

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

CALCUTTA

M.A. 360/96

O.A. 1366/1996

Present : Hon'ble Mr. Justice G.L. Gupta, Vice-Chairman.

Hon'ble Mr. B.P. Singh, Administrative Member.

Haripada Biswas, s/o Late S.K. Biswas,  
aged about 38 yrs. Ex. Sr. Clerk, Statistical  
Office, S.E. Railway, Garden Reach, at present  
residing at P.O. & Vill. Raipur Vis. Maheshtolla,  
Dist. 24-Parganas (South)

- v e r s u s -

1. Union of India, service through General Manager, S.E. Railway, GRC, Calcutta-43.
2. Sr. Statistical Officer, S.E. Railway, GRC, Calcutta-43.

...Respondents.

For the applicant : Mr. B.C. Sinha, counsel.

For the respondents : Mr. S. Chowdhury, counsel.

Heard on 01.08.2001

Order on 20.08.2001

O R D E R

B.P. Singh, AM

Shri Haripada Biswas, former Sr. clerk, Statistical Office, S.E. Railway, Garden Reach has filed this O.A. against his removal and prayed for the following reliefs:-

"8.

- A. To set aside and quash the Charge Memorandum dated 16.12.91, Enquiry Report, Removal Order dated 17.3.93; and order dated 14.12.94 rejecting mercy petition;
- B. To direct the respondents to reinstate your applicant in service w.e.f. 17.3.93 treat the period of suspension as pent on duty and all other consequent benefits;"

20/8/2001

...2

2. Appellate order in the disciplinary proceedings was passed by the appellate authority on 14.12.94. The O.A. has been filed on 19.11.96 i.e. after the prescribed period of limitation for filing application before the Tribunal. The applicant has, therefore, filed an M.A. 360/96 under section 5 of the Limitation Act and section 21 of the Administrative Tribunal Act, 1985 for condonation of delay in filing the application.

3. In the M.A. the applicant has submitted that as soon as the applicant received the final order of removal from the appellate authority he was seriously ill and lost balance of mind due to shock. He remained under regular and continuous treatment of medical practitioner from 23.12.94 to 20.08.96 vide medical certificate attached with the M.A. The applicant submits that due to his serious ~~illness~~ there was delay in filing the O.A. The delay was not on account of any negligence or inaction or lack of bona fides on the part of the applicant and, therefore, the applicant has prayed for the condonation of delay in filing the application. We have considered the submission of the Id. counsel for the applicant regarding the M.A. We have also heard the Id. counsel for the respondents. On hearing the Id. counsel for both parties the M.A. is allowed and delay is condoned. Thus the M.A. stands disposed of accordingly.

4. The fact of the case as it is clear from the O.A. is that after his appointment the applicant was subsequently promoted as a Sr. Clerk and he was placed under suspension by Statistics and Analysis Officer, S.E. Railway, Garden Reach vide letter dated 27.9.91 as per Annexure-A/1. The suspension was ordered in compliance with the instructions contained in the Communication dated 27.9.91 received from Chief Vigilance Officer (T)/GRC. The disciplinary authority also prepared and issued the chargesheet to the applicant as advised by C.V.O./GRC as would be clear from Annexure-A/2, A/3 and A/4. The applicant was chargesheeted for two articles of charges. The first article related for alleged receipt of heavy amounts of money from a number of candidates to provide them job under Railway. The second charge related with running of restaurant by the wife of the applicant without bringing the

*20/8/2000*

same into notice of the Administration and/or obtaining any ~~permission~~ from Administration. For the above acts, the applicant was alleged to have failed to maintain absolute integrity and devotion to duty and acted in a manner which was unbecoming of railway servants and thereby the applicant violated relevant provisions of conduct rules. The applicant was also alleged to have admitted the above facts of the charges against him. The suspension order against the applicant was revoked by an order dated 8.1.99 as per Annexure-A/4. The applicant submitted representation against the chartgesheet vide representation dated 31.3.1992 as per Annexure-A/5 and further vide representation dated 22.6.92 as per Annexure-A/6. In both these representations the applicant denied the charges. Thereafter the enquiry was held against the applicant and he was removed from service in terms of office memorandum issued by the Sr. Statistical Officer on 17.3.93 as per Annexure-A/7. The applicant submitted undated represenation/appeal against the said removal order which is available collectively at Annexure-A/8. The reminder of the appeal dated 22.4.94 referred to the date of submission of appeal on 23.3.1993, 17.6.93, 18.8.93, 22.12.93 and 17.1.94. The appellate order dated 14.12.94 is also available at Annexure-A/8 in which the Statistical Officer has intimated to the applicant that his appeal against removal from railway service has been turned down by the competent authority. The Sr. Statistical Officer who communicated the appellate order has not communicated the post and designation etc. of the competent/appellate authority in his communication. Being aggrieved with the order of the appellate authority the applicant filed present O.A. and prayed for the reliefs stated above.

5. We have heard Sri B.C. Sinha, Id. counsel for the applicant and Sri S. Chowdhury, Id. counsel for the respondents. We have gone through the O.A., reply to the O.A. alongwith various enclosures attached therewith. Official documents relating to the applicant have also been produced before us and we have also gone through them.

2-nyamc

6. The Id. counsel Sri Sinha for the applicant has reiterated the fact and submitted that the chargesheet for major penalty was issued to the applicant on the advice of the Vigilance. Similarly suspension order and revocation of suspension order were also issued under the advice and guidance of the Vigilance and, therefore, the chargesheet being vitiated requires to be quashed. The Id. counsel further submitted that even the final decision on the chargesheet by disciplinary authorities was taken at the instance of the Vigilance. The Id. counsel submits that this shows that the Departmental Authorities never chose to take a different stand in the matter and, therefore, their decision cannot be said to be voluntary and objective. The Id. counsel has repeatedly tried to emphasise that right from the stage of suspension till the stage of final decision by the competent authority several actions in this case ~~were~~ taken at the instance of the Vigilance. There was no independent application of mind by the concerned competent authority and, therefore, their decision cannot be said to be independent and objective and, therefore, the entire proceedings from beginning to end is vitiated and requires to be set aside. Even the appellate order is very cryptic. The Id. counsel referred the case of Anil Goel Vs. Union of India and Anr. decided on February 11, 1994 (1994) 28 ATC 646. In this case the chargesheet ~~for~~ for major penalty was issued at the instance of Central Vigilance Commission and punishment was awarded on the advice of the C.V.C. The decision of the Departmental Authority was not found voluntary and independent and, therefore, the same chargesheet was quashed. The Tribunal held-

" The opinion of the disciplinary authority has to be formed by himself. He is not at all fettered in consulting any other authority or person he may like, but ultimately, it has to be his own decision and when questioned, it has to be established that the decision was taken freely by him. No external authority has any right to pressurise him into taking a decision to initiate a disciplinary proceedings which he himself is not willing to initiate."

2-2-2020

7. The Id. counsel Sri Chowdhury for the respondents has contested the application by filing reply on behalf of the respondents. The respondents have denied all the statements/allegations unless admitted or supported by the official records. The Id. counsel has submitted the brief history of the case that the applicant, Sr. clerk of Statistical Branch, South Eastern Railway, Garden Reach was chargesheeted on 16.12.91 with the allegation of cheating person alluring them for railway service. Thus the applicant earned a huge amount as per complaint ~~dated~~ on 8.2.91 addressed to General Manager, S.E. Railway, Garden Reach. The case was enquired into by Vigilance Branch and follow up action was taken on the investigation report. The applicant was placed under suspension by the Statistics and Analysis Officer, Souther Eastern Railway, Garden Reach as per ~~instructions~~ contained in Chief Vigilance Officer (Traffic), S.E. Railway, Garden Reach letter dated 27.9.91 and, therefore, the Id. counsel submits that the question of application of mind by the said Statistical and Analysis Officer does not arise. The Id. counsel has further submitted that major penalty chargesheet was issued to the applicant by the Statistics and Analysis Officer, S.E. Railway since the C.V.O. advised to do so in view of the identical documentary evidence which was referred to and gone through by the Disciplinary Authority. The Id. counsel further submitted that the legal provisions were rigidly followed to take action against the applicant. The Id. counsel has further submitted that it is customary and matter of procedure prevalent in the railway that enquiry and investigation are conducted by the Vigilance Department before any final decision is taken for imposing any penalty as a result of disciplinary proceedings against the Railway Staff and the same custom and procedure was followed in this case. In view of the above submission the Id. counsel submitted that the prescribed procedures have been followed in the case and, therefore, there is no merit in the application. The reliefs prayed for are absolutely misconceived, unwarranted in law and are liable to be rejected.

27/2/92

8. The relevant disciplinary proceedings file has been produced before us. From the file we find that C.V.O. (T), S.E. Railway addressed the Statistical Officer, S.E. Railway, Garden Reach to direct the applicant to report his office on 10.9.91 in connection with the Vigilance investigation. After the enquiry was completed the C.V.O. sent a communication on 7.11.91 with his confidential report on investigation advising the name of official, nature of D.A.R. action etc. to the competent authority alongwith draft chargesheet, relevant documents etc. On receipt of the said documents and as per advice of the C.V.O, the suspension of the applicant was revoked with effect from 8.1.92. The file also contains various exhibits in original most of which are in Bengali language especially those connected with statement of the applicant as well as others. We also find on record a draft chartesheet etc. sent by the C.V.O. to the Statistical and Analysis Officer, S.E. Railway/G.R.C. We have also seen the chargesheet dated 16.12.91 which has been issued to the applicant by the competent disciplinary authority viz. Statistics and Analysis Officer, S.E. Railway, G.R.C., Calcutta. From the comparison of the draft chargesheet and the final chargesheet, we find that the final chargesheet is not verbatim repetition of the draft chargesheet. This clearly shows that the disciplinary authority has applied his mind independently, voluntarily and objectively before issue of the final chargesheet though in the forwarding letter issued by the Statistical and Analysis Officer dated 16.12.91 it is mentioned that as advised by CVO/GRC.....dated 7.11.91 charge sheet .....is issued on being scrutinised by the Personnel Branch, Garden Reach. The reply of the applicant dated 31.3.92 to the reply of charges is also on record and the second representation dated 22.6.92 is also on record and the other communications made from time to time by the applicant are also on record. The report of the Government Examiner of Questioned Documents, Central Forensic Institutes, Calcutta is also on record. The copy of the complaint dated 8.2.1991 against the applicant is also on record. The complaint is addressed to General Manager, S.E. Railway, Garden Reach, Calcutta on which direction has been given for verification as the first step.

Subj

The enquiry of verification of the fact has also been made. The statement of the concerned person in original are available in the file. The applicant was also involved in the enquiry and he was supplied the copy of the complaint statement etc. given by the complainant at the time of enquiry. The detailed proceeding sheet of the enquiry in the disciplinary case is also available and the applicant is present during the course of the enquiry. The enquiry report was submitted by Enquiry Officer on 28.9.92 in which he held the applicant guilty of the charges contained in Arts. 1 and 2 of the charge sheet. A copy of the enquiry report was sent to the applicant on 8.10.92 which was received by him on 15.10.92 as per his receipt available in the file. Reply to the enquiry report has been submitted by the applicant vide his representation dated 29.10.92. The applicant in his reply rebutted the finding of the Enquiry Officer and denied the allegations. The enquiry report and the representations of the applicant thereon have been duly considered by the disciplinary authority as is clear from the written order available in the file. On the basis of the above the final order has been passed by the Disciplinary authority removing the applicant from service w.e.f. 22.3.93 vide his order dated 17.3.92. The order was received by the applicant on 22.3.93 as per his receipt available in the file and a copy of the order. In the said order there is mention about the investigation by the Vigilance Organisation. But there is no mention that final order has been passed at the instance of the C.V.O. or any other authority. The Disciplinary authority has applied his mind independently, voluntarily and in objective manner after going through the finding of the Enquiry Officer and the representation / defence reply submitted by the applicant. It has been clearly stated by the Disciplinary Authority that allegations have been substantiated from his own statement by the applicant. The applicant has already admitted about the part of the money received by him. His signature has also been got verified by a Govt. Expert ( G.E.Q.D.). The official documents do not contain any paper relating to appeal or mercy petition of the applicant.

20/10/93

9. From the perusal of the official documents we find that no doubt enquiry was conducted by the Vigilance Branch in the complaint against the applicant and the copy of the report of the Vigilance investigation was sent to Statistical Analysis Officer, respondent No.2 for further necessary action. In the forwarding letter the Chief Vigilance Officer has given his advice to respondent No.2 about action to be taken. He had also enclosed a draft copy of the charge sheet for major penalty. We do not find any irregularity in this action. The vigilance set up in various departments is meant for assisting the administration and the administrative authorities in the matter of investigation relating to corruption, malpractices and irregularities in the set up. It is the duty of the Vigilance Organisation to send copy of the report alongwith the draft of the proposed action for advice, guidance and assistance of the concerned authority. In doing so, the Chief Vigilance Officer does not commit any irregularity or transgress the jurisdiction of any authority. It is the duty cast on him. We have also noticed that Disciplinary Authority who is respondent No.2 in this O.A. has applied his mind independently, voluntarily and objectively both at the time of issuing charge sheet and issuing the final punishment order. None of the above decision has been taken at the instance of Vigilance authorities. We, therefore, find from the records that decision in Anil Goel's case cited above by the applicant is not applicable in the present case. ~~Therefore~~ We find that receipt of part of the money has been admitted by the applicant for which charge sheet was issued.

10. From the above discussions, it is clear that the applicant was chargesheeted for major penalty by the Disciplinary Authority after taking independent decision on the report and advice sent by the Vigilance Organisation. The disciplinary proceedings was held according to the prescribed procedures in which the applicant participated. The Disciplinary authority after due consideration of the enquiry report and other materials as well as the representation of the applicant arrived at the conclusion to remove the applicant from service. The Disciplinary Authority arrived

Answer

at such conclusion <sup>by</sup> exercise <sup>of</sup> his voluntary and independent discretion in objective manner. So far as the order of the Disciplinary Authority and appellate authority are concerned, the same has not been enclosed in the O.A. by the applicant. We could find the order of the Disciplinary Authority in the records. We have not found any irregularity in the order of the Disciplinary Authority. Since the order of the appellate authority has not been produced before us we refrain ourselves from making any categorical decision. But we presume on the basis of the Disciplinary Authority order that the appellate order is also an independent voluntary/objective order. We do not agree with the submissions of the Id. counsel for the applicant that entire disciplinary proceedings is vitiated because the same has been conducted at the instance and under the direction of the Vigilance Organisation. The Vigilance Organisation has <sup>fixed</sup> worked within its limit and we do not <sup>find</sup> any transgression of the limits <sup>done</sup> by the Vigilance Organisation in this case. The Disciplinary Authority had exercised his statutory power on his own without being influenced by any other authority. We do not find any merit in the case and, therefore, do not intend to interfere in the orders of the Disciplinary Authority and appellate authority.

11. On the basis of our above discussions and observations, we find no merit in the application and, therefore, dismiss the same without any order as to costs.

B.P. Singh  
( B.P. Singh ) 2028201  
Member (A)

G.L. Gupta  
( G.L. Gupta ) J.  
Vice-Chairman.

a.k.c.