

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 471/2012

Reserved on: 26.07.2018

Date of decision: 02.08.2018

Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhaya, Member (A)

S.K.Nagarwal aged 42 years S/o Shri R.D.Nagarwal r/o Siddharth Nagar, Near Jawahar Circle, Jaipur presently working as Dy.CE/Construction/Design/Jaipur, HQ Office, North Western Railway.

...Applicant.

(Applicant in person)

Versus

1. Union of India through the General Manager, North Western Railway, HQ Office, Near Jawahar Circle, Malviya Nagar, Jaipur-302017.
2. Central Vigilance Commission
Through Secretary,
Satarkata Bhawan, Block-A, General Pool Office Complex, INA, New Delhi-110023.
3. Sh.Anil Kumar, the then Dy.CVO/E/Jaipur
At present, Chief Project Manager, DFCCIL
C/O Dy. GM (HR)
Dedicated Freight Corridor Corporation of India Limited
5th Floor, Pragati Maidan Metro Station Building Complex, New Delhi-110001.
4. Sh. Naresh Malhan, IRTS, the then CVO/N.W.Railway
C/O Secretary, Railway Board,
Railway Bhawan, Raisina Road, New Delhi-110001.

...Respondents.

(By Advocate: Shri Anupam Agarwal)

ORDER

Per : A Mukhopadhaya, Member (A)

The applicant, in this case, has been aggrieved by the appointment of an Inquiry Officer vide order dated 16.06.2011 to enquire into charges levied through the service of a major penalty Memorandum No.E-174/V/DAR/Engg./10/14 dated 05.08.2010 and has approached this Tribunal to set aside both the aforementioned order and Memorandum as well as the Central Vigilance Commission (CVC) advice of 09.02.2010, of which these were a consequence. In addition, he has also sought other relief, as deemed fit by this Court and award of costs.

2. The brief facts of the case, as stated by the applicant, are that since he is a Whistle Blower, whose activities have led to issuance of about 25 charge-sheets to various officials, these officials in general and Shri Anil Kumar, the then Deputy Chief Vigilance Officer /Engineering, [Dy.CVO(E)] in collusion with certain contractors conspired to misrepresent bonafide action of the applicant, who has been performing his duties fairly and honestly and that the impugned charge-sheet is a direct result of this mechanism. He further alleges that the driven by their desire to target the applicant, these persons have persuaded the respondents-party to issue the said charge-sheet and then appoint an Inquiry Officer, without considering the averments made by applicant in his detailed written statement submitted in reply to the charges. He states that the charges, as levelled,

(3)

pertain to acts or decisions, which were not taken by the applicant alone, but only he has been served with the charge-sheet for the same, and thus proving that the charge-sheet has been issued with malafide intention. In particular, the applicant has alleged that in their undue haste to proceed against him even the mandatory provision laid down in Para 1005.1 of the Indian Railway Vigilance Manual, namely that "it is the duty of the disciplinary authority to consider the reply to the charge-sheet submitted by the charged official and placed on record the reasons in case of non-acceptance of the defence put forward by the charged official" has been patently ignored for enquiry has been initiated through a cryptic note stating "case remitted for enquiry" without recording any reason for the decision as was obligatory under the provisions of the Indian Railway Vigilance Manual.

3. Therefore, in view of the above, after exhausting of remedies available to him departmentally under the rules, the applicant has been forced to approach this Tribunal for granting relief, as mentioned earlier.

4. Replying to the application, the respondents have denied that the charge-sheet is the result of any bias or prejudice against the applicant and have further stated that the prescribed procedure has been fully adhered to before serving the charge-sheet on the applicant and also thereafter the charge-sheet was

(4)

served only after due consideration of the facts and circumstances of the case as both the Zonal Headquarters level as well as Railway Board and, thereafter, after due consultation with CVC. Further, the charge-sheet was served only after the CVC cleared the same. After perusing "the investigation report and the comments of the administrative authority thereon" as "in agreement with the Railway Board" the Commission would advise initiation of major penalty proceedings against Shri S.K.Nagarwal, the Dy. CE. The respondents averred that this advice has been rendered to by the CVC in its capacity as a competent independent statutory authority after taking into account all relevant material facts and circumstances.

5. The respondents have also drawn attention to the facts the the impugned CVC advice dated 09.02.2010, the charge-sheet is dated 05.08.2010 and the impugned order appointing the Inquiry Officer is dated 16.06.2011. Thus, in this view of the matter, this OA filed on 10.07.2012 is beyond the period of one year's limitation prescribed in this case. Since there is no application for condonation of delay, the OA deserves to be rejected on this count alone.

6. Both parties to the dispute (the applicant's pleadings in person and the official respondents' pleadings through their counsel) were heard at length and each were given opportunity to address and rebut the arguments made by other. The applicant

(5)

in his arguments reiterated the points highlighted (and referred to above) in his application and drew specific attention to the CVC Memorandum dated 13.07.2009 (Annexure A-4) stating that "CBI was investing two cases against Shri Anil Kumar since the year 2006. However, he was allowed to continue in the Vigilance Department for reasons unknown. The CBI's letter dated 31.10.2006 has stated "the local branch has also informed that Shri Anil Kumar does not enjoy good reputation either in NW Railway or Western Railway. No vigilance clearance has been given by ACB Branch Jodhpur of the name of Shri Anil Kumar."

7. This, the applicant argues amounts to corroborative evidence both of the characters of the then DCVO(E) Shri Anil Kumar and also provides an inside into why such a person would target the whistle blowing activity of the applicant, as he bore the grudge against him for the same. The applicant has also drawn specific attention of this Tribunal to a letter dated June 3, 2006 from one of the contractors Shiva Constructions Private Limited wherein permission has been sought to proceed in civil/criminal court against the applicant in his individual capacity. This, the applicant also supports his contention that certain contractors like this one, and others acted in connived with the vigilance officials in general, and Shri Anil Kumar in particular because the applicant served them notice in cases regarding to obtaining payment without doing the requisite work.

8. Refuting the applicant's arguments, counsel for the official respondents referred to in particular to Rule 9(a)(i) of the Railway Servants (Discipline & Appeal) Rules, 1968, which reads as follows:

"On receipt of the written statement of defence, the disciplinary authority shall consider the same and decide whether the inquiry should be proceeded with under this rule."

9. Shri Anupam A Garwal, counsel for the official respondents contended that a perusal of the entire note-sheet relating to the decisions commenced with the enquiry and appointment of an Inquiry officer, as provided by the applicant himself clearly shows that the applicant was only allowed to inspect "the concerned files" and given "other documents" as requested by him to prepare his defence but also that this defence (i.e. his written statement) and a CD given in support of his defence were placed on record and put up to the disciplinary authority. After request of the applicant he was given a personal hearing in the matter by the disciplinary authority (General Manager, North Western Railway) on 25.03.2011 before the case was finally remitted for enquiry by the General Manager, North Western Railway on 29.03.2011. Counsel for the respondents avers that thus the requirements for consideration of applicant's written statement/defence have been fully complied with.

(7)

10. As regards the applicant's contention that the CVC's advice in this matter is in-corrective and that the whole proceedings are thus being conducted at the behest of the CVC wrongly, the respondents' counsel reiterated that the consultation with the CVC was as per the prescribed procedure and that there is nothing to indicate that the advice given by the statutory authority was not after full consideration of the facts and circumstances of the case and adherence to the relevant legal provisions applicable for such consideration.

11. In his rejoinder to the arguments made by the respondents' counsel, the applicant clarified in his view there has been no delay whatsoever in filing the instant OA because while it is true that the impugned charge-sheet is dated 05.08.2010, the procedure prescribed required him the applicant to submit his defence/written statement in response to the same and thus it was only when the order initiating the enquiry through appointment of an Enquiry Officer was issued on 16.06.2011 and was received by him on 12.07.2011 that the cause of action for this OA arose from the aforementioned series of events. Since this OA was filed on 10.07.2012, it has been filed within limitation.

12. We have carefully considered the averments and the arguments made by the parties. Before proceedings to the merit of the case, it is proposed to deal with the question related to

delay and adherence or otherwise to the procedure, as raised by the respondents and the applicant respectively. On the question of limitation, we find that since the averments of the applicant are as per the facts on record and rules, there has been no delay in filing this OA, which is within limitation.

13. Coming to the question whether prescribed procedure has been followed or not in this case, it is undisputed by both the parties that Rule 9(a)(i) of the Railway Servants (Discipline & Appeal) Rules, 1968 (hereafter referred to as the Rules) as follows:

“On receipt of the written statement of defence, the disciplinary authority shall consider the same and decide whether the inquiry should be proceeded with under this rule.”

14. The respondents' counsel argued that a perusal of a copy of note-sheet provided by the applicant himself clearly indicates that the consideration of the written statement and the CD given by the applicant as well as a personal hearing given in the matter by the respondents together constitutes consideration of the applicant's defence before a decision on the same was taken. The applicant has relied on the Vigilance Manual related to these rules, viz, Instructions for the guidance of officials dealing with disciplinary cases, appeals, revision and review under the Railway Servants (Disciplinary & Appeal) Rules, 1968, Item No.1005, which states that “it is the duty of the Disciplinary Authority to

consider the reply to the charge-sheet submitted by the charged official and place on record the reasons in case of non-acceptance of defence put forward by the charged official.”

15. It is the contention that the note-sheet as provided by him at Annexure A/17, which has been denied or refuted by the respondents, clearly shows that the General Manager, North Western Railway, the disciplinary authority in this case has initiated the enquiry through a cryptic order dated 29.03.2011 which reads “Case remitted for Inquiry” clearly shows that the disciplinary authority has not placed on record the reasons for his non-acceptance of the defence put forward by the charged official (applicant) in this case and thus he has violated the mandatory requirement of the procedure which vitiates the issue of the charge-sheet as well as appointment of an enquiry official to enquire into these charges.

16. On a perusal of the rules and instructions referred to above, we find that the instructions in agreement with the applicant’s arguments that the rules and instructions thereon (i.e. Item No.1005.1 in this case) have to be read together in harmonious conjunctions in such case and that for the written statement/defence of the applicant to be constituted as having been considered, it is obligatory for the disciplinary authority to do so. Clearly this has not been done in this case.

17. Therefore, without going into the merits of the case, we find that the mandatory and obligatory consideration of the written statement of defence submitted by the applicant has not been carried out by the disciplinary authority in this case. The issue of major penalty Memorandum No.E-174/V/DAR/Engg./10/14 dated 05.08.2010 and the appointment of an Inquiry Officer vide order dated 16.06.2011 are, therefore, found to be violative of prescribed procedure and the rules and are hereby set aside. The entire matter is remitted to the respondent-disciplinary authority with the direction to proceed afresh with consideration of the applicant's written statement/defence and thereafter process the case in accordance with the procedure prescribed in the rules and instructions. We make it clear that no observation is being made by this Tribunal on the merits of the case.

18. There will be no order as to costs.

(A.Mukhopadhaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

/kdr/