

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.07/2018.

Dated this Thursday the 11th day of January, 2018

CORAM: HON'BLE SHRI ARVIND J. ROHEE, MEMBER (J)
HON'BLE SHRI R. VIJAYKUMAR, MEMBER (A)

Kapil Kumar,
Employed: Senior Assistant
Loco Pilot (Group 'C' Post)
under CCCOR/Daund,
Solapur Division, Central Rly.,
Daund. R/at Flat No.11,
Utsav Apartment, Lingali,
Near Swami Samarth Temple,
Daund, Post & Taluka – Daund,
Dist. Pune – 413 801.

... ***Applicant***

(Advocate by Shri G.S. Walia)

Versus

1. Union of India,
Through General Manager,
Central Railway,
Chhatrapati Shivaji Maharaj
Terminus (CSMT), Headquarters
Office, Mumbai 400 001.
2. DRM (Divisional Railway Manager)
Solapur Division, Central Rly.,
Solapur 413 001.
3. Senior Divisional Mechanical Engineer,
DRM (Divisional Railway Manager's)
Office, Solapur Division,
Central Railway, Solapur 413 001.
4. Assistant Divisional Mechanical Engineer,
DRM (Divisional Railway Manager)
Solapur Division, Central Rly.,
Solapur 413 001.

... ***Respondents***

Reserved on : 04.01.2018.

Pronounced on : 11.01.2018.

ORDER

Per : Shri A.J. Rohee, Member (J)

On 04.01.2018 when the matter was called out for admission, heard Shri G.S. Walia, learned Advocate for the Applicant. We have carefully perused the case record.

2. The Applicant is presently working as Senior Assistant Loco Pilot (Group 'C' post) under Respondent No.4. In this OA he made a grievance regarding the Memorandum/ Charge-sheet dated 17.05.2017 issued against him and also the report of the Inquiry Officer dated 06.11.2017, raising various grounds.

3. In this OA, the following reliefs are sought:-

“8.a) This Hon'ble Tribunal will be pleased to call for the records of the proceedings which led to the issuance of the chargesheet dated 17.05.2017 and after going through its propriety, legality and constitutional validity be pleased to quash and set aside the same.

8.b) This Hon'ble Tribunal will be pleased to quash and set aside the Inquiry Officer's report dated 06.11.2017 with all consequential benefits of Seniority, promotion, pay fixation, arrears of pay etc.

8.c) This Hon'ble Tribunal will be pleased to order and direct the respondents to absorb the Applicant in any alternative category according to the Medical Fitness of the applicant and fix his pay in the alternative category according to the Rules.

8.d) Any other and further orders as this Hon'ble Tribunal may deem fit, proper and

necessary in the facts and circumstances of the case.

8.e) Cost of this Original Application be provided for.

4. The following interim relief is also sought:-

“9.a) Pending hearing and final disposal of this Original Application this Hon'ble Tribunal may be pleased to STAY the effect and operation of the Inquiry Officer's report dated 06.11.2017 and accordingly order and direct the respondents not to take any further action on the Inquiry Officer's Report 06.11.2017.

9.b) Ad-interim and Ex-parte Ad-interim orders in terms of prayer 9(c) above.”

5. Perusal of record shows that in a disciplinary proceeding the following charge is framed against applicant:

ANNEXURE-II ARTICLE I

Statement of Imputation of misconduct framed against Shri Kapil Kumar Sr. ALP working under CCCOR/DD committed gross misconduct om that-

Shri Kapil Kumar Sr. ALP working under CCCOR/Daund was booked for PME on date 06/01/2017 for fitness in Aye-One medical category. On examination it is found that he had undergone LASIK Surgery in both eyes. Same has been confirmed by Ophthalmologist Byculla. He failed to inform the fact to medical department. Also he failed to follow the guidelines issued by Railway Board vide letter dated 11.11.2013. i.e. to take prior permission for undergoing such eye surgery. This is against IRMM, 2000 Para 512(9).

Thereore the above act of omission and commission failed to maintain absolute devotion to duty and acted in a manner of unbecoming of railway servant and there by violated rule 3.1 (ii)

& (iii) of Railway Service (Conduct) Rules, 1966.

6. The applicant contested the inquiry and thereafter the Inquiry Officer submitted his report to the Disciplinary Authority in which it is concluded that the sole charge levelled against him stands proved. The said report was then served on the applicant by the Disciplinary Authority calling upon him to submit his representation to it as required by CCS (CCA) Rules, so that final order can be passed in the disciplinary proceedings.

7. Learned Advocate for the applicant submitted that the inquiry report reveals that Inquiry Officer himself acted as the Prosecutor and a Judge since no Presenting Officer was appointed to represent the Department and he himself has cross-examined the applicant, which according to him is not legally permissible and hence the inquiry stands vitiated. It is also stated by him that this Tribunal is having power under Article 226 of the Constitution of India to issue a writ of prohibition in such matter to stay the further inquiry proceeding and can restrain the Disciplinary Authority to pass

the final order on the strength of the Inquiry Officer's report. For the purposes of his submissions, he relied upon the decision rendered by the Hon'ble High Court of Punjab & Haryana in ***Vikas Kalsi Vs. Union of India & Ors., CWP No.350/2014 (CAT) decided on 14.01.2014*** in which following observations are noted in part 8 thereof:

“8. The jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution of India in service matters. This is evident from a perusal of Article 323-A of the Constitution. The constraints and norms which the High Court observes while exercising the said jurisdiction apply equally to the Tribunal created under Article 323-A. (We find it all the more surprising that the the learned Single Member who passed the impugned order is a former judge of the High Court and is thus aware of the norms and constraints of the writ jurisdiction.) The Administrative Tribunal is not an appellate authority sitting in judgment over the orders of transfer. It cannot substitute its own judgment for that of the authority competent to transfer. It cannot substitute its own judgment for that of the authority competent to transfer. In this case the Tribunal has clearly exceeded its jurisdiction in interfering with the order of transfer.”

8. Reliance is also placed on another decision rendered by the Hon'ble High Court of Andhra Pradesh in ***T.V.R. Lingaiah Vs. President of Chittoor Yendhia Charcoal Producers' Co-operative Society, No.511, Renigunta & Anr., AIR 1957 AP 98 in WP No.354/1951 decided on 22.01.1956*** in which the following

observations are mentioned in para 5 as to when a writ of prohibition can be issued:

“5. It is objected on behalf of the respondent that I should not interfere by way of a writ of prohibition because, under the appropriate provisions of the Act, there are remedies available by way of appeal and revision to certain authorities mentioned therein. I do not think that such provisions debar me from issuing a writ of prohibition in such a case as this. As has been observed by their Lordships Satyanarayana Rao and Rajagopalan in Sri Shirpur Mutt v. Commissioner H. R. E. Board, 1952-1 Mad LJ 557 at P. 578 : (AIR 1952 Mad 613 at P. 631) (A).

"In deciding the question, whether a writ of prohibition should issue or not, the existence of an alternative remedy is, in our opinion, an irrelevant consideration when the complaint is that an inferior tribunal is exceeding its jurisdiction or is assuming a jurisdiction not vested in it by law. If the tribunal is permitted to exercise that jurisdiction which is objected to, if it exercises it wrongly, the mischief would be done, before the alternative remedy is availed of. It is unnecessary to insist upon a party complaining that he should first suffer and submit himself to the jurisdiction which is being wrongly exercised or is wrongly exceeded and then take advantage of the alternative remedy"

9. The law laid down in the aforesaid decisions regarding power vested in this Tribunal under Article 226 of the Constitution of India to issue writ of prohibition cannot be disputed, still for the reasons stated herein below, we are of the considered view that this is not a fit case to exercise such power and to grant the

stay to the Inquiry Officer's report.

10. After hearing the learned Advocate for the applicant quite at length and on perusal of record, it is obvious that the applicant did not submit any representation to the Inquiry Officer's report and straightway approached this Tribunal to challenge it, on the ground that the inquiry is vitiated for failing to follow the CCS (CCA) Rules and since the Inquiry officer performed dual role of a Judge and Prosecutor. Although under Article 226 of the Constitution, this Tribunal possesses power to issue writ of prohibition, still we are of the view that in the peculiar facts and circumstances of the case, alternate remedy is available to the applicant to allege all these grounds before the Disciplinary Authority in response to the Inquiry Officer's report, for its consideration, so that appropriate orders can be passed in the matter. Instead of doing so, the applicant straightway approached this Tribunal to challenge the Inquiry Officer's report. Hence, we are of the view that filing of the present OA is *pre-mature*, since there is no adverse order

as such, passed by the Disciplinary Authority in the inquiry proceeding so far nor the charge-sheet has been challenged on any ground.

11. For the aforesaid reasons, there is no question of exercising power of judicial review vested in this Tribunal to quash the Inquiry Officer's report as illegal and to prohibit the Disciplinary Authority from considering it and passing order on it. In fact the applicant desires that a task which is to be done by the Disciplinary Authority on receiving representation to the Inquiry Officer's report, the same should be done by this Tribunal. This is not scope of judicial review, since we cannot encroach upon the legitimate power nor can assume the power of the Disciplinary Authority to pass any order in the matter. No prejudice will be caused to the applicant in case, he submits a representation to the Inquiry Officer's report for consideration of the Disciplinary Authority, raising all the pleas which has been raised in this OA and also some other pleas, if he so desires.

12. From the above discussion, it is

obvious that the OA is *pre-mature* and hence it cannot be entertained. The OA, therefore, stands dismissed in *limine*, however with liberty to the applicant to submit a representation on the Inquiry Officer's report to the Disciplinary Authority, who shall consider it and pass the appropriate order in accordance with law, if not passed so far in absence of applicant's representation to the Inquiry Officer's report.

13. Registry is directed to forward certified copy of this order to both the parties.

(R. Vijaykumar)
Member (A)

(A.J. Rohee)
Member (J)

dm.