

LIBRARY

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. O.A. 350/01272/2015

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

Baburam Roy,
Son of Late Ghanteswar Roy,
Aged about 61 years,
Retired Deputy Secretary (P),
Office of the Secretary,
General Manager, Eastern Railway
And residing at 4, Thakurdas Sarani,
Chowdhury Para Road, P.O. – Barasat,
District : 24 Parganas (North),
Pin – 700 124.

... Applicant

- V E R S U S -

1. Union of India,
Service through the General Manager,
Eastern Railway,
17, N.S. Road, Fairlie Place,
Kolkata – 700 001.
2. General Manager,
Eastern Railway,
17, N.S. Road, Fairlie Place,
Kolkata – 700 001.
3. Chief Personnel Officer,
Eastern Railway,
17, N.S. Road, Fairlie Place,
Kolkata – 700 001.

... Respondents

For the Applicant : Mr. P.C. Das, Counsel
Mr. B. Chatterjee, Counsel

For the Respondents : Mr. S. Banerjee, Counsel

Order dated: 26.8.2016

ORDER

Per Ms. Jaya Das Gupta, Administrative Member:

The applicant, Shri Babu Ram Roy has filed this O.A. under Section

3w

19 of the AT Act, 1985 seeking the following reliefs:-

"8.a. To quash and set aside the Memorandum of Charge Sheet No.

SP. 273/D&A/BR dated 26th May, 2015 issued by General Manager,
Eastern Railway, Kolkata;

b. To release all the post retirement benefits including full pension
along with interest;

c. To produce the entire disciplinary proceedings file and any other
relevant documents;

d. Costs;

e. Any other or further order or orders or direction as Your
Lordships may deem fit and proper."

2. It is the case of the applicant that he was initially appointed as Jr.
Clerk on 17.2.1978 and during course of his service, had been promoted as
Welfare Inspector Gr. III; as Assistant Personnel Officer in Malda Division in
Eastern Railway; and also as Deputy Secretary (P) at the Office of
Secretary to the General Manager, Eastern Railway, Kolkata. He has retired
from service on 31.5.2015. It is the contention of the applicant that though
for his performance throughout his career he had been awarded three
promotions, suddenly just before his retirement on superannuation, he had
been served with a memorandum of charge-sheet dated 26.5.2015
containing allegation pertaining to the year 1994 i.e. about 21 years
previous to the date of issue of charge-sheet. It is his prayer that as the
charge-sheet is stale and has been issued after a very long period the said
memorandum of charge-sheet should be quashed. Hence in this
application he has approached this Court in the present O.A.

3. Per contra, the Ld. Counsel for the respondents submitted that the
fact of his misconduct had come to light only in the year 2014 and

3w~

immediately thereafter, after holding of preliminary enquiry in which the applicant duly participated, a charge-sheet has been issued before the retirement of the applicant. Since the charges are grave and since it came to light only about a year previous to the retirement of the applicant, there is no ground for quashing of the charge-sheet and hence the prayer of the applicant should be dismissed.

4. Heard both Counsels and consulted the records. The articles of charges framed against the Babu Ram Roy, the then Welfare Inspector, Eastern Railway, Sealdah and now Deputy Secretary (P), Eastern Railway (Hqrs.) are set out below:-

"Article of Charge-I

Shri Baburam Roy, Dy. Secretary (P)/E.Rly/HQ, while working as SLWI/SDAH under Sr. DPO/E. Rly/SDAH, had submitted reports for compassionate appointment against Late Mithailal, Ex-Mech/DSL Shed/BGA/E.Rly on 31.5.1994 as per directives laid down in Sr. DPO/SDAH's letter No. SC/SDAH/Comp/R-1892/Mech(D)/93 dated 08.12.1993 to CLWI/IC/SDAH. Although it had been mentioned in the said letter of Sr. DPO/SDAH to ascertain exact financial position of the family of Late Mithailal and the particulars of the dependent family members, but Shri Baburam Roy, Dy. Secretary (P)/E. Rly, the then SLWI/SDAH under Sr. DPO/SDAH failed to mention any comment on his report for compassionate appointment in prescribed format on the appropriate items (item No. 21 & 22).

Surprisingly enough, Shri Baburam Roy had submitted another report in plain paper to his immediate superior (CLWI) on the same date i.e. 31.5.1994 with ulterior motive mentioning that the financial condition of the deceased family is not good and none of the family members is employed anywhere.

Considering his above certification a note was put up by OS (C) in the prescribed format to Sr. DPO/E.Rly/SDAH in which family of the deceased employee has been mentioned as 02 members viz. Wife and son and financial condition of the family as not good and based on such justification the case was put up and duly approved by DRM/SDAH for further processing and screening.

But the fact is that Shri Pradumma, son of Late Mithailal had joined as Tech. trainee in National Capital Thermal Power Project, Bidyutnagar, Gaziabad, UP on 6.3.1991 i.e. before expiry of his father, Mithailal on 28.8.1993 and all the daughters of late Mithailal were married & as such there was no hardship to his only dependent wife Smt. Hubraji Debi as she was eligible for family pension as per rules.

3W3

By the above, Shri Baburam Roy, the then SLWI/SDAH, had failed to submit the correct information in his report to the Competent Authority which has resulted approval for further processing of screening of the son of Late Mithailal as a candidate by competent authority and ultimate absorption of Shri Alakh Narayan Bharati in the name of Pradumna in Eastern Railway on 23.12.1994 and for which neither he nor Pradumna, son of Late Mithailal was eligible and thus Shri Baburam Roy has shown lack of integrity, devotion to his duty and acted in a manner unbecoming of a Railway servant in violation of Rules 3.1(i), 3.1(ii) & 3.1(iii) of Railway Services (Conduct) Rules, 1966, as amended from time to time."

Article of Charge-II

Shri Baburam Roy, Dy. Secretary (P)/E.Rly/HQ, while working as SLWI/SDAH under Sr. DPO/E.Rly/SDAH, had submitted reports for compassionate appointment against Late Mithailal, Ex-Mech/DSL Shed/BGA/ER on 31.5.1994 as per directive laid down in Sr. DPO/E.Rly/SDAH's letter No. SC/SDAH/Comp/R-1892/Mech(D)/93, dated 8.12.1993 to CLWI/SDAH.

In the report, in prescribed format, particulars of the family members of Late Mithailal was recorded based on particulars of G114, against item No. 11 as Smt. Hubraji Debi as wife, Sri Pradumna as son & Smt. Prema Debi, Smt. Parbati Debi, Smt. Puspa Debi & Smt. Purnima Debi – all as married daughters.

But in a separate report on plain paper, Shri Roy had mentioned Smt. Prema Debi, Smt. Parbati Debi & Smt. Purnima Debi as married daughters of Late Mithailal based on local enquiry.

Considering the contradiction between the official records and local inquiry reports, Shri Baburam Roy, the then SLWI/SDAH, failed to conduct further detail inquiry about the daughters of late Mithailal and to ascertain details of their family. Had Shri Roy personally inquired the case at the residence of all the married daughters, the contradiction would have got cleared. But Shri Roy with malafide intention kept silent on this issue and thereby assisted Shri Alakh Narayan Bharati, purported Pradumna husband of Smt. Parbati Devi & Son-in-Law of Late Mithailal to apply appear and get appointed in Railway service on compassionate ground fraudulently, producing Shri Alakh Narayan Bharati as Pradumna.

Moreover, Shri Baburam Roy, Dy. Secretary (P)/E.Rly/HQ while working as SLWI/SDAH under Sr. DPO/E. Rly./SDAH had identified the candidate in the face of the application of Shri Alakh Narayan Bharati, producing himself as Shri Pradumna wherein he was applied to Sr. DPO/SDAH, seeking permission to appear in the interview test scheduled to be held on 31.8.1994 due to non-receiving of original call letter and thereby enabled him impersonating Shri Pradumna, S/o Late Mithailal to appear in the interview test held on 31.8.1994 duly permitted by Sr. DPO/SDAH.

Consequently, Shri Alakh Narayan Bharati had filled up the form of application (marked as QF4 by CFPB) embossing his LTI thereon as Pradumna. He had also embossed his LTI in the certificate (marked as

..... m

Q F1 & QF2 by CFPB) of physical fitness of the candidate (Sl. 552807 dtd. 14.12.94) as Pradumna and in the bio-data form (marked as QF3 by CFPB) of Service Record of Shri Pradumna on 15.2.95. On verification of these LTIs with that of original Pradumna (marked as AI/1 to AI/5 by Vigilance department) collected on 27.4.2015 and Alakh Narayan Bharati (marked as S1 by CPFB) collected on 20.1.2015, Central Fingerprint Bureau, Govt. of India, after examination has certified that those earlier LTIs (QF1, QF2, QF3 & QF4) are identical with the specimen LTI (S1) of Alakh Narayan Bharati and different with specimen LTIs (AI/1 to AI/5) of Shri Pradumna.

From the above inference of CFPB, NCRB, Kolkata, it is crystal clear that Shri Baburam Roy, the then SLWI/SDAH with malafide intention had assisted Shri Alakh Narayan Bharati, now working as AC fitter in Sealdah Division to appear in interview test and get appointed in Railway Service on compassionate ground by presenting himself as Pradumna.

Had Shri Baburam Roy not identified Shri Alakh Narayan Bharati as Pradumna on the date of interview test, Shri Bharati would not have been able to appear on the same interview test held on 31.8.1994 and would not have been appointed in Railway service on compassionate ground against Late Mithailal, Ex-Mech/DSL Shed/BGA/E.Rly.

By the above acts of omission and commission, Shri Baburam Roy, the then SLWI/E.Rly/SDAH now Dy. Secretary(P)/E. Rly/HW has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway Servant in contravention to Rule 3.1(i), 3.1(ii) and 3.1(iii) of the Railway Services (Conduct) Rules, 1966, as amended from time to time."

Thus we note that the alleged misconduct is grave in nature as allegedly false identification and false reporting led to compassionate appointment of an ineligible person.

5. Initially when the applicant had prayed before the Court for an interim order for staying operation of the charge-sheet, an interim order had been granted on 25.8.2015 which is set out below:-

"Ld. Counsel for both sides are present.

2. It is submitted by Ld. Counsel for the parties that no date of enquiry has been fixed in regard to the charge-sheet issued against the present applicant.

3. As such, the respondents are directed to file a reply within 4 weeks. Rejoinder, if any, be filed within a period of 2 weeks thereafter. List this matter on 14.10.2015.

4. Since no date has been fixed in regard to the proceedings, it is accepted that till the next date of hearing, no further orders shall be passed by the authority with regard to the charge-sheet.

5. List this matter on 14.10.2015.

6. Plain copy of the order be handed over to Ld. Counsel for the

.. m

parties.

7. The authorities are, however, at liberty dispose of the representation dated 8.7.2015 as contained in Annexure A-7 in the 8.7.2015."

6. The Ld. Counsel for the applicant pressed his point that a stale charge-sheet cannot be acted upon on such a distant date and hence the charge-sheet should be quashed. In support of his averment he cited judgments of the Hon'ble Apex Court, the Hon'ble High Court at Calcutta and also of Central Administrative Tribunal, Calcutta Bench. However, all the four judgments can be distinguished as because they relate to different circumstances as regards the present case.

In (2006) 5 SCC 88 M.V. Bijlani v. Union of India & ors. the Hon'ble Apex Court had held that, "initiation of disciplinary proceedings after six years and in continuance thereof for a period of 7 years prejudiced the delinquent officer." However in the above case, the gamut of DP has been visited and the appellate authority had also passed an order. The disciplinary proceedings were initiated after 6 years and continued for a further period of 7 years. However, in the present case the disciplinary proceedings have not entered the full fledged enquiry stage because of the interim order of stay by the Tribunal. Also and there is a reason for filing the charge-sheet so late as the misconduct came to light only in 2014 i.e. about a year only before his retirement on 31.5.2015.

In the second case (2005) 6 SCC 636 P.V. Mahadevan v. Md. T.N. Housing Board the Hon'ble Apex Court had held that, "though there is inordinate delay of 10 years in initiating departmental enquiry against the applicant no convincing explanation given by the respondent employer." However, in the present case an explanation has been given that the alleged misconduct perpetrated by the applicant came into light only in the year 2014 and the charge-sheet was issued on 26.5.2015 after holding

29^

preliminary enquiry giving personal hearing to the applicant.

The Ld. Counsel for the applicant also brought to our notice a judgment of the Hon'ble High Court of Calcutta in WPCT No. 110 of 2008 where the facts of the case is that "the charge-sheet was issued after 10 years of the alleged incident and the ordeal of the charged officer was perpetrated by the constant changes in the enquiry officer. No reasons are on record to indicate why such switches were required. The action and attitude of the respondents is thus deplorable. Moreover, the petitioner was not suspended at any point of time. The respondents really did not have any interest in continuing with the charge-sheet which was issued to the petitioner. This is apparent from the fact that they took no steps to rectify the charge-sheet of 1997."

The circumstance in the present case is different. As the alleged misconduct came to light only in the year 2014, after holding preliminary enquiry chargesheet was issued in May, 2015.

The applicant also referred to the decision taken by the Central Administrative Tribunal in O.A. 806 of 2006 on 16.6.2008 in the matter of Madhusudan Mukherjee v. Ministry of Information & Broadcasting. Here the authorities did start the disciplinary proceeding but did not finalise it quickly and the delay was beyond the period prescribed and in violation of the CVC circular of 23.5.2000 which requires that a disciplinary proceeding should be finalised within 6 months from the date of appointment of EO/PO. In the present case as enquiry has been stayed there is no question of completion of such enquiry on time.

7. As noted above none of the above judgments referred to by the Ld. Counsel for the applicant applies to the present case.

8. Counsel for applicant also submitted that provisions of Article 21 of

JWM

Constitution have been violated in the present case.

9. We also take note of the Three Judges' judgement of the Hon'ble Supreme Court in AIR 1996 SC 484 B.C. Chaturvedi v. Union of India & ors., the relevant portion of which is set out below:-

"Constitution of India, Arts 14, 21 and 311 (2) – Disciplinary Proceedings – Initiation for misconduct of being in possession of assets disproportionate to govt. servant's known source of income – Delay – That by itself cannot be said to have Violated Art. 14 to 21."

"No doubt, much time elapsed in taking necessary decisions at different levels. So, the delay by itself cannot be regarded to have violated Article 14 or 21 of the Constitution."

"The advantage of promotions given by the delinquent officer would be no impediment to take appropriate decision to pass an order consistent with the finding of proved misconduct."

10. In view of the judgement given by the Hon'ble Apex Court by Three Judges' Bench and also taking note of the fact that an enquiry should be held to arrive at the truth regarding the veracity of the alleged grave misconduct leading to wrong identification of an ineligible beneficiary for compassionate appointment, the disciplinary process should continue strictly as per law. In the matter of judicial review we should not interfere too much in executive actions unless the procedure adopted in disciplinary proceeding is blatantly wrong. Therefore, the disciplinary process culminating with the findings of the disciplinary authority should be concluded preferably within six months from the date of receipt of a certified



copy of this order. As the applicant has retired, provisional pension must be paid. Interim order passed on 25.8.2015 is vacated.

11. The O.A. is, accordingly, disposed of. No costs.

(Jaya Das Gupta)
MEMBER(A)

(Bidisha Banerjee)
MEMBER(J)

SP