

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.668/2000

Dated this the 29th day of Sept., 2000.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Smt. Shanta Shastry, Member (A)

Rajaram Vishwanath,
Jr. Engineer (Signals) Gr.II,
Office of Sr.Section Engineer
(Signals) (M),
Central Railway, Solapur.

... Applicant

By Advocate Shri S.P.Saxena

V/S.

1. Union of India
through the Secretary,
Ministry of Railways,
Rail Bhawan, New Delhi.
2. The General manager,
Central Railway,
C.S.T., Bombay.
3. The Divisional Railway
Manager, Central Railway,
Solapur.
4. The Divisional Signal and
Telecommunication Engineer (M),
Central Railway, Solapur.
5. Sr. Dy. General Manager
(Vigilance) Central Railway,
C.S.T., Bombay.
6. Shri P.Y.Desai,
Asstt. Enquiry Officer (HQ),
Office of General Manager,
Central Railway, Vigilance
Branch, C.S.T., Bombay.

... Respondents

By Advocate Shri S.C.Dhawan

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ORDER

(Per : Shri S.L.Jain, Member (J))

This is an application under Section 19 of the Administrative Tribunals Act, 1985 for a declaration that the enquiry proceedings are vitiated from the stage of issue of chargesheet and to quash and set aside the chargesheet dated 1.9.1999 as being illegal and issued by in-competent authority.

2. The applicant who claims to have ^{been} promoted as Junior Engineer Gr.I, w.e.f. 12.3.1999 was served with the chargesheet dated 1.9.1999. The grievance of the applicant is that the appointing authority for the applicant is Divisional Railway Manager and therefore his Disciplinary Authority for the purpose of ordering a departmental enquiry has to be the Divisional Railway Manager, Solapur. The Divisional Signal and Telecommunication Engineer (M), Central Railway, Solapur, is an officer/authority subordinate to Divisional Railway Manager who has signed the alleged chargesheet dated 1.9.1999. The applicant claims that he has learnt from reliable sources that there is no order for conducting an enquiry against the applicant passed by D.R.M. at any time. Hence, the chargesheet is issued by an incompetent officer and it is illegal and void ab-initio. Under Rule 9, the competent Disciplinary Authority has to appoint a presenting officer to present on its behalf the case, but no presenting officer has been appointed for the said departmental enquiry. The Disciplinary Authority is not required to appoint a particular officer as enquiry officer on the recommendation of

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any other authority and certainly not on the recommendation of Sr.Dy. General Manager (Vigilance) Central Railway, Bombay. Shri D.Y.Desai, Respondent No. 6 of the office of S.D.G.M.(Vigilance), Mumbai was appointed as an Enquiry Officer not by the D.R.M.Solapur but by the Divisional Signal & Telecommunication Engineer (M) Solapur, who is not competent to act as Disciplinary Authority. Shri Desai is from the Vigilance Branch has been appointed by Respondent No. 4 at the behest and recommendation of the Sr.D.G.M. (Vigilance), Central Railway, Bombay. Shri Desai is holding the post of Asst. Enquiry Officer in the office of S.D.G.M.(Vigilance) and therefore it cannot be ruled out that Shri Desai would not oblige his officer by giving a tutored finding in his report, on malafide and unfair reasons. As no presenting officer has been appointed, the enquiry officer is cast upon a duty to examine the witnesses to be adduced for and on behalf of the Department. Thus, he has to play a dual role of prosecution and to act as an enquiry officer. A duty is cast upon the enquiry officer to examine a charged officer generally at the end but before the enquiry is closed/complete by the enquiry officer the applicant was examined. The Railway Board has issued a letter dated 5.4.1988 which is to the effect that cases be referred to the Vigilance by the disciplinary authority before the Disciplinary Authority finalises the disciplinary proceedings and the opinion given by the vigilance should be accepted by the disciplinary authority. The disciplinary authority cannot delegate its power of taking a final decision on

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enquiry proceedings to any other authority and further the enquiry officer is not bound by the advice of the CBI/CVC/Vigilance officers in the matter of taking a final decision about the guilt or otherwise of the charged employee. In the present case, the Sr.D.G.M. (Vigilance), it is understood, is directing the disciplinary authority to award the punishment of severe nature. Thus, it appears that the vigilance department framed the charge-sheet, it appointed its own officer as enquiry officer and it is once again directing to inflict a particular punishment on the charged employee which leads to over-stepping the powers of the disciplinary authority by the vigilance departments/officer in an illegal manner. Thus, the applicant apprehends that the disciplinary authority, being under pressure of vigilance department, would not be deciding the enquiry proceedings in a fair manner, without due application of his own mind on the entire proceedings of the enquiry. Hence, this OA. for the above stated reliefs.

3. The applicant's counsel and the respondents' counsel are heard before admission.

4. The learned counsel for the applicant argued that the chargesheet dated 1.9.1999 is issued by the Divisional Signal and Telecom Engineer (M), Central Railway, Solapur and the enquiry officer is also appointed by the same authority. While the said authority is neither the appointing authority of the applicant nor the disciplinary authority.

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5. The learned counsel for the applicant also argued on the basis of Rule 9 (9) (a) (c) that it is mandatory for the disciplinary authority where the enquiry is entrusted to an enquiry officer to appoint the Presenting Officer. The said two grounds are being opposed by the learned counsel for the respondents.

6. We have perused the papers filed by the applicant and we are of the considered opinion that the applicant was examined at the initial stage of enquiry only with a view that the enquiry is ^{ripe to} ~~vital~~ to proceed. The questions asked were only in respect of whether he has received the copy of the chargesheet, documents available with the papers also. About other grievances raised by the applicant, it is suffice to say that it is only an apprehension of the applicant. The enquiry is complete one. The applicant has filed this OA. on 18.9.2000 before this Tribunal and on the same day he has also filed a representation to ADRM, Solapur in this respect. Since the chargesheet was issued on 1.9.1999, enquiry officer was appointed on 7.10.1999. The proceedings continued thereafter. The applicant made no grievance in respect of the enquiry officer or in respect of charge sheet being signed by incompetent authority, non appointment of the presenting officer, it is suffice to state that at this stage this Tribunal is not inclined to decide the matter. We agree to the contention of the learned counsel for the applicant that if the illegality or irregularity which comes

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to the applicant at any later stage, he has the right to agitate the same, but when enquiry proceedings are at the final stage, it would be an interference with the authority of the disciplinary authority.

7. In JT 1994 (1) SC 658, Union of India vs. Upendra Singh, the Apex Court has held as under :-

" In its order dated September 10, 1992 this Court specifically drew attention to the observations in A.N.Saxena that the Tribunal ought not to interfere at an interlocutory stage and yet the Tribunal chose to interfere on the basis of the material which was yet to be produced at the inquiry. In short, the Tribunal undertook the inquiry which ought to be held by the disciplinary authority for the inquiry officer appointed by him and found that the charges are not true. It may be recalled that the jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court and under Article 226 of the Constitution. Therefore, the principles, norms and the constraints which apply to the said jurisdiction apply equally to the Tribunal. If the original application of the respondent were to be filed in the High Court it would have been termed, properly speaking, as a writ of prohibition. A writ of prohibition is issued only when patent lack of jurisdiction is made out. It is true that a High Court acting under Article 226 is not bound by the technical rules applying to the issuance of prerogative writs like certiorari, prohibition and mandamus in United Kingdom, yet the basic principles and norms applying to the said writs must be kept in view. If we do not keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law, the exercise of jurisdiction becomes rudderless and unguided; it tends to become arbitrary and capricious. There will be no uniformity of approach and there will be the danger of the jurisdiction becoming personalised. The parameters of jurisdiction would vary from Judge to Judge and from Court to Court (Some say, this has already happened.) Law does advance.

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Jurisprudence does undoubtedly develop with the passage of time, but not by forgetting the fundamentals. You have to build upon the existing foundations and not by abandoning them. It leads to confusion; it does not assist in conherence in thought or action.

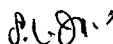
In the case of charges framed in a disciplinary inquiry, the Tribunal or Court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the Tribunal has no jurisdiction to go into the correctness or truth of the charges. The Tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to Court or Tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the Court/Tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court."

8. Without recording any finding on the submissions of both the parties, we dispose of the OA. ^{as} ~~that~~ at this stage the Tribunal is not expected to interfere in the matter. The disciplinary authority before whom the representation is pending must first decide the grievances of the applicant while arriving to a finding of guilt or otherwise of the applicant.

9. In the result, OA. deserves to be dismissed and is dismissed accordingly at the stage of admission with no order as to costs.


(SHANTA SHASTRY)

MEMBER (A)


(S.L. JAIN)

MEMBER (J)

mrj.