

Central Administrative Tribunal Lucknow Bench Lucknow.

Original Application No.458 /2006

This, the 16th day of November 2007.

**HON'BLE MR. JUSTICE KHEM KARAN, VICE CHAIRMAN.
HON'BLE MR. R. R. BHANDARI, MEMBER (A)**

Alok Kumar, aged 47 years,
S/o Late Surendra Kumar,
R/o 14, North Eastern Railway Colony,
Vivekanand Marg,
Lucknow-226001.

Applicant.

By Advocate :Shri Abdul Moin.

Versus

1. Union of India, through Secretary,
Railway Board,
Rail Bhawan, Raseena Road,
New Delhi.
2. Member Engineering,
Railway Board, Rail Bhawan,
Raseena Road,
New Delhi.
3. General Manager, North Eastern Railway,
Gorakhpur (U.P.)
4. Director General,
Research Designs & Standards Organization (RDSO),
Ministry of Railways,
Manak Nagar,
Lucknow-226011.

Respondents.

By Advocate: Shri Arvind Kumar

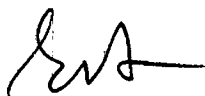
Order

By Hon'ble Mr. R.R. Bhandari, Member(Administrative)

Shri Alok Kumar, preferred this O.A. in terms of Section 19 of the AT ACT 1985

. He sought for the following reliefs:

- (a) Quash the Punishment Order, dated 14.06.2004 and Appellate Order, dated 18.7.2005 along with Charge Sheet contained in Annexure Nos. 1, 2 and 3 respectively to this Original Application and consequently, all service benefits including promotion of S.A. Grade from due date, i.e. when junior persons were promoted, be allowed.



(b) Issue any other order, which this Hon'ble Tribunal deems just and proper in the circumstances of the case.

(c) Costs of the case.

2. The learned counsel for the respondents have submitted preliminary objections along with an application to put them on record.

3. The preliminary objection is on the ground of maintainability before this Hon'ble Tribunal as barred under the limitation provided in the statute. The grounds were that (i)

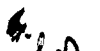
the applicant claimed promotion from retrospective date i.e. when one Shri Anurag Sharma was promoted. Thus Shri Anurag Sharma should have been made as a necessary party and that (ii) UPSC have been impleaded in the O.A. without making it a necessary party.

4. The case has been heard on couple of occasions. It is futile to discuss on the maintainability of the O.A. at this point of time. The preliminary objections are set aside.

5. The brief matrix of the facts of this case are as under.

The applicant is an officer of Indian Railway Service of Engineers (IRSE) of 1981 examination batch. During the course of his work as Senior Divisional Engineer-I, he was one of the member of a Tender Committee. It is alleged that some irregularities of the Tender Committee were noticed and the applicant was issued with a major penalty charge sheet dated 11.9.2001 kept at annexure-3. The matter was inquired into by an inquiry officer namely Shri J.K. Thaper, retired CAO. The applicant submitted certain documents including CVCs first stage advise and Railway note sent to CVC for arriving at the first stage advise. The enquiry was conducted by the enquiry officer during the years 2001 and 2002. The Director General, RDSO issued a disagreement memorandum dated 6.5.2003 (Annexure A-12) giving his reasons for agreeing/not agreeing to the enquiry report with the framed articles and giving a chance to Shri Alok Kumar for making further representations if any. The applicant made his representation




against the Disagree^{ment} Memo and Enquiry report on 3/6/2003 (Annexure-14). The Railway Board vide their letter dated 14.6.2004 kept at Annexure -1 issued a penalty of "reduction by one stage in the time scale of pay for a period of one year with effect of postponing the future increments." The applicant made an appeal dated 19.7.2004 against this punishment order. The appeal was decided by the Ministry of Railways letter dated 18.7.2005. The applicant was informed that the appeal has been rejected. 

6. Subsequent to it, the O.A. has been filed. The learned advocate for the applicant made us to go through the voluminous documents on record and quoted a few judgments in support of his arguments mainly on two issues.

(a) Whether, CVC's advice should be made available to the defender and

(b) Whether a retired person can be appointed as enquiry officer.

(i) CAT Lucknow, Judgment in O.A. 2/2002 in the case of Mahatam vs. Union of India highlighting that non supply^{of} report of CVC is a violation of the principle of natural justice. 

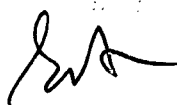
(ii) (1993)1 Supreme Court Cases 13-State Bank of India Vs.D.C. Agarwal and Another bringing out that CVC report, if considered is to be supplied to the delinquent employee.

(iii) (2004) 13 Supreme Court Cases -427 Ravi Malik Vs. National Film Development Corpn. Ltd. And Others. The relevant portion of this judgment is reproduced below:

2. ".....As far as the procedure for imposing a major penalty is concerned, Rule 23 lays down the procedure. The subject matter of debate before us is the construction of Rule 23 (b) which reads as follows:

"23.(b) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviors against an employee, it may itself enquire into, or appoint any public servant, hereinafter called the inquiring authority to inquire the truth thereof."

3. A retired Judge of the City Civil Court was appointed as the inquiry officer for the purpose of inquiry into the truth of the imputations against the appellant. The appellant challenged this appointment by way of a petition under Article 226 of the Constitution. It was the appellant's submission that a retired judge was not a "public servant" within the meaning of Regulation 23(b). In addition the



appellant challenged the refusal of the inquiry officer to make available certain documents to him.

.....

7. *In this case the Central Vigilance Commission had issued instructions permitting retired officers to be appointed as inquiry officers. The words "public servant" used in Rule 23 (b) mean exactly what they say, namely, that the person appointed as an inquiry officer must be a servant of the public and not a person who was a servant of the public. Therefore, a retired officer would not come within the definition of "public servant" for the purpose of the Central Vigilance Commission would override any interpretation which a court may put, as a matter of law, on it.*

8. *The appeal is accordingly allowed and the finding of the High Court on the interpretation of Rule 23 (b) is set aside. It will now be open to the respondents to appoint any serving public servant to hold the inquiry if it so desires. It is being made clear that the inquiry will proceed from the stage at which it has reached before the inquiry officer whose appointment is today held to be incompetent."*

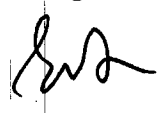
7. The learned advocate of the applicant pressed strongly that from the above, ~~the~~ it is quite clear that retired Officers would not come within the definition of public servant. On the same analogy a retired Railway Officer cannot conduct the inquiry.

8. The respondents averred us to go through their line of arguments and quoted a couple of cases to highlight their points. Viz:-

(i) (1980) 3 Supreme Court Cases 304 *Sunil Kumar Banerjee Vs State of West Bengal and others*, bringing out that no material irregularity has been committed in not showing the vigilance commissioner's report to the applicant.

(ii) (1997) 6 SCC 75 *Commissioner of Police Vs. Jayasurian and Another*, bringing out that any superior authority can initiate departmental proceedings and conduct an inquiry.

(iii) (2003) 4 Supreme Court Cases 670, *State of U.P and Another Vs. Chandrapal Singh and another*, bringing out that enquiry could be done by other than disciplinary authorities and that there is an express rule governing this issue.



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(iv) (1997) 2 SCC 251, *Shyam Bhadur Tripathi Versus U.P. State Public Services Tribunal and others*, bringing out that the departmental inquiry could be transferred to an independent agency.

9. After detailed discussions by the learned counsel for the applicant and the respondents, the matter boils down to two issues. (i) Whether a retired Railway official could have been nominated as enquiry officer to enquire into the conduct ^{of} a serving LM- railway official. (ii) Whether the advise report rendered by the CVC at stage one and stage two could be supplied to the applicant at appropriate time on his request.

These two issues are now dealt in detail:

(a) Nomination of a retired official as enquiry officer.

The Railway Servants are governed by the Railway Servants (Disciplinary & Appeal) Rules 1968. Rule 9 gives the procedure for imposing major penalties. Rule 9(2) and 9(3) are reproduced below:

9(2) "Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against a railway servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, [a Board of Inquiry or other authority] to inquire into the truth thereof.

9(3) "Where a Board of Inquiry is appointed under sub-rule (2) it shall consist of not less than two members, each of whom shall be higher in rank than the Railway servant against whom the inquiry is being held and none of whom shall be subordinate to the other member or members, as the case may be, of such Board."

10. By a corollary, it could be gathered that if the inquiry is being conducted by one person, that person should also be higher in rank than the Railway Servant against whom the inquiry is being held.

11. A thorough perusal of Rule 9 makes it clear that nowhere it is mentioned that a retired person could be appointed as an inquiry officer. The Railway Board however, have issued subsequent letters authorizing railways to nominate inquiry officers from the retired officers. One of the circular given to us by learned counsel for the respondents is No. 99/V-1/DAR/5/2. The relevant portion is reproduced as below:

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"A great deal of concern has been expressed for expeditious disposal of departmental inquiries under DAR, particularly in vigilance related cases. In order to expedite the inquiries, a scheme of empanelling of retired railway officers (selection grade and above) to serve as Inquiry Officers was introduced by the Railway Board sometime back. It was felt that serving Railway officers, being too pre-occupied with their day today work, were not able to devote time required for conduct of departmental inquiries. Thus, the panel of RIOs was formed which has been reviewed and enlarged from time to time."

12. The Railway Board letter quoted above is a departmental letter and cannot substitute or make any amendment in the rules as made in Rule 9(2) and Rule 9(3).

13. This matter has also been dealt in O.A. 97/2005 by the Division Bench of Central Administrative Tribunal, Guwahati quoted in ATJ 2005 Vol. 3. The decision is dated 2.6.2005. The relevant portions are reproduced below:

"The applicant who was the Principal of KVS in Nazira was kept under suspension pending disciplinary proceedings. The Commissioner, KVS (Vigilance Section) has issued an order dated 14.12.2004 (Annexure E) appointing one Sheri M.M.Lal (Retired Assistant Commissioner) as the Enquiry Officer to inquire into the charge framed against the applicant. According to the applicant under Rule 14(2) of the CCS (CCA) Rules, 1965 a retired person cannot be appointed as Inquiry Officer.

.....

4. *We have considered the matter. The grievance of the applicant is against the appointment of a retired person as Inquiry Officer, Rule 14 (2) of the Rules has already been noted enables the disciplinary authority to appoint an authority to act as Inquiry Officer. There cannot be any doubt that the authority contemplated under Rule 14 (2) must be an Officer of the Government or the institution concerned. It is also necessary to bear in mind that while appointing Enquiry Officer adequate care should be taken to ensure that only such officials are chosen as enquiry officer who are sufficiently senior in rank as compared to the defending officials and also who cannot be suspected of any prejudice or bias against the defending officials. In the instant case the Commissioner, KVS had appointed a retired Assistant Commissioner Mr. M.M.Lal, as inquiry Officer only under the provisions of Rule 14(2) of the Rules. In that view of the matter since Mr. M.M.Lal is a retired Assistant Commissioner he can not be appointed as Inquiry Officer, since he is not an authority contemplated under Rule 14(2).*

5. *In the facts and circumstances of the case we quash the impugned order dated 14.12.2004 (Annexure E) in this application. The Commissioner, KVS, respondent No. 2 is free to appoint any authority other than a retired person as Inquiry officer."*

14. The argument by the learned counsel for the respondents that the Railway Board's circular authorized appointment of retired persons as Inquiry Officers has been discussed at length. Since the Railway Board Circular does not substitute or amends Rule 9(2) of the Railway Servants (Disciplinary & Appeal) Rules, 1968, we are not




convinced by the argument. The learned advocate for the respondents could not support his arguments on this issue of 'nominating retired persons as Enquiry Officers' by any Judgments of Tribunal/High Court/Supreme Court.

15. Now discussing the second issue viz., whether the Central Vigilance Commission's advice notes could be made available to the delinquent employee during the stage of inquiry.

16. On this issue, we have a judgment of this very bench dated 13.9.2005 in O.A. 2/2002 as quoted by the learned counsel for the applicant. . This judgment relies on the Apex Court's decision in State Bank of India Vs. D.C. Aggarwal and another. The relevant part of this judgment is reproduced below:

"In the light of the decision of the Apex Court in State Bank of India & Ors. Vs. D.C. Aggarwal & Anr., 1993 (2) SLJ SC 88 copy of the CVC report is obligated and mandated to be supplied before imposition of punishment. The fact of consultation with the CVC is reflected and the order passed by the disciplinary authority where it is stated that though the EO exonerated applicant, however, General Manager, Board, Vigilance and CVC have deferred clearly shows that CVC was consulted. Non-supply of the report of CVC which is a material relied upon behind the back of applicant certainly constitutes as an additional material considered by the disciplinary authority, as such non supply of the same vitiates the enquiry for violation of the principles of natural justice and deprivation of a reasonable opportunity to defend."

17. We are of the opinion that this case is akin to the two cases mentioned above as far as the non supply of CVC's advise is concerned.

18. If the advise of the Central Vigilance Commission has been considered during the course of the disciplinary proceedings, the same should have been supplied to the delinquent official if asked for at appropriate time. In very special cases, such request may not be considered, but in such situations, the competent authority should have recorded the reasons for not supplying such documents.

19. In the result the punishment order dated 14.6.2004 as well as appellate order dated 18.7.2005, as impugned, are quashed, but with liberty to the Disciplinary Authority to get



the enquiry held afresh from the stage of nomination of competent officer as enquiry officer. No order as to costs.

R.R. Bhandari
(R.R. Bhandari) 16/11/07
Member (A)

Khem Karan
16.11.07
(Khem Karan)
Vice Chairman.

v.