judicial in nature and he cannot withdraw or modify his own order subsequently. Also, since the earlier decision to stay the inquiry was in compliance to the directive of the Tribunal, the decision to resume the proceedings amounted to contempt of the Tribunal. The applicant has further submitted that departmental inquiry was being prolonged for no fault of his and in the process he is getting deprived of his due promotions and financial benefits.

6. The respondents have pleaded that the allegation against the applicant was grave and it was important to conclude the departmental inquiry expeditiously. If the allegations in the inquiry were substantiated the applicant could be awarded any of the major penalties and hence, the applicant was deliberately trying to block proceedings in the Departmental Inquiry. Respondents have pleaded that Hon'ble Supreme Court have given several judgements with the ratio that the Departmental Inquiry and criminal proceeding on similar allegations were separate activities and could be continued simultaneously. There is no legal bar in proceeding with a



Departmental Inquiry even if the criminal proceeding for the similar charges has been stayed by the courts. The respondents have also mentioned that the stay against the impugned order in this OA has been obtained by the counsel for applicant by submitting incorrect facts before the Tribunal on 07.06.2020. The counsel for applicant had submitted that the Jabalpur Bench had granted ad interim stay to Shri Anil Kumar on the order of ECR, Hajipur dated 16.05.2019 though the impugned order before Jabalpur Bench was issued by SEC Railway. The respondents have averred that OA was not maintainable and needs to be dismissed.

7. After admission, we heard the rival counsels.

8. Shri M.P. Dixit, learned counsel for applicant submitted that the applicant was a senior officer in the Railway and on being posted at ECR Hqrs, he had raised some issues and took decisions which adversely affected Anand Raj. Learned counsel referred to the order of Hon'ble Patna High Court staying further proceeding in the Special CBI case qua applicant and the observation that there was no corroboration on the demand of bribe by the applicant (Annexure A-1). The Hon'ble High Court had also questioned the procedure of trap adopted by the CBI.

8.1 Ld. Counsel averred that the IO was not providing relevant documents to the applicant required for defense which was in contravention of the principle of natural justice. The respondents

have changed several IOs between 2008 and 2016 in succession without any tangible progress in the Departmental Inquiry. Because of delay in finalization of the Departmental Inquiry he was being deprived of his promotions.



8.2 Ld. counsel further submitted that the order of Disciplinary Authority for resumption of inquiry proceeding was not valid as being a quasi-judicial authority, he cannot modify his own order subsequently. After passing an order, he becomes functus officio and cannot review his own order. The learned counsel drew attention of the Tribunal to the ratio laid by Hon'ble Supreme Court in **SBI Vs. S.M. Goyal** (2008) SCC 92 and **N.S. Bhaduria Vs. State of M.P.** (2013 SCC Online MP 8320) in support of his contention.

8.3. Ld. counsel for applicant further stated that the Railway authorities were not pursuing the CVC cases uniformly despite the communication from Railway Board to all General Managers. They were adopting selective approach and in this regard, he particularly referred to the case of Shri K.K. Jha and Rajeshwari Singh against whom CBI cases were filed but no departmental inquiry is pending against them.

9. Shri S.K. Ravi, learned counsel for respondents, submitted that the orders of Disciplinary Authority issued on 27.03.2018 and 16.05.2019 were administrative in nature and not quasi-judicial. Both the decisions were communicated by Dy. CPO/Gaz, GM(P) Office,



ECR. The format of communication itself suggests the orders were of administrative nature. He averred that the applicant was interested in delaying and finally stalling the Departmental Proceeding because of the gravity of charges which if substantiated may result in imposition of any of the Major punishments. The learned counsel further stated that the counsel for the applicant had got the ad-interim stay in this OA by making incorrect submission before the Tribunal. The Jabalpur Bench of CAT had granted ad interim relief vide order dated 29.05.2019 in respect of the impugned order issued by South East Central railway on 16.05.2019 (Annexure P/3 page 137) whereas the learned counsel for applicant had pleaded that the relief was in respect of receipt of the letter issued by GM, Hajipur.

9.1 The learned counsel further mentioned that DoP&T vide its OM dated 01.08.2007 has clarified that stay of disciplinary proceeding is not required in every case where on the same allegations there is a criminal case which is still not finalized. The concerned authority may decide on proceeding with the departmental proceeding after taking into consideration the facts and circumstances of each case. Ld. Counsel in order to buttress his submission referred to the judgment put reliance on the Hon'ble Calcutta High Court judgement in **Sima Sarkar Vs. BSNL** in which it has been held that departmental inquiry can proceed independent of the outcome of the criminal trial though based on same issues. He

also referred the judgements of Hon'ble Supreme Court in the case of **State of Rajasthan Vs. B.K. Meena & Others** (1996) 6 SCC 417, **State Bank of India & Ors. Vs. Neelam Nag and Another** (2016) 9 SCC 491 and **Stanzen Toyotetsu India (P) Ltd. Vs. Girish** (2014) 1 SCC (L&S) 641 in support of his argument.



10. After hearing the submissions of rival counsels and examining the pleadings and materials on record, we advert to the moot issue in this case of whether the decision of the Disciplinary Authority to resume the departmental proceeding after having issued earlier the order for staying the proceedings till finalization of the Criminal proceedings was in accordance with the rules and settled law. The applicant has challenged the order on three main grounds as under:

- (a) **that an officer in the capacity of Disciplinary Authority performs quasi – judicial role and he cannot modify his own order.**
- (b) **that the Disciplinary Authority had earlier stayed the proceedings under directive of the Tribunal and hence to resume the proceeding was illegal and a contempt of the Tribunal ;**
- (c) **that a criminal case is under trial before the Special CBI court on the same allegations and the Hon'ble High Court Patna has stayed further proceeding in the case qua applicant .**

11. Besides the above three grounds, the applicant has also mentioned that the respondents were discriminating against him as some other officers against whom CBI cases were registered

departmental inquiry was not being initiated. This is not a valid ground to challenge the departmental inquiry as one's liability before the law does not mitigate with another person getting away with an offence. It is not the role of this Tribunal to examine how the respondents are dealing with other cases which may have some similarity with the case under consideration. Our role is confined to examining the legal aspects of the issue brought before us.



12. The applicant has also raised the issue that Inquiry Officer was not making available some documents demanded by him for defense. Annexure A2/III of the OA mentions the list of documents proposed to be relied upon to prove the Article of Charge framed against the applicant. This list does not include the document demanded by the applicant. Rule 14 (12) of the CCS (CCA) Rules, 1965 provides that inquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case.

13. Reverting back to the applicant's first main ground for challenging the impugned order (Para 11), there is a need to ascertain whether the order of Disciplinary Authority in staying and resuming the departmental proceeding was quasi-judicial or administrative in nature. The applicant avers that the stay order

passed by the Disciplinary Authority on 27.03.2018 was a quasi-judicial decision and the subsequent order dated 16.05.2019 to resume the proceeding was modifying the earlier order. Being against the settled law the impugned order deserves to be quashed. In this regard, the applicant has put reliance on the ratio of Hon'ble Supreme Court Judgements in **SBI Vs. S.M. Goyal** (2008) SCC 92 and **N.S. Bhaduria Vs. State of M.P.** (2013 SCC Online MP 8320). In both the cases Hon'ble Supreme Court has dealt with the question as to when does an authority become functus officio. Para 18 of the Supreme Court Judgement in **State Bank of India and Others Vs. S.N. Goyal** which has been reproduced at para 15 of the Judgement in **N.S. Bhadauriya v. State of MP and Others** reads as under:-



“18. It is true that once an Authority exercising quasi judicial power, takes a final decision, it cannot review its decision unless the relevant statute or rules permit such review. But the question is as to at what stage, an Authority become functus officio in regard to an order made by him. P. Ramanatha Aiyar's Advance Law Lexicon (3rd Edition, Vol. 2 Pages 1946-47) gives the following illustrative definition of the term 'functus officio.'

Thus a Judge, when he has decided a question brought before him, is functus officio, and cannot review his own decision.

Black's Law Dictionary (Sixth Edition Page 673) gives its meaning as follows:

Having fulfilled the function, discharged the office, or accomplished the purpose, and therefore, of no further force or authority.”

14. In the instant case, the Disciplinary Authority by staying the proceeding had not decided the final outcome or accomplished the purpose of the departmental enquiry. A departmental inquiry is

initiated with the service of charge memo and concludes with the award of punishment or exoneration/dropping of charge. The Disciplinary Authority is required to take decisions at different stages of a departmental inquiry and many a times he has to revise his earlier decisions, in view of changing circumstances. Such decisions may relate to appointment of inquiry officer or presenting officer or remitting an inquiry back to the inquiry officer for de-novo inquiry.



The decisions of Disciplinary Authority taken at different stages of departmental inquiry do not make him functus officio for that stage.

If that were so, all decisions of changing the IOs or Presenting Officer or de-novo inquiry would be illegal. In the instant case, six inquiry officers have already been changed by the Disciplinary Authority. Only a decision of the final award of punishment or exoneration /dropping of Charge by the Disciplinary Authority can make him functus officio. The decision to stay or resume the departmental proceeding cannot be called exercise of quasi-judicial power and hence, such orders do not make the Disciplinary Authority functus officio for that stage.

15. Regarding the applicant's second ground that the Disciplinary Authority had stayed the proceedings in the departmental inquiry under the directive of the Tribunal and hence, its resumption without the approval of the Tribunal was a contempt of the Tribunal. The order dated 27.03.2018 (Annexure A/8) states that the Disciplinary

Authority decided to stay the ongoing disciplinary proceeding till final disposal of the Criminal Proceedings in light of the order of the Tribunal dated 18.01.2018 and 15.02.2018 passed in in OA No.77 of 2018. The Tribunal had, vide its order dated 18.01.2018, granted liberty 'to the applicant to pray before the authority by filing representation for staying the departmental proceeding' and directed the authority 'to dispose of the same within one month taking into consideration the decision of the Hon'ble High Court.'



Further the Tribunal's order issued on 15.02.2018 reads as under:-

"Learned counsel for the respondents are directed to take instructions why the proceeding shall not be stayed despite opportunity granted to the disciplinary authority to consider the representation of the applicant, seeking stay off the proceeding on account of pending CBI case which has been stayed by the Hon'ble High Court and in light of judgement of the Hon'ble High Court the General Manager has advised the applicant to participate in the inquiry proceeding without dealing with the issue of stay.

Instructions be filed within two weeks."

16. As evident from above, the Tribunal did not issue any express directive to stay the proceeding of the departmental inquiry. The Tribunal had only directed the counsel for respondents to take instructions on the issue of stay. The Disciplinary Authority, in light of the orders of the Tribunal, decided on his own to stay the disciplinary proceeding till final disposal of the criminal proceedings. Subsequently, the Disciplinary Authority, in light of the CVC's advice as also the DoPT guidelines decided to resume the proceeding in the departmental inquiry (Annexure A/10). In absence of an express

order of the Tribunal staying the proceeding in the departmental inquiry, the decision to resume the proceeding cannot be called a contempt of the Tribunal. The applicant also did not file a contempt petition against the order, he rather preferred a fresh OA before the Tribunal challenging the order.



17. The applicant's third ground against resumption of the departmental proceeding is the stay granted by Hon'ble Patna High Court in the Special CBI Case till further orders qua the applicant. Since both the departmental and criminal proceeding are based on similar allegation and Hon'ble High Court has stayed the criminal proceeding in view of infirmities in the allegation, the disciplinary proceeding should also be stayed.

18. The law on this count is well settled. There is no legal bar for both, the departmental proceeding and criminal proceeding to go on simultaneously. The Hon'ble Apex Court in its judgement in the **State Bank of India and Others vs Neelam Nag and Another** reported in (2016) 9 SCC 491 held at para 13 as under:

"13.It is well settled that there is no legal bar to the conduct of the disciplinary proceedings and criminal trial simultaneously. However, no straitjacket formula can be spelt out and the Court has to keep in mind the broad approach to be adopted in such matters on case-to-case basis"

The Hon'ble Supreme Court in Court in **Divisional Controller, Karnataka State Road Transport Corporation v. M.G. Vittal Rao**

(2012) 1 SCC 442, succinctly summed up the settled law on this issue in the following words:

“(i) There is no legal bar for both proceedings to go on simultaneously.

(ii) The only valid ground for claiming that the disciplinary proceedings may be stayed would be to ensure that the defence of the employee in the criminal case may not be prejudiced. But even such grounds would be available only in cases involving complex questions of facts and law.

(iii) Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings.

(iv) Departmental Proceedings can go on simultaneously to the criminal trial, except where both the proceedings are based on the same set of facts and the evidence in both the proceedings is common.”



In **State of Rajasthan vs B K Meena and Others**, reported under (1996) 6 SCC 417, the observations of Hon’ble Supreme Court at para 17 reads as under:

“17.The approach and the objective in the criminal proceeding and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and if established, what sentence would be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. ***Even if stayed at one stage , the decision may require reconsideration if the criminal case gets unduly delayed.***”
(emphasis supplied)



19. The ratio of above judgements of Hon'ble Supreme Court permits holding of departmental proceeding during pendency of Criminal trial for similar charges. Already there has been a delay of twelve years since the Charge memo was served on the applicant and it is trite to say that a departmental inquiry should be completed as early as possible. The proceeding in the departmental inquiry is getting stalled for last almost three years on account of the stay ordered in light of the directive of the Tribunal or by Tribunal itself. In light of the ratio of the aforementioned judgements, we do not wish to go into the merit of Tribunal's directive or interim order for staying the proceedings. The Disciplinary Authority decided to resume the proceedings in light of the CVC advice and DoPT guidelines. We find no dissonance in the CVC advice and DoPT guidelines with the settled law on the subject.

20. Going by the above discussions, we find that the impugned order (Annexure A/10) is not in violation of any Rule or the settled law on the subject. The request of applicant to declare the impugned order as illegal and set that aside is not in order. The OA is therefore dismissed as being devoid of merit. Ad-interim stay granted also stands vacated. MA/050/00065/2020 is also disposed of.

21. No order as to cost.

[Sunil Kumar Sinha]
Administrative Member

[M.C. Verma]
Judicial Member

Srk.