

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No. 1257 of 2013

Reserved on: 11.01.2019

Pronounced on: 26.04.2019

Between:

M. Chandrasekhar, S/o. Bhaskar Rao,
Aged 38 years, Occ: Senior Section Engineer (Diesel/Elec.),
(under the orders of removal from service)
Diesel Loco Shed, Gooty R.S.,
Guntakal Division, South Central Railway,
R/o. H. No. 1-629/2, Bank Colony,
Chilakaluripeta PO, Guntur Dt.

... Applicant

And

1. Union of India, Rep. by
The General Manager, Rail Nilayam,
South Central Railway, Secunderabad.
2. The Chief Motive Power Engineer,
Rail Nilayam, South Central Railway, Secunderabad.
3. The Additional Divisional Railway Manager,
South Central Railway, Guntakal Division, Guntakal.
4. The Senior Divisional Mechanical Engineer (Diesel),
South Central Railway, Diesel Shed, Gooty.
5. The Senior Divisional Mechanical Engineer (Diesel),
South Central Railway, Guntakal Division, Guntakal.

... Respondents

Counsel for the Applicant	...	Mr. K.R.K.V. Prasad
Counsel for the Respondents	...	Mr. V.V.N. Narasimham, SC for Rlys

CORAM:

Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. Applicant is challenging punishment of “removal from service” imposed by the disciplinary authority and confirmed by the appellate and revisioning authorities.

3. Brief facts of the case are that the applicant was appointed as Section Engineer in the respondents organisation and later, promoted to the grade of Sr. Section Engineer by the Chief Personnel officer, who is in the grade of SAG. Applicant was issued a charge memo on 9.2.2008 for demanding and accepting illegal gratis of Rs.2000. Inquiry Officer was appointed and based on his report dated 8.9.2009, disciplinary authority has imposed the penalty of removal from service on the applicant on 11.3.2010, which, on appeal was confirmed by the appellate authority on 10.2.2011. Thereafter, the revision petition was also rejected on 10.10.2012. Aggrieved over the same, applicant filed the OA.

4. The contentions of the applicant are that the order of removal was not issued by the appointing authority. Inquiry officer is from the Vigilance Wing, who has an inclination to prove the charges. Besides, he is of the same grade as that of the applicant. Annexures to the charge sheet have not been signed by the disciplinary authority. Relevant witness has not been cited in the charge sheet. The revision authority has not furnished a copy of the advice received from the Railway Rates Tribunal, Chennai. Action was initiated without a complaint. Instead of Railway officials being engaged, outsiders have been brought in to prove the charges. Money meant for the check was not provided by the vigilance wing but by the Chief Vigilance Inspector. PW-1, who was the decoy signed the proceedings in English though he does not know English. PW-2 stated that he did not know as to why PW-1 gave the money to the applicant. PW-2 also

confirmed that the Chief Vigilance Inspector gave the money for the trap. The Chief Vigilance Inspector has confirmed that he has given the trap money and also stated that there was no written complaint. GC notes were not marked and kept in sealed cover as per procedure prescribed. Vigilance checks were done in a milk bar which does not come under the geographical jurisdiction of the respondents. IO conducted the general examination of the applicant at the end of the inquiry against Sub rule 21 of Rule 9 of RS (D&A) Rules 1968. Provisions as mentioned in Para 704 & 705 of vigilance manual like involving Gazetted officer as witness etc have not been followed. Orders of the disciplinary and that of the appellate authority are not speaking orders. Similarly the revisioning authority without considering the glaring lapses noticed in the pre-check proceedings passed orders.

5. Respondents contend that the applicant was appointed as Section Engineer and as per 6th CPC the grades of Section Engineer and Senior Section Engineer were merged into one grade of Senior Section Engineer. The Chief Personnel Officer vide letter dated 29.10.2009 has communicated that the Senior Section Engineer be kept in a separate list. There was no change of grade or pay or designation in the process. Hence he was not promoted as Sr. Section Engineer. Accordingly, the Junior Administrative Grade officer (JAG) has placed the applicant in the block of Sr. Section Engineer on 3.12.2009. As the placement order was issued by the JAG officer, he would then become the appointing authority and not the Senior Administrative grade officer. The Sr. Divisional Mechanical Engineer, Guntakal who was the controlling officer has initiated disciplinary action. The inquiry officer in normal course has to be senior to the charged employee as per (RBE-37/2001) but when the inquiry is conducted by the Commissioner of Departmental Inquiries of CVC then there is no need to

appoint an officer senior to the applicant, as there would be no element of bias. Vigilance wing of the respondents can perform vigilance check in and outside the railway premises and recommends disciplinary action wherever required. It is true that the 1st disc. Authority has not signed the annexures but since it was transferred to the 2nd disciplinary authority, Sr. Divisional Mechanical Engineer, Khazipet the omission could not be rectified but that would not affect the inquiry proceedings. Names of relevant witness have been indicated in the charge sheet and they were enquired during the inquiry proceedings. Applicant was caught by the vigilance wing while accepting bribe and he could not prove his innocence in the inquiry and that a JAG officer has removed him from service as he is competent to do so since it was a JAG officer who placed him in the block of Sr Section Engineer. The appellate authority has issued a speaking order by stating that though there are some technical omissions, the basic charge being proved has upheld the order of the disciplinary authority. The vigilance trap was laid based on an oral complaint. PW-1 has confirmed that the question and answers were translated into Telugu. PW-2 was witness to the transaction between PW-1 and the charged employee. Arrangement of Gazetted officers as witness during trap is not compulsory and need to be made when possible. The trap proceedings were not drawn at the scene of the trap to avoid inconvenience to public members but done in the railway premises. Applicant has nowhere denied the charge of accepting the bribe.

6. Applicant filed a rejoinder stating that he has denied the charge of accepting the bribe during the preliminary inquiry. The appointing authority is the Chief Personnel Officer who is a Senior Administrative Grade officer. The proceedings issued vide letter dated 29.10.2009 (annexure -11) confirm this aspect. Vigilance wing can confine to only railway jurisdiction in conducting

traps otherwise it will clash with the jurisdiction of Police and CBI. Reference to Commissioner of Departmental Inquiries is irrelevant and that the respondents cannot act against the orders of the Railway Board. The complainant nor his representative is not in the picture making the proceedings invalid. The appellate authority admitting that there are certain omissions confirms that there are procedural irregularities. Disciplinary authority has succumbed to the dictates of the vigilance wing. Revision Authority has not issued a speaking order. Oral complaints cannot be the basis for vigilance trap. Using semi literate employees as PW only proves that the vigilance wing wanted to implicate him in a false case.

7. Heard both the counsel. We went through the documents and material paper submitted.

8. I) The case is about acceptance of alleged illegal gratias of Rs.2000 by the applicant. The process of issue of charge sheet, conducting the inquiry and imposing the penalty of removal has been gone through. Appealing to the appellate authority and the revisioning authority was done. At these levels, the penalty of removal was confirmed. Applicant in his defence has raised some technical deficiencies which have been admitted by the appellate authority in his appellate order. Therefore this requires a relook.

II) Another major infirmity noticed is that a Senior Administrative Grade officer has been the appointing authority for the applicant as per letter dated 29.10.2009 (Annexure -11) while as the order of removal was issued by a subordinate authority of Junior Administrative grade. This is a violative of Article 311(1) of the Constitution which reads as under:

“311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State

(1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed.”

III) Therefore, in view of the above infirmities it would be inappropriate to proceed against the applicant without being attended to. Hence, to meet the ends of justice respondents are directed to conduct denova proceedings from the stage of appointing an Inquiry Officer. Thereafter, competent disciplinary authority has to decide the issue. It is open to the respondents to treat the period from the date of removal as confirmed by the revisioning authority till the issue is decided once again as per the rules and regulations of the respondents organisation. Time allowed to complete the exercise of inquiry and for the disciplinary authority to take a decision in the matter is 6 months from the date of receipt of this order.

IV) With the above directions the OA is disposed off. There shall be no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated, the 26th day of April, 2019

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