

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

Original Application No 276 of 2008

Lucknow this, the 10th day of April, 2014

HON'BLE MR. NAVNEET KUMAR MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)

Rahmatullah, aged about 52 years, son of Late Shri Iltaf Hussain,
resident of 386-B, Girja Railway Colony, Bargaon, Gonda.

By Advocate Sri Praveen Kumar

Applicant

Versus

1. Union of India through the General Manager, North Eastern Railway Gorakhpur.
2. The Senior Divisional Commercial Manager, North Eastern Railway, Ashok Marg, Lucknow.
3. The Divisional Commercial Manager, North Eastern Railway, Ashok Marg, Lucknow.

By Advocate Sri Rajendra Singh.

Respondents

ORDER (Oral)

By Hon'ble Mr. Navneet Kumar, Member (J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following relief(s):-

"1. To set aside the impugned order dated 15.7.2008 and show cause notice dated 6.3.2008 along with enquiry report dated 28.11.2007 contained as Annexure No. A-1 and A-2 of the case, may also be passed.

2. Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.

3. Cost of the present case, as the applicant has unnecessarily been forced to approach this Hon'ble Tribunal."

2. The brief facts of the case are that the applicant was working on the post of Commercial Supervisor and was falsely implicated by the Vigilance Department and accordingly, major penalty charge sheet was served upon the applicant. Subsequently, the retired Senior Deputy

General Manager/ Chief Vigilance Officer, North Central Railway, Allahabad, was appointed as Enquiry Officer. The applicant feeling aggrieved by the said appointment of the Enquiry Officer, preferred the present O.A. stating there in that a retired government officer cannot be appointed as Enquiry Officer. This Tribunal after considering the submissions made by the learned counsel passed an interim order.

3. The learned counsel, appearing on behalf of the respondents has pointed out that after the decision of Alok Kumar's case decided by the Hon'ble Apex Court on 16.4.2010, a retired government servant can be appointed as an Enquiry officer. As such, it is submitted by the learned counsel for the respondents that the respondents may be permitted to complete the inquiry and pass the orders.

4. Shri Praveen Kumar, learned counsel for the applicant fairly submitted at bar that the direction be issued for completing the inquiry proceedings and pass final order and be permitted to file fresh O.A. if he is further aggrieved.

5. Heard the learned counsel for the parties and perused the record.

6. Admittedly, the applicant was working in the respondents organization was served with a major charge sheet vide charge sheet dated 21.3.2007 wherein, certain charges are leveled against the applicant and after that an inquiry officer was appointed who was retired railway officer. The question which came for consideration before the Hon'ble Apex Court in the case of Alok Kumar that whether retired officer can be appointed as an Enquiry Officer and observed as under:-

"There is no conflict between the language of Rule 9(2) and the Circular dated 16.7.1998. Under Rule 9(2), the disciplinary authority has discretion to appoint a "Board of Inquiry" or "other authority" to conduct inquiry against the delinquent officer/official. The circular only aids it further while saying that in the interest of administration and in consonance with the Rules, the former/retired officers of the Railway Department who satisfy the eligibility criteria can be appointed as enquiry officers, and submit their report to the disciplinary authority in accordance with law.

A good practice of the past can even provide good guidance for the future. This accepted principle can safely be applied to a case where the need so arises,

keeping in view the facts of that case. There can be hardly any doubt that the practice of appointing former officers as enquiry officers had been implemented for quite some time in the Railway Department. This practice is not opposed to any statutory provision or even public policy. To bar such a practice, there has to be a specific prohibition under the statutory provisions."

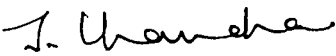
"62. In the light of the above enunciated rudiments of law, let us revert to the two points argued before us. Firstly, the contention of the respondents that Rule 9(2) necessarily debars appointment former railway employees as inquiry officers (other authority) is without any merit. Secondly, they have suffered no prejudice at least none has brought to our notice from the record before us or even during arguments. The contention was that this being violation of the statutory rule there shall be prejudice ipso facto. We may also notice that the circulars issued by the Department of Railways cannot be ignored in their entirety. They have only furthered the cause contemplated under Rule 9(2) of the Rules and in terms of judgment of Virpal Singh Chauhan (Supra) the Court had taken the view that circulars should be read harmoniously and in given circumstances, may even prevail over the executive directions or Rules.

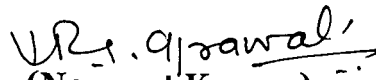
63. We do not find any merit even in the contention that if departmental inquiry has been conducted under the Rules of 1968 in accordance with law, principles of natural justice and no de factor prejudice is pleaded or shown by cogent documentation, the court would be reluctant to set aside the order of punishment on this ground alone. Secondly, the argument in relation to non-furnishing of CVC notes is again without any foundation as it has not even been averred in the application before the Tribunal, that these alleged notes were part of the record and that they were actually considered by the Disciplinary Authority and such consideration had influenced the mind of the competent authority while passing the impugned orders. Absence of pleading of these essential features read with the fact that no such documentation has been placed on record except demanding circulars of the CVC, we are of the considered view that even on this account no prejudice, as a matter of fact, has been caused to the delinquent officers (in the case of Shri Alok Kumar). We are not able to accept the contention addressed on behalf of the respondents that it is not necessary at all to show de factor prejudice in the facts of the present cases. We may notice that the respondents relied upon the judgment of this Court in the case of ECIL (Supra), that imposition of punishment by the Disciplinary Authority without furnishing the material to the respondents was liable to be quashed, as it introduced unfairness and violated sense of right and liberty of the delinquent in that case. No doubt in some judgments the Court has taken this view but that is primarily on the peculiar facts in those cases where prejudice was caused to the delinquent. Otherwise right from the case of S. L. Kapoor (Supra), a three Judge Bench of this Court and even the most recent judgment as referred by us in Kailash Chandra Ahuja's case (Supra) has taken the view that de facto prejudice is

one of the essential ingredients to be shown by delinquent officer before an order of punishment can be set aside, of course depending upon the facts and circumstances of a given case. *Judicia posteriora sunt in lege fortiori*. In the later judgment the view of this Court on this principle has been consistent and we see no reason to take any different view. Prejudice normally would be a matter of fact and a fact must be pleaded and shown by cogent documentation to be true. Once this basic feature lacks, the appellant may not be able to persuade the Court to interfere with the departmental inquiry or set aside the orders of punishment.”

7. Considering the observations made by the Hon'ble Apex Court whereof the view that a retired railway officer can be appointed as an Enquiry Officer, as such, let inquiry be proceeded and the same be completed within a period of 6 months from the date of receipt of certified copy of this order is produced. It is expected that the applicant will co-operate in the enquiry and in failure to do so the authorities would be at liberty to proceed further.

8. Accordingly, the O.A. is disposed of. No order as to costs.


(Ms. Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

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