

Central Administrative Tribunal, Mumbai Bench

O.A. No. 840/1998

Mumbai this the 28th day of January, 2004

Hon'ble Mr. Kuldip Singh, Member (J)  
Hon'ble Mr. S.K. Naik, Member (A)

N.K. Gupta  
working as Chief Engineer  
Survey and Construction,  
Western Railway  
Churchgate,  
Mumbai-400 020

Residing at  
P-86 Badawar Park,  
Wode House Road,  
Colaba, Mumbai-400 005.

C/o G.S. Walia  
Advocate  
High Court,  
Industrial Traders Building,  
Oppostive Maha State Co-op Bank,  
Nagindas Master Road,  
Fort, Mumbai-400 023.

...Applicant

By Advocate: Shri G.S. Walia.

v  
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1. Union of India through  
Secretary,  
Railway Board,  
Rail Bhawan,  
New Delhi-110 001.

2. General Manager,  
Western Railway,  
Head Quarters Office,  
Churchgate,  
Mumbai-400 020.

..Respondents

By Advocate: Shri M.S. Ramamurthy.

ORDER (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (J)

The applicant who was working as Chief Engineer was proceeded departmentally and after the enquiry was completed, he had been visited with the disciplinary authority's order dated 3.8.1995 whereby the disciplinary authority imposed a penalty of reduction by 4 increments for a period of 6 months

without any effect on future increments. Appeal against the said order had also been rejected.

2. The applicant has taken various grounds to challenge this impugned order but one of the main ground of attack is that along with the applicant there were three other Charged Officials (CO) against whom separate enquiry should have been initiated but the enquiry proceedings were held as if the proceedings were common to all the COs. The allegations against the applicant and other officials were also common. Against the applicant it was alleged that while working as Dy. Chief Engineer on Bhuj-Maliya Project during 1986-87 he acted as a Tender Committee Member (Convenor) in tender cases No. BVJ, 105, 106, 107, 110 and 112 and while doing so he committed many irregularities which we need not mention.

3. The applicant further submitted that there were two other officials who are called as CO-2 and CO-4 who were also members of the Tender Committee along with applicant and CO-1 was Executive Engineer in respect of the cases and had prepared the briefing note for the guidance of the Tender Committee. Therefore, identical charges were framed against all of them.

4. Applicant further submitted that common proceedings were held in respect of the applicant without any order passed by the President, the appointing authority of the applicant.

5. The applicant also demonstrated that Presenting Officer for all the COs were common. While holding enquiry all the COs were made to sit in one common room and the common Presenting Officer sat in the same room.

6. All the prosecution witnesses, who had been examined, were held common for the COs. Similarly all the defence witnesses were also common for all the COs. The prosecution witnesses were

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examined at one and the same time for all the COs. Witnesses were not separately examined in respect of separate charge-sheets.

7. The applicant has also annexed as Exhibit-G, copy of the daily order-sheets to demonstrate as to how practically a common enquiry was held against all the COs without any order passed by the President of India for holding common enquiry.

8. The learned counsel for the applicant thus submitted that holding of common enquiry is vitiated and is against the law and rules. In support of his contention, the learned counsel for the applicant has also referred to a judgment entitled as Tripura Charan Chatterjee Vs. State of West Bengal and Others reported in 1979 (1) SLR878 wherein it has been held as under:-

" Constitution of India, Article 311 - Civil Services (Classification, Control and Appeal) Rules, 1930 - West Bengal Civil Services (Classification, Control and Appeal) Rules, 1971 - Common Trial/Joint Enquiry against their delinquent officers - Inquiry held analogously without the sanction of competent authority - Inquiry illegal - Order imposing punishment of compulsory retirement based on such enquiry also illegal."

9. Shri Ramamurthy appearing for the respondents submitted that enquiry was not a common one rather it was a simultaneous enquiry so it cannot be given the colour of common enquiry, as contended by the applicant.

10. We have gone through the record particularly the Exhibit-G which runs from page 79 onwards which is a copy of the order-sheets recorded by the Inquiry Officer. Perusal of the same would go to show that all the COs had been described as CO-1, CO-2 and CO-4 and they had signed the order-sheets in token of their attendance on a common sheet. The proceedings, as recorded, leave no room for doubt that it is a simultaneous enquiry and not a common enquiry so we find that it cannot be contended that the case of each COs was dealt independently and it cannot

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be held that the same is a case of simultaneous enquiry held against all the COs. In such circumstances we find that the learned counsel for the applicant is right in contending that a common enquiry or a joint enquiry was held without any sanction from the competent authority, i.e., the President of India, as such the applicant can be said to have been prejudiced for holding of the common enquiry without the legal sanction of the President of India, as required under the rules.

11. Thus the enquiry report in respect of all the charges in respect of the applicant is not maintainable in law and action taken on the basis of such enquiry report is also not justified.

12. Accordingly, we quash the enquiry proceedings and consequent orders <sup>based on</sup> thereupon. Accordingly, we allow the OA with all consequential benefits be paid to the applicant. This may be done within a period of 2 months from the date of receipt of a copy of this order. No costs.

Naik  
(S.K. Naik)  
Member (A)

Kuldeep  
(Kuldeep Singh)  
Member (J)

Rakesh