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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.544/96

Date of order: 22.10.96

V.K.Sharma

: Applicant

Vs.

Union of India & Ors.

: Respondents

Mr.S.K.Jain

: Counsel for applicant

Mr.U.D.Sharma

: Counsel for respondents

CORAM:

Hon'ble Mr.Gopal Krishna, Vice Chairman

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

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

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri V.K.Sharma has prayed that the charge sheet dated 26.3.96 (Annx.A1) and the reply of the respondents dated 16.7.96 (Annx.A2) may be quashed and the respondents may be directed not to proceed with the enquiry on the basis of the above charge sheet.

2. The facts of the case as stated by the applicant are that while he was working on the post of CHFI at Gandhi Dham, Ajmer Division in the pay scale of Rs.1600-2660, he was promoted to scale Rs.2000-3200 on ad hoc basis vide order dated 3.8.95 (Annx.A3). The applicant is an active trade unionist and has been fighting for the cause of the employees. The applicant is the Divisional Chairman of the Western Railway Masdoor Sangh Ajmer Division and there is rivalry between the two Unions, the other one being the Western Railway Employees Union. When the applicant was working on the post of CHFI, a false case was registered against him with the collusion of two Vigilance Inspectors (who are listed as witnesses in Annx.IV to the charge sheet). Under the pressure of the rival union, a charge sheet dated 26.3.96 (Annx.A1) was issued to the applicant in which 3 charges were framed, one being that the applicant had not cooperated in the matter of vigilance check, the second

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being that he picked up a handful of currency notes and ran away from the reservation office and the last being that he disposed of the excess amount of Railway cash after he ran away from the reservation office. In Annx.III to the charge sheet, there is no list of documents by which the charges are proposed to be proved. In Annx.IV to the charge sheet, there are names of two Vigilance Inspectors who are supposed to be the witnesses against the applicant. If there had been a vigilance check, a number of employees would have witnessed it but none of the other employees have listed as witnesses. There is no rule requiring <sup>that</sup> a Railway employee should cooperate in a vigilance check. The charge also does not specify why the applicant did not cooperate in the vigilance check. The second charges is also vague as no time has been mentioned at which the incident occurred and there is no document in support of the vigilance check. In any case, no misconduct could be alleged against the applicant as there was no allegation against him that he was in possession of any illegal gratification. The third charges were also vague because neither the time or date or place of the event have been mentioned. Rule 9(2) of the Railway Servants (Discipline & Appeal) Rules, provides that an enquiry can be conducted when there are grounds for enquiring into the truth of any imputation. No grounds have been disclosed by the disciplinary authority for instituting disciplinary proceedings against the applicant. There was no preliminary enquiry before the charge sheet was issued to the applicant. It is not the case of the authorities that respondent No.2 who has been impleaded by name was present on the spot when the vigilance check was conducted. Therefore, the charge sheet is not based on personal knowledge of respondent No.2, the disciplinary authority. It is, therefore, not clear how he framed the charges against the applicant. The issue of

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the charge sheet to the applicant is as a result of trade union rivalry to which the reference has been made above. The issue of the charge sheet is also based on bias on the part of respondent No.2 because the applicant has to take direct action such as Dharna, Demonstration, etc, for redressal of the grievances of the members of the Union to which he belongs. The malafides of respondent No.2 can also be seen from the fact that although the applicant was promoted to scale Rs.2000-3200 from that of Rs.1600-2660, he was not relieved to join the promotional post but promotion order itself was cancelled vide subsequent order dated 9.4.96 (Annx.A4). The applicant submitted his representation dated 20.5.96 (Annx.A5) against the charge sheet but the reply given to the applicant vide the communication dated 16.7.96 (Annx.A2) was that all the points therein would be considered during the course of enquiry and that no interference could be made in the matter at this stage.

3. During the arguments, the learned counsel for the applicant stated that the entire charge sheet is based on malafides. The charge sheet is vague and there is no supporting evidence for the charge sheet. Therefore, the charge sheet deserves to be quashed and the enquiry should not be proceeded with. He strongly prayed for grant of interim relief to the effect that the enquiry which is to be commences on 23.10.96 should be stayed by issuing an interim order.

4. No reply has been filed by the respondents. The learned counsel for the respondents appeared and argued the matter. He added that the time given to the respondents for filing the reply was too short. Notices were issued on 15.10.96 and the next date fixed for reply/appearance was on 22.10.96. He however added that it was for the Inquiry Officer to determine the truth or otherwise of the charges on the basis of the evidence listed in the charge sheet and at this stage the Tribunal would not be justified in interfering with the enquiry

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or the disciplinary proceedings.

5. We have heard the learned counsel for the parties and have gone through the O.A and the annexures thereto.

6. A perusal of Annxs.I & II of the charge sheet shows that the charges are fairly specific and the date and time of the events leading to the alleged misconduct have been mentioned therein. No doubt no documents have been listed on the basis of which the charges are proposed to be proved. However, names of two witnesses have been mentioned. These are Vigilance Inspectors who are reported to have carried out the check on the basis of which the alleged misconduct on the part of the applicant was supposed to have been revealed. On the face of it, the charge sheet does not appear to be vague and it cannot be said that no evidence at all has been indicated by the disciplinary authority by which the charges are proposed to be sustained. It is not for the Tribunal to decide how much evidence should be 'listed' in the charge sheet before the charge sheet can be considered to be based on evidence. We do not whether any preliminary enquiry was conducted or not before issuing the charge sheet but there is no rule that a preliminary enquiry must necessarily be conducted before a charge sheet is issued. No doubt the applicant has made allegations of bias against respondent No.2 who has issued the charge sheet but the charge sheet itself states certain facts and events the truth of which is to be enquired into by the Inquiry Officer. At this stage when the charges have not enquired into it is not possible for us to come to a conclusion that the charge sheet has been issued to the applicant due to any bias on the part of respondent No.2, the disciplinary authority. The applicant drew attention to the cancellation of his order of promotion to scale Rs.2000-3200 (Annx.A3) by order dated 9.4.96 (Annx.A4) which according to him is a an indication of bias against him. However, Annx.A2 dated 16.7.96

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filed by the applicant himself shows that the respondents had replied to the applicant stating that when the applicant was promoted to scale Rs.2000-3200 he neither carried out the order nor submitted a written refusal. The applicant's case is that he was not in fact relieved for joining the promotional post. However, there is no document on record to show that on receipt of the communication dated 16.7.96 (Annx.A2) the applicant refuted the allegation made against him that he had failed to carry out the order regarding his promotion. During the arguments the learned counsel for the applicant showed us a communication dated 16.12.95, wherein the applicant had prayed that he may be relieved to enable him to join the promotional post. But Annx.A2 was issued much later i.e. after about 7 months after the date of the communication dated 16.12.95. In the circumstances, on the basis whatever has been stated by the applicant, we cannot come to a conclusion that the action against the applicant regarding issue of charge sheet was motivated by bias, much less due to trade union rivalry.

7. Ordinarily if allegation of malafides are made against an official impleaded as a respondent by name these require to be refuted by way of a counter affidavit by the respondent concerned, before the Tribunal can reject these as untenable. However in this case the allegations of bias of malafides are all totally vague. The allegation regarding withdrawal of order of promotion due to bias on the part of respondent No.2 stands controverted by what is stated in Annx.A2 dated 16.7.96 that it was the applicant himself who did not join the promotional post. Also the promotion order was issued by respondent No.3 and was also withdrawn by him but allegation of malafides has been made against respondent No. <sup>2</sup>~~1~~ who neither passed order of promotion nor cancelled it. For all these reasons and in view of the circumstances of the case we are of the view that in the


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facts of the present case, the allegations of mala fides against respondent No.2 regarding issue of charge sheet are not tenable, even though no counter affidavit has been filed by respondent No.3.

8. A vigilance check is part of the activities of the department but whether the applicant was required to cooperate in this regard is a matter to be enquired into during the formal enquiry. We do not understand how it is relevant at this stage whether the disciplinary authority had personal knowledge of the event leading to the alleged misconduct on the part of the applicant.

9. A charge sheet has been issued to the applicant in which the charges framed, as already stated above, are fairly specific and some evidence has also been indicated on the basis of which the charges are proposed to be sustained. At this stage, therefore, we are not inclined to interfere with the charge sheet. In Annx.A2 dated 16.7.96, the respondents have already informed the applicant that he will be given due opportunity to present his case during the course of the disciplinary enquiry. That is also a legal requirement. In the circumstances, we decline to interfere with the charge sheet at the thresh-hold or with the enquiry proceedings which would be conducted in pursuance of the charge sheet issued to the applicant.

10. The O.A is dismissed at the stage of admission.

  
(O.P.Sharma)

Administrative Member

  
(Gopal Krishna)

Vice Chairman