

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH  
CALCUTTA

M.A. 503 of 2002  
O.A. 411 of 1997

Present : Hon'ble Mr. Justice B. Panigrahi, Vice-Chairman.  
Hon'ble Mr. N.D. Dayal, Administrative Member.

Ramendra Nath Roy Choudhury

- v e r s u s -

1. Union of India, service through General Manager, S.E. Railway, Garden Reach, Calcutta-43;
2. General Manager, S.E. Railway, Garden Reach, Calcutta-43/
3. General Manager, Eastern Railway, Fairlie Place, Calcutta-700001.
4. General Manager, S.C. Railway, Secunderabad (A.P.);
5. Divl. Railway Manager, S.E. Railway, Kharagpur.
6. Chief Communication Engineer, S.E. Railway, Calcutta-700043.

...Respondents.

For the applicant : Mr. B.C. Sinha, counsel.  
For the respondents : Mr. L.K. Chatterjee, counsel.  
Mr. A.K. Dutta, counsel.

Date of order: 15.09.2004

O R D E R

Per Justice B. Panigrahi, VC


This application assails the validity, legality and propriety of the memorandum of chargesheet dated 1.9.92 and also the order dated 13.9.96 vide Annexure-A/12 issued by respondent No.2, General Manager, S.E. Railway, Garden Reach.

2. The skeletal picture of the case is stated hereunder.
3. The applicant while working as SSOP(W)/HQ/E. Railway (Senior Scale Group 'A') was served with a major penalty charge sheet dated 1.9.92 which has been enclosed as A/1 to the application. The applicant claims to have submitted a representation on 9.9.92 by stating that since he had received an incomplete charge memorandum,



therefore, he was unable to file his defence statement in response to the said articles of charges. In their reply the respondents had asked the applicant for inspection of 18 items of documents relied upon by them vide Annexure-A/III to the charge memo. Again the applicant renewed his prayer for supply of related documents connected with the charges to which the respondent authorities had responded that the applicant, if so desired, can peruse the same at the time of enquiry after taking permission from the Inquiry Officer. He neither submitted his statement of defence nor participated in the enquiry purportedly conducted by the Inquiry Officer; instead filed this case for quashing the charge memo enclosed as Annexure-A/1 to the O.A.


4. The respondents in their reply have disclosed that there was serious allegation made against the applicant concerning manipulation of records and also malpractices alleged to have been committed by him in conducting the examination while acting as a Member of the Selection Committee. It has been alleged that he had the administrative responsibility of drawing out the list of screened and eligible candidates on the basis of written examination. The applicant by engaging his brother-in-law, Sri Subrata Roy Chowdhury, DSK-II of SPS Office caused the tabulation sheets to be prepared by inflating the marks obtained in written examination in respect of some candidates thereby enabling them to qualify to be called for interview by crossing the cut off marks fixed at  $30^{1/2}$ . Therefore, he committed serious irregularity. The matter was thoroughly scrutinised. Thereafter it was decided to initiate disciplinary action against the applicant. Accordingly, a major penalty charge-sheet No. SP.268/D&A/RNR dated 1.9.92 was issued by General Manager, Eastern Railway.



5. In the memorandum of charges, the applicant was asked to submit his written statement of defence within 10 days after receipt of the charge memo. But instead of submitting the statement of defence he adopted different subterfuge to avoid the said disciplinary proceedings. To get over from the proposed penalty he, however, misused jurisdiction of this court by filing a speculative claim for quashing of the memorandum of charges.

6. Certain developments have taken place during the pendency of this original application. The Inquiry Officer after completion of enquiry held the applicant guilty and sent the matter to the Disciplinary Authority for appropriate direction. Mr. N.P. Barman, who was the Enquiry Officer, submitted his report on 17.7.98. The copy of the enquiry report was, however, communicated to the applicant vide letter dated 31.10.2000. In the findings, it appears that Inquiry Officer has held the applicant guilty for the article of charges I and II. But in so far as the article of charge No.III is concerned, he opined that the prosecution could not bring home the charge against the applicant by producing clear and unimpeachable materials, therefore, he let off the applicant from the aforesaid charge. In his observation, he noticed that the applicant has inflated the marks of the candidates as indicated in the chargesheet.

7. The report of the Inquiry Officer was placed before the Disciplinary Authority who too, after agreeing with the conclusion of the Enquiry Officer imposed the punishment of dismissal of the applicant from service. This was done after consulting the U.P.S.C. who have also agreed with the suggestion of the Disciplinary Authority. Therefore, the applicant has filed a separate application for amendment of the prayer by making a prayer to quash the order of dismissal which has been imposed by the Disciplinary Authority.




8. Mr. Sinha, ld. counsel appearing for the applicant has, at the outset, invited our attention that the panel of Act Apprentices was published on 13.7.88 and the major penalty chargesheet was issued to the applicant on 1.9.92. There has been no explanation whatsoever offered by the respondents as to why they remained silent from 1988 till 1992 by not issuing any article of charge imputating the applicant's conduct. Thereafter he has filed several representations for supply of documents. But the authorities concerned without responding to those letters and supplying the copies of documents, gave an evasive reply, as a reason whereof, he was unable to submit the written statement of defence. He had faced frequent transfer during the pendency of the aforesaid proceedings. His normal date of retirement was 28.02.2004. From his submission, it has further transpired that in this case, General Manager, Eastern Railway was not the competent authority nor the Disciplinary Authority of the applicant. Therefore, he has neither any power nor any jurisdiction to issue memorandum of charges against the applicant for his alleged misconduct. Mr. Sinha, has further invited our attention that the Vigilance Officer who allegedly enquired into the matter after his retirement was asked to act as an Enquiry Officer. Therefore, it is not expected from such a person to get proper justice. Mr. Sinha has relied upon a judgement of the Ernakulam Bench reported in 1998(37) ATC 293 in the case of Baby Vs. Divisional Engineer and Ors. In support of his stand, he submitted that it is not appropriate for the Disciplinary Authority to appoint a retired person as an Enquiry Officer in a disciplinary proceeding. In this case the respondent authorities appointed the present Inquiry Officer who was acting as Investigating Officer while in service and thereafter has discharged the function of Inquiry Officer. Therefore, it was quite unlikely to get proper justice from such an Inquiry Officer. He has also relied upon a judgment reported in AIR 1986 SC 2118 in the

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case of Kashinath Dikshita Vs. UOI & Ors. where it has been laid down by the Hon'ble Supreme Court that the copies of the statement of defence recorded in course of preliminary enquiry must be supplied to the delinquent in case such statements are used in the disciplinary proceeding. In this case after going through the judgment, we find that the facts of that case are quite distinguishable from the present facts. It is true that the applicant asked for supply of certain documents to which the respondent authorities have replied that it was open to the applicant to peruse the documents in course of inquiry after taking necessary permission from the Enquiry Officer. Evidently the copies of the documents which the applicant intended to obtain, were never rendered by the Prosecution in support of their plea. Since those article of charges were <sup>based on those material</sup> ~~not based~~ therefore, these documents appear to be irrelevant. Further the respondents have also granted permission to the applicant to peruse those documents in course of his enquiry after taking permission from the I.O. Thus in our considered opinion, the aforesaid judgment has no application to the present facts.

9. Mr. Chatterjee, ld. counsel appearing for the respondents has submitted that in this case the charge brought against the applicant is serious in nature. From time to time the proceeding was adjourned with the expectation that the applicant would participate in the proceedings but under different pretext he bought time prolonging the disciplinary proceeding. Thereafter he rushed to the Tribunal for quashing the chargesheet and the departmental proceedings. It is true that there might be some delay in concluding the disciplinary proceeding. The question in this background has to be considered is whether the Disciplinary Authority shall be held responsible for such delay or it has occurred on account of the non-cooperation by the applicant. The ld. counsel has submitted that the prayer which the applicant has sought in the O.A. cannot be granted in view of further development that had taken place during the pendency of the case. The disciplinary proceeding has come to



an end by passing an order of dismissal. The applicant could get remedy under (Discipline & Appeal) Rules, 1968 by filing statutory appeal before the Appellate Authority. Without availing statutory remedy which is provided under the rules, he could not have come to this court by circumventing the provision of law. When other efficacious remedy is available to the applicant, it is not understood why bypassing the Appellate Authority, he has directly invoked the jurisdiction of this Tribunal. He has also relied upon the judgment reported in AIR 1970 SC 679 in the case of State of U.P. Vs. O.P. Gupta and contended that neither the Tribunal nor the High Court can sit in appeal against the findings of the disciplinary authority. The Court or Tribunal has no right to re-assess or re-evaluate the evidence that has been considered by the Disciplinary Authority. The court will have only to see whether there were any procedural irregularities or illegalities committed causing prejudice to the delinquent. It is true that in a domestic enquiry principle of natural justice is to be followed. But at the same time, it must be proved before the court that for non-observance of such natural justice, there was serious prejudice caused to the delinquent by defeating the ends of justice. In this case no such circumstances having been pleaded by the applicant so as to come to a different conclusion than that of the Disciplinary Authority.

10. After considering the respective contentions and on the persual of the grounds of the application, it is found that the respondent authorities initiated a disciplinary proceeding for the alleged misconduct and mis-behaviour on the applicant on the following article of charges:-

"ARTICLE - I & II

That the said Shri R.N. Roychowdhury while working as Supdt. Printing & Stationery, S.E. Railway/GRC during the period from Jan'86 to 27.10.88 manipulated the selection of Act Apprentices in the Printing Presses at GRC & KGP conducted in terms of CPO/S.E. Railway/GRC's



recruitment Notice No. Pts. Presses/Act.App./40 dated 19.2.86. As a dominating member of the Selection Committee with duties like setting of question paper, evaluation of answer sheets (even jointly with others) and serving as a member of Selection Committee, Shri Roychowdhury had the administrative responsibility of drawing out the list of screened and eligible candidates for written examination. Shri R.N. Roychowdhury by engaging his brother-in-law, Shri Subrata Roy Chowdhury, DSK-II of SPS office to prepare the Tabulation Sheets inflated the marks obtained in written examination in respect of the following candidates enabling them to qualify to be called for interview by crossing the cut-off marks fixed at  $30\frac{1}{2}$ .

- 1) Kaushik Kr. Guha       $-26\frac{1}{2}$       Inflated to  $36\frac{1}{2}$ . He was selected and empanelled vide Srl. No.26 of the Panel.
- 2) Sashanka Sekhar Bhattacharjee,       $-20\frac{1}{2}$       Inflated to  $36\frac{1}{2}$ . He was selected and empanelled vide Srl.No.28 of the Panel.  
Roll. 352 GRC.
- 3) Animesh Das,       $-22$       Inflated to 32  
Roll 24 GRD
- 4) K. Ishwar Rao,       $-11$       Inflated to  $30\frac{1}{2}$ .  
Roll 159 GRC.

working under him and being the dominating member of the Selection Committee and Officer-in-Charge of the Branch for which selection was made, he did not call the following candidates who secured more than cut-off marks, making deprived for interview.

Name	Roll No.	Marks obtained in the Answer Sheets.
1. Babu Chandra DAs.	Roll GRC 61	$40\frac{1}{2}$ .
2. Tapan Kr. Halder	Roll KGP 1930	36
3. Tarun Kr. Dutta	Roll GRC 1940	32
4. Tapas Kr. Howlader	Roll KGP 1949	36
5. Prasenjit Chowdhury.	Roll KGP 1241	$33\frac{1}{2}$ .

### ARTICLE - III

That the said Shri R.N. Roychowdhury being the dominating Member of the Selection Committee and administrative Officer as well, issued call letter to Shri Swapn Kr. Ghosh, Roll-GRC-369 but there were two Answer Sheets available - one in the name of Sri Swapn Kr. Ghosh, Roll-GRC-369 and the other in the name of Sri Swapn Kr. Ghosh, Roll-GRC-369 securing 17 and  $24\frac{1}{2}$  marks respectively. It was certain that both Swapn Kr. Ghosh could not sit for examination at a same time.

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The candidates were identifiable with the photograph pasted in the call letter. So the possibility of availability of two answer sheets was with Shri Roychowdhury who held the Answer Sheets before distributing to evaluators. One of the two Answer Sheets was manufactured and both were distributed by Shri Roychowdhury to different evaluations.

Thus Shri R.N. Roychowdhury enhanced marks in favour of 4 candidates to make them eligible to appear in the interview and deprived five eligible candidates of appearing for interview and held two Answer Sheets of Shri Swapn Kr. Ghosh (Shri Swapn Ghosh) Roll-GRC-369.

By the above act of omission and commission

Shri R.N. Roychowdhury failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of Railway Servants and thereby contravened Rule-3.1(i),(ii) & (iii) of Railway Service Conduct Rules, 1966 rendering himself liable for disciplinary action under Rule 6 of the Disciplinary and Appeal Rules, 1968 as amended from time to time."


11. They have also enclosed schedule III as well as necessary documents in support of those charges. The copies of those documents have also been supplied to the applicant. The applicant thereafter without submitting the statement of defence demanded some more documents other than the documents relied upon by the prosecution. Therefore, it was open to the respondents not to supply those documents, since those documents are irrelevant for the purpose of enquiry. They are not obliged to supply the same, but in the event, those documents were found necessary the applicant could renew his prayer in course of enquiry. There is nothing on record to show that the Inquiry Officer was the same person who conducted the preliminary investigation prior to appointment as Enquiry Officer. If that be so, why the applicant did not raise such objection before the Enquiry Officer or before the Disciplinary Authority. After conclusion of enquiry, it would not be appropriate or legitimate for the applicant to raise such an issue which is stale. Reliance has been placed upon the decision of the Ernakulam Bench where it is held that since a retired person cannot exercise statutory powers of an Enquiry Officer it is quite undesirable to appoint a retired

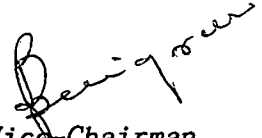


person as E.O. Upon careful consideration of the judgment we are of the firm view that no general principle of universal application has been laid down. The decision of that case is to be confined to the facts of that case alone and shall be binding between the parties thereto. There are certain formidable points which cannot escape our notice. The panel of Act Apprentices was published on 13.7.88 and major penalty charge sheet was issued on 1.9.92. There has been nothing on record to show why there was delay of about four years from the alleged act of mis-conduct till actual proceeding was initiated. However, delay is not fatal in all cases. It depends upon facts and circumstances of the particular case and also there may be distinguishable grounds for initiating the proceeding at a late stage. There might be some incidents of causing preliminary enquiry and after being satisfied, the authorities concerned must have deemed it necessary to initiate the proceeding. In this case major penalty chargesheet was issued in the month of September 1992. Enquiry was completed on 17.7.98 and accordingly the Enquiry Officer submitted his report to the Disciplinary Authority. It does not sound proper for the I.O. or D.A. to sit over the matter without taking any action or without supplying a copy to the delinquent till 2000. The copy of report was only communicated on 31.10.2000. Even thereafter the D.A. took further two years to take action upon such enquiry report. All these developments have taken place during the pendency of this case. We find that the remedy is statutorily available to the delinquent to challenge the D.A.'s finding before the Appellate Authority. The stand taken by the delinquent in this case can very well be pressed into service in the appeal memo to be filed by the applicant. It is open to the Appellate Authority to consider the stand taken by the delinquent regarding the delay in disposal of the disciplinary proceedings and the effect of non-supply of documents as alleged by the applicant. Since those matters can be properly taken care of by the Appellate authority in case the applicant files appeal to the said Authority, we, therefore, do not intend to delve in such aspects at this stage.

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12. Accordingly, we hereby dismiss the application with leave to the applicant to file an appeal before the statutory appellate authority within six weeks from the date of communication of this order. In case, ~~of~~ such appeal is filed, the Appellate Authority shall be at liberty to dispose of the same in accordance with law after condoning the delay, within four months from the receipt of the appeal memo after giving a chance of hearing to the applicant. ~~and pass a reasoned order in accordance with law.~~

  
Member (A)

  
Vice-Chairman.