

reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTINGS: BILASPUR

Original Application No.203/00224/2017

Bilaspur, this Friday, the 11th day of January, 2019

**HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER**

Piyush Mishra S/o Shri G.K.Mishra,
Aged about 30 years, presently working as JM-IT-II/
SECR, R/o in front of Parihar Petrol Pump,
Village-Barbaspur, Post Barbaspur, Tehsil and
District Anuppur (M.P.)-484224
(By Advocate –**Shri A.V.Shridhar**)

-Applicant

V e r s u s

1. Union of India – Through the General Manager,
South East Central Railway, New GM Building,
Bilaspur (C.G.)-495004
2. The Chief Electrical Engineer,
South East Central Railway, New GM Building,
Bilaspur (C.G.)-495004
3. The Chief Personnel Officer, Personnel Department,
South East Central Railway, GM Office,
Bilaspur (C.G.)-495004
4. The Deputy Chief Personnel Officer (Gazetted),
Personnel Department, South East Central Railway,
GM Office, Bilaspur (C.G.)-495004

- Respondents
(By Advocate –**Shri R.N.Pusty**)

O R D E R

By Navin Tandon, AM:-

The applicant is aggrieved that a retired railway officer has
been appointed as the enquiry officer in the major penalty charge

sheet issued to him. Further, his choice of defence assistant is not being allowed.

2. The applicant has made the following submissions:-

2.1 The applicant was working as Assistant Divisional Electrical Engineer (Operation) (for brevity ‘**ADEE (OP)**’) with South East Central Railway (for brevity ‘**SECR**’) at the relevant time when charge memorandum dated 03.08.2016 was issued to him in respect of a major penalty.

2.2 Before responding to the charge memorandum, the applicant prayed for appointment of defence assistant vide his letter dated 19.09.2016 along with no objection from the said defence assistant.

2.3 Vide order dated 26.09.2016 the respondents have denied the request of the applicant to appoint a retired employee of South Eastern Railway (for brevity ‘**SER**’) as defence assistant.

2.4 The applicant is also aggrieved that a retired railway officer from other zonal railway has been considered for appointment as enquiry officer.

2.5 His representation dated 15.11.2016 regarding appointment of a specific person as defence assistant is pending before the respondents till date.

3. Following reliefs have been sought for by the applicant in this Original Application:

“8.1 That the learned Tribunal may kindly be pleased to call the entire records pertaining to the case of the applicants.

8.2 That, the Hon’ble Tribunal may kindly be pleased direct the respondents to permit the applicant to choose Defence Assistant of his choice.

8.3 That, the Hon’ble Tribunal may kindly be pleased to direct the Respondents to appoint serving railway employee as enquiry officer.

8.4 That, the Hon’ble Tribunal may kindly be pleased to direct the Respondents to decide the pending representations of the applicant before proceeding further with the enquiry proceedings.

8.5 Cost of the petition be awarded to the applicant.

8.6 Any other relief which the learned Tribunal deems fit and proper may be awarded”.

4. The respondents in their reply have submitted as under:-

4.1 A major penalty charge memorandum dated 03.08.2016 (Annexure R-1) was initiated against the applicant, the then ADEE (OP), Raigarh and now JM (Junior Manager) IT-2/SECR on the basis of Central Vigilance Commission’s advice in a CBI trap case under Prevention of Corruption Act.

4.2 The applicant acknowledged the memorandum on 16.08.2016 and submitted an application dated 22.08.2016 (Annexure R-2) requesting one month’s time for submitting his written statement, which was allowed by the disciplinary authority vide letter dated 06.09.2016 (Annexure R-3).

4.3 Instead of submitting reply to the charge memorandum the applicant submitted another application for appointment of Shri

M.V.D.Satyanarayana, Sr.Steno to Sr.DEE/TRD/Kharagpur/SER to act as his Defence Helper and also submitted his consent letter.

4.4 The respondents vide letter dated 26.09.2016 (Annexure R-4) brought attention to Rule 9(13) (a) and (b) of RS(D&A)Rules, 1968 and advised the applicant to nominate a serving/retired official of SECR to act as defence counsel/assistant in the case.

4.5 The applicant did not file the reply to the charge memorandum on or before 16.09.2016. The applicant was again given one more opportunity to submit his written statement vide letter dated 08.11.2016 (Annexure R-8) but the applicant failed to do so.

4.6 The applicant repeatedly submitted the same representation of nomination of defence counsel, where rules do not permit and thereby tried to delay the DAR proceedings.

4.7 Since the applicant did not reply to the charge memorandum even after receiving the last letter dated 08.11.2016 (Annexure R-8) the disciplinary authority decided to remit the case for enquiry and appointed enquiry officer and presenting officer by orders dated 29.12.2016 (Annexure -R-9 colly.).

5. Heard the learned counsel of both sides and carefully perused the pleadings of the respective parties and the documents annexed therewith.

6. It is noted that almost everywhere in O.A., reply, and correspondence, the designation of Shri M.V.D.Satyanarayana is shown as Sr.Steno to Sr.DEE/TRD/Kharagpur. However, perusal of page 23, Annexure A-2 of the O.A. indicates that he has retired on 30.06.2005

7. The learned counsel for the applicant submits that this was a case initiated by CBI and, therefore, this is not a vigilance case. Therefore, the provisions of empanelment of retired railway officer as enquiry officer, which has been mentioned in Indian Railway Vigilance Manual, is not applicable in this case.

7.1 The learned counsel for the applicant also submits that the respondent-department in their reply dated 19.01.2017 (Annexure A-6) to RTI application have explicitly stated that no specific provision regarding nomination of retired railway official as enquiry officer, is available in RS(D&A)Rules, 1968.

7.2 In view of the above, it is the averment of the learned counsel for the applicant that retired officials can not be nominated as enquiry officer in disciplinary proceedings.

7.3 The learned counsel for the applicant draws attention to RBE No.177/1990 (Annexure R-7) wherein the Railway Board has allowed the choice of defence helper from railway servants retired from a different railway unit. In a similar case General Manager of

East Coast Railway vide letter dated 09.01.2013 (copy placed at page 24, along with Annexure-2 of the OA) has allowed the nomination of Shri M.V.D.Satyanarayana to be the defence counsel.

8. The learned counsel for the respondents brought out that the applicant is resorting to delaying tactics.

8.1 The learned counsel for the respondents cited the case of **Union of India & others Vs. Alok Kumar**, (2010) 5 SCC 349 to buttress his claim that retired railway officers can be appointed as enquiry officer.

8.2 The learned counsel for the respondents took us through various provisions of RBE No.177/1990 (Annexure R-7) wherein choice of Defence Helper has been liberalized in certain cases. The case of the applicant is not covered under any of such provisions and, therefore, the respondents have correctly refused his request to engage Shri M.V.D.Satyanarayana, Sr.Steno to Sr.DEE/TRD/Kharagpur/SER, to be the defence counsel.

9. The Hon'ble Supreme Court in the matters of **Alok Kumar** (supra) while adjudicating on the issue of nominating retired railway officer as enquiry officer in cases of employees covered by the Railway Servants (Discipline & Appeal) Rules, 1968 has come

to the conclusion that the words “other authority” occurring in Rule 9(2) does not have to be only a person in service.

9.1 From the above it is clear that that there was no illegality in appointment of retired railway officer as enquiry officer in the instant case.

10. Regarding the issue of nominating serving/retired official of another unit as defence assistant, the provisions of RBE No.177/1990 (Annexure R-7) has been gone through. In the said circular the Railway Board has given certain relaxation in Para 2(a) (b) & (c), which read as under:

“(a) If the delinquency for which the Railway servant is charged occurs on a certain Zonal Railway/CLW/DLW/ICF, but he is transferred to another such Railway Administration, the concerned charged officer may, if he so desires, be allowed a serving or retired Railway servant belonging to the Railway Administration on which the delinquency occurred.

(b) In the case of disciplinary inquiry against retired Railway servants for pension cut under para 2308-RII, if they are settled down in a remote area away from the Railway Administration from which they retired, such persons may also be allowed, if they so desire, the choice of having a serving or retired Railway servant working on any Railway Administration within whose jurisdiction the place of their present residence falls. They may also be allowed Defence Helpers from amongst retired Railway servants irrespective of the Railway Administration from which they retired, who have settled in the vicinity of the place where the charged officer is also settled.

(c) In the case of Railway Board’s office, its attached office or sub-ordinate office or small Railway Administrations other than Zonal Railway/CLW/DLW/ICF, the charged Railway servants may, if they so desire, have as Defence Helper a Railway servant who is serving or has retired from a contiguous Railway Administration from amongst Zonal Railways/CLW/DLW/ICF. If a retired railway servant belonging to a small Railway Administration (other than Zonal Railways/CLW/DLW/ICF) is

being taken up for pension cut, he may have the option of having a serving or retired Railway servant belonging to one of the bigger Railway Administration viz. Zonal Railways/CLW/DLW/ICF within whose jurisdiction the place of his present residence falls. He may also be allowed Defence Helpers from amongst retired Railway servants irrespective of the Railway Administration from which they retired, who have settled in the vicinity of the place where the charged officer has also settled".

10.1 It is very clear that the applicant was working in SECR when the cause of action of issue of charge-sheet occurred. He has neither been transferred out of SECR nor he has retired. Further, SECR does not come under the definition of attached office or subordinate office. Therefore, none of the provisions of RBE No.177/1990 (Annexure R-7) are applicable to the applicant.

10.2 From the above it is clear that the respondents have rightly not agreed to the request of the applicant for nominating Shri M.V.D.Satyanarayana, Sr.Steno to Sr.DEE/TRD/ Kharagpur/SER, as his defence counsel.

11. In view of the foregoing, it is clear that there is no merit in the Original Application and the same is accordingly dismissed. The interim order passed earlier stands vacated. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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