

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

Jaipur, this the 1<sup>st</sup> day of April, 2010

OA No.171/2010

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)  
HON'BLE MR. B.L.KHATRI, MEMBER (ADMV.)

S.K.Nagarwal, aged 39 years,  
s/o Shri R.D.Nagarwal  
r/o 51, Sitaram Colony,  
Ramnagar, Sodala,  
Jaipur, presently working as  
Dy. CE/Construction/Design/Jaipur,  
HQ Office, North Western Railway.

.. Applicant

(Applicant present in person)

Versus

1. The General Manager, North Western Railway, HQ  
Office, Hasanpura Road, Jaipur.

.. Respondent

(By Advocate: .....)

ORDER (ORAL)

The grievance of the applicant in this case is  
regarding order dated 10.8.2009 whereby the respondents

have appointed the Enquiry Officer and another order dated 19.2.2010 (Ann.A/2) whereby the written statement of defence submitted by the applicant pursuant to the memorandum SF-5 dated 6.4.2009 was considered by the Disciplinary Authority and he was directed to appear before the Enquiry Officer. The applicant has filed this OA thereby praying for the following reliefs:-

"In view of the facts and grounds narrated hereinabove it is humbly prayed that this Hon'ble Tribunal may very graciously be pleased to allow this Original application, call for entire record relating to the case and grant the following relief-

- (1) Pass order to call for all records of the disciplinary proceedings under memorandum No.E-174/V/DAR/Engg./09/3 dated 06.04.2009,
- (2) Set aside the impugned order dated 10.08.2009.
- (3) Set aside the impugned order dated 19.02.2010.
- (4) Direct the Respondent No.1 to pass reasoned and speaking order on the written statement of defence within a specified period as may be fixed by this Hon'ble Court.
- (5) Any other relief as deemed fit by this Hon'ble Court under the facts and circumstances of the case.
- (6) Award costs in favour of the Applicant."

2. Briefly stated, facts of the case are that vide memorandum dated 6.4.2009 (Ann.A/3) chargesheet was

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issued against the applicant. The charges against the applicant was that he got allotted and retained the railway accommodation for the period w.e.f. 8.6.2006 to 24.9.2008 while his wife was already in occupation of the Government accommodation at the same station allotted during the said period. Thus, according to the respondents, the applicant by suppressing the fact that he was in occupation of two Government accommodations at the same station i.e. at Ajmer has also received undue payment of HRA at the rate of Rs. 2700/- per month for the month of April and May, 2006 and thus has violated the provisions of Central Government Service Rule 317 B-4 and para 1706 (a)(i)(e) of the Indian Railway Establishment Code. The said charges were required to be proved on the basis of 14 documents which have been mentioned in Ann.III accompanied with the chargememo. The applicant was directed to submit his written defence within a period of 10 days. Facts remain that the applicant did not submit any written defence within the stipulated period. However, vide letter dated 27.4.2009 (Ann.A/4) the applicant requested the General Manager for supply of the documents and inclusion of prosecution witnesses.

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Perusal of this document reveals that the applicant has made passing reference regarding supply of documents as mentioned in Ann.III, but from the tenor of this document, it is evident that the applicant was questioning the authority of the General Manager to explain how the applicant has violated the aforesaid provisions and also to make available additional documents which may or may not form basis for issuing the chargesheet against the applicant. Since the applicant did not submit his written defence within the time prescribed, the Enquiry Officer was appointed vide letter dated 10.8.2009 (Ann.A/1) after a lapse of about six months. It is further stated that pursuant to his request certain additional documents were supplied vide letter dated 29.12.2009 (Ann.A/6). However, vide another letter dated 7.1.2010 (Ann.A/7) the applicant requested for one week's more time for submission of written statement of defence by condoning the delay. The applicant, however, submitted his written defence and the same was considered and rejected vide impugned order Ann.A/2 dated 19.2.2010 and the applicant was directed to participate in the enquiry proceedings. It may be stated that before rejecting the request of the applicant vide

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order dated 19.2.2010, the applicant was also given personal hearing. As can be seen from the contention raised in the OA, the case of the applicant is that since he was not supplied the documents which he has asked for, as such, he could not prepare his defence statement and it was not permissible for the Disciplinary Authority to appoint the Enquiry Officer. It is further submitted that when subsequently additional documents were supplied and applicant submitted defence statement, the same was rejected by passing non-speaking order whereas the Disciplinary Authority was required to pass speaking and reasoned order. For that purpose, the applicant has also placed reliance on the office order No.51/9/03 dated 15<sup>th</sup> September, 2003 (Ann.A/8), which are the instructions issued by the Govt. of India, Central Vigilance Commission to all the Ministries and Departments providing that the Disciplinary Authority should pass speaking and reasoned order as the disciplinary proceedings are quasi-judicial in nature and contended that before appointing the Enquiry Officer, it was incumbent upon the Disciplinary Authority to pass reasoned and speaking order.

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3. We have given due consideration to the submissions made by the applicant present in person and have also perused the rules. It is not the case of the applicant that the documents relied upon by the respondents i.e. Ann.III which form part of the chargesheet has not been made available to him. Rather perusal of the list of the relied documents as mentioned in Ann.III, it is evident that except one or two documents all the documents relied upon are those documents which were already in possession of the applicant. Thus, in view of what has been stated above, it cannot be stated that the applicant has been prejudiced and he could not submit his defence statement for want of documents relied upon by the respondents, keeping in view the gravamen of the charge leveled against the applicant that he was in occupation of two Government quarters and also that he has received House Rent Allowance for the aforesaid period in violation of the rules and instructions, thus, it cannot be said that the prejudice has been caused to the applicant and he could not submit his defence statement for want of documents which were relied upon by the department, keeping in view the nature of the charges against the

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applicant. Thus, we see no infirmity where the respondents have appointed Enquiry Officer vide impugned order dated 10.8.2009.

4. That apart, after appointment of the Enquiry Officer request of the applicant was acceded to and he was given additional documents vide order dated 29.12.2009 (Ann.A/6) and he was also asked to submit written statement of defence. The applicant was also given personal hearing. It is after considering defence statement of the applicant that the respondents have passed order dated 19.2.2010 whereby the applicant was asked to participate in the enquiry proceedings. Thus, in view of what has been stated above, we are of the firm view that no infirmity can be found in the order of the respondents whereby the respondents have considered it appropriate to proceed with the enquiry and the applicant was asked to participate in the enquiry proceedings. The reliance placed by the applicant to the office order No. 51/9/03 dated 15<sup>th</sup> September, 2003 (Ann.A/8) stating that the respondents were bound to pass speaking and reasoned order as to whether the Enquiry Officer who has already been appointed should proceed with the matter while

rejecting request of the applicant, suffice it to say that the reliance placed by the applicant on the office order dated 15th September, 2003 is not applicable in the facts and circumstances of this case. The order Ann.A/8 is attracted when the Disciplinary Authority is required to pass final order on the basis of the report submitted by the Enquiry Officer and after taking into consideration the advise of the Central Vigilance Commission and the UPSC. That stage has not come as yet. Thus, according to us, it was not mandatory for the respondents to pass reasoned and speaking order.

5. The effect of non-supply of documents before appointing the Enquiry Officer was also considered by this Tribunal in OA No. 173/2005, Rajesh Kumar Gangwal vs. Union of India decided on 9<sup>th</sup> March, 2010 whereby the effect of appointing the Enquiry Officer without considering the defence statement of the delinquent employee was considered. At this stage, we wish to reproduce para 9, 10 and 11 of the judgment, which thus reads:-

9. The question which requires our consideration is whether it was imperative to submit the listed documents to the applicant even before appointment of the Enquiry Officer. The learned counsel for the applicant could not point out any

provision of the statutory rules which stipulate that the listed documents has to be supplied at initial stage even before appointment of the Enquiry Officer. If one has regard to the provisions of the CCS (CCA) Rules, the applicant is only entitled to inspection of the documents during the enquiry proceedings. Thus, the applicant as a matter of right insisted that he will file reply only when the listed documents are made available to him. The applicant was also informed vide memorandum dated 17.8.2004 that under provisions of sub-rule (2) and 5(b) of Rule 14 of CCS (CCA) Rules, 1965, it is the satisfaction of the Disciplinary Authority based upon the fact that there are grounds for enquiring into the imputation of misconduct against the government servant, Enquiry Officer can be appointed to enquire into the truth thereof. He was further informed that he shall be allowed inspection of the documents at the appropriate time in the presence of the Enquiry Officer. Thus, according to us, it cannot be said that prejudice has been caused to the applicant by appointing Enquiry Officer without reply of the applicant. Facts remain that liberty was granted to the applicant to file defence statement. The applicant was insisting upon supply of the documents before filing the defence statement. It is after a lapse of 3 months that Enquiry Officer was appointed by the Disciplinary Authority. The applicant has failed to show as to how prejudice has been caused to him by appointing Enquiry Officer. At this stage, we wish to refer to the decision of the Andhra Pradesh High Court in the case of A. Rama Murthy vs. The A.P. Industrial Infrastructure Corporation, 2003 (3) SLR 93. That was a case where Enquiry Officer was appointed even prior to issuance of the chargesheet to the petitioner therein. The contention was raised before the Hon'ble High Court that it was not permissible in law to appoint the Enquiry Officer at the inception and the Enquiry Officer is not competent to issue charge memo. Hon'ble the High Court held that the disciplinary proceedings are said to have been commenced against the delinquent with the issuance of the chargesheet. The object of appointing the Enquiry Officer is to undertake an enquiry into the charges levelled against the concerned employee based upon evidence. Appointing an Enquiry Officer only conveys the resolve of the appointing authority to proceed with the disciplinary proceedings irrespective of the nature of explanation that may be offered by the employee. It was observed that such a practice is not in consonance with the principles of good administration. However, appointing an Enquiry Officer even before show cause notice is issued by itself does not vitiate the proceedings. The reason is that no prejudice has caused to the employee. At this stage, it will be useful to quote para 11 and 12 of the judgment, which thus reads:-

11 On the facet of this matter relating to the appointment of the enquiry officer even before the disciplinary

proceedings are initiated against the petitioner. It is well settled that disciplinary proceedings are said to have commenced against the delinquent employee with the issuance of the show cause notice or the charge sheet as the case may be. Normally, whenever the appointing authority feels that there is any dereliction on the part of an employee under him, a show cause notice or charge sheet, as the case may be is issued incorporating the acts and instances of misconduct against the employee and he is required to submit explanation. If the employee accepts dereliction on his part, no further enquiry is needed. However, if the employee denied the charges levelled against him, the matter needs to be enquired further in a domestic or departmental enquiry, in accordance with the procedure prescribed for the concerned organization. Appointing an enquiry officer even before the employee is issued a show cause notice and even before he submits his explanation is, in a way, an extraordinary phenomenal. If at all any thing, it only conveys the resolve of the appointing authority to proceed with the disciplinary proceedings, irrespective of the nature of explanation that may be offered by the employee. Such a practice may be in consonance with the good administration. However, appointing an enquiry officer even before show cause notice is issued by itself does not vitiate the proceedings. The reason is that no prejudice, as such, is caused to the employee. Therefore, the contention of the petitioner in this regard cannot be accepted.

12. One important aspect that needs to be noticed is that irrespective of the stage of appointment of enquiry officer, the object of appointing an enquiry officer is to undertake an enquiry into the charges levelled against the concerned employee. The enquiry may be in the form of adducing oral or documentary evidence before him by the management, on one hand, and the delinquent employee, on the other. Once an employee insists on conducting of an oral enquiry, the enquiry officer has no option except to undertake the same. In fact his appointment is only for that purpose. Once the enquiry officer is appointed, the employer is under obligation to place its case before the enquiry officer in support of the charges in the form of oral and documentary evidence. Accordingly to the normal principles of evidence, if the employer fails or refuses to lead evidence in support of the charges, the enquiry officer has to hold that the charges are not proved, inasmuch as not material is placed in support of the charges. It is only when the employer adduced the evidence, the delinquent employee has to be offered an opportunity to lead his evidence, apart from cross examining the witnesses examined by the employer.

10. We entirely agree with the reasoning given by the Andhra Pradesh High Court in the case of A.Rama Murthy (supra). In this case also no prejudice has been caused to the applicant by non-supply of the documents. In fact the relevant documents which formed the basis for issuing article 1 and 2 are the documents which the applicant has submitted to the authorities and was thus aware of such documents. As already stated above, the allegation against the applicant is that he tampered the duty certificate issued by the District Collector changing the date from 20.12.2003 to 26.12.2003 and submitted joining report dated 30.12.2003 thereby stating that he has performed duty till 26.12.2003 whereas the applicant has performed duty till 20.12.2003. Thus, these two documents were submitted by the applicant to the respondents and charges are primarily based upon these two documents so submitted by the applicant coming from his possession and it was on this account that the charges were levelled regarding tampering of documents and drawing pay for six days for the period w.e.f. 20.12.2003 to 26.12.2003 when the applicant has not performed any duty.

11. Be that as it may, since the Andhra Pradesh High Court has categorically held that non consideration of reply of the delinquent official does not amount to prejudice caused to the employee and the enquiry starts when the Enquiry Officer is appointed, as such, the contention raised by the applicant that it was not permissible for the Disciplinary Authority to appoint enquiry officer cannot be accepted.

The ratio as laid down by this Tribunal in the case of Rajesh Kumar Gangwal (supra) is squarely applicable in the facts and circumstances of this case. Rather, the case of the applicant is on weaker footing, inasmuch as, in the instant case the matter was again considered by the Disciplinary Authority after supply of the additional documents and written statement so submitted by the applicant and the Disciplinary Authority decided to proceed with the enquiry proceedings. Thus, in exercise of

the power of judicial review, it is not permissible for us to substitute the findings so arrived by the Disciplinary Authority.

6. For the foregoing reasons, we are of the view that the applicant has not made out a case for our interference. Accordingly, the OA is dismissed at admission stage.

  
(B.L. KHATRI)  
Admv. Member

  
(M.L. CHAUHAN)  
Judl. Member

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