

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

Dated this Thursday the 19th day of June, 2003.

Coram: Hon'ble Mr. V.K. Majotra - Member (A)
Hon'ble Mr. Shankar Raju - Member (J)

O.A.920 of 1999

Sushil Kumar Srivastava,
Chief Law Assistant,
Western Railway,
O/o Chief Administrative Officer,
Western Railway, Churchgate, Mumbai.
R/o C/o Flat No.3,
Sai Leela Apartments,
Near Kasturi Gram,
Highway Road, Kalyan (West),
District Thane.
(By Advocate Shri M.S.Ramamurthy) - Applicant

Versus

1. Union of India
through the General Manager,
Western Railway, Churchgate,
Mumbai.
2. The Deputy Chief Personnel
Officer (Gazetted),
Western Railways, Churchgate,
Mumbai.
3. The Chief Personnel Officer,
Western Railway,
Churchgate, Mumbai.
(By Advocate Shri C.M.Jha)

ORDER

By Hon'ble Mr. Shankar Raju, Member (J) -

Applicant impugns the Respondents' penalty order dated 3.12.1998 withholding his next increment in the tims scale for a period of three years with cummulative effect. Assailed also is the order of the Appellate Authority dated 23.3.1999 reducing the punishment to withholding of two increments for a period of 1 1/2 year with cummulative effect. He has sought quashment of the same with all consequential benefits.

2. Applicant who was working as Law Assistant under Senior Law Officer was served upon a charge sheet under SF 5 for the following allegations -

"Shri S.K.Shrivastava CLA-CCG while working as such during the month of December 96 and January 97 committed gross misconduct in as much as that:

1. CVI-CCG vide Note E161/27/PC/VPM/5/96 dated 20.12.96 addressed to the Law Officer had requested the attendance of Shri S.K.Shrivastava, CLA-CCG on 23.12.96 at 11.00 AM. The Sr.LO marked the Note to the CLA who returned the original Note to CVI with the endorsement that he was on leave and he would not be available.

2. He submitted a Note to SDGM giving certain past history of a vigilance case and accusing the vigilance and Executive for not taking action. He in his note has further mentioned that CLA working under Sr.LO is independent Authority on the Legal Matters and under the control of the Ministry of Law and Justice. Their higher legal authorities are empowered to ask clarification. Executives has got only discretion either to agree or disagree with the opinion of the legal branch and are not supposed to ask clarification on legal matters.

3. The Sr.LO was further reminded to direct Shri Shrivastava to attend Vigilance Office by Dy.CVO (A) vide Note No. E161/27/VPM/6/96 dated 3.1.1997, on which Sr.LO vide his note No. S&P/Misc/97/1 dated 6.1.1997 stated that Shri Shrivastava would like to see SDGM.

4. After discussing with SDGM a further Note was issued to Sr.LO by Dy.CVO (A) vide Note No. E161/27/VPM/6/96 dt. 6.1.97 for directing Shri Shrivastava for attending vigilance branch.

5. Sr.LO vide his confidential letter No. S&P/Misc./97/1 dt. 6.1.97 addressed to Shri Shrivastava directed him to attend Dy.CVO (A)'s office on 7.1.97. However, Shri Shrivastava failed to attend the Vigilance office.

By the above act Shri Shrivastava has disobeyed the orders by superiors and caused hinder to the working of vigilance and caused delay in the investigation, and thereby acted in a manner unbecoming of a Railway Servant violating Rule 3.1 (iii) of Railway Services (Conduct) Rules, 1966."

3. After the regular hearing, submission of defence as well as examination of witnesses etc. by his enquiry report dated 12.8.1998, Enquiry Officer substantiated the charge against the applicant of acting in a manner unbecoming of a Railway servant under Railway Servants (Conduct) Rules, 1966

4. Respondents through the finding of the Enquiry Officer which culminated into a major punishment is on the basis of his admission of the mistake which rejected the appeal giving rise to the present OA.

5. The learned counsel for the Applicant Shri Ramamurthy contends that the present case is not of a misconduct as the Applicant who has the immediate local superintendence by the Senior Law official cannot be directed by the Vigilance Inspector to tender clarification and as such any legal opinion which has not been acted upon should be referred to the higher authorities.

6. In this backdrop it is stated that the Senior Law Officer had concurred with the Applicant's opinion as to non commission of misconduct and had recorded such in the note sheet of OAR file and acknowledged that the charge sheet had been issued under pressure from the Vigilance.

7. It is further stated that the enquiry is vitiated and he had requested Senior Law Officer to be called as a defence witness, denial of which has deprived the applicant of a reasonable opportunity to effectively defend in the enquiry.

which is in violation of the principles of natural justice. It is further stated that in the year 1995, the Chief Vigilance Inspector B.K.Sharma had discussed the same matter with the Applicant and thereafter clearance was given by Vigilance which was approved by the General Manager (Establishment) issuing a general order dated 11.3.1997 laying down the procedure for examining the applications for House Building Allowance. As such it was not required by CVI to call the Applicant to give any clarification.

8. On the other hand respondents' counsel Shri C.M.Jha vehemently opposed the contentions and contested the OA by contending that having committed serious irregularities in the drawal in House Building Advance by some Railway employees the Investigating Branch investigated the matter and during this immediate need forced them to seek clarification from Chief Law Assistant. Applicant who was working as such under Senior Law Officer had not co-operated as such he was directed through his immediate superior SLO but despite this he has not tendered clarification and reported to Vigilance which shows insubordination. A clear misconduct resulting in culpuable damage as hindrance had been caused in Vigilance investigation.

9. In so far as the non-examination of witnesses is concerned it is contended that Senior Law officer had acted as disciplinary authority , issuing charge sheet to the Applicant as such being irrelevant was not examined and moreover no prejudice has been caused to the applicant.

situation arises in the exigency of service that such a clarification is pertinent and relevant to the issue of importance. It is also established on record that a letter has been written to the immediate senior of the Applicant i.e. the Senior Law Officer who directed the Applicant to attend Vigilance Office. Despite this, no compliance has been made. Senior's orders have not been followed without any justification by the Applicant.

13. Insubordination does constitute a misconduct. As a Government servant it is incumbent upon the Applicant to have followed the instructions of his superior in true letter and spirit without any reservations. Such a careless attitude to question the authority of the Senior not to have clarified the query put forth by the Vigilance has caused a resulting damage with high degree of culpability as investigation carried by the Vigilance has been hindered due to non-co-operative attitude adopted by the Applicant. Accordingly we are of the considered view that what has been alleged against the Applicant amounts to a misconduct within the meaning of Rule 3 (ibid).

The next contention put forth regarding the examination of the Senior Law Officer, the Respondents have denied this on the ground that Senior Law Officer is a disciplinary authority cannot appear in the enquiry as a witness. Moreover, it is not disputed that

Senior Law Officer has issued a directive to the applicant to present before the Vigilance and to give clarification. As such no prejudice has been caused to the Applicant on that count.

14. We also find that while on appeal in his memorandum Applicant in absolute and unequivocal terms on his own volition admitted his misconduct by stating as under -

"This is my first and last mistake. I may be excused as I have to work more than 18 months in the Railways."

15. Moreover at the time of personal hearing in appeal, Applicant had promised to improve his working.

16. If one has regard to the above in clear and explicit terms Applicant having admitted his misconduct cannot assail the correctness of the charge or misconduct or as to the violation of the rules in derogation of the principles of natural justice. However, we find no violation as such.

17. The orders passed by Disciplinary Authority as well as Appellate Authority well reasoned orders showing application of mind.

18. In the result, for the foregoing reasons, having no good grounds to interfere, OA is found bereft of merit and it is accordingly dismissed. No order as to costs.

S.Raju
(Shankar Raju)
Member (J)

V.K.Majotra
(V.K.Majotra)
Member (A)

mf