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: CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A.No.396 of 1987

A.K.Chatterjee ... Applicant
Vs.

Union of India and others Respondents

Hon.D.S.Misra,AM
Hon.G.S.Sharma,JM

(By Hon.G.S.Sharma,JM)

The applicant is posted as HSK Electrician Gr.I in Diesel Locomotive ~~Locomotive~~ Works, Varanasi. On 23.4.1986, a charge sheet was issued to the applicant by his disciplinary authority for his impersonating as a Gazetted Officer while staying in the Officer's Rest House Howrah on 5 days in 1981 and 1982 and once in the retiring room Patna in 1982 on the strength of a forged 1st Class duty card pass. Despite the sufficient opportunity given to the applicant, he did not submit the statement of his defence to the disciplinary authority on one ground or the other and ultimately when the inquiry proceeded and the prosecution evidence was closed and the case was fixed for the defence evidence of the applicant, he rushed with this petition under Section 19 of the Administrative Tribunals Act XIII of 1985 for getting quashed 7 orders passed by the disciplinary or inquiring authority and for a direction to the respondents to supply him certain documents and to approve the nomination of the defence counsel of the choice of the applicant.

2. The applicant is aggrieved by the orders of the disciplinary and inquiring authorities for not supplying him the necessary documents for preparing the statement of his defence and for not approving the nomination of his defence assistant. We will now like to examine the various orders mentioned in clause (i) ~~to (ix)~~ of Para 7 of the petition, with which the applicant is aggrieved separately.

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3. Annexure 1 is the very statement of articles of charge framed against the applicant. The statement of imputation of misconduct along with the list of documents and witnesses served on the applicant is quite clear and contains no vagueness and there is no material before us at this stage to say that prima-facie there is no case against the applicant and as such, the charge sheet, annexure 1, cannot be quashed.

4. Annexure 5 is an order dated 26.5.1986 of the disciplinary authority amending the date 14.1.1982 mentioned in the statement of imputation of misconduct. Such amendment is always permissible under the law and this order prima-facie does not appear to be illegal or unjust and as such, cannot be quashed.

5. Annexure 6 is an order dated 11.6.1986 of the disciplinary authority informing the applicant in reply to his applications dated 20.5.1986 and 24.5.1986 that he should file his statement of defence within 7 days and he has already been informed about the documents vide letter dated 26.5.1986 and there is no First Information Report concerning this case. The case of the applicant is that the very basis of the action initiated against him is unknown to him and he should have been given the copy of the FIR on which the charge sheet was issued to him. There can be no denial of the fact that under the rules, a delinquent is entitled to get the copy of FIR but in this case, as communicated to the applicant vide annexure 6, there is no concern of any FIR with this case. Anonymous and pseudonymous complaints on the basis of which inquiries are started need not be included in the lists of documents under the rules and as such, the insistence of the applicant for the copy of FIR is not justified.

6. Vide annexure 8 dated 7.8.1986, the applicant was informed that he had already inspected the necessary documents vide his letter dated 19.5.1986. The correctness of this fact is disputed by the applicant and his letter dated 19.5.1986,

annexure 2 shows that he had inspected the registers of Howrah Officer's Rest House as mentioned in the charge sheet and had taken the copy of the ~~GEOD~~ letters of the Hand Writing Experts as well as statement of P.K.Saha.Jenitor ,Officer's Rest House,Howrah. His contention is that he wants other documents for preparing his defence which were wrongly disallowed. In our opinion, the ~~mater~~ appears to be very simple. The applicant has been charged with staying in Officer's Rest House or retiring room by impersonation on the basis of forged card pass on 6 days mentioned in the statement of imputation He could very easily say that on these dates, he stayed in the Rest House or retiring room at Howrah and Patna or not and in case he had stayed there,^{he stayed} without any impersonation or the impersonation is alleged on the basis of certain wrong facts or circumstances. He could also admit or deny his signatures if any, on the registers of the said rest house or retiring room as he had already examined the same and in case there was no lapse on his part,he could prepare and file the statement of his defence at the first available opportunity. The unfortunate fact is that he does not want to disclose his case at all and on technical grounds he is avoiding to cooperate with the inquiry pending against him for over one year. The disciplinary or inquiring authority has to consider whether the documents demanded by a delinquent ~~hase~~ got any relevancy in the inquiry against him. This can be possible only after his defence is known. We,therefore, prima-facie find nothing wrong in annexure 8.

7. Annexure 9 is copy of order dated 3.9.1986 of the disciplinary authority stating that the documents demanded by him have no relevancy and he appointed the inquiring authority under this order and asked the applicant to appear before him on the date fixed. He was allowed to take the assistance of his defence assistant. There is nothing in this letter for setting it aside.

8. Annexure 12 is order dated 3.9.1986 of the inquiring officer refusing to accept the nomination of one Indra Sen Singh as the defence assistant of the applicant on the ground that he had retired from service more than 3 years ago. This is strictly in accordance with rules, and the inquiring officer was right in doing so. The applicant should have submitted a panel of 3 defence assistants for acceptance which he did not do and he cannot insist for a person who under the rules is not eligible to act as such.

9. The last annexure 19 is the copy of the record of proceedings taken by the inquiry officer in the inquiry against him on 4.3.1987 at Varanasi. This shows that P.K.Saha Jenitor was examined at Calcutta because for certain reasons he was unable to come to Varanasi and the applicant was given full opportunity to cross-examine him at Calcutta. The order sheet further repeats the fact that the documents demanded by the applicant were not relevant for the purpose of inquiry and he insisted that he will like to cross-examine P.K.Saha at Varanasi. The records show that the applicant was given full opportunity including pass, leave etc., to go to Calcutta for the cross-examination of P.K.Saha. If in the opinion of the inquiry officer P.K.Saha was unable to come to Varanasi, the applicant could not refuse to cross-examine him merely because his statement was being taken outside Varanasi. He did make a half hearted attempt to disclose his defence case in his representation dated 7.1.1987, annexure 14, to the General Manager but the same is neither the complete reply to the charges contained in the charge sheet served on the applicant nor can take the place of statement of defence. So in our view, the insistence of the applicant for getting the inquiry conducted according to his own sweet will does not appear to be justified.

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10. The above discussion shows that in view of the non-cooperating attitude of the applicant, it is not a fit case in which we should admit his petition against the various interlocutory orders passed against him in the pending inquiry. There is no point for adjudication at this stage and the applicant will have an opportunity to challenge the order, if any, passed against him after the inquiry is concluded in accordance with the Railway Servants (Discipline and Appeal) Rules, 1968. We may clarify here that the observations made in this order will not be binding and will not affect the discretion of the Tribunal in case a fresh petition is filed by the applicant against the final order passed in the inquiry. In the interest of justice, we will like to advise the parties that in case the applicant files his complete statement of defence within 15 days he may be allowed further opportunity to cross-examine Sri P.K.Saha at some proper place. The Hand Writing Expert may also be called for his cross-examination and in case in the written statement of his defence he disputes his signature or the signatures of any other concerned person on the documents on which the disciplinary authority is placing its reliance, he should be given their photocopies so that he may get them compared by some other Hand Writing Expert for his defence.

11. With these observations, the application is finally disposed of at admission stage.

Khanna
15/5/87
MEMBER (A)

Dated 15th May, 1987

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Sundararao
15/5/87
MEMBER (J)