

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

No. E(D&A) 2006 RG6-38

New Delhi, 16 /10/2008

The General Manager (P),
All Zonal Railways and Production Units etc.

Sub: Appointment of retired officials as Inquiry Officer for
conducting departmental inquiry reg.

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A number of cases have recently come to the notice of this Ministry where the Courts have set aside the inquiry reports in the departmental disciplinary cases on the ground that the inquiry had been conducted by a retired railway servant. It has been held that the term "other authority" mentioned in Rule 9 (2) of Railway Servants (Discipline And Appeal) Rules, 1968 does not include a retired railway servant and that if the Railways wants that retired railway servants should also be brought within the scope of "other authority", suitable amendment in the Rule itself be required. Reliance has also been placed on Supreme Court judgment in the case of Ravi Mallick Vs. National Film Development Corporation Ltd. & Ors. reported in (2004) 13 SCC 427. It has also been observed that a retired railway servant has no administrative control over his subordinates or an authority to carry out the purposes of taking evidence under the Rules.

2. The matter has been examined by the Ministry of Railways in consultation with the Department of Personnel & Training. Existing rules as such do not prescribe any condition or prohibit any one from being made inquiry authority. Therefore, any person including a retired railway servant may be appointed as inquiry authority in a departmental disciplinary inquiry. Any inference that the rules exclude retired railway servants from being made the inquiry authority in the departmental inquiries has no basis. Since the rules already do not lay down any condition or prohibit any one from being made inquiry authority, there is also no cause for making any specific mention of retired railway servants therein. The inquiry authority is only the delegate of the disciplinary authority whenever the disciplinary authority itself is not enquiring into the matter. The question of his exercising or not exercising administrative control over a person or persons involved in the departmental disciplinary inquiry therefore, is not relevant. His appointment by the disciplinary authority automatically enables him to exercise powers required to conduct the inquiry.

3. The reliance of the Courts on the Supreme Court judgment in the Ravi Mallick case mentioned in Para 1 above, is also not appropriate. Extracts of the above judgment as brought out in the relevant Court orders shows that the judgment had been delivered by the apex court in the context of particular service rules viz. NFDC Service Rules and Regulations. These rules stipulated that only public servants can be appointed as inquiry officers. The apex court had merely ruled that a retired officer would not come up within the definition of Public Servant for the purpose of these rules. There is however, no stipulation either in the Railway Servants (Discipline And Appeal) Rules, 1968 or in the Public Servants (Inquiries) Act, 1850 mentioned in Rule 9 (2) of these rules that the inquiry can be conducted by the

Public Servants only. The above referred judgment of the apex court thus, is inapplicable to the railway servants.

4. Ministry of Railways have therefore, decided that Railways should challenge the orders of the Central Administrative Tribunal or of the High Court, as the case may be, which rules against appointment of a retired railway servant as the inquiry officer in a departmental disciplinary inquiry. The position brought out in Para 2 and 3 above may be appropriately used while contesting/arguing cases before the Court. Vigilance Directorate, Railway Board Office have under their letter, No. 94/V-1/CVC/1/4 dated 29.7.2008, circulated a few judgments where the Courts have upheld the appointment of retired railway servant as inquiry officer in departmental disciplinary inquiry. Subsequently, a copy of Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) O.M. dated 15.4.87 which permits engagement of retired Government servants to conduct departmental inquiries in individual cases was also circulated under their letter No. 2007/V-I/DAR/1/9 dated 23.9.2008 for information and guidance. Contents of the above referred letters may also be utilized by the Railways to strengthen their cases pending before the Hon'ble CAT/Hon'ble High Courts in which the appointment of a retired railway servant as inquiry officer has been challenged.

5. Please acknowledge receipt.

Sd/-
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Railway Board