

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

OA no. 206/93 : Date of order 13-3-95

Dr. B.S. Johri : Applicant

v/s

Union of India & Others : Respondents

Mr. S.K. Jain : Counsel for the applicant

Mr. Manish Bhandari : Counsel for the respondents

CORAM

Hon'ble Mr. Gopal Krishna, Member (Judicial)

Hon'ble Mr. O.P. Sharma, Member (Administrative)

PER HON'BLE MR. O.P. SHARMA, MEMBER (ADMINISTRATIVE)

In this application u/s 19 of the Administrative Tribunals Act, 1995, Dr. B.S. Johri has prayed that the charge sheet (Annexure A-1) dated 13.11.90, alongwith the enquiry proceedings be quashed and the respondents be ordered to make payment of the gratuity and the commuted value of the pension and other retirement dues forthwith to the applicant alongwith interest at 24%.

2. The facts of the case as set out by the applicant are that while he was working as Senior Divisional Medical Officer, at Ajmer, a charge sheet (Annexure A-1) dated 13.11.90 was issued to him under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 (for short the Rules), on the ground that the applicant was carrying a passenger with him unauthorisedly, who was found without ticket and was charged by the concerned authorities. It was alleged that this was done by the applicant with intention to defraud the Railways and that the applicant had misused the pass issued to him for medical examination of his wife for treatment of Bronchial Asthma and that she did not take treatment for it, after travelling on the said pass and on reaching Bombay. The charge sheet was issued at the behest of Railway Board and the Chief Vigilance Officer as evident from

the correspondence at Annexure A-3 dated 24.10.90, by which the Chief Vigilance Officer forwarded the charge-sheet for service upon the applicant, "as desired by Railway Board." The charge sheet was issued by the General Manager without applying his mind to the facts of the case. By letters dated 24.10.90 and 19.12.90, the applicant asked for certain documents for the purpose of preparing his reply to the charge sheet. Ultimately, he was supplied with 13 documents, out of the 19 asked for.

30. The applicant filed his reply dated 25.3.91 (Annexure A-2) to the charge sheet. Thereafter, the applicant asked for certain additional documents vide his application dated 4.3.91 (Annexure A-5). However, no such document was supplied and it was stated that the Enquiry Officer would supply these documents during the enquiry, after the applicant proved the relevance of the documents asked for. The Disciplinary Authority (the General Manager) then informed the applicant by letter dated 1.7.91 (Annexure A-7) that a reference had been made to the Railway Board "for appointment of Enquiry Officer." The General Manager then appointed one Shri P.C. Guptas, Chief Electrical Distribution Engineer, Churchgate, Bombay as Enquiry Officer vide his order dated 17.7.91 (Annexure A-9), and he endorsed a copy of this letter, amongst others, to the Chief Vigilance Officer, the Central Vigilance Commission, and the Secretary of Railway Board. These endorsements show that the Disciplinary Authority had been acting under the instructions of the Chief Vigilance Officer and the Railway Board. Copy of order of appointment of the Presenting Officer, Annexure A-9 dated 17.7.91 was similarly endorsed to the other authorities, referred to above, showing that the General Manager had not been acting independently.

4. Further, according to the applicant, a preliminary hearing was fixed on 9.8.91, which was postponed at the request of the applicant to 19.8.91. The applicant asked for a decision on his reply to the charge sheet and it was furnished to him vide Annexure A-10 dated 30.8.91 in which a decision was conveyed that the charges against the applicant were to be enquired into by a Enquiry Officer because the applicant had made counter allegations also, attributing motives. According to the applicant, this reply showed that the General Manager was prejudiced against the applicant on account of certain paras of his reply, taking these to be counter allegations and attributing motives. The enquiry was fixed on 20.9.91 and on that date, the Enquiry Officer dealt with the applicant's application dated 4.3.91 for additional documents. However, the request for the documents mentioned therein was not dealt with and out of 18 only 13 documents have been furnished to him. (It is not clear if these 18 documents are different from the 19 referred to in para 2 above). During the enquiry, the Enquiry Officer allowed the exhibition of the statements of witnesses recorded earlier, at the back of the applicant by getting confirmation from the witnesses that these statements had been given by them and bore their signatures. This procedure was not permissible under the rules, under which the evidence to be relied upon during the enquiry had to be produced during the enquiry itself.

5. The applicant has further stated that he was appointed by the President/Railway Board, and therefore, the General Manager had no power to act as Disciplinary Authority and to hold a enquiry against the applicant. Under Rule 7 of the Rules, the President and the persons mentioned in Schedules I, II and

III are authorised to impose penalties specified under sub Rule (1) of Rule 6 and to act as Disciplinary Authorities. Since the applicant was appointed by the President, the President alone could impose on him all the penalties mentioned in Rule 6, and therefore the President alone could act as the Disciplinary Authority in his case. The charge sheet had been drafted by the Chief Vigilance Officer as is evident from the letter dated 24.10.90 (Annexure A-2). Therefore, the enquiry was vitiated as having been conducted ~~at~~ the command of the Chief Vigilance Officer.

6. Further, according to the applicant, charge no. 1 is wholly frivolous in as much as the applicant had gone to Bombay with a patient (the applicant's wife) under the guidance of their Doctor. Since the applicant's wife did not feel that she would be given proper attention at Bombay, she did not consult the Doctor to whom reference was made. As regards charge no. 2, there is no evidence that Mrs. Kavita Johri was travelling with the applicant. A receipt which was given to the applicant for excess fare showed the name of Mr. (should be Mrs.) Kavita and the payment is said to have been made by her alone. Further, the incident is said to be of 1989, while the charge sheet has been issued on 13.11.90 and there was further delay in connection with the proceedings relating to enquiry etc. The applicant retired from service on 31.12.91. While the written briefs were submitted on 20.2.92, the enquiry has not been finalised yet. The respondents have no power to stop the payment of gratuity to the applicant. Only the President has such power but no order has been issued to stop his payment.

7. The applicant has also assailed the proceedings conducted by the Enquiry Officer. According to him, the provisions of Sub-Rule (21) of Rule 9 were not followed in as much as the

applicant was not generally questioned on the circumstances appearing against him during the enquiry. The Enquiry Officer also committed grave illegality in not drawing adverse inference against the Presenting Officer in not producing Dharmapal Mushand of Kota, who was the co-passenger, as witness in this case. No reasons for his non-production has been given. The Enquiry Officer referred to the panchname for holding that there was signature of Shrimati Kavita Johri on the EFT, and therefore, being a Johri, she had been held to be travelling with the applicant. There is in fact no evidence to suggest that the applicant had any relation with the lady, who was charged as travelling without ticket. The Enquiry Officer has held the charge of misuse of pass issued in favour of the applicant's wife as proved by stating that he had carried Mrs. Premlata Johri, his close relation as companion of his wife, when he was himself travelling with his wife on a privilege pass. Charge no. 2 has been held as established on the ground that the signature on the EFT clearly shows that the person charged for without ticket was Mrs. Kavita Johri. From the evidence it does not come out that the applicant was carrying Mrs. Kavita Johri with him without any travelling authority and that this was with intent to defraud the Railway Administration. Hence no charge has been proved against the applicant.

2. The respondents in their reply have taken certain preliminary objections as to the maintainability of the application. They have stated that the applicant has sought to have the charge sheet dated 13.11.90 (Annexure A-1) set aside. However, the application was filed in April, 1993, after a lapse of two and a half years of the issue of charge sheet. Subsequently, according to them, the applicant was given a copy of the enquiry report vide letter dated 1.4.93 (Annexure A-18), and he submitted his final defence against the enquiry report by his letter

dated 8.5.92 (Annexure A-19). Since the applicant has already retired from service, the disciplinary case will now be decided by the President of India in consultation with the UPSC, and the case has already been referred to the Railway Board for this purpose. The application is pre-mature also for the reason that the disciplinary proceedings have not yet been concluded. The respondents have also taken the ground that this Tribunal had no jurisdiction to entertain applications in departmental proceedings cases, where the proceedings for the enquiry have been conducted in accordance with the rules. In support of these averments, the respondents have cited a number of rulings of various Benches of the Tribunal.

9. Coming to the averments of the applicant in the application, the respondents have stated that the General Manager, who is the competent authority to issue the charge sheet, had applied his mind to the facts of the case before issuing the charge sheet. All the documents which were listed in the charge sheet were supplied to the applicant. As per rules, the Railway servants could ask for additional documents only from the Enquiry Officer. If a reference was made to the Railway Board for appointment of Enquiry Officer, it does not follow that the Disciplinary Authority was acting under the instructions of the Chief Vigilance Officer. After the appointment of the Enquiry Officer, the enquiry was conducted as per rules. There is nothing on records to suggest that the General Manager was prejudiced against the applicant in any manner. Allegations have been made against the General Manager without impleading him by name. The additional documents were supplied by the Enquiry Officer as asked for, excepting those which were not considered relevant or which were not in existence. There was no irregularity in the procedure adopted by the Enquiry

Officer in taking on record statements of witnesses concerned which had been recorded before the enquiry after obtaining confirmation. Enquiries are conducted with a view to providing a full opportunity to the employee to defend his case, and in this case the applicant was given full opportunity to cross examine the witnesses whose previous statements were taken on record, after these were confirmed as having been given by them.

10. As to the jurisdiction of the General Manager, the respondents have stated that he was the authority to issue the charge sheet, and to take subsequent disciplinary proceedings against the applicant. Merely because the charge sheet has been drafted by some other official, it does not follow that the General Manager is not competent to issue the charge sheet. Regarding communications to the Railway Board etc., these are official formalities and the authorities concerned are informed because their help is taken as required in such matters.

11. Coming to the merits of the charges against the applicant, the respondents have stated that the medical pass was misused for journey between Jaipur and Bombay in as much as the wife of the applicant, to whom pass had been issued for treatment of Bronchial Asthma did not take any treatment, as was recommended, and the pass was misused in as much the applicant carried another close relative in the first class to cover travel on the medical pass, issued in favour of his wife. The enquiry report will show the misconduct committed by the applicant. It is an afterthought on the part of the applicant to claim that Mrs. Kavita Johri had no connection with the applicant. Dharmapal Mashand was not listed as a witness in the charge sheet and no such person was travelling in the coach concerned. There was no undue delay in issuing the charge sheet. The Enquiry Officer has also submitted his report, and a copy

thereof has been given to the applicant, and the matter is now pending before the President of India, who will take action/in consultation with the UPSC. Payment of gratuity etc. depends on the finalisation of the disciplinary case.

12. During the arguments, the learned counsel for the applicant, apart from reiterating the averment made in the application stated that the General Manager was not competent to initiate disciplinary proceedings against the applicant and in any case since only the Disciplinary Authority was competent to appoint the Enquiry Officer, Annexure A-7 showing that a reference has been made to the Railway Board for appointment of the Enquiry Officer, established that the Railway Board exercised control over the Disciplinary Authority in the matter of disciplinary proceedings and the appointment of the Enquiry Officer. Also the facts that the charge sheet was dated 30.11.90, the applicant's reply thereto was dated 25.3.91, the Enquiry Officer and the Presenting Officer had been appointed on 17.7.91 and the last statement during the enquiry was recorded on 21.12.91 showed that there have/considerable delay in finalising the enquiry proceedings and the subsequent disciplinary proceedings. He also cited the following rulings in support of the averments made in the application and the arguments during the course of hearing. (i) Kashi Nath Banerjee Vs. Union of India and others, 1991(1)SLR CAT 371, in which it has been held by the Tribunal that after superannuation the master and servant relationship between the Government and the Government servants ceased, and therefore the Disciplinary Authority has no right to impose any penalty on the Government servant after his retirement. (ii) Santosh Kumar Mitra Vs. Union of India and others, (1987) 2 ATC 701, wherein the Tribunal held that continuance

of disciplinary proceedings after retirement in terms of the Railway Establishment Code, Volume II, Rule 230S is not permissible where despite sufficient time being available, final orders were not passed before retirement.

(iii) K. Kannan Vs. Union of India & Others, (1991)1S ATC 560, wherein it was held by the Tribunal that failure on the part of the Enquiry Officer to examine the charged employee generally on the circumstances appearing against him renders the disciplinary proceedings invalid in view of Rule 9(21) of the Rules. (iv) Sripal Jain Vs. Union of India & Others decided by the Jaipur Bench of the Tribunal on 28.8.92 in CA no. 246/92, in which the Tribunal held that the intention of the relevant rule is not to authorise withholding of DCRG indefinitely on the ground that departmental proceedings have not been concluded and that the rule can be read as authorising withholding of DCRG only for a reasonable period required for concluding these proceedings. (v) Girija Kumar Phukan Vs. State of Assam and others, 1986(1) SLJ 178, in which the Gauhati High Court had held that under the Assam (Services) Pension Rules, 1969, the disciplinary proceedings against a retired Government servant can be continued if decision as such is taken by the Governor and show cause notice is issued to the charged official informing him that the proceedings initiated against him prior to his retirement shall be continued under the Pension Rules. Therefore in the instant case continuance of proceedings after retirement of the applicant was not valid. (vi) A. Sanjeeva Rao Vs. Union of India and another, 1991(4)SLR 272, wherein the Tribunal held that withholding of DCRG during the pendency of disciplinary proceedings was improper in as much as the authorities had far exceeded the time frame provided for such disciplinary proceedings.

In this case since the disciplinary proceedings had been inordinately delayed, the applicant retired long back on 31.12.91

and there was no specific order to continue the proceedings beyond retirement, the disciplinary action against the applicant deserves to be quashed.

13. The learned counsel for the respondents reiterated the averment made in the replies to the OA and added that the cases cited by the applicant's counsel had no relevance to the facts of the present case. He drew our attention to the relevant rules and maintained that the General Manager was competent to initiate disciplinary proceedings against the applicant and the proceedings once initiated during the service period can be continued beyond retirement without any fresh, formal order. According to him, there was no inordinate delay in conducting enquiry or disciplinary proceedings and that soon after the applicant had submitted his representation dated 8.5.92 (Annexure A-19) against the report of the Enquiry Officer, the applicant filed the present OA before the Tribunal on 6.4.93. In the intervening period, between the submission of the representation of the applicant against the Enquiry Officer's report and the filing of the OA, the matter was referred to the Railway Board who were required to consult the UPSC, whose advice was required to be taken before passing any order imposing any cut in the pensionary benefits of the applicant. Once the applicant filed the present OA, the respondents were estopped from proceeding further with the disciplinary case in any manner. He disputed the applicant's contention that no examination under Rule 9(21) had been conducted and added the entire enquiry proceedings had been conducted strictly in accordance with the relevant rules. Also he referred to a Railway Board's circular, according to which the Enquiry Officer was permitted to adopt the procedure of taking on record statements previously recorded after these were confirmed by the witnesses, who were makers of these statements and then giving opportunities of cross-examination of such witnesses to the applicant or his defence assistant.

14. We have heard the learned counsel for the parties and have gone through the records and the judgements cited before us.

15. The prayer of the applicant in the relief clause is for quashing of the charge sheet and the enquiry proceedings and payment of gratuity and other retirement benefits to the applicant partly on the ground of delay in finalising the proceedings. Therefore, the maintainability of the application cannot be challenged on the ground that it was filed more than two years after the issue of the charge sheet. Hence this preliminary objection to the maintainability of the OA is rejected. Since the applicant has challenged the proceedings and the procedure adopted by the Enquiry Officer and has alleged denial of justice as a result of the faulty procedure, the OA cannot be rejected on the grounds canvassed by the respondents. Hence the other preliminary objections of the respondents are also rejected.

16. Coming to the averments in the application, there is no specific prayer for quashing of the Enquiry Officer's report or the findings of the Enquiry Officer. Since as yet no final order has been passed in the disciplinary proceedings, there is no prayer for quashing of the final order either. This is, therefore, more or less an ^{intermediate} stage in the proceedings and the applicant has approached us for quashing decisions, orders etc. which are mainly steps towards the final order to be passed on conclusion of the disciplinary proceedings. The question is, therefore, whether at this stage we should give our findings on the merits of the charges and whether in the light of the evidence produced on behalf of the Disciplinary Authority or the rebuttals made on behalf of the applicant the charges can be held as proved or not. Aside from the question whether this Tribunal is competent to merely reappraise evidence once the proceedings have been conducted according to rules, in our view, at this stage, it would not be proper for us to give any

findings on the merits of the charges, when the final order has itself not been passed. Once the final order is passed by the appropriate authority on completion of the disciplinary proceedings and if the applicant is aggrieved by the said order, he will naturally have a right to take recourse to action as permitted under the law, including the filing of an OA before the Tribunal. The respondents has not yet taken a final decision on the submissions made by the applicant by way of a representation against the report of the Enquiry Officer. We do not know what will be the view of the respondents on submissions made by the applicant. Therefore, only when the final order is passed, would it be known how the submissions of the applicant have been dealt with and whether the action of the respondents suffers from any such infirmity as renders such action illegal, and therefore liable to be quashed. We therefore refrain from expressing our views on the merits of the case as such.

17. However, still we shall deal with the averments of the applicant relating to certain technical and procedural issues, such as regarding the competence of the General Manager to initiate disciplinary proceedings against the applicant and continue these even after his retirement, whether the General Manager was under any undue influence of the Chief Vigilance Officer, the Central Vigilance Commission or by the Railway Board, whether there was any bias or prejudice on the part of the General Manager in conducting disciplinary proceedings, whether there had been inordinate delay in finalizing the disciplinary proceedings on the part of the respondents, and whether on account of such delay the retirement benefits should be released to the applicant even before the conclusion of the disciplinary proceedings. With regard to the procedure adopted by the Enquiry Officer, we shall give our decision

on the questions whether additional documents had to be supplied to the applicant before the commencement of the enquiry and whether the Enquiry Officer was justified in taking on record the statements of witnesses which had been previously recorded, and which had been confirmed by the witnesses concerned during the enquiry as having been given by them, and which had not been recorded in his presence.

18. Under Rule 2(1)(c)(ii), a Disciplinary Authority means, in relation to Rule 9 and Clauses (a) and (b) of Sub Rule (1) of Rule 11 in the case of a Gazetted Railway Servant, the authority competent to impose any of the penalties specified in Rule 6. ~~etc.~~ An authority which is competent to impose any penalty specified in Rule 6 including a minor penalty on a Railway Servant is also competent to initiate even major penalty proceedings against him under Rule 9 of the Rules. Rule 7(2) states that any of the penalties specified in Rule 6 may be imposed on a Railway Servant by the authority specified in Schedules I, II and III. Schedule III of the Rules provides that the General Manager can impose on officers up to and including Junior Administrative Grade and Selection Grade Officers minor penalties specified in Rule 6. Thus the General Manager is a Disciplinary Authority for a Gazetted Officer upto the level of a Junior Administrative Grade and Selection Grade Officer and is, therefore, competent to initiate disciplinary proceedings against him even for major penalty, under Rule 9, even though he is not competent to impose any of the major penalties against him. Rule 9(2) further makes it clear that a Disciplinary Authority, competent under these rules to impose any of the minor penalties specified in Rule 6 may, subject to the provisions of the Clause (c) of Sub-Rule(1) of Rule 2, institute disciplinary proceedings against any

Railway Servant for imposition of any of the major penalties specified in Rule 6, notwithstanding that such disciplinary authority is not competent to under these rules to impose any of the major penalties. There can, therefore, be no doubt at all that under the relevant rules, the General Manager can initiate disciplinary proceedings against an officer upto the level of the Junior Administrative Grade and the Selection Grade, notwithstanding that he is not competent to impose any of the major penalties on him. The learned counsel for the applicant was unable to state what was the precise rank of the applicant. Unless the learned counsel for the applicant showed that the applicant was an officer higher in rank than a Selection Grade Officer, he is not justified in challenging the initiation of major penalty proceedings against him under Rule 9 on the ground that the General Manager was not competent to initiate disciplinary proceedings by issue of ^a/charge sheet to him. Even during the arguments, the learned counsel for the applicant was unable to show to us whether the applicant was higher rank than a Selection Grade Officer. Therefore, the mere challenge to the initiation of disciplinary proceedings by issue of a charge sheet under Rule 9 by the General Manager to the applicant on the ground that President/Railway Board was the appointing authority of the applicant is not tenable. We, therefore, reject the applicant's contention that the issue of charge sheet and initiation of disciplinary proceedings against him by the General Manager and subsequent taking of such proceedings against him by the General Manager was without jurisdiction.

19. Once disciplinary proceedings were initiated by the General Manager who was the competent Disciplinary Authority, these could be continued by him till the last stage except that he could not pass any final order if he is of the view that a major penalty is impossible on the ~~Government~~ Railway Servant concerned because a major penalty on a Group 'A'

himself. The applicant has not given any tenable grounds for alleging mala fides against the General Manager nor has he impleaded him by name. He has also not shown what interest the General Manager or other authorities could have in unjustifiably framing the applicant on false or baseless charges. If the name of an officer for appointment as Enquiry Officer was communicated to the General Manager by the Railway Board, there was nothing wrong in that. The Chief Vigilance Officer and the Central Vigilance Commission are advisory bodies, and we do not see anything improper if they were consulted before initiating disciplinary proceedings against the applicant. Therefore the allegation of undue influence on the General Manager by the outside authorities is rejected.

21. We also do not find that there has been any inordinate delay in conducting the disciplinary proceedings. The sequence of events narrated by the applicant himself shows that the ~~OA~~ charge sheet was issued on 30.11.90, he submitted his written statement of defence on 25.3.91, the Enquiry Officer and the Presenting Officer were appointed on 17.7.91, statements of witnesses were recorded ~~on~~ from September, 1991 onwards and the statements were concluded in December, 1991. After submission of briefs by the parties, the Enquiry Officer submitted his report in January, 1992. The applicant has submitted his representation against the report and findings of the Enquiry Officer on 8.5.92. Thereafter, ofcourse there was a gap till the filing of this OA on 6.4.93, after which no proceedings could be taken by the respondents in view of the provisions of Section 19(4) of the Administrative Tribunals Act, 1985. The learned counsel for the respondents stated before us that in this intervening period, a reference has been

made to the Railway Board, who was also required to consult the UPSC, and it took some time to obtain the UPSC's advice. Taking a total view of the circumstances of the case, we are of the view that there was no inordinate delay in finalising the enquiry proceedings or conducting disciplinary proceedings in this case till the filing of the OA. Any delay thereafter is due to the pendency of the OA filed by the applicant.

22. Once the disciplinary proceedings were validly continued after the retirement of the applicant, he could be paid only provisional pension (which is full or maximum pension, in effect) but no death cum retirement gratuity until the conclusion of such proceedings, in view of the specific provisions of Rule 316(1) of the Manual of Railway Pension Rules, which prohibit such payment until the conclusion of such proceedings and passing of the final orders. We have seen a judgement of the Bombay Bench of the Tribunal in P.R. Das vs. Union of India & Others, (1994) 28 ATC 798, wherein the provisions of Rule 316(1) as aforesaid was treated as directory and part of the DCRG was ordered to be released under certain conditions, pending conclusion of disciplinary proceedings, on the ground that there had been inordinate delay in concluding the pending judicial proceedings against the applicant in that case. As regards the present case, we have already given a finding that there has been no inordinate delay on the part of the respondents in concluding disciplinary proceedings in this case. Hence this judgement will in any case have no applicability to the present case. Hence DCRG has been justifiably withheld in this case for the present.

22. Regarding the additional documents, Rule 9(7) and the note below the said Rule make it clear that for the purpose of reply to charge sheet (i.e. written statement of defence) only the documents listed in the charge sheet will be supplied

Officer can be imposed only by the President under Schedule III. If the General is of the view that a major penalty is imposable, he has to refer the matter to the authority competent to impose a major penalty, which in the case of the applicant, would be the President of India, as specified in Schedule III, the applicant being a Group 'A' Officer. Once the applicant retired from service, the proceedings are automatically converted into those under the Pension Rules without there being a formal order to that effect, and a cut in the pensionary benefits, ~~as~~ regardless of the Group to which he belonged during the service, can be imposed only by the President. However, the Disciplinary Authority who initiated proceedings, can continue the proceedings till the last stage except that the final order has to be passed by the President after a reference made to him, if the Disciplinary Authority is of the view that a cut in pension or pensionary benefits is imposable on him. These conclusions can be drawn on the basis of the provisions in Rules 315 and 316 of the Manual of Railway Pension Rules. Thus there is no irregularity in continuance of the proceedings even beyond retirement by the General Manager.

19. Endorsement of various communications to the Chief Vigilance Officer or references to the Central Vigilance Commission or the Railway Board do not by themselves establish that the General Manager was influenced by these authorities in initiating proceedings against the applicant, when ^{he} was himself not keen to initiate disciplinary proceedings against the applicant. There is no irregularity in taking the assistance of authorities such as Chief Vigilance Officer, Railway Board or the Central Vigilance Commission for the purpose of proper conduct of disciplinary proceedings as long as all substantive decision are taken by the Disciplinary Authority.

to the Railway Servant, Rule 9(12) shows that for obtaining any documents not listed in the charge sheet for the purpose of replying on these for his defence, the Railway Servant has to approach the Enquiry Officer, indicating the relevance of such documents. Thus there was no infirmity in the procedure adopted in regard to supply of additional documents to the applicant.

24. With regard to the procedure adopted by the Enquiry Officer in taking on record statements not recorded during the enquiry, once again we find nothing wrong with the procedure. Once the statements recorded earlier ^{were} confirmed by the witnesses, who were makers of the statements on these being shown to them or read out to them, these were as good as those recorded during the enquiry. Once a full opportunity was given to the applicant to cross-examine the witnesses during the enquiry, the procedure adopted by the Enquiry Officer did not result in any injustice to the applicant and therefore, it cannot be assailed as being violative of any rule or principles of natural justice.

25. The judgements cited by the learned counsel for the applicant have no applicability to the present case. Kashi Nath Banerjee's case is not applicable here because once the applicant has retired from service, in any case it would not be possible to impose a penalty on the applicant and if at all, a cut in the pensionary benefits of the applicant can only be imposed. Santosh Kumar Mitra's case is also not applicable in this case because we have already held above that there has been no inordinate delay in conducting the enquiry or the disciplinary proceedings in this case. As regards the K.Kannan's case, we refrain from expressing any view about the alleged failure on the part of the Enquiry Officer to examine the applicant generally on the circumsta

appearing against him, firstly because the averment in this regard was disputed by the learned counsel for the respondents and secondly, this aspect will have to be examined to see whether it had a bearing on the merits of the final order in this case. Regarding Sripal Jain's case, this will also have no applicability because there has been no inordinate delay in conducting the proceedings in this case. As regards the Girija Kumar Phukan's case decided by the Gauhati High Court, this was rendered under the Assam (Services) Pension Rules, 1969, and obviously it cannot have any applicability to the applicant's case which is governed by the Railway's Pension Rules. In so far as A. Sanjeeva Rao's case is concerned, once there has been no inordinate delay in conducting/finalising the proceedings in this case, we cannot hold that it was improper on the part of the respondents to withhold the retirement benefits of the applicant, pending conclusions of the disciplinary proceedings.

26. In the circumstances of the present case, we direct the respondents to finalise the proceedings and pass a final order as expeditiously as possible so that any undue hardship to the applicant, who has already retired, is avoided. Once a final order is passed, and if any cut in any of the pensionary benefits of the applicant is imposed, it would be open to the applicant to file a fresh OA challenging the said order on merits in which he can also raise any issues which according to him have resulted in substantive denial of justice to him, except for those issues on which we have already given our findings as above.

27. The OA is disposed of accordingly. No order as to costs.

(O.P. SHARMA)
MEMBER(A)

Gopak
(GOPAL KRISHNA)
MEMBER(J)