

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.350/1309/2016

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr.(Ms) Nandita Chatterjee, Administrative Member

Kartik Singh, S/o Late Mohan Singh, aged
About 46 years, working as Divisional Commercial
Manager, Eastern Railway, Asansol under control
of Divisional Railway Manager, Eastern Railway,
Asansol at present residing at Railway Quarter
No.1291/B, Traffic Colony, PO-Asansol,
District-Burdwan, Pin-713301, West Bengal

.....Applicant

-VERSUS-

1. Union of India, through the General Manager,
Eastern Railway, Fairlie Place, Kolkata – 700001;
2. Chief Commercial Manager, Eastern Railway,
3, Koilaghat Street, Kolkata-700001;
3. Senior Deputy General Manager, Eastern Railway,
Fairlie Place, Kolkata;
4. Deputy Chief Vigilance Officer(Traffic), Eastern
Railway, Fairlie Place, Kolkata-700001;
5. Secretary-Vigilance, Railway Board, Rail Bhawan,
New Delhi-110001

.....Respondents

For the applicant : Mr. C. Sinha, counsel

For the respondents : Mr. S.K. Das, counsel

Heard on : 19.07.2018

Order on : 24.8.18

ORDER

Bidisha Banerjee, Judicial Member

- This application has been filed in order to seek the following reliefs:

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"a) To set aside and quash the impugned Charge Memorandum being No.SP264/D&A/KS(2) dated 22.12.2015 issued by General Manager, Eastern Railway;

b) To set aside and quash Impugned letter being No.C/CCM/Con/VC/5 dated 18.08.2016 issued by Chief Commercial Manager, Eastern Railway;

c) To set aside and quash Impugned appointment of Enquiry Officer vide Order No.SP264/D&A/KS(2) dated 08.07.2016 issued by General Manager, Eastern Railway;

d) To set aside and quash Impugned Enquiry proceeding(Daily Order sheet) dated 08.08.2016;

e) Any other order or orders as the Hon'ble Tribunal deems fit and proper."

2. In the present case preliminary investigation was initiated on the basis of an anonymous complaint and departmental action has been initiated on the basis of such investigation report and the materials and evidence gathered during such investigation.

3. Learned Counsel of the applicant would vociferously submit that in terms of CVC's Instructions dated 25/11/14, no action could be taken on anonymous or pseudonymous complaints and such complaints should just be filed. Therefore, action was prohibited. Materials or evidence gathered during the investigation for verifications of anonymous complaints and when such enquiry was initiated without the approval of the CVC, it could lead further to any disciplinary proceedings. Learned Counsel would echo the grievance of the applicant stating that the complaint was intentionally made with an intention to delay the process of granting vigilance clearance to an employee who was due for promotion. Ld. counsel relied upon CVC circular dated 07.03.2016.

4. Per contra the Learned Counsel for the respondents would submit that the complaints of 2013 were acted upon before the issuance of circular of November 2014, and, therefore, could be pursued for further enquiry, investigation and

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vi. Commission's circular No.07/11/2014 dated 25.11.2014 withdrawing Circular dated 11.10.2002 and reiterating previous circulars dated 29.6.1999 and 31.1.2002 to the effect that no action should be taken on anonymous/pseudonymous complaints and such complaints should be filed.

4. xxxxxxxxxxxxxxxxxxxxxxxx Ld. Attorney General for India has furnished his opinion and clarified that unless expressly stated all Executive Circulars are prospective in nature and they do not have retrospective effect. Only a law can be retrospective if a law expressly states that it will be retrospective or the intention to that effect is very clear. It is further clarified that an anonymous / pseudonymous complaint, say made in 1997 i.e. prior to the prohibitory circular dated 29.06.1999 ought to have been generally not entertained but if there was verifiable material in accordance with the DoPT's O.M. of 1992 and investigation has commenced, the same would have to be taken to its logical conclusion notwithstanding the issue of a later circular dated 29.06.1999.

5. Based on the opinion furnished by Ld. AG, the following clarifications are being issued:-

i. No action should be taken on anonymous / pseudonymous complaints in line with Commission's present instructions dated 25th November, 2014 and such complaints should be filed.

ii. However, where the action was initiated on anonymous/ pseudonymous complaints prior to the issue of CVC's circular dated 29.6.1999 and was pending as on 29.6.1999, it can be pursued further to its logical end.

iii. Where action was initiated on anonymous/ pseudonymous complaints between the period 11.10.2002 and 25.11.2014 with prior concurrence of CVC but is pending, further action is permissible on such complaints.

iv. Material/evidence gathered during the investigation/verification of anonymous complaints when the action was prohibited on such complaints (i.e. between 29.06.1999 & 11.10.2002), or where such enquiry was initiated without the approval of CVC, can be utilised for further initiation of disciplinary proceedings on misconducts noticed in such verification / enquiry.

6. All Administrative Authorities / CVOs may note the above clarifications for guidance / compliance while handling and processing matters arising out of anonymous / pseudonymous complaints.

Sd/-
(J. Vinod Kumar)
Director"

7. The provisions of circular exemplify and demonstrate that action on anonymous complaints between the period 11.02.2002 and 24.11.2014 could be proceeded with if initiated with prior concurrence of CVC. Admittedly an anonymous complaint, dated 12.06.2013, addressed to the

Advisor(Vigilance)/Railway Board, formed the basis of investigation in the present case.

8. In terms of the CVC circular extracted supra, the said complaint dated 12.06.2013 could be acted upon only with prior concurrence of CVC.

9. Ld. counsel for the applicant has vociferously alleged that no such concurrence of CVC was obtained and, therefore, the consequent actions were illegal.

10. Per contra the ld. counsel for the respondents would defend their action by submitting that the complainant sent his confidential letter of complaint dated 12.6.2013 to Advisor (Vigilance)/Railway Board furnishing a number of verifiable allegations/facts and figures of misusing Privilege Passes in illegal manner. Railway Board, Vigilance vide their letter dated 10.07.2013 advised GM/Eastern Railway to look/enquire into the complaint of source information made against the applicant, as it was a serious one. Railway Board/Vigilance advised to ensure that a consolidated report reached their office within six weeks. Hence, GM(Vigilance)/Eastern Railway decided to enquire into the complaint as source of information on 19.07.2013. Further that CVC itself sent a copy of source information received in their office to Railway Board for necessary action treating it as source information vide CVC's office memorandum issued under their No.18899/13/Vig.1/218817 dated 8.7.2013.

11. Ld. counsels were heard and materials on record were perused.

12. It came to the notice of this Tribunal that the railways are conspicuous by their silence on "Prior concurrence of CVC". They referred to a letter dated 08.07.2013(Annexure R/2), that of a Section Officer of CVC who simply

forwarded the complaint to Railway Board for action which cannot, under any stretch of imagination, be termed as "Concurrence of CVC."

13. However, we cannot remain oblivious to the Circular dated 14th July, 2016 which says that even anonymous complaints can be verified if its allegations are serious and Hon'ble Apex Court's decision legitimising the practice of anonymous whistle blowing. [(2010)8 SCC 281].

14. In **Pradip Kumar Guha Vs Union of India and Others**[2008(2) SLJ 332 CAT] this Tribunal held that:-

"It is true that ordinarily the Court or Tribunal should not interfere at the chargesheet stage in disciplinary matters but in a case where the applicant has raised issue that delay in initiation of disciplinary action has been prejudicial to his interest and that action against him was initiated without any basis, the Court felt it incumbent to lift the veil by going through the departmental records produced by the respondents and see the facts of the case to come to a conclusion."

The Hon'ble Court found that "an anonymous complaint was received by the Ministry of Health & Family Welfare in September, 1998 implicating eight (8) officers, one of them being the applicant in that case. When the matter was dealt with in the file and put up to the CVO of the Ministry, the officer in his notes dated 01/09/1998 observed that 'anonymous complaint cannot start vigilance enquiry as per CVC's direction.'

The same view was reiterated by the Chief Vigilance Officer on 09/04/03 when the vigilance clearance in respect of the applicant for appointment as Director, CDL Calcutta was sought for and it was observed that the Director GHS constituted a Committee under the Chairmanship of Addl DG (RKS) to enquire into the matter. The Committee submitted its report saying that since the allegations contained names of private parties/persons this may be given to a professional body like CBI for investigation. Further the Committee found nothing against the applicant. No chargesheet or disciplinary proceedings were initiated against him. The applicant P.K. Guha was earlier accorded vigilance clearance in connection with his in situ promotion dated 05/09/2000. The allegation contained in anonymous complaint was enquired into by a Committee which give its report and that was examined vide office note dated 05/08/2003. In that note, without any reference to the observations made in the earlier note dated 09/04/2003, it was observed that from the complaint it is seen that P.K. Guha along with two others were perhaps responsible for the alleged irregularities for the said period. Further we may refer the case to CVC for first stage advice.

After receipt of advice dated 06/11/2002 of CVC the respondent initiated action to peruse the relevant documents/profile/register of GDMS, Guhawati and Calcutta for framing of charge. The matter then remained pending for study of the documents for two years. The chargesheet was actually issued on 13.06.2005 after obtaining clearance of disciplinary authority on 26/04/2005 and, therefore, the Court found that the anonymous complaint was opened up after several years to consider vigilance/disciplinary action against the applicant."

The Tribunal held that *"the charge memo dated 13/06/2005 issued against the applicant was unsustainable in the eye of the law being arbitrary, irregular, illegal, irrational, premeditated and in violation of CVC Instructions and, therefore, liable to be quashed."*

15. In the instant case, we noticed that CVC concurrence would have lend an entirely differnet complexion to the matter(action on complaint) which otherwise ought to have been filed.

16. In the aforesaid backdrop we remand the matter back to the disciplinary authority to examine satisfaction of the conditions enumerated in the CVC circular supra, before proceeding further with the matter.

17. Based on its revelations on scrutiny, the disciplinary authority shall be at liberty either to withdraw the charge memo or to proceed with it.

18. The O.A. stands disposed of. No costs.


(Dr. Nandita Chatterjee)
Administrative Member


(Bidisha Banerjee)
Judicial Member