

CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH  
KOLKATA



No.O A.350/524/2019  
M.A.350/353/2019

Date of order : 3.7.19

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

KARTIK SINGH  
VS.  
UNION OF INDIA & ORS.  
(EASTERN RAILWAY)

For the applicant : Mr. A. Chakraborty, counsel  
Ms. P. Mondal, counsel

For the respondents : Mr. K. Sarkar, counsel

**Bidisha Banerjee, Judicial Member**

The applicant in his second journey to the Tribunal has sought for the following reliefs:-

"i) Office order being No. SP264/D&A/KS(2) dated 20.11.2018 issued by the respondent No.2 is not tenable in the eye of law and therefore the same may be quashed;

ii) Office Order being No SP264/D&A/KS(2) dated 20.11.2018 issued by respondent No.2 to the extent the same contains the contentions of the respondent No.1 regarding continual of the Disciplinary Proceeding is not tenable in the eye of law and therefore the same may be quashed;

iii) Set-aside and quash the impugned Charge Memorandum being letter being No. SP264/D&A/KS(2) dated 22.1.2015 issued by respondent No.1;

iv) Set aside and quash the impugned letter being No.C/CCM/Con/VC/5 dated 18.08.2016 issued by the respondent No.3;

v) Set-aside and quash the impugned appointment of the Enquiry Officer letter being No. SP264/D&A/KS(2) dated 08.07.2016 issued by respondent No.1;

vi) Grant all consequential benefits;

vii) Costs of and incidental to this application;

viii) Pass such further or other order or orders."

2. Prior to filing the present O.A. the applicant had earlier preferred O.A.No.350/1309/2016 assailing inter alia a charge memo, appointment of enquiry officer, enquiry proceeding etc. This Tribunal having noticed that a preliminary investigation was initiated on the basis of an anonymous complaint and a departmental action was initiated on the basis of such investigation report and the materials and evidence gathered during such investigation and having considered the submission of the Id. counsel for the applicant that in terms of Central Vigilance Commission's circular dated 07.03.2016 anonymous complaints between the period from 11.10.2002 and 25.11.2014 with prior concurrence of CVC but pending could only be proceeded with, observed as under:

"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 14<sup>th</sup> 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]."

Having considered the ratio in the case of **Pradip Kumar Guha Vs.**

**Union of India and Others**[2008(2) SLJ 332 CAT] the Tribunal held as

under:-

"15. In the instant case, we noticed that CVC concurrence would have lend an entirely different 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."

(Emphasis supplied)

3. The order dated 24.08.2018 passed in the earlier O.A.No.350/1309/2016 was assailed before the Hon'ble High Court at Calcutta in W.P.C.T.No.80 of 2018 when having found that the disciplinary proceedings have been initiated against the petitioner on the basis of an anonymous complaint without obtaining concurrence of the Central Vigilance Commission, the Hon'ble High Court observed as under:-

".....we are of the prima facie view that the petitioner has set up a strong case, for stay of further proceedings until further orders. It is ordered accordingly."

However, after the final hearing Hon'ble High Court at Calcutta on 07.12.2018 would conclude as under:-

"In course of hearing today, Mr. Das Poddar has produced documents before us to show that it was not a case of an anonymous complaint being received by the railways directly from the complainant; on the other hand, the complaint was received by the Commission and the Commission itself had forwarded the complaint for necessary action to the Railway Board. It is only upon the Railway Board having considered the complaint to be serious that letter dated July 10, 2013 was issued by the Secretary/Vigilance Railway Board raising a query as to whether the complaint had been investigated earlier, if received; in the event of there being an investigation, copy of the report was also directed to be furnished.

It is submitted before us that acting upon the aforesaid letter of the Railway Board, disciplinary proceedings were initiated against the petitioner.

Having regard to the disclosure, as aforesaid, we do not consider it proper to interfere with the order of the tribunal. The writ petition is disposed of, without any order for costs.

We must, however, record at this stage that a decision taken by the General Manager, Eastern Railway, being the petitioner's disciplinary authority, has been brought to our notice. Such decision was the result of compliance of the order of the tribunal. Having regard to the developments subsequent to passing of the order of the tribunal, we express no opinion on the merits of the rival claims. It shall be open to the petitioner to pursue

such remedy as is available to him in accordance with law, if at all he is dissatisfied with the order of the general manager.

*Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously."*

*(Emphasis added)*

4. The order of the Hon'ble High Court was assailed before the Hon'ble Apex Court by the applicant herein in Special Leave to Appeal(C) No.4904/2019. The Hon'ble Apex Court while dismissing the SLP on 22.02.2019 recorded as under:-

*"We do not find any good ground warranting interference with the impugned order in exercise of our jurisdiction under Article 136 of the Constitution of India."*

5. On 20.11.2018 the decision of the General Manager, the Disciplinary Authority was communicated to the applicant by the Deputy Chief Personnel Officer (for Principal Chief Personnel Officer). The communication dated 20.11.2018 reads as follows:-

*"The General Manager/E. Rly., Disciplinary Authority, has accordingly passed his considered decision as follows:*

*"The complaint received by vigilance organisation was treated as source of information having verifiable facts, in terms of Board's instructions. Only after due vigilance investigation and based on facts bringing out prima facie irregularities of misuse of pass by the Charged Official, disciplinary proceedings have been initiated in this case. Hence it is required to be continued to its logical conclusion as per extant norms & rules"*

*It is also to inform that the said Shri Kartik Singh (C.O.) has filed a Writ Petition before the Hon'ble High Court/Calcutta vide the WPCT No.80/2018 challenging the Hon'ble CAT/CAL's aforesaid order 24.08.2018. However, no further information is received.*

*This is for your kind information and necessary action to initiate and continue the inquiry proceedings of the subject disciplinary case."*

6. Since in terms of the liberty of Hon'ble High Court, enumerated supra, the applicant was required to challenge the decision of the Disciplinary Authority but no order from the Disciplinary Authority issued prior to its communication vide letter dated 20.11.2018 was served upon him, the applicant felt handicapped. He has preferred M.A.No.350/353/2019 to bring on record a letter dated 16.04.2019 issued to him by the Disciplinary Authority (D.A. in short) which according to the applicant was not the decision of D.A. taken prior to its communication. The letter dated 16.04.2019 is set out hereunder (extracted with emphasis):-

*"The Hon'ble CAT/Kolkata disposed of the subject OA on 24.8.2018 with direction upon the disciplinary authority in the following manner:*

*"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.*

*Hon'ble CAT in its order also observed that "However, we cannot remain oblivious to the Circular dated 14<sup>th</sup> 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]."*

*In view of the aforesaid order of the Hon'ble CAT/Kolkata, I, the undersigned, the disciplinary authority, have examined that CVC itself has sent copy of complaint received in their office to Railway Board/Vigilance for taking necessary action under the subject as source information vide CVC's office memorandum issued under their No.18899/13/Vig.1/218817 dated 08.07.2013. Railway Board/Vigilance in para -1 of their letter dated 10.7.2013 advised GM/Vigilance/Eastern Railway to look/inquire into the complaint as source information. As per advice of Railway Board/Vigilance, Vigilance/Eastern Railway, considering the said 'anonymous' complaint as source information regarding misuse of pass and conducted a Preventive check at the pass issuing office of Asansol under DRM/ASN. Based on the facts brought out in the investigation report, you were prima facie found responsible for misuse of Pass in irregular manner and hence, disciplinary proceedings were initiated. It is to mention further that since CVC itself had sent copy of complaint received in their office to Railway Board for taking necessary action, it was redundant to seek concurrence from CVC. The aforesaid facts were also brought to the notice of the Hon'ble High*

Court/Kolkata which had recorded these facts in its order dated 7.12.2018 in WPCT No.80/2018.

Further, CVC in para 5(iii) of their Circular dated 7.3.2016 issued clarifications that "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." From the above it would be seen that action i.e. investigation into complaint was initiated within the period specified above, and hence, further action i.e. disciplinary action was accordingly initiated on such complaint in a justified and lawful manner.

In view of the above, I, the undersigned, being the disciplinary authority, have rightfully decided that the disciplinary proceedings are to be continued to its logical conclusion as per extant norms and rules. Accordingly, I.O. was advised to continue inquiry into the charges instituted in the disciplinary proceedings against you."

7. Citing the aforesaid order dated 16.04.2019, Id. counsel for the applicant at hearing would vociferously submit that, the order dated 16.04.2019 was a subsequent decision of the General Manager not taken pursuant to the direction of the Tribunal in O.A.1309 of 2016 and due to its non-supply he was prevented from assailing the decision of the D.A. and, therefore, he would pray for a direction upon the respondent authorities to furnish a copy of the decision of the Disciplinary Authority taken prior to the communication dated 20.11.2018.

8. In order to give him a fair chance we had called for the records. The respondents when asked to furnish such decision, produced a file containing the decision of the Disciplinary Authority dated 08.11.2018 i.e. taken prior to its communication dated 20.11.2018 which is verbatim similar to the one communicated on 20.11.2018. Therefore, the contention of the applicant that due to non-furnishing of the decision of the Disciplinary Authority, taken in terms of the order

passed in O.A.1309/2016, the applicant is prevented from challenging the decision, is untenable.

9. At hearing ld. counsel for the respondents would produce before us the documents which demonstrate that the Section Officer of Central Vigilance Commission issued an office memorandum dated 08.07.2013 in regard to "Source information against Railway official" and forwarded the same to the Railway Board for necessary action. Furthermore, we note that the disciplinary action initiated by issuance of a charge sheet that is challenged in the present O.A., cannot be termed as irregular one in view of the fact that the charges have been drawn up not on the basis of the complaint but on the basis of the following documents listed as Annexure-III to the charge memo which reads as under :-

1. Reports of Dataware house of Indian Railways;
2. Requisition slips 2 nos. as booked from SBG-PRS;
3. Working chart of Train No.13404 of 3AC class for Date of journey 29.01.2013;
4. Privilege Pass No.348115 issued on 28.01.2013 by Ch. OS/Pass Section/ASN, E. Rly as deposited by Shri Kartik Singh;
5. Certified copy of EQ register as maintained in MLDT Division;
6. Certified photocopies of Counterfoils of Privilege Passes issued to Shri Kartik Singh, the then DCM/ASN."

10. Ld. counsel for the applicant would further argue that biased petition of the applicant was forwarded to the Revisionary Authority for appropriate order and it is yet to be disposed of. Hence the D.A.

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proceedings cannot be concluded. We note that the applicant has alleged bias against the erstwhile Enquiry Officer P.M. Pillai.

We note that the Enquiry Officer has been changed subsequently, therefore, the plea that the bias petition being not yet disposed of the proceedings cannot be continued, is not tenable. We further note that one A.K. Burma, retired General Manager, enquiry officer resigned from the matter on 19.06.2019 as the charged officer had raised charges of bias against him and thereafter the newly engaged Inquiry Officer has proceeded with the enquiry proceedings.

11. At hearing Id. counsel for the applicant would submit that he would not press the M.A.350/392/2019, therefore it is dismissed as not pressed.

12. In the aforesaid backdrop, the Disciplinary Authority having decided in terms of liberty granted by this Tribunal to conclude the enquiry proceedings initiated against the applicant, we permit the same to be concluded in accordance with law with an appropriate order which be issued within a period of four months from the date of communication of this order.

10. Accordingly the O.A. stands disposed of. Consequently the M.A.350/353/2019 also stands disposed. No costs.

**Nandita Chatterjee)**  
Administrative Member

**(Bidisha Banerjee)**  
Judicial Member