

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

PATNA BENCH : PATNA

Date of Decision:- 04/04/2004

Registration No. OA -198 of 1996

Virendra Kumar Sharma, Son of Sri Madan Gopal Sharma,  
resident of Railway Quarter No.65, Neora Colony,  
Khagaul (Danapur) , P.O. Khagaul, P.S. Motichak,  
Khagaul, District Patna

... Applicant

- By Shri Gautam Saha, Advocate

Versus

1. The Union of India through General Manager, Eastern Railway, Fairley Place, Calcutta.
2. Chief Personnel Officer, Eastern Railway, Fairley Place, Calcutta.
3. Divisional Railway Manager, Eastern Railway, Danapur

... Respondents

- By Shri Gautam Bose, Advocate

Coram:- Hon'ble Shri L.R.K. Prasad, Member(Administrative)

Hon'ble Shri Lakshman Jha, Member (Judicial)

O R D E R

Hon'ble Shri Lakshman Jha, Member (Judicial):-

1. The applicant has prayed for quashing Annexure-A series, the Memorandum of charges dated 20.2.94 issued against him by the Respondent No.1, General Manager, Eastern Railway, Calcutta.
2. The applicant was posted as Permanent Way Inspector, Grade II, Garhara, from 5.8.85 to 23.1.87. He made two requisitions bearing No. 000080 dated

3.8.86 for supply ~~of~~ of 150 litres of antoxil and No.000081 dated 3.8.86 for supply ~~of~~ of 400 litres of calory as per Railway specification. The total cost of the aforesaid material was about Rs. 46,000/-.

It is stated that he did not receive the aforesaid requisitioned materials during the period of his stay at Garhara. He was promoted to the higher grade of P.W.I., Grade I, and also, to the grade of Assistant Engineer ~~in~~ due course ~~and~~ was transferred to different places, while he was posted at Danapur as Assistant Engineer, he was served with the impugned memorandum of charges on 10.2.94, i.e. to say, after seven and half ~~years~~ by the Respondent No.1 as at Annexure-A-1 series.

3. the It is further case of the applicant that he requested for supply of documents as per the direction contained in Annexure-A-1 to the General Manager (Vigilance) for preparing his written defence. But he ~~was~~ not supplied the relied upon documents. However, he submitted his written defence statement and requested to drop the charges, but without success.

4. The Respondents Railways in their written statement have stated that the applicant while functioning as P.W. I, Garhara, during the period 1987 to 1989 submitted the aforesaid requisition for procurement of paints chemicals which were of no use and were ~~of~~ inflated quantities causing loss to the Railway of Rs. 46,000/-. The applicant was found prima facie liable for the loss and accordingly was served with the impugned Memo. of charges. The inquiry is still undergoing and he is at liberty to raise his grievance before the inquiry officer. It is stated that the

original relied upon documents are lying with the C.B.I., Patna and on receipt of the representation of the applicant the CBI, Patna, was requested to make available the relevant documents before the inquiry officer for inspection of the applicant. However, the CBI failed to produce the documents till date. The applicant could not be given copies thereof.

5. It is further stated that Shri H.M. Agarwal, the [redacted] Signal Engineer, Eastern Railway, was nominated as the inquiry officer, who conducted inquiry in absence of presenting officer. The inquiry was conducted without inspection of relied upon documents by the applicant. The inquiry officer [redacted] submitted his inquiry report on 25.5.96. The inquiry report was sent to the Railway Board by the Vigilance Department for second stage advice of Chief Vigilance Commissioner. The Chief Vigilance Commissioner on a perusal of the inquiry report remitted the case for the de novo inquiry. Accordingly, the case is undergoing de novo inquiry and Shri D.N.Ghosh, retired CWE/SE/ South Eastern Railway has been nominated as new inquiry officer by the Railway Board. Thus, it is said that the inquiry against the applicant is still pending and the application is premature and fit to be rejected.

6. Heard Shri Gautam Saha, counsel for the applicant and Shri Gautam Bose, learned counsel for the respondents and perused the record.

7. The applicant was served with the statement of imputations of misconduct vide Annexure-1(B) as follows:-

"That Sri Virendra Kumar Sharma was functioning as PWI, Ga rhara during 1987 to 1989. His duty

was required to submit requisition according to quality, quantity and utility of materials.

That the aforesaid Sri V.K.Sharma submitted some requisition nos. 00081 dated 3.8.86, 000080 dated 3.8.86, for the procurement of paints/chemicals to be used in the Railways for the maintenance work.

That the paints/chemicals so requisitioned and later on procured were of no use and in inflated quantities.

That the Railways suffered a heavy loss of Rs. 46,000/- due to this procurement of paints/chemicals which were found to be of no use.

Thus said Sri V.K.Sharma, thereby committee gross misconduct and exhibited lack of devotion to duty and lack of integrity as envisaged under Rule 3(1) sub-clause (i) and (ii) of the Railway Services (Conduct) Rules, 1966."

8. The learned counsel for the applicant forcefully contended that the aforesaid allegations against the applicant is vague and incorrect in as much as the Respondents have not disclosed the excess quantity and specific quality and extent of misutility of the materials in question causing loss of Rs. 46,000/- to the Railways. The applicant never received nor utilised the materials in question. He was required to prepare requisition as per the Railway specification and to submit the same for scrutiny and processing by the higher authorities i.e. by the Assistant Engineer and the Divisional Engineer

who was empowered to approve the requisition.

The Divisional Engineer after finding the proper requisition was required to affix the fund existed level and at this stage he became the indentor of the requisition. Thereafter, the requisitions are required to be submitted to the Controller of Stores, Calcutta, who was required to purchase the materials after proper inspection regarding its quality and quantity etc. Thus, the Divisional Engineer and the Controller of the Stores, Calcutta were admittedly liable for the quality as well as quantity of material. The learned counsel for the applicant referred to Section 101 of the Indian Railway Stores Code and Rule 757 and Rule 1305 of the Indian Railways Stores Code in support of his aforesaid contentions.

9. It may be pointed out that the aforesaid stand of the learned counsel for the applicant is unrebutted. The applicant was not posted at Garhara during the period 1987 to 1989 when the materials requisitioned by him were utilised. It is not denied that he (the applicant) was not empowered to place requisition to the aforesaid higher authorities. The aforesaid charges suffers from vagueness as to how the applicant was responsible for the quantity, quality and the utilisation of the materials requisitioned by him as per the Railway specifications. Therefore, the contention of the learned counsel for the applicant that the charges against the applicant suffers from the vagueness does not appear unfounded.

10. In the next place, the learned counsel for the applicant contended that the aforesaid allegations pertaining to the year 1987-89 and he was

served with the Memo. of the charges in the year 1994 i.e. after about seven and half years. He (the applicant) was not supplied with relied upon documents in spite of his representation. It is admitted by the Respondents that the relied upon documents could not be supplied to the applicant as the same were with the CBI, Patna. The CBI was requested for production of documents for inspection by the applicant, but it could not materialise. It is pertinent to point out that the non-supply of the relied upon documents is against the principle of natural justice and the inquiry proceeding stands vitiated on this account. Therefore, the contention of the learned counsel for the applicant on this score also appears apposite.

11. It is also the admitted position that an ex-parte inquiry was already held against the applicant without supply of the relied upon documents as mentioned in the Memorandum of charges by inquiry officer, Shri H.M. Agarwal, the Chief Signal Engineer, Eastern Railway, Calcutta, vide Annexure-A/7. However, the presenting officer despite intimation to attend the inquiry proceedings did not turn up on several dates and, accordingly, the inquiry was held ex-parte. The applicant was not held guilty and was exonerated from the charges levelled against him vide the inquiry report submitted in the month of June, 1996. But, the disciplinary authority could not pass any order on the inquiry report in spite of several representations, the last being dated 21.4.97, as at Annexure-A/14. It is stated that, in the meantime, the juniors to the applicant were promoted to the next higher post of Divisional Engineer without considering the case of the applicant, vide office order dated 29.12.97,

as at Annexure-A/15. The inquiry officer has so far failed to conclude the proceeding initiated through the Memorandum dated 10.2.94, as at Annexure-A/1, against the charges of 1987-89. The Respondents are required to conclude the proceeding within the period of 380 days as per specific instructions by the Railway Board.

12. The contention of the learned counsel for the applicant appears quite proper and sound. As stated above, it is the admitted position that ex-parte inquiry against the applicant was held and concluded in which he was exonerated from the charges. The de novo inquiry, that too, by another inquiry officer has been held bad and illegal by the Hon'ble Supreme Court in the case of R.K.Dev Versus the Collector of the Central Excise, reported in AIR 1971 SC page 1441. Further, the different Benches of the CAT have held that de novo inquiry in the facts and circumstances of such case is bad and invalid. We may refer the case of L. Davit Versus Union of India (1990) 14 ATC 590 of Madras Bench of the CAT in which de novo inquiry by a new inquiry officer subsequent to submissions of the inquiry report was held illegal under the Railway Servants (Discipline and Appeal) Rules, 1968, Rule 10(2).

12. Thus we have no hisitation in holding that the de novo inquiry in the facts and circumstances of the case is not in accordance with the settled law of the land.

13. Before we part with we would like to point out that the <sup>the domacles</sup> sword would not be allowed to hang over

the head of the delinquent for an indefinite period. The charges related to the year 1987-89 and the inquiry was already ~~concluded~~ in the year 1996, exonerating the applicant from the charges. But without passing any appropriate order on the inquiry report, ~~by SDA~~, a denovo inquiry was ordered which is said to be still continuing and, in the meantime, several juniors have, admittedly, been promoted by superseeding the applicant. The charges, as said above, suffer from serious defects of vagueness particularly if but the <sup>as per</sup> juxtaposition of the Railway Rules referred to above. Admittedly, the applicant has not been supplied as yet the relied upon documents. In such circumstances, the continuance of the inquiry would, in our opinion, be against the principle of natural justice and an abuse of the process.

14. In view of the aforesaid discussions, the impugned Annexure-A/1 series are hereby quashed. The application is allowed, but without cost.

SKS

*L. Jha*  
4.4.2000  
(Lakshman Jha )  
Member (J)

*L.R.K. Prasad*  
4.4.2000  
( L.R.K. Prasad )  
Member (A)