

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR**

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**ORDER SHEET**

(B)

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**ORDERS OF THE TRIBUNAL**

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09.10.2012

OA No. 535/2012 with MA 284/2012 & MA 337/2012

Applicant present in person.  
Mr. V.S. Gurjar, Counsel for respondents.

**MA No. 337/2012**

Heard on this MA for seeking deletion of the name of respondent no. 4, Chief Vigilance Commissioner, New Delhi, from the array of respondents. Applicant present in person submits that he is not claiming any relief against respondent no. 4 as respondent no. 4 is only a proforma party whereas learned counsel for the respondents submits as per the Section of the Central Vigilance Commissioner Act, 2003, no suit, prosecution or other legal proceeding shall lie against the Commissioner, any vigilance Commissioner, the Secretary or against any Staff of the Commissioner in respect of anything which is in good faith done or intended to be done under this Act.

Be that as it may, since the applicant is not claiming any relief against respondent no. 4 and respondent no. 4 is only a proforma party. Respondent no. 4 is at liberty to raise legal, just and valid objection at the time of hearing. At this stage we do not intend to delete the name of respondent no. 4.

This MA stands disposed of accordingly.

**OA 535/2012 with MA 284/2012**

Heard learned counsel for the parties. The OA as well as MA are disposed of by a separate order.

*Anil Kumar*  
(Anil Kumar)  
Member (A)

*K.S. Rathore*  
(Justice K.S. Rathore)  
Member (J)

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**CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR**

**ORIGINAL APPLICATION NO. 535/2012  
with  
MISC. APPLICATION NO. 284/2012**

**DATE OF ORDER: 09.10.2012**

**CORAM**

**HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER  
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

Ashes Kiran Prasad S/o late Shri Dhanushdhar, aged 54 years, R/o B-504, Shatabdi Rail Vihar; B-9/4, Sector-62, Noida (UP) – 201309, and presently posted as Chief Traffic Officer (Planning & Survey), North Western Railway, Jaipur and residing in Room No. 16, Railway Loco Officers' Rest House, Ganapati Nagar, Hasanpura Road, Jaipur – 302006.

...Applicant

Applicant present in person.

**VERSUS**

1. The Union of India through the Secretary, Railway Board, Rail Bhawan, New Delhi – 110001.
2. Member Traffic, Railway Board, Rail Bhawan, New Delhi – 110001.
3. Advisor Vigilance, Railway Board, Rail Bhawan, New Delhi – 110001.
4. Chief Vigilance Commissioner, Satarkta Bhawan, Block-A, GPO Complex, INA, New Delhi – 110023.

... Respondents

Mr. V.S. Gurjar, counsel for respondents.

**ORDER (ORAL)**

The present Original Application has been filed by the applicant praying for deletion of his name from the secret list without prejudice to his right of hearing by quashing the impugned order dated 26.04.2012 - Annexure A/1(i) to A/1(v).



2. The main challenge to the impugned order dated 26.04.2012 is on the ground that there is no loss caused to the Railways as alleged and since no loss to the Government is involved, this is not a vigilance case and so the applicant cannot be put in secret list.

3. Further, it is submitted by the applicant that the continuance of applicant in the secret list for a further period of three years is bad in law and is against the fundamental legal principle set in Section 428 Cr.P.C., 1973. It is also submitted that he has already been punished with reduction in pay scale in the same grade by two stages for three years and without prejudice to his right of hearing, he cannot be punished further by keeping him in the secret list for another period of three years when there is no time frame for completion of enquiry proceedings. In effect, the period of secret list becomes highly elastic and variable which may vary from person to person and without any basis. The quantum and duration of punishment in practice, therefore, is dependent on the whims and fancies of the Disciplinary Authority and is not governed by any rule. In such eventuality, this would be a miscarriage of justice if the applicant is continued in secret list for a proven act of misconduct by the Railway Administration.

4. After receiving the memorandum of charge-sheet on 29.08.2008, the applicant made several representations vide letter dated 05.09.2008, 15.09.2008, 12.11.2008, 08.12.2008, 22.05.2009 and 10.08.2009. The applicant submitted his reply



to the charges vide letter dated 23.09.2009. Since Inquiry Officer was not being nominated and the case was getting unduly delayed, the applicant approached this Bench of the Tribunal on 15.02.2010 by way of filing O.A. No. 68/2010, wherein the applicant had prayed for the following relief: -

- "i) Quashing the memorandum of charges against the applicant or if this is not acceptable, then to direct the respondent No. 1 to dispose off the applicant's reply dated 23.09.2009 to the memorandum of charges through a speaking order within a week and completion of Discipline and Appeal Rule proceedings, if required within two months.
- ii) The statement of the witness Shri Tapan Barua be declared in admissible under S.24 of the Indian Evidence Act, 1872.
- iii) The statement of all the witnesses, be declared in admissible on the ground of being hearsay witnesses.
- iv) Removal of the applicant's name from the 'secret list'.
- v) Allow the applicant to be promoted to the Joint Secretary's rank from the date his next junior, Shri K.L. Dixit was promoted.
- vi) Allow the applicant to be empanelled in the DRM's panel.
- vii) Allow the applicant to be eligible for deputation postings."

5. This Bench of the Tribunal vide its order dated 04<sup>th</sup> January, 2011 has disposed of the said OA No. 68/2010 at admission stage observing as under: -

- "5. Applicant further submits that since the nature of the charges are not such which warrant placing of his name in secret list as such his name be deleted from the secret list, suffice it to say that we do not wish to go into this aspect of the matter at this stage. However, the applicant may make representation to the appropriate authority regarding this aspect within a period of two weeks from today and in that eventuality the appropriate authority will consider the



same within a period of six weeks from the date of receipt of the copy of the representation."

6. Pursuant to the observations made hereinabove by this Bench of the Tribunal in OA No. 68/2010, the applicant has submitted his representation on 07.01.2011 - Annex. A/4(i) before the respondent-authority praying for removal of his name from the 'secret list' as no monetary loss to the Railways is involved, but the same has been rejected vide impugned order dated 26.04.2012 - Annexure A/1 (i) to A/1 (iii). Therefore, this Original Application has been filed by the applicant for deletion of his name from the secret list without prejudice to his right of hearing by quashing the impugned order dated 26.04.2012 - Annexure A/1(i) to A/1(v).

7. We have heard the rival submissions made on behalf of the respective parties and carefully gone through the pleadings, reply as well as documents available on record. We have also carefully perused the relevant provision of law, which has been relied upon by the applicant as well as by the learned counsel for the respondents.

8. As per provision of clause 322.4 of Indian Railway Vigilance Manual, *'name once included in Secret List will not be removed until a period of three years has elapsed. The period of three years, for which the name will be current on the list, will count from the date of punishment in disciplinary proceedings or from the date of conviction in a Court Trial'*. Admittedly, the punishment order has been passed by the respondents on 22<sup>nd</sup>



June, 2012 and the period of three years will be counted with effect from 22<sup>nd</sup> June, 2012. It is not disputed that against the punishment order, the applicant has availed the alternative efficacy remedy available under the law by way of filing an appeal and the same is pending for consideration.

9. Having considered the rival submissions of the respective parties and upon careful perusal of the relevant provision of law, pleadings, relief claimed by the applicant, it is seen that the applicant has not challenged the validity of para 322.4 of Indian Vigilance Manual and without challenging the validity of the aforesaid para 322.4 of Indian Vigilance Manual, the relief as claimed by the applicant cannot be extended in favour of the applicant.

10. From bare perusal of the pleadings made by the applicant, it reveals that neither in the facts nor in the grounds of the O.A., the applicant has pleaded regarding para 322.4 of Indian Vigilance Manual challenging the validity of the said para. But in the relief clause, the applicant has made relief for quashing the impugned order dated 26.04.2012 enclosed as Annexure A/1 (i) to A/1 (v). It reveals that annexure A/(iv & v) also includes the para 322.4 along with other paras, and the applicant has cleverly prayed for quashing the enclosed Annexure A/1 (i) to A/1(v) as a whole. But without any specific pleading for challenging the validity of para 322.4 of Indian Vigilance Manual, we are not inclined to interfere in the matter.





11. Further, it is not disputed that against the punishment order, the applicant has availed the alternative efficacy remedy available under the law by way of filing an appeal and the same is pending for consideration and without waiting for the decision of the appellate authority on his appeal, the applicant has filed the present O.A. Thus, we do not want to interfere in the matter at this stage.

12. Moreover, learned counsel for the respondents submitted that if the applicant is succeed in the appeal and if the appeal of the applicant is allowed, the name of the applicant will be deleted from the select list immediately.

13. In view of the discussions made hereinabove, we do not find any merit in the present case at this stage. Consequently, the Original Application being bereft of merit fails; and the same is hereby dismissed with no order as to costs.

14. In view of the order passed in O.A., no order is required to be passed in Misc. Application No. 284/2012 filed by the applicant praying for interim relief. Accordingly, the Misc. Application stands disposed of.

  
(ANIL KUMAR)  
MEMBER (A)

  
(JUSTICE K.S. RATHORE)  
MEMBER (J)