

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 25th day of November, 2004.

QUORUM : HON. MR. A. K. BHATNAGAR, A.M.
HON. MR. D. R. TIWARI, A.M.

O.A. No. 995 of 1999

Arjun Prasad, son of Late Murlidhar, working as Senior Typist in the Office of Chief Personnel Officer, North Eastern Railway, Gorakhpur....
.....Applicant.

Counsel for applicant : Sri S.K. Om.

Versus

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Chief Personnel Officer, North Eastern Railway, Gorakhpur.
3. Dy. Chief Personnel Officer (Admn.), North Eastern Railway, Gorakhpur.
4. Sr. Personnel Officer (Hqrs.), North Eastern Railway, Gorakhpur....
....Respondents.

Counsel for respondents : Sri A.K. Gaur.

ORDER

BY HON. MR. D. R. TIWARI, A.M.

By this O.A. filed under section 19 of the A.T. Act, 1985, the applicant has prayed for quashing the impugned letter dated 13.8.1999 (Annexure-1) passed by the Inquiry Officer coupled with the prayer for issuance of direction to the respondents not to hold any further inquiry fixed on 6.9.1999.

2. Briefly stated, the applicant at the relevant time, was working as Senior Typist in the office of ~~Compt. Vigilance~~ ^{K.S.P.O} N.E. Railway, Gorakhpur. The disciplinary proceeding under section 9 of the Railway Servants (D&A) Rules, 1968. The Article of charges are reproduced below :-

" ॥१॥ उन्होने दिनांक 8-5-1991 को कपट पूर्ण तरीके से इक महिला को अपनी पत्नी दाओधित करके, ललित नारायण मिश्र,

D.R.T.

रेलवे चिकित्सालय, गोरखपुर के जच्चा-बच्चा ब्रेटरनिटी १ वार्ड में अंतर्गत रोगी के रूप में भर्ती कराया जो उनकी पत्नी नहीं थी और उसी दिन उसकी मृत्यु हो गई, जबकि उनकी पत्नी जिनका नाम श्रीमती नीलम कुमारी है, जीवित है। इस प्रकार उन्होंने एक गैर रेलवे रोगी को मुफ्त में चिकित्सा सुविधा उपलब्ध कराया।

४।।५ ललित नारायण विश्र, रेलवे चिकित्साब्द्य, गोरखपुर में
उपर्युक्त भर्ती के जालसाजी के बाबले में, प्रारम्भिक जांच के दौरान
श्री अर्जुन प्रसाद ने जान-बूझ और सौच समझ कर झूठा लिखित बयान
प्रस्तुति किया और तथ्यों को छिपाया ।

श्री अर्जुन प्रसाद के उपर्युक्त कथित कार्यों से सिद्ध होता है कि
वे पूर्ण सत्य निष्ठा को बनाये रखने में अवकल रहे और एक रेल
कर्मचारी के रूप में अनपौष्टिक कार्य किया तथा रेल सेवा आवरण
नियम 1966 के नियम ३१।।।।। तथा ३१।।।।।।।। का उल्लंघन किया ।
3- On receipt of the charge memo dated 23.9.92, the
applicant denied the charges. Accordingly, the Inquiry
Officer was appointed by a letter dated 11.1.1994 who after
the inquiry, submitted his report on 23.9.94 (Annexure-4).
The Inquiry Officer, in his report, gave him the verdict of
not guilty in the following words :-

“आरोपित रेल कर्म वारी श्री अर्जुन प्रसाद पर लगाये गढ आरोप नं० । व ॥ सिद्ध नहीं होते । अतः इन्होंने रेल सेवा आचरण १९६६ के नियम ३१।३२।३३ एवं ३४।३५।३६ के उल्लंघन के दोषी नहीं हैं ।”

4. The Disciplinary Authority agreed with the report of the Inquiry Officer. However, this order could not be communicated to the applicant as the Disciplinary Authority, meanwhile, was transferred. It appears that the Vigilance did not agree with the findings of the Inquiry Officer and Senior Personnel Officer (Mech.) wrote that the Inquiry Officer has failed to secure the attendance of handwriting expert which was an important evidence in that inquiry (Annexure-5). The Inquiry Officer thereon wrote a letter which is at Annexure-6, stating that he had written to the Vigilance department for calling the handwriting expert from Calcutta on three times i.e. on 21.10.94, 21.11.94 and

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19.12.94. However, the prosecution witnesses i.e. the handwriting expert could not be produced to participate in the inquiry proceedings. Even the Vigilance department did not give any reason for his absence. He has also stated that as per provisions contained in the DAR inquiry, it has been directed that after giving three chances for production of witnesses/documents, the inquiry proceeding may be closed. He has, in his letter quoted above, has stated that there was no justification to give him another chance and accordingly, the inquiry proceeding was closed. In pursuance of the objection from the Vigilance Department denovo inquiry was ordered by appointment of another Inquiry Officer on 30.1.1997 (Annexure-7). In order to have a denovo inquiry, fresh chargesheet dated 16.5.1997 was issued (Annexure-8). Against this order, the applicant filed O.A. No.19/98 which was decided by the order dated 26.4.1999 and the chargesheet dated 16.5.1997 was quashed. The Tribunal found that the chargesheet dated 16.5.1997 was in violation of Rule 10(2) of the Railway Servant (D&A) Rule and the chargesheet was quashed and the O.A. was allowed. The Tribunal did not give any liberty to the Respondents to proceed with the disciplinary proceedings a fresh. However, the Respondents have issued the impugned letter for further inquiry in the case. This Tribunal, by an interim order dated 1.9.1999 has stayed the further proceedings.

5. The impugned order has been challenged on various grounds mentioned in para 5 and its sub-paras interalia that the impugned order dated 13.8.1999 issued for further inquiry is as per the direction of the Chief Personnel Officer, who is neither the Disciplinary Authority nor the Appellate Authority and Senior Personnel Officer (Hqrs.) is the competent authority who could remand the case to the Inquiry Officer. It has also been contended that the entire action of the Respondents in conducting the further inquiry and examining J.K. Samual, handwriting expert is wholly arbitrary illegal and malafide.

H. Venkateswaran

6. The respondents, on the other hand have resisted the O.A. and the claim of the applicant by filing a detailed counter affidavit. They have submitted that the inquiry report, when sent to the Vigilance department, was not agreed to by them and in accordance with the advice of the Vigilance Department denovo inquiry was ordered and the applicant challenged this order in his O.A.No.19/98 before the Tribunal and the Tribunal vide its order dated 16.5.97 quashed the denovo inquiry. Since denovo inquiry was quashed by the Tribunal being violative of Section 10(2) of the Rules *ibid*, the further inquiry has been ordered by the impugned order in pursuance of the order of the Tribunal dated 16.5.97. The contention of the applicant that Chief Personnel Officer is not the Disciplinary Authority, is not acceptable because this was done on the advice of the Vigilance department and the decision was taken on behalf of the General Manager(P) and the letter was issued with the approval of Senior Personnel Officer (Hqrs.) who was the Disciplinary Authority of the applicant and there was nothing wrong in it. They have argued that the evidence of handwriting expert was very essential and it was decided to have the inquiry a fresh and there is no illegality in this.

7. We have heard very carefully the rival submissions made by the counsel from either side and perused the records. We have also perused very carefully the original records produced by the respondents in this case. The original record, however, does not reveal any material other than available in the pleadings except few circulars issued by the Ministry of Railways.

8. During the course of the argument learned counsel for the applicant Sri S.K. Om emphasised that the action of the respondents for holding fresh inquiry is without jurisdiction and contention of the respondents that this has been done in pursuance of the order of the Tribunal

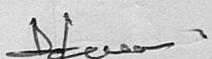
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dated 26.4.99 cannot be accepted because the Tribunal did not give liberty to them to order fresh inquiry. The Tribunal's order was to quash the denovo inquiry as it was violative of Sec.10(2) of the Rules. Secondly, the then Disciplinary Authority, Senior Personnel Officer (Hqrs.) accepted the inquiry report submitted by the Inquiry Officer and the applicant was exonerated but the order could not be communicated as she was transferred along with the post. Para 7 of the order in O.A. No.19/98 also supports the contention that the inquiry report was sent to Disciplinary Authority Smt. Renu Sharma who agreed with the inquiry report. The Respondents have also not disputed this fact which is clear from para 18 of the counter affidavit. The applicant has also filed the supplementary affidavit and annexed the circular on this subject. This annexure is at Annexure-1 of the supplementary affidavit. In this circular it has been provided that the decision recorded on the file by that authority even if not communicated, shall be final and cannot be changed by that authority himself or by the successor in office. The decision taken by the Disciplinary Authority is a judicial decision and once it is arrived at, it is final. In view of this, argues the counsel for the applicant that the disciplinary proceedings has reached the finality and it cannot be changed. Learned counsel for respondents Sri A.K. Gaur relying on the decision of the Hon'ble Supreme Court in the case of Union of India & others Vs. A.N. Saxena - 1992 SCC (I&S) 1861 has contended that by the impugned letter only the inquiry has been ordered and the Supreme Court has held that the Court should not interfere at an interlocutory stage. He has also relied on the judgment of the Supreme Court in the case of High Court of Judicature at Bombay Vs. Shashikant S. Patil and Another - 2000(1) SCC 416 wherein the Apex Court has held that judicial interference is permissible if there is violation of natural justice or statutory regulations and he submits that the O.A. deserves to be dismissed. In this

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connection, it may be mentioned that these cases are the authorities for the contention when the disciplinary proceeding is initiated in pursuance of the chargesheet. In this case, the Disciplinary Authority has been initiated and after the receipt of the inquiry report, the Disciplinary Authority has agreed with that hence, the facts in this case are distinguishable from the facts mentioned in the cases cited by the learned counsel for the respondents.

9. The crucial question which arises for adjudication in this case is whether the action of the respondents in issuing the impugned letter is justified or not. We have gone through the original records also and the records shows that the competent authority i.e. the S.P.O.(Hqrs.) has agreed with the findings of the Inquiry Officer which has not been disputed by the Respondents (Page 94). It may not be out of place to mention in this case that the role of the Vigilance department is advisory in nature and it does not prevent the Disciplinary Authority from taking unbiased and independent decision in finalising the case under DAR. It has been circulated by letter dated 26.10.92 which is at page 110 of the original record. It may be noted that the instructions regarding speedy finalisation of departmental enquiries, the circular provides that after giving three opportunities to produce witnesses/records, the inquiry proceedings may be concluded/closed. This has been circulated by N.E. Railway vide No.Z/13/Vig/3/23 dated 6.3.1976 which is at Page 111 of the original record. Since the Inquiry Officer has written three times to the Vigilance department and requested them to call the handwriting expert to participate in the inquiry proceeding and the Vigilance department failed to comply and the Inquiry Officer was left with no option but to close the proceedings. Accordingly, the inquiry was concluded and the report was submitted to the Disciplinary who also agreed with the finding of the Inquiry Officer. For these reasons we are of the considered view that the O.A. is liable to succeed on merit.



10. In view of the facts mentioned above and the discussions made, the O.A. succeeds on merit and the impugned order is quashed. The respondents are directed not to hold any further inquiry in the present case.

No order as to costs.

A.M.
A.M.

J.M.
J.M.

Asthana/