

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:31.01.2008

CORAM:

THE HONOURABLE MR.JUSTICE P.K.MISRA
and
THE HONOURABLE MR.JUSTICE K. CHANDRU

WRIT PETITION No.17275 of 2001
and
WPMP.NO.25538 of 2001

1. Union of India,
Rep. by Chairman,
Railway Board & Ex-Officio
Secretary to the Government
of India, Ministry of Railways,
Rail Bhavan, New Delhi -1.
2. The Secretary,
Railway Board,
Ministry of Railways,
Rail Bhavan, New Delhi 1. Petitioners

vs.

1. The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai 600 104.
2. S. Gopalakrishnan
S/o.late G. Sunderarajan
3. The Secretary,
Department of Personnel & Training,
North Block, New Delhi 1. ... Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari to call for the records of the first respondent in O.A.No.640 of 2001, including the order dated 30.8.2001 and quash the same.

For Petitioners ... Mr.R. Thiagarajan
Senior Counsel for
Mr.V.R. Gopalan

For Respondent-2 ... Mr. Vijay Narayan
Senior Counsel for
Mr.R. Parthiban &
Mr. Karthik Rajan

ORDER

(Order of the Court was made by P.K.MISRA,J)

Heard Mr.R,. Thiagarajan, learned Senior Counsel, for the petitioners and Mr.Vijay Narayan, learned Senior Counsel, for Respondent No.2.

2.The facts are as follows :-

For convenience, the present Respondent No.2, who had filed the application before the Tribunal, is referred to as "the applicant".

The applicant, at the relevant time, was functioning as Chief Administrative Officer, North Eastern Railway. The Railway Board, while investigating to the case of procuring ballast for the guage conversion of Mansi-Saharsa and Hajipur-Bachwara sections of North Eastern Railways, found that contracts had been finalised at exorbitant rates in the name of urgency and the applicant had accepted eight tenders during 1996-98. For the loss sustained, it has been recommended to take action against the Convenor of the Tender Committee and other Members of such Committee. However, no action had been recommended to be taken against the applicant, who was the Tender Accepting Authority. The Railway Board as per the existing convention, had sought for first stage advice from the Central Vigilance Commission regarding the action to be taken against the concerned officials and the Central Vigilance Commission had recommended taking of action against the railway officials including the applicant. At that stage, the Railway Board had referred the matter to the Central Vigilance Commission for reconsideration of the advice relating to taking of any action against the present applicant, but the Central Vigilance Commission had reiterated that proceedings should be initiated.

On the basis of such advice, the Railway Board issued charge memo dated 31.12.1998 to the applicant listing various allegations. Subsequently, enquiry was conducted and the Commissioner of Departmental Inquiry found that the charges levelled against the applicant had been proved. Thereafter, in accordance with the procedure laid down in Office Memorandum dated 4.4.1996 of the Department of Personnel and Training, the Central Vigilance Commission was consulted for the second stage advice. The Central Vigilance Commission at the second stage rendered opinion exonerating the applicant. On 12.10.2000, the advice of the Commission was accepted for further processing for the conclusion of the disciplinary proceedings as against the applicant. When the matter was placed before the disciplinary authority for a detailed speaking order, the disciplinary authority decided that the case may be sent to Central Vigilance Commission for reconsideration of their second stage advice in view of the nature of the charges held to be proved. Accordingly, a communication was sent to Central Vigilance Commission for reconsideration of the second stage advice. However, the Central Vigilance Commission again reiterated its earlier advice of exoneration of the applicant. At that stage, the disciplinary authority recorded the provisional views for furnishing a copy of the Inquiry Officer's report to the

applicant inviting his comments. Thereafter, the applicant in his representation dated 21.2.2001 had made further submission and the disciplinary authority differing from the second stage advice of the Central Vigilance Commission, sought for the opinion of the Department of Personnel and Training. The Department of Personnel and Training opined that consultation was necessary only in the case where President was the disciplinary authority and in other cases it was not necessary to consult and accordingly no categorical advice was given by the Department of Personnel and Training. The Chairman of the Railway Board, who was the disciplinary authority, took a final decision accepting the enquiry officer report and imposed punishment of withholding of increment for a period of one year without cumulative effect vide order dated 17.5.2001. However, before such order could be communicated, it was detected that such order cannot be implemented because by the said time the applicant had attained the highest basic salary in the existing grade. Therefore, the disciplinary authority passed fresh order for the imposition of punishment of reduction to one lower stage in the time scale of pay for a period of one year without cumulative effect vide order dated 22.6.2001. Before that date, however, the applicant had submitted a representation to the Minister of Railways on 5.6.2001. On 22.6.2001, the Central Administrative Tribunal in O.A.No.584 of 2001 had directed the Railway Board to dispose of the representation and to maintain status quo preventing the Railway Board from appointing any junior officer as General Manager. On 30.6.2001, the representation of the applicant was rejected. Thereafter, O.A.No.640 of 2001, which is the subject matter of the present writ petition, was filed challenging the order of punishment dated 22.6.2001 and the subsequent rejection of the representation dated 30.6.2001. The applicant had also prayed for a direction to the Union of India to promote him to the post of General Manager by including his name in the supplementary panel. The Tribunal allowed such application and issued a direction directing the Union of India to consider the case of the applicant for promotion. Such order is in challenge in the present writ petition.

3. The Tribunal in its judgment observed that even though the report of the Inquiry Officer was supplied to the applicant, the advice of the Central Vigilance Commission and the tentative findings of the disciplinary authority as to why he was not accepting the advice, were not furnished to the applicant and, therefore, the disciplinary authority violated the principles of natural justice. The Tribunal further observed that the procedure contemplated in the Office Memorandum dated 28.9.1978 regarding consultation with the Department of Personnel and Training had not been complied with inasmuch as, even though such opinion had been sought for, the Department of Personnel and Training had not rendered any advice and, therefore, non-furnishing of any advice had vitiated the disciplinary proceedings. Since the procedure had not been followed and the advice of the Department of Personnel and Training had not been obtained, the applicant had been greatly prejudiced. The Tribunal also concluded that the Board had already taken a decision on 11.10.2000 that "... in the second stage advice

the CVC has advised exoneration. We may accept this as it has seen (been ?) the views of the Railway Board." and even though such order had not been communicated, the disciplinary authority should not have reviewed such decision and come to a different conclusion.

4. While assailing the above decision, the learned Senior Counsel appearing for the Railway Board and has raised the following contentions :-

(1) Even though there was requirement to consult the Central Vigilance Commission, the disciplinary authority is not bound by the opinion furnished by the Central Vigilance Commission and is free to take a decision different from the advice given by the Central Vigilance Commission.

(2) Since the enquiry report, which was against the applicant, had been furnished to the applicant, there was no necessity to furnish a copy of the advice given by the Central Vigilance Commission nor there was any necessity to furnish a copy of the tentative opinion of the disciplinary authority.

(3) There was no necessity to consult with the Department of Personnel and Training and, at any rate, such opinion is also being advisory, in the absence of any prejudice and more particularly when the Department of Personnel and Training had been consulted, but it had not given the opinion, there is no necessity to interfere with the order of punishment.

(4) Since the opinion of the disciplinary authority had only been recorded in the file and not communicated to the applicant, the disciplinary authority was free to take a different view at a subsequent stage.

5. So far as the first contention is concerned, the matter is no longer res integra. While considering the requirement of consultation with the Union Public Service Commission in the matters relating to disciplinary action, it was observed by the Supreme Court in (1962) Suppl.(1) (SCR) 968 (A.N.D'Silva v. Union of India) that even though the consultation is a Constitutional mandate, the advice furnished by the UPSC., regarding such disciplinary action is not binding and the disciplinary authority is free to take any appropriate decision notwithstanding the advice of the UPSC to the contrary. While considering the question of advice rendered by the Central Vigilance Commission to Public Sector Undertakings, it was observed in AIR 1991 SC 1513 = (1991) 3 SCC 219 (NAGARAJ SHIVARAO KARJAGI v. SYNDICATE BANK HEAD OFFICE, MANIPAL AND ANOTHER) that such advice can be considered only as an advisory and not binding.

6. In a recent unreported Division Bench decision of this Court in W.A.No.419 & 634 of 2005 (THE CHAIRMAN, UNION BANK OF INDIA & OTHERS v. ALL INDIA UNION BANK OFFICERS' FEDERATION & OTHERS) disposed of on 30.10.2007, after considering the effect of the Central Vigilance Commission Act, 2003, it has been observed

that any opinion furnished by the Central Vigilance Commission cannot be considered as binding and the disciplinary authority is free to act independently on the basis of the materials on record. However, such disciplinary authority can take into account the opinion furnished by the Central Vigilance Commission.

7. In view of the above position of law, the first contention of the petitioner is acceptable to the extent that the disciplinary authority was not bound to act according to the opinion rendered by the Central Vigilance Commission and it was free to take its own decision, of course on the basis of materials on record.

8. The Tribunal had observed that the enquiry having been conducted on the basis of the opinion furnished by the Central Vigilance Commission, before taking any action, the Railway Administration should have furnished a copy of the opinion of the Central Vigilance Commission to the applicant. For the aforesaid purpose, the Central Administrative Tribunal had relied upon several decisions of the Supreme Court, which are actually not applicable to the facts of the present case. In those decisions, the Supreme Court has emphasised on the fact that if enquiry officer had exonerated the delinquent and the disciplinary authority intends to take a different view in the matter, copy of such enquiry report along with the tentative view expressed by the disciplinary authority should be furnished. However, in our considered opinion, the ratio of such decisions cannot be made applicable to the facts of the present case. As already indicated, in the present case, the enquiry report was against the applicant. The suggestion given by the Central Vigilance Commission being only advisory in nature, as already observed, need not have been furnished to the applicant.

9. Similarly, the third contention raised by the learned Senior Counsel for the Railway Administration prima facie appears to be justified, though, in our opinion, it is not necessary for us to go into that aspect as even assuming that such contention that there was no necessity to consult with the Department of Personnel Training, the ultimate conclusion of the Tribunal that there was no justification to impose the punishment, is just and proper in the peculiar facts and circumstances of the case.

10. During the course of hearing, we had called upon the Railway Administration to produce the relevant file. From the file it is apparent that initially the Railway Administration had not proposed to initiate proceedings against the applicant, but the proceedings were sought to be initiated against others. However, at that stage, the Central Vigilance Commission had rendered an opinion that the proceedings may also be initiated against the applicant. The applicant had merely recommended for acceptance of the tender, which had already been approved by the Tender Approval Committee. It is apparent that the applicant was new to the area and, therefore, it can be reasonably concluded that the applicant must not have any direct knowledge regarding cost factor for supply

of materials. Subsequently, the Central Vigilance Commission had rendered opinion for exoneration of the applicant. Such opinion was placed before the disciplinary authority, who clearly recorded that since the earlier view of the Department was not to proceed against the applicant and the Central Vigilance Commission had given opinion to exonerate, such opinion may be accepted. At that stage, an office note was placed before the disciplinary authority wherein it was indicated that since the proceedings or prosecutions were launched against other persons, while giving a reply to the applicant, the matter should be recorded carefully. In fact the office note never pointed out any specific reason for which, the order passed by the disciplinary authority, should not be communicated. On the other hand, the office note was only to the effect that the letter to be sent to the concerned applicant should be drafted with proper care and attention. Subsequently, the disciplinary authority suddenly changed his views and directed to impose punishment. However, no reason whatsoever was indicated as to why the disciplinary authority was differing from his earlier conclusion. It is of course true that the earlier conclusion of the disciplinary authority had not been communicated to the applicant. However, even assuming that it was legally permissible for the disciplinary authority to take a different view, it could have been done only on the basis of some rational reason and not on the basis of any arbitrariness. In the absence of any reason and particularly keeping in view the background note was only to the effect that the letter was to be drafted carefully, we are of the considered opinion and in agreement with the conclusion of the Tribunal that the subsequent decision to impose minor punishment was arbitrary.

11. For the aforesaid reasons, though we have differed from several reasonings given by the Tribunal, we are not inclined to interfere with the ultimate order passed by the Tribunal. Accordingly, the writ petition is disposed of with the aforesaid observation. Consequently, the connected miscellaneous petition is closed.

सत्यमेव जयते

Sd/-

Asst. Registrar.

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Sub Asst. Registrar.

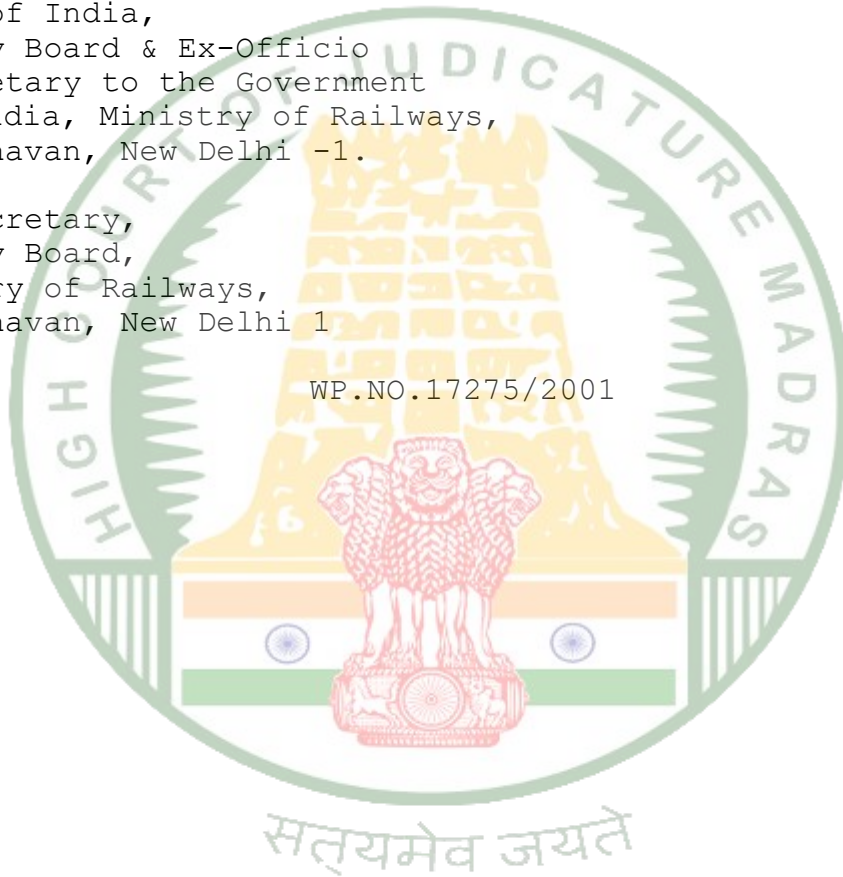
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To

1. The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai 600 104.
3. The Secretary,
Department of Personnel & Training,
North Block, New Delhi 1.
3. The Chairman,
Union of India,
Railway Board & Ex-Officio
Secretary to the Government
of India, Ministry of Railways,
Rail Bhavan, New Delhi -1.
4. The Secretary,
Railway Board,
Ministry of Railways,
Rail Bhavan, New Delhi 1

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