

**Central Administrative Tribunal Lucknow Bench Lucknow.**

**O.A. NO. 254/2008**

**This the 17<sup>th</sup> day of July 2008.**

**Hon'ble Mr. Justice Khem Karan, Vice Chairman.  
Hon'ble Dr. A. K. Mishra, Member (Administrative)**

Ratan Kumar Chakravarty,  
Aged about 48 years,  
Son of late Sri B. C. Chakravarty,  
Resident of L1/6, sector G, LDA Colony,  
Kanpur Road, Lucknow.

Applicant.

By Advocate Sri S. P. Singh.

Versus

1. Union of India through  
The Secretary to the Government of India,  
Ministry of Railway, New Delhi.
2. General Manager,  
Northeastern Railway,  
Gorakhpur.
3. Divisional Commercial Manager,  
North- Eastern Railway, Divisional Office,  
Lucknow.
4. Shri D.D. Yadav, Inquiry Officer,  
retired E.O., C/o Divisional Commercial  
Manager, North Eastern Railway,  
Divisional Officer, Lucknow.

Respondents.

By Advocate Sri Arvind Kumar.

Order (Oral)

By Hon'ble Mr. Justice Khem Karan, Vice Chairman.

Applicant is challenging the charge sheet dated 12.7.2007, issued under Rule 9 of the Railway Servant (Discipline & Appeal) Rules 1968, order dated 8.8.2007 by which, the disciplinary authority appointed one D.D. Yadav, a retired Railway Servant as, Inquiry Officer and also the inquiry report dated 10.4.2008. His contentions are that the charge sheet is not founded on correct facts and is actuated by malice and that a retired railway servant cannot be appointed as inquiry

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officer. It is also alleged that while officials directly responsible for faulty loading of goods have been left off with minor punishment, but the applicant is being subjected to proceedings under Rule 9, for imposing the major penalty. With a view to substantiate the contention that a retired railway servant is not competent to hold inquiry under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968, the applicant has referred to a decision-dated 16.11.2007 rendered by this Bench in O.A. No. 458/2006, Alok Kumar Versus Union of India & Others (Annexure -5).

2. Sri Arvind Kumar, has stated that such an O.A. against the pending disciplinary proceedings, is not maintainable and there is no force in the contention that a retired servant cannot be appointed as Inquiry Officer under sub- rule 2 of Rule 9 of the Rules of 1968. According to him, the Railway Board Circular dated 31.8.1999, providing for appointment of retired officers as Inquiry Officer for purposes of holding inquiry under the Rules of 1968, could not be well considered by the Bench rendering the decision dated 16.11.2007 in O.A. 458/2006. Sri Arvind Kumar, argues that ~~the meaning of~~ expression, "other authority" appearing in sub -rule (2) of Rule 9 has connotation different to "Public Servant", appearing in corresponding rule of CCS (CCA) Rules of 1965. He <sup>has</sup> ~~is~~ also informed that in the case in hand the inquiry officer has already submitted his report and so the applicant is free to take all possible pleas in his written reply, to be submitted in response to the show cause notice.

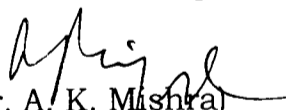
3. Upon careful consideration of the entire material on record and the respective submissions so made by the learned counsel for the parties, we are of the view that it would not be just and proper for us to <sup>enter</sup> into the question as to whether a retired railway servant can be appointed as inquiry officer under sub rule 2 of Rule 9. The reason is that <sup>the</sup> inquiry officer has, after <sup>in</sup>quire into the matter, already submitted is report and

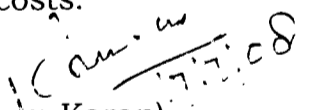
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the applicant has been given show cause notice. At such a stage, any interference of this Tribunal on any ground will not be just and proper. We are of the view that applicant may take this plea and other possible pleas in his written reply to the show cause notice and in case, he takes such pleas, the disciplinary authority, shall consider the same in accordance with law and the judicial pronouncements, that may be cited are produced before him.

4. The allegations that the charge sheet is not based on correct facts or is actuated by malice are also not such which should be gone into by us at this state. Those can also be agitated in the written reply.

5. So, the O.A. is finally disposed of with a direction that in case the applicant takes the above points or other points in his written reply to the show cause notice, the disciplinary authority will consider the same in accordance with law and in the light of the material on record and then pass orders as expeditiously as possible say within a period of 3 months from the date such written reply is so submitted by the applicant. The applicant may submit his written reply to the show cause notice within a period of 15 days from today. No orders as to costs.

  
(Dr. A. K. Mishra)  
Member(A)

  
(Khem Karan)  
Vice Chairman.