

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 525 of 2007

Wednesday, this the 9th day of January, 2008

C O R A M :

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

A. Venkatesan,
S/o. V. Arumughan,
[Retd. Senior Section Engineer/
Drawing & Designs/Construction/
Southern Railway/Trivandrum]
Residing at : Devakulam P.O.,
(Via.) Suseendram, Kanyakumari
District, : 629 704. ... Applicant.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India, represented by
The General Manager, Sourthern Railway,
Headquarters Office, Park Town P.O.,
CHENNAI : 3
2. The Chief Personnel Officer,
Southern Railway,
Headquarters Office, Park Town P.O.,
CHENNAI : 3
3. The Deputy Chief Engineer/Construction,
Southern Railway, Trivandrum Division,
TRIVANDRUM – 14 ... Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant is aggrieved of non release of his terminal benefits on the
ground that disciplinary proceedings, according to the respondents are pending,
whereas, the proceedings had come to an end.

[Signature]

2. Brief facts: The applicant was proceeded against vide Annexure A-1 charge memo dated 08-10-2001 for the following alleged misconduct:-

**"ARTICLE OF CHARGES FRAMED AGAINST SHRI A.VENKATESAN,
SENIOR SECTION ENGINEER/Drg., Dy. CE/O/CN/TVC.**

Sri A. Venkatesan, Sr. SE/Drg./CN,Dy.CE/O/CN/TVC while working as a Chief Draftsman in the office of XEN/GC/VRI during the period from 1995 to 1996 is responsible for carrying out technical checks on measurements recorded in MB before passing the bills, preparation of tender Schedules, rider quantities, rate analysis etc. He carried out technical checks for all the bills passed in various agreements in the office of XEN/GC/VRI.

He carried technical checks for CC I to CC VIII part bills under agt. No. 45/CN/95. In this he has committed the following irregularities which paved way for making huge overpayment to the contractor.

- (i) He failed to ensure the fulfillment of agreement conditions during his technical check before passing the bills.
- (ii) Even after comparing the initial level recorded by Contractor in the presence of departmental official with that of M/s. Jeyshila Consultants he failed to bring out the deficiencies in existing width of MG formation.
- (iii) Even after comparing the quantities recorded in the MB with the quantities available with him submitted by M/s Jeyshila Consultants he failed to bring out the deficiencies in the recorded quantity.

By the above acts, Shri A. Venkatesan, Sr.SE/Drg./CN, Dy.CE/O/CN/TVC then Chief Draftsman, XEN/O/GC/VRI failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway Servant and violated Rule 3.1 (i), (ii) and (iii) of Railway Services Conduct Rules, 1966."

3. The applicant having denied the charges, regular enquiry was held and the relevant dates are as under:-

Date of issue of Charge Memorandum:	Oct, 2001
Date of appointment of I.O.	Feb.2003
Date of Preliminary Hearing	Jan. 2004
Date of appointment of Another I.O.	Jan. 2004
Date of enquiry held at chennai:	Sep. 2004 to Dec. 2004
Date of receipt of P.O.'s Brief	May 2005
Date of submission of Applicant's brief	June, 2005



Date of I.O's Findings/I.O Report	Sep. 2005 (CHARGES NOT PROVED)
Date of service of IO's report	Dec. 2005
Applicant's reply to I.O.'s report	Dec. 2005

After the above drill, the D.A. had issued the following order dated 10-04-2006:

"I have gone through the entire enquiry report submitted by Sri. R. Rajamany, Retd. CCRS and Inquiry Officer dt. 29-9-2005 filed in folios 130 to 150 in detail. In the conclusion, the Enquiry Officer has stated that the three charges levelled against the employee Sri. A. Venkatesan, while working as Chief Draftsman in the office of XEN/GCNVRI during the period from 1995 to 1996 could not be proved by the administration. As such, Sri A. Venkatesan Retd., Chief Draftsman cannot be held responsible for the charges levelled against him."

Based on the conclusion made by the Inquiry Officer, as the Administration could not prove the three charges levelled against Sri. A. Venkatesan, Retd., Chief Draftsman, I am issuing this speaking order tht Sri A. Venkatesan, Section Engineer/D &D while working as Chief Draftsman under XEN/GC/VRI during 1995-1996 is not guilty of the charges levelled against him."

4. This order, though delivered to the applicant, was immediately taken back as having withdrawn. The applicant was in the dark as to the reason for such withdrawal of the order, declaring him as not being guilty of the misconduct alleged against him.
5. The applicant superannuated in October, 2001 itself and he is paid only the provisional pension and save leave encashment, none of the other terminal benefits has been made available to him on account of the pendency of the proceedings.
6. The respondents have stated that withdrawal of the speaking order dated 10-04-2006 was on the justifiable reason that the Disciplinary Authority has to seek the opinion of the CVC at the second stage, which was not so sought and hence, it was required that the applicant was not issued with the decision as the

said decision, unless opinion by the CVC as the second stage is given, would only be provisional. It has also been stated by the respondents that suo-moto revision is being taken by referring the matter to the Hon'ble President of India.

7. Counsel for the applicant argues that if the original order of the Disciplinary Authority is withdrawn, there is no question of suo-moto reason. Viewed from another angle, there is no question of the decision being held to be 'provisional'. Counsel for the applicant thus prays that the OA be allowed, holding that after the issue of the speaking order dated 10-04-2006 there is no provision to treat it as provisional.

8. Counsel for the respondents has reiterated the contents of the counter and submitted that since the opinion of the CVC has not been obtained at the second stage, the action taken by the respondents is legal and valid.

9. Arguments were heard and documents perused. Records produced by the respondents have also been perused. It is seen that the decision to withdraw the order of the disciplinary authority had been taken as the Dy. CPO, by his communication dated 24-05-2006 stated as under:-

In this case, though the first stage advice was to go for a major punishment on finalizing DAR inquiry, in the capacity as DA, you have exonerated the employee of the charges levelled against him vide SF 5 issued bearing No. P.227 DY.CE/CN/TVC/AV dated 08-10-2001. this is against Vigilance advice. In order to enable me to put up the file to higher authorities please give your comments as to why in the capacity as DA you have not followed the Vigilance Advice.

10. The Vigilance Branch has in its letter dated 13-08-2001 stated as under:-

"Sub: Investigation on GC Works in reach III and IV of Thiruchirappalli – Villupuram Chordline - Issue of

Charge sheet - reg.

The investigation report along with the views of GM has been sent to Rly. Board to obtain CVC's first stage advice on 18.7.2000.

Rly. Board vide their letter dt. 27/28.6.2001 has communicated CVC's first stage advice to issue major penalty charge memorandum on Shri A. Venkatesan, SE/Drg./CN/TVC as he is due to retire on superannuation in October, 2001. Draft article of charges, statement of imputations, etc. To issue major penalty charge sheet on Shri A. Venkatesan, Section Engineer/Drg., Dy.CE/CN/O/TVC is enclosed. Necessary action may be taken to serve SF 5 on the employee. Copy of the charge sheet along with the acknowledgement may kindly be sent to this office for record.

Attention in this connection is also invited to Board's letter No. 93/V-1/VP/1/2 dt. 6.12.93 wherein it has been clearly mentioned that "In the Vigilance cases, draft charge sheets are prepared by the Vigilance Organisation to be served on the delinquent officials by the Disciplinary authorities. In some cases, it has come to the notice that the draft charge sheets are not properly scrutinized by the concerned executives before issue, leading to embarrassment and some times delay in processing of the DAR cases. In this connection, it is pointed out that the role of the vigilance is only advisory and the executive has to exercise due check and apply his/her mind keeping in view the allegations and gravity thereof in dealing with DAR cases. The draft charge sheet is only to assist the Executive in facilitating and speeding up the DAR action.

This is a vigilance composite case, involving CVC's advice. The DA may record only provisional views, if intended penalty is at variance with CVC's advice and consult Vigilance Branch after recording provisional views."

11. The above communication only states that major penalty proceedings were to be taken and the view of DA would be provisional only if intended penalty is at variance. In this case action taken was for a major penalty proceedings, enquiry has taken place as per major proceedings, and if at all there be any deviation from the penalty the view of the DA shall be provisional. It is not that the DA has imposed any minor penalty. When the findings do not hold the applicant guilty and when the disciplinary authority has been fully convinced with the holding of the proceedings the only course available would be

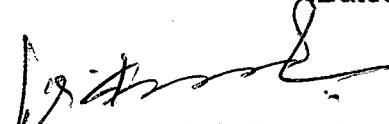
exoneration of the applicant. There cannot be any view against the final view of the D.A. that the applicant is not found guilty. Of course, if guilt has been proved but the DA has decided to impose one such penalty which does not come under major penalty, perhaps, there would be a scope for the CVC to suggest major penalty but such is not the case here. If the CVC views that the finding of the inquiry officer is wrong it amounts to his taking the place of the D.A. which is impermissible.

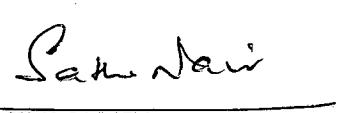
12. In view of the above, the OA **succeeds**. It is declared that no further proceedings in respect of Annexure A-1 could be taken and that the order passed by the D.A. is treated as final. Consequently, the applicant is entitled to the release of all the withheld terminal benefits. The dues shall be paid to the applicant within a period of eight weeks from the date of communication of this order.

13. Though the applicant has claimed interest on delayed payment, as the withholding of the terminal benefits was on the ground of pendency of departmental proceedings, no interest is payable. However, now that the action of the respondents has been held to be illegal, in case payment is not made within the aforesaid period, then interest shall be payable @ 9% per annum from the month following the date of filing of the OA, i.e. from September, 2006.

14. Under the circumstances there shall be no order as to costs.

(Dated, the 9th January, 2008)


 (Dr. K B S RAJAN)
 JUDICIAL MEMBER


 (SATHI NAIR)
 VICE CHAIRMAN