

**CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH, AHMEDABAD**  
Original Application No.192 of 2021  
with MA 283/2021

This the 27<sup>th</sup> day of July, 2021

**CORAM :**

**HON'BLE SHRI JAYESH V BHAIKARIA, MEMBER (J)  
HONBLE DR A K DUBEY, MEMBER (A)**

1. Avinash Kumar,  
Male, Aged: about 34 years,  
Son of Shri Anil Kumar,  
Occupation: XEN (C), P&D, Ahmedabad, Western Railways  
Residing at: Quarter No. 176/A, Railway Officers' Colony,  
Near Circuit House, Shahibaug, Ahmedabad – 380 004.  
...Applicant

(By Advocate Mr. Rahul Sharma)

VS

1. Union of India, Ministry of Railways,  
(Notice to be served through The Chairman & CEO,  
Railway Board Rail Bhavan, Raisina Road,  
New Delhi – 110 001.)

2. The General Manager, Western Railways,  
Churchgate, Mumbai – 400 020.

3. Shri Subodh Kulshrestha,  
The Inquiry Officer & Retd. PCE/CR,  
(Notice to be served through The General Manager,  
Western Railways, Churchgate, Mumbai – 400 020.)

...Respondents

(By Advocate Mr. M. J. Patel R- 1& 2)

**ORDER (ORAL)**

Per Shri Jayesh V Bhairavia, Member (J)

1 In the present OA counsel for applicant mainly submitted that while applicant was posted as Divisional Engineer (West)[DEN(West)] at Rajkot, FIR No.03/2017 was registered by the Gujarat Anti-Corruption Bureau, Rajkot against the applicant and other accused Railway Officers. Subsequently, the investigation was transferred to CBI, ACB, Gandhinagar and the FIR was registered by CBI vide Crime No.

RC0292017A0004 U/s 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 against the applicant and other two Railway Officers. On completion of investigation, Charge Sheet was submitted and was registered by the Special CBI court with Sp. Case No.01/2019.

- 2 It is stated for the same incident of registration of CBI case against the applicant and other co-accused Railways Officers, the respondent no.2 i.e. General Manager, Western Railway herein issued departmental charge sheet (Memorandum dated 16.08.2020) under the provision of Rule-9 of Railway Servants (Discipline & Appeal) Rules 1968 to the applicant (Annexure A/4). As per the knowledge of the applicant, the other two accused persons mentioned in FIR/Charge sheet filed by CBI namely, Shri R K Meena and Shri Rasiklal M Vyas have also been served with charge memorandum alongwith applicant under the provision of RS (D&A) Rules 1968.
- 3 Therefore the applicant made a representation dated 11.06.2021 (Annexure A/6) to respondent no.2 through proper channel requesting that as per the provisions of Rule-13 of the RS (D&A) Rules 1968, a common proceeding be conducted in departmental enquiry against all the three officers. Before the Disciplinary Authority could take any decision on the said representation dated 11.06.2021, the Inquiry Officer informed the applicant through email dated 14.06.2021 that inquiry would continue till any instructions came from Disciplinary Authority and preliminary meeting would be held on 21.06.2021 (Annexure A/1) impugned herein.

4 The learned counsel for the applicant further submits that the applicant had apprised the inquiry officer that his application/representation for conducting common inquiry was pending before the Disciplinary Authority. In response to it vide letter dated 11.07.2021 the Inquiry Officer informed the applicant that till such time a decision from Disciplinary Authority came, it was proposed to continue the inquiry and requested the applicant to intimate the next date in this regard for the inquiry. Therefore, he has filed MA 283/2021 to place the additional document on record (Annexure A/9).

5 Learned counsel for the applicant Shri Rahul Sharma submits that Rule 13 of RS (D&A) Rules 1968 stipulates common proceedings were two or more Railway Servants are concerned in case, the President or any other authority competent to impose the penalty of dismissal from service on all such Railway servants, may make an order directing that disciplinary action against all of them may be taken in a common proceeding.

6 The present case undisputedly involves more than two Railway Officers who have been served with a charge memorandum for the same incident. He submits that the applicant is ready and willing to participate and continue with the departmental enquiry to get it cleared at the earliest.

7 The materials relied upon and relevant documents are common and if defence is disclosed in course of inquiry, it may prejudice the defence in both criminal proceedings and departmental proceedings. Therefore he prays for a direction to the Disciplinary Authority to

decide his pending representation dated 11.06.2021 (Annexure A/6) and till such a decision is taken, departmental enquiry be kept in abeyance.

- 8 On the other hand the standing counsel for the respondents Shri M J Patel submits that he has filed the reply. He submits that Rule-13 stipulates that the competent authority may make an order for common proceedings. Therefore, it is not compulsory for Disciplinary Authority to direct to take common proceedings, the same cannot be considered as Must.
- 9 The learned counsel for the applicant placed reliance on various judgments in support of his submissions (Annexure A/8 colly referred). It is stated that the Hon'ble Apex Court in the case of Shri Rangaswami, The Textile Commissioner and Ors v/s The Sagar Textile Mill (P) Ltd and Anr reported in (1977( 2 SCC 578 held that the word "May" is capable of meaning "must" or "shall" in the light of the context and where a discretion is conferred upon a public authority coupled with an obligation the word "may" which denotes discretion should be construed to mean a command."
- 10 Heard the learned counsel for both the parties.
- 11 It is noticed that the applicant/delinquent submitted a application/representation dated 11.06.2021 (Annexure A/6) before the Disciplinary Authority requesting to conduct a common proceedings in respect to charge memorandum issued to the applicant and two other officers who were also stated to have been served with charge memorandum under the provision of RS (D&A) Rules 1968 for the same incident of allegation of bribe as also based

on the same CBI case filed against the applicant and said two co-accused. The Rule 13(1)(d) of RS (D&A) Rules 1968 prescribes the procedure for direction of common proceedings were two or more officers/employees are concerned in identical incident.

- 12 Therefore without entering into the merit of claim of applicant, we deem it fit and proper to dispose of this OA by directing the respondent no.2/Disciplinary Authority to expeditiously decide the application dated 11.06.2021 (Annexure A/6) but not later than 30 days of receipt of copy of this order and intimate the decision to the applicant as well as the Inquiry Officer. In the meantime, the departmental enquiry be kept in abeyance till then.
- 13 With the aforesaid direction, the OA stands disposed of. MA, if any pending also stands disposed of. There shall be no orders as to costs.
- 14 Registry is directed to send copy of this order through email to the parties.

(Dr A K Dubey)  
Member(A)

(Jayesh V Bhairavia)  
Member(J)

abp

