

(2022) 05 KAR CK 0005

In the Karnataka High Court

Case No : Writ Petition No. 7468 Of 2022 (S-CAT)

M. VIJAYA KUMAR

APPELLANT

Vs

DY. SECRETARY E(O) I & Others

RESPONDENT

Date of Decision : 06-05-2022

Acts Referred:

Railway Services (Conduct) Rules, 1966 — Rule 3(1)(ii), 3(1)(iii)
Constitution Of India, 1950 — Article 226

Citation : (2022) 05 KAR CK 0005

Hon'ble Judges : P.S. Dinesh Kumar, J;M.G. Uma, J

Bench : Division Bench

Advocate : R.P. Somashekharaiiah, M. Unnikrishnan

Final Decision : Dismissed

Judgement

P.S. Dinesh Kumar. J

1. This writ petition is directed against order dated March 21, 2022 passed by the CAT Central Administrative Tribunal dismissing petitioner's O.A. No.170/00432/2021.

2. We have heard Shri. R.P. Somashekharaiiah, learned Advocate for the petitioner and Shri. M. Unnikrishnan, learned CGC for respondents.

3. Brief facts of the case are, petitioner was working as Deputy Chief Engineer (Construction) with South Western Railway. He was entrusted with work of 'Road Over Bridge' to be constructed in Doddaballapura. The site was situated in busy National Highway, NH-207. Petitioner retired on attaining the age of superannuation on March 31, 2019. On November 23, 2020, the Chief Vigilance Commissioner wrote a letter and called upon the petitioner to explain the excess payment made to the Contractor with regard to installation of concrete machine. Petitioner submitted his reply. Thereafter, the Deputy Secretary of Railway Board issued a charge memo with following Articles of Charges:

Article of Charge-I

He has not ensured the installation of weigh batching plant for the concreting work in deviation with stipulation of contract and also not deducted the payment at the rate of 10% on the base rate for this deviation.

He has paid additional Rs.500/- per cum for the concrete supplied from RMC plant whereas the same was to be supplied by the contractor by installation of weigh batching plant at the site as per tender conditions without additional cost.

Due to these acts of omissions and commissions by him, excess payment of approx. Rs.56.05 lakhs was made to contractor and resulted into financial loss to Railway.

Article of Charge-II

He has not ensured the quality of concrete in the work as per contract provisions. Unsatisfactory Laboratory test reports of the concretes in the work, indicate that the concrete of lesser strength was accepted by him against the strength of concrete for which he had made the payment.

He as Engineer-in-charge of the work, has not ensured the proper execution of work under this agreement UCC 74004, which has resulted into construction defects like honeycombing, cracks, shabby repairs at various locations.

Due to this act of omission and commission by him, substandard quality of concrete work was executed in the agreement and safety of the public is put at the risk.

By the aforesaid act Shri.M.Vijaya Kumar, Retired Dy.CE/North/BNC, South Western Railway has failed to maintain absolute integrity, devotion to duty and had acted in a manner unbecoming of a Railway servant, thereby contravened Rule 3(1) (ii) & (iii) of Railway Services (Conduct) Rules, 1966."

4. Petitioner challenged the same before the CAT. The O.A. was contested by the respondents. On consideration of material on record, the CAT has dismissed the O.A. Hence, this writ petition.

5. Shri. Somashekaraiah, learned Advocate for petitioner urged two contentions. Firstly, that petitioner was entrusted with the work in the year 2014. He was permitted to retire on attaining the age of superannuation. The Memorandum of charge has been issued on June 25, 2021, in violation of Rule 21(b) of the Master Circular issued by Indian Railways which prohibits issuance of charge sheet in case of a retired officer for any misconduct which allegedly took place more than four years before issuance of the charge sheet.

6. Secondly, that the charge sheet has been signed by an Officer of equal rank. Therefore, it is unsustainable in law.

7. In reply, Shri. Unnikrishnan, learned CGC submitted that the petitioner was incharge of the work from August 5, 2014 to March 31, 2019. The charge memo

has been issued on June 25, 2021 and the same is in time. With regard to the second contention that the charge memo has been signed by an Officer of equal rank, he submitted that petitioner had not urged this ground either before the CAT nor in the writ petition. The said submission was not controverted by Shri. Somashekaraiah.

8. We have carefully considered rival contentions and perused the records.

9. The only point that remains for consideration is, whether the charge memo issued is in violation of Rule 21(b) of Master Circular?.

10. It is the specific case of the Railways that petitioner was incharge of the work from 2014 to 2019. The charge memo has been issued in the year 2021. The period between which the petitioner was incharge of the work is a matter of fact, which can be ascertained by adducing evidence. Hence, no finding can be recorded in a writ petition under Article 226 of the Constitution of India.

11. In view of the above, no exception can be taken to the order passed by the CAT.

12. Resultantly, this writ petition fails and it is accordingly dismissed.

13. All contentions of the petitioner are kept open to be urged before the Enquiry Officer.

No costs.