

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH**



O.A/350/916/2019

Date of Order: 22.07.2019

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative Member

Pintu Moulick, son of late Sailendra Nath Moulick,
permanent resident of Bongaon Station Road, Railway
Quarter No. 181/B, Post office and P.S Bongaon,
District North 24 Parganas 700109.

--Applicant.

Versus

1. Union of India through the General Manager, Eastern Railway, Fairlie Place, Kolkata Pin Code - 700001.
2. The Sr. Assistant Engineer/South Eastern Railway, Sealdah-700014.
3. Mr. J. K. Sengupta, Retd. Dy. FA& CAO/F&B/ER- Cum-Inquiry Officer of Flat No. A/5 Srijan Apartment MIG-8, Nilganj Road, Sodepur, Kolkata - 700110.

-----Respondents.

For The Applicant(s): Mr. A. Chakraborty, counsel
For The Respondent(s): Mr. A. Ganguly, counsel

ORDER (ORAL)

Per: Ms. Bidisha Banerjee, Member (J):

Assailing a charge-sheet, issued on 13.10.18 by Sr. ABN/South Eastern railway, the applicant has preferred this O.A to seek the following reliefs:

"A) Charge Memorandum being No.SDA/VIG/MJ1028 dated 13.10.2018 issued against the undersigned by the Sr. Assistant Engineer/South, Eastern Railway, Sealdah is not tenable in the eye of law and as such the same may be quashed.

B) Costs and Incidentals.

C) Such further Order/Orders and/or direction/directions as your lordships deem fit and proper."

2. At hearing, ld. Counsel would submit that the proceedings should stay in as much as the charges are vague and the applicant has been prevented from putting up effective defense against the charge memo due to non supply

of the complaints and reports forming the basis of the allegations levelled therein.

3. Ld. counsel placed the Letter dated 18.6.19, as in Annexure A-3 that would reveal that the applicant has sought for the following documents:

- "1) The authenticated copy of fake appointment letter issued by Sri Pintu Moulick the charged official by which the allegations has been framed.
2. The name and designation of the issuing authority along with the Signatory Authority of the alleged vendor Panel List for Group-D Employment.
3. The authenticated documents presence of alleged Animek Hazra during the working period of charged official.
4. The authority letter for framing the charges, based upon an anonymous undated and unsigned letter by which the charges has been framed."

Further vide representation to the Disciplinary Authority, dated 22.5.19 (Annexure A/2) the applicant has alleged as under:

- i) From a bare perusal of the Charge Memorandum, it would be evident that your authority has already expressed your mind towards establishing the charges against the undersigned and as such the Charge Memorandum being No. SDA/VIG/MJ/028 Dated 16.10.2018 is mere ritual and face saving.
- ii) It is equally well settled position of law that at the stage of issuing a charge-sheet, the authority issuing the charge-sheet notice cannot, instead of telling him the charges, confront him with definite conclusion of his alleged guilt. In view of such settled positions the Charge Memorandum being No. SDA/VIG/MJ/028 Dated 16.10.2018 under reference is not tenable in the eye of law.
- iii) The charges had been framed with some allegation of involvement in issuance of fake appointment letter and impart of training to one Animek Hazra, son of Amitava Hazra, alleged to be a victim of racket. That although it seems the charges to be the outcome of the complaint of the said one Animek Hazra or his father Amitava Hazra, the said relevant document e.g. the complaint letter preferred by the complainant has not been listed in the list of relied upon the documents "which vitiates the entire Disciplinary proceeding."

- iv) The Hon'ble Supreme Court in the matter of State of Punjab Versus V.K. Khanna & Others reported in (2001) 2 Supreme Court Cases 330 had been pleased to observe that:

"Although While it is true that justifiability of the charges at this stage of initiating a disciplinary proceeding cannot possibly be delved into by any court pending inquiry but it is equally well settled that in the event there is an element of malice or malafide, motive involved in the matter of issue of a charge-sheet or the concerned authority is so biased that the inquiry would be a mere farcical show and the conclusions are well known then and in that event law courts are otherwise justified in interfering at the earliest stage so as to avoid the harassment and humiliation of a public official"

The action of the disciplinary Authority in issuing charge-sheet without providing the documents (that forms the basis of the charges) as well as non-inclusion of the same in the list under Annexure-III of the Charge Memorandum being No. SDA/VIG/MJ/028 Dated 16.10.2018 depicts biasness on the part of the Prosecution side.

- v) In the instant case, the charges contained in the Charge Memorandum are not specific, vague, equivocal but ambivalent and indefinite. That the Hon'ble Apex Court in the case of State of U.P -versus- Mohammed Sharif reported in (1982) 2SCC-374 had been pleased to hold that charge sheet was vague and the employee was prejudiced in the matter of his defence.
- vi) The entire charges had been framed on the basis of suspicion owing to some un-communicated complaint by one incumbent claiming to be the victim of racket but the undersigned cannot be dealt with since such suspicion has got no role to play in the instant matter. The Hon'ble Apex Court in Zunjarrao Bhikaji Nagarkar vs. Union of India & Ors. [1999(7) SCC 409] has categorically held:

"Initiation of disciplinary proceedings against an officer cannot take place on an information which is vague or indefinite. Suspicion has no role to play in such matter. There must exist reasonable basis for the disciplinary authority to proceed against the delinquent officer. Merely because penalty was not imposed and the Board in the exercise of its power directed filing of appeal against that order in the the Appellate Tribunal could not be enough to proceed against the appellant. There is no other instance to show that in similar case the appellant invariably imposed penalty."

- vii) The undersigned denies and disputes all the charges levelled against him vide impugned Charge Memorandum being No. SDA/VIG/MJ/028 Dated 16.10.2018.
- viii) Furthermore, the submission of Gateman Guidebook by said Animek Hazra, son of Amitava Hazra, does not substantiate that the same has been handed over and/or shown to the said person. The same, being a

public document, can be inspected/checked/studied by any one. Mere production of documents by one person claiming to be the victim of the racket does not validate and corroborate my involvement in the issuance of fake appointment letters.

- ix) With regard to allegation of depositing the huge amount to the Bank, not commensuration with my salary, it is stated that the source of the said amount had already been submitted before the authorities. If all the amount tallied with the income and expenditure of the undersigned since my joining with effect from 22.02.1990, such a vague charge would not have levelled against me by the railway authorities.

In such backdrop, your authority is requested to consider my version/contention and to supply me the copies of the complaints of said Animek Hazra, son of Amitava Hazra in connection with the present case that forms the basis of charges under Charge Memorandum being No. SDA/VIG/MJ/028 Dated 16.10.2018 issued by tour authority as well as the copy of the complaint by the said incumbent that also forms the basis of Charge Memorandum being No. FW/D&A/92/PKD dated 24.10.2018 issued by Assistant Engineer (HQ)/Eastern Railway/FP/Kolkata against the aforesaid Pradip Kumar Das, Carpenter, Gr. III working under SSE(W)/HQ/ER/FP/Kolkata and thereby inclusion of the same in the list of documents in Annexure - III at an earliest before proceeding with the Enquiry and thereafter to exonerate me from the charge referred in the Charge Memorandum being No. SDA/VIG/MJ/028 Dated 16.10.2018 under reference considering the submissions made herein above."

Therefore, the applicant, as we discern has furnished adequate reasons to seek stay of proceedings.

4. Per contra, Ld. Counsel for the respondents would place the following provision in IREM 2006, which reads as under:

"837. Documents which can be safely denied:

The following are some of documents access to which may reasonably be denied:-

- i) *Reports of investigation:- The reports of the CBI or the reports of the fact-finding inquiry on the basis of which charge sheet is issued. These reports are intended only for the Disciplinary Authority and even the Inquiring Authority does not see them.*
- ii) *File dealing with disciplinary case against Government Servant:- The file in which the reports of preliminary inquiry/investigation is dealt with and which contains the various notes leading to the issue of chargesheet is a confidential file and may be denied.*

- iii) *Advice of the Ministry of Law:- The advice of the ministry of Law is confidential and is meant to assist the Disciplinary Authority."*

Placing the same, ld. Counsel would, while vehemently opposing the prayer of the applicant for supply of documents, contend that the respondents are vested with the right to deny access to particular documents.

5. We failed to decipher any materials copies whereof has been sought for by applicant that come under the purview of such privileged documents as para 837 supra suggests. The reason why the request vide letter dated 18.6.19 (A3) and 22.5.19 (A/2) have not been disposed of, is also not forthcoming.

6. Having heard the rival contentions and having perused the materials on record and legal provisions, we are of the concerned opinion that in the interest of justice the letters dated 11.5.19 A/2 and 18.6.19 A/3 (being not disposed of as yet) ought to be examined, considered and disposed of by the competent authority and documents (additional) as are found relevant be provided within 4 weeks of receipt of the copy of this order, and before the next date of enquiry.

7. In the event, the D.A is of the opinion that details have to be furnished in accordance with law, the same shall be furnished within 4 weeks as specified thereafter, the applicant shall be permitted to prefer his representation within a further period of 2 weeks, which if preferred shall be disposed of within 2 weeks thereafter, in which case the proceedings shall remain stayed until disposal of the representation.

8. This O.A accordingly stands disposed of. No costs.

(Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)