

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

**OA No.3173/2016  
MA No. 1091/2019**

New Delhi, this the 14<sup>th</sup> day of October, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman  
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Zia Majeed (aged about 38 years)  
S/o Abdul Majeed,  
Working as Manager, MCS, Rites, Gurgaon,  
R/o H. No. 900, Block 18, Baba Kharak Singh Marg,  
New Delhi.

...Applicant

(By Advocate: Mr. S.P. Sethi)

Versus

Union of India, service through

1. Executive Director, Privatization & Concession,  
Rites limited, Rites Bhawan, Sector-29,.  
Gurgaon-122001.
2. The Group General Manager(I),  
Rites Limited Northern Region,  
Core-2, 12<sup>th</sup> Floor, Scope Minar,  
Laxmi Nagar, New Delhi – 110092.

...Respondents

(By Advocate: Mr Shrinkar Chaturvedi)

**ORDER (ORAL)**

**Justice L. Narasimha Reddy, Chairman:-**

The applicant was working as Manager, Eastern Railway (ER) in the Rail India Technical and Economic Service (RITES) under the Ministry of Railways and in the

year 2014, he was in Kolkata. A charge memorandum was issued to him on 19.06.2014, with certain allegations. He denied the allegations by submitting a representation. Not satisfied with that, the Disciplinary Authority (DA) appointed one Mr. K. Venkatesh, Senior Deputy General Manager as Inquiry Officer (IO).

2. The IO submitted the report on 28.08.2015 holding that the charges framed against the applicant cannot be concluded and established. He opined that the authenticity of the Quality Assurance Plan (QAP), which is part of the allegations, could not be verified due to non-availability of the certified copy of the document. Certain other reasons were also mentioned. Thereafter, the applicant was transferred to Gurgaon.

3. The DA passed an order dated 26.05.2016 holding that there are procedural lapses in the Inquiry conducted by Mr. K. Venkatesh and, accordingly, one Mr. S. K. Yagnik, Group General Manager (GGM) was appointed as IO and to conduct the inquiry into the charges, from the stage of preliminary hearing. This OA is filed challenging the order dated 26.05.2016.

4. The applicant contends that the DA, who was functioning at Kolkata has taken into account the report

submitted by IO and passed a detailed order dated 18.09.2015 proposing to accept the report. It is stated that simply because the DA forwarded the entire matter to the vigilance wing for guidance and advice, the issue cannot be treated as open and the impugned order ought not to have been passed. Certain other grounds are also pleaded.

5. On behalf of the respondents a detailed counter affidavit is filed. It is stated that the plea of the applicant that the DA passed an order dated 18.09.2015 exonerating the applicant is incorrect. It is stated that though some observations were made by the then DA, he ultimately forwarded the matter to the vigilance wing for advice and guidance and the same cannot be construed as containing any final decision. It is also stated that the inquiry report was not in accordance with law, both from the point of view of procedure and substance and, accordingly, de novo inquiry was ordered.

6. We heard Mr. S.P. Sethi, learned counsel for the applicant and Mr. Shrinkar Chaturvedi, learned counsel for the respondents.

7. The articles of charge framed against the applicant are in relation to the inspection said to have been undertaken by him, in his capacity as the officer associated with the

Quality Assurance Wing. On considering the record before him, the IO submitted a report with the following observation:-

“since authenticity of QAP could not be verified due to non-availability of the certified copy of the document as the same could not be provided by RDSO, the certified agency and custodian of the document, undersigned as an Inquiry Officer do not find any justification to proceed with the enquiry further as the main charge against the IE lies with this document only and without certified copy of the QAP dt. 18.10.10, charges framed against the IE can not be concluded and established.”

8. In a way, the report was equivocal. Neither it was said that the articles are not proved nor it was held that they were proved. It can be said that he found the material inadequate to proceed further. The DA, who was functioning at Kolkata at that time, considered the report of the IO and in a way he too opined that material was not sufficient. He prepared a detailed note dated 18.09.2015.

The conclusion of the note reads as under:-

“Even after full application of mind with due diligence, the doubts on dichotomies raised above can neither be fathomed nor answered. Further, the I.O. has not been able to establish the charges, which goes to compound the fact that there may be more factors involved in this case. Hence with all the materials on record, the allegations against the I.E. cannot be substantiated beyond reasonable doubts.

With the above observations and comments thereon by the undersigned, the case is remitted to corporate office for further advice [this has reference to AGM(P)'s letter No. PERS/11/439/ZM/2014 dated 22.04.2014] as it is a registered vigilance case.

The case is routed through ED/QA and forwarded to GGM(P) for necessary vigilance advice and further guidance in order to close the case at our end.”

9. From this, it is evident that the DA was also of the view that the doubts on dichotomies raised by the IO cannot be fathomed or answered. Two courses were open to the DA. In case the report of the IO has the effect of exonerating the applicant of the charges, the same could have been accepted. If, on the other hand, he wanted to differ with the findings, a disagreement note ought to have been issued. The uncertainty that surrounds the report of the IO has spread to the procedure at the stage of DA also. He was unable to make up his mind and ultimately sought advice and guidance of the vigilance wing. There is absolutely no doubt that the matter was far from being finally decided, at that stage.

10. The applicant was transferred to Gurgaon and his entire record was transmitted. Concerned authority at Gurgaon perused the file and felt that the IO by name, Mr. K. Venkatesh did not follow the prescribed procedure and there were fundamental procedural lapses in the inquiry. On this basis, he appointed one Mr. S. K. Yagnik, GGM as IO and required him to conduct the inquiry from the stage

of preliminary hearing. Order dated 26.05.2016 passed in this behalf, reads as under:-

“WHEREAS, disciplinary proceedings under Rule-25 of RITES Limited (Conduct, Discipline & Appeal) Rules, 1980 were initiated against Shri Zia Majeed, Emp. No. 10425, then Manager/ER/RITES/Kolkata, now Manager/M&CC/ROC/Gurgaon, in the office of the Eastern Region/RITES/Kolkata on the charge based on the allegations set out in the charge memorandum of even No. RITES/ER/D&AR/ZM dated 19.06.2014.

AND WHEREAS, Shri Zia Majeed having denied the charges, Shri K. Venkatesh, SDGM/ER/RITES/Kolkata was appointed vide order No. RITES/ER/D&AR/ZM dated 24/07/2014 as the Inquiry Officer to inquire into the charges. The Inquiry Officer Shri K. Venkatesh had completed the inquiry and submitted the inquiry report dated 28.08.2015.

AND WHEREAS, the undersigned, having carefully gone through the records of inquiry, finds that the inquiry against Shri Zia Majeed has not been held in accordance with the prescribed procedure, in as much as there are fundamental procedural lapses in conduct of the inquiry.

NOW THEREFORE, the undersigned in exercise of the powers conferred by sub-rule (2) of the said Rule, hereby appoints Shri S. K. Yagnik, GGM (I)/NR/RITES/Delhi as Inquiry Officer to conduct further inquiry into the charges leveled against Shri Zia Majeed from the stage of preliminary hearing.”

11. The impugned order could have been find fault with, if the DA, who dealt with the matter earlier, has arrived at a definite conclusion and had given finality to the proceedings. Once the proceedings remained inconclusive, it always remains open to the next incumbent to resume them from the stage where they were lying. That is what

happened in the instant case. We do not find any legal error in the entire exercise.

12. The apprehension of the applicant is that the relevant record is not available for verification and on the basis of incomplete record he cannot be proceeded. It is needless to mention that the respondents are under the obligation to make available the relevant record that is needed for proving the allegations made against the applicant. Benefit of doubt, if any, deserves to be given to the applicant.

13. We, therefore, dismiss the OA but with the above observations. MAs, if any, shall stand disposed of. There shall be no order as to costs.

**(Mohd. Jamshed)**  
**Member (A)**

**(Justice L. Narasimha Reddy)**  
**Chairman**

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