

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/471/2013

Date of Reserve: 02.12.2019

Date of Order:31.01.2020

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Sri Krupa Sagar Sahoo, IRTS, aged about 61 years,S/o. Late Shiba Charan Sahoo, Vill/PO-Mathakaragola, PS-Kamakhyanagar, Dist-Dhenkanala, Retired as CTM (SC&P), East Coast Railway, Chandra Sekharpur, Bhubaneswar, Dist-Khurda.

...Applicant

By the Advocate(s)-M/s.B.Dash
C.Mohanta

-VERSUS-

Union of India represented through:

1. The Chairman, Rail Bhawan, New Delhi-110 001.
2. Jt.Secretary (E&P),Railway Board, Rail Bhawan, New Delhi-110 001.
3. General Manager, South East Central Railway, Bilaspur, Chhatisgarh.
4. General manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist-Khurda.

...Respondents

By the Advocate(s)-Mr.T.Rath

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is a retired IRTS Officer under the Respondent-Railways. In this Original Application under Section 19 of the A.T.Act, 1985, he has sought for the following reliefs:

- i) The Original Application may be allowed.
- ii) The order at Annexure-A/1 and Annexure-A/15 may be quashed.
- iii) The applicant may be allowed all consequential benefits including financial benefits.
- iv) Such other order(s)/direction(s) may be given in giving complete relief to the applicant.

2. Facts in issue are that the applicant while working as Chief Commercial Manager (FS & CI) in the South East Central Railway, Bilaspur, was served with a Memorandum dated 24.07.2006 (A/1) in contemplation of disciplinary proceedings against him under Rule-9 of the Railway Servants (Discipline & Appeal) Rules, 1968, containing the following Articles of Charge:

Article-I

He misled the General Manager (GM)/SECR about his (GM's) competence and irregularly recommended to him on 14.09.2004 to approve an irregular policy of ignoring results of second weighing, by twisting the directives as contained in the Railway Board's letter No.TC-1/2002/109/5 dated 15.11.2002, and by violating Section 78 of 'The Railway Act, 1989', as well.

Article-II

That Shri K.S.Sahoo violated the provisions as contained in para Nos. 1503, 1504 & 1514 of the Indian Railways Code for the Accounts Department, Part-I and para Nos. 112, 113 & 114 of the Indian Railway Financial Code, Volume-I, by recommending to GM/SEC Rly to approve the said policy proposal of significant financial implications without its scrutiny by the Finance.

Article-III

In order to favour a party named M/s. Shree Nakoda Ispat Limited, Shri K.S.Sahoo recommended on 19.04.2005 to CCM/SECR to withdraw its bill of punitive charges of Rs.21,75,081/- and thus, he not only violated directives contained in the Railway Board's letter No.TC-1/2002/109/5 dated 15.11.2002 and the SEC Rly's local policy circulated vide letter No.C/SECR/BSP/WB/PC/5110 dated 22.09.2004, but was also instrumental in causing direct loss of Rs.21,75,081/- to the railway revenue.

By the above act of omission & commission, Shri K.S.Sahoo, Chief Commercial Manager (FS & CI) failed to maintain absolute integrity, exhibited lack of devotion to duty, and acted in a manner unbecoming of a Railway Servant, and thus, contravened provisions of Rule-3(1)(i), (ii) & (iii) of Railway Service (Conduct) Rules, 1966".

By the aforesaid Memorandum, the applicant was directed as under:

"Shri K.S.Sahoo is hereby directed to submit to the undersigned through General manager/South East Central Railway a written statement of his defence (which should reach the said

General manager/South East Central Railway) within ten days of receipt of this Memorandum, if he does not desire to inspect any documents for the preparation of his defence, and within ten days after completion of inspection of documents, if he desires to inspect documents, and also:

- (a) to state whether he wishes to be heard in person; and
- (b) to furnish the names and addresses of the witnesses, if any, whom he wishes to call in support of his defence.

3. In response to the Memorandum, the applicant submitted a letter dated 17.08.2006 (A/2) to the authorities concerned with a request to inspect some documents and to be heard in person after submission of his reply. Since no document was provided, the applicant submitted another letter dated 20.09.2006 (A/3) to the Joint Secretary, (E&P), Railway Board (Respondent No.2) reiterating his earlier request. However, the applicant was supplied two documents and his request for supply of additional documents was not considered and under the circumstances, he submitted his written statement of defence on 13.12.2006 (A/5), stating his action as bona fide, with a request to withdrawn the charges levelled against him. While the matter stood thus, the Railway Board decided to hold an inquiry and in this connection, both Inquiry Officer and the Presenting Officer were appointed for that purpose. After conclusion of the inquiry, the Presenting Officer submitted his written brief vide A/6 dated 03.06.2008, stating that all the charges levelled against the applicant have been conclusively proved. The applicant submitted his written brief on 01.07.2008 (A/7) by pointing out that the charges framed against him have not been proved at all since in a disciplinary proceedings, the prosecution is required to prove the charges based on the depositions of the witness whereas in his case, the prosecution witness submitted that he did not personally investigate the case relating to the charges and the allegations made against the applicant in the Memorandum. Be that as it may, the Inquiry

Officer after analyzing various aspects of the matter held in his report dated 28.07.2008 (A/8) that the applicant is innocent, apart from holding that the prosecution had failed to bring home the charges and concluded that the applicant is not guilty of the charges. This being disagreed to by the Disciplinary Authority, a tentative disagreement notice was communicated to the applicant vide Memorandum dated 02.09.2009 (A/9) requiring him to submit his representation against the same. On 04.11.2009 (A/10), the applicant submitted his representation explaining the circumstances under which he has not failed to maintain absolute integrity and devotion to duty and as such, no misconduct has been committed by him. Vide order dated 19.05.2010 (A/11) issued by the Deputy Secretary/E(O)/-I in the Ministry of Railways (Railway Board), it was held the applicant is guilty of all the charges and accordingly, major penalty of "reduction to a lower stage in the time scale of pay for a period of one year which will have the effect of postponing the future increments of pay" was imposed on the applicant. The applicant thereafter, preferred an appeal dated 14.06.2010 (A/12) under Rule-18(ii) read with Rule-21 of the Railway Servants (Discipline & Appeal) Rules, 1968 to the President. In the meantime, vide Memorandum dated 17.06.2010 (A/13), the pay of the applicant was reduced by one stage at Rs.67,600/- in the Pay band Rs.37,400-67,000/- GP Rs.10,000/- as on 01.06.2010 from his actual pay which was Rs.69,630/- in the same Pay Band, as a measure of implementation of the punishment order. The UPSC vide its letter dated 15.11.2011 (A/14) tendered advice to the effect that on account of loss caused to the Railways, the charges are proved against the applicant and further advised for rejection of the appeal. Vide order dated 07.02.2012 (A/15) the applicant was communicated about the rejection of his appeal by the

President on the ground that the same is devoid of merit. Hence, this Application with the aforesaid reliefs.

4. The grounds, inter alia, urged by the applicant in support of the reliefs sought for are as follows:

- i) Order dated 15.11.2002 which provides "re-weighment of such wagons/rakes should be considered only when there are reasonable grounds for the same" was not taken into consideration by the Disciplinary Authority. According to applicant such wagons in the context, mean the wagons/rake which have already been weighed in the weighbridge at the originating station under the supervision of Railway staff.
- ii) Section 78 of the Railways Act provides that notwithstanding anything contained in the R.R.A, the Railway Administration has the right to correct any error or collect any amount that may have been omitted to be charged. There being no misinterpretation of orders issued by the Railway Board nor misleading information regarding competence of the General Manager being given by the applicant, the charge under Article-1 falls to the ground.
- iii) During the course of inquiry, Shri Pramod Kumar, who was the General Manager, SECR, Bilaspur at the relevant point of time, deposed that he had approved the proposal of the Commercial Department on being satisfied about its rationality. He further submitted that the Board's order is incomplete and the note put up by the applicant was to correct the problems being faced by the field staff which followed the spirit of the Board's order. According to applicant, the said General Manager at no point of time had ever stated to have been misled by him.
- iv) Para 112 & 114 of Indian Railways Financial Code, Vol-1 prescribes that finance should subject the proposals, requiring Railway Board's or General Manager's or even lower authorities' approval to the same level of close scrutiny from the point of view of need, scope and financial propriety. No new proposal having been put up by the applicant before the General Manager, SECR, the restrictions for repeated weighment of consignment by Railway official as provided in Rule 118 of Goods Traffics No.41(part-1, Volume-1) was required to be taken into

consideration while dealing with Article (II) of the charge-sheet. According to applicant, neither the SECR nor he introduced any new rule intentionally nor twisted the Board's orders regarding the requirement of financial concurrence.

- v) A hand written note from CTS/Bhilai as relied upon by the prosecution that the applicant failed to maintain absolute integrity or devotion to duty ought to have been exhibited and the applicant should have been provided an opportunity to cross-examine the CGS.
- vi) The R.R. issued at the originating station being a vital document to substantiate the booking of goods was not exhibited nor the prosecution did like to bring the said document on record for examination, which smaks mala fide intention of the respondents.
- vii) Orders passed by the Advisor/Vigilance/Railway Board speak that diversion of rakes need not be resorted to if operationally found inconvenient. This was not regarded since MXA (Marauda) does not fall on the route from BSPX (Banspani) to Bhilai/Goods Shed. Thus, the rakes could not have been diverted for re-weighment. In this backdrop, the applicant has called in question whether the rakes were diverted on instruction of the vigilance for re-weighment
- viii) In terms of Rule-6 of Railway Servants (Discipline & Appeal) Rules, 1968, penalties can be imposed for good and sufficient reasons. For imposition of any of the penalties provided in Clause (v) to (ix) of Rule-6(1), an enquiry is a must and it should be conducted in the manner prescribed. In the absence of a misconduct, there cannot be any disciplinary proceedings. According to applicant, a plain reading of the charges would go to show that he had never committed any misconduct. On the contrary, the same can be said to be one way of interpretation of the direction issued by the Railway Board. It is his case that interpretation or misinterpretation of a rule cannot constitute misconduct and as such the charge memo issued is not in conformity with Rule-6 of RS(D&A) Rules, 1968.

5. In the counter-reply, the respondents have opposed the prayer of the applicant and while narrating the genesis and backdrop of the matter, they have pointed out that there has neither been procedural irregularities in the

conduct of inquiry nor principle of natural justice has been violated to the prejudice of the applicant. According to respondents, the Disciplinary Authority after considering the report of the I.O., disagreed with the findings arrived at therein and in effect, the applicant was provided with the disagreement notice requiring him to make representation against the same. The applicant having so submitted, the Disciplinary Authority came to the conclusion that the charges levelled against the applicant have been established and in view of this, he imposed punishment on the applicant. The appeal preferred by the applicant against the punishment imposed by the Disciplinary Authority having been duly considered was rejected by the President.

6. According to respondents, punitive charges raised after re-weighment represent potential Railway Revenue that escaped realization due to erroneous initial weighment or because of Railway staff collusion with loading parties in manipulating the chargeable weight. These punitive charges are notified in terms of six times the freight tariff rates for the highest class rate of goods traffic. It has been pointed out that the Railway Board has not delegated powers to the Zonal Railways to frame any policy of doing away with realization of these punitive charges.

7. One M/s.Nova Iron & Steel Ltd., a party against which fifteen bills of punitive charges were pending for recovery by South East Central Railway(SECR), conducted a meeting with the General Manager/SECR on 05.08.2004 and submitted a representation dated 13.08.2004 to drop the bills of punitive charges and to enforce Railway Board's instructions dated 15.11.2002 regarding reweighment of rakes. The General Manager/SECR directed the CCM/SECR (applicant) on this representation itself on 21.8.2004 to examine

the case and put up. Complying with the above direction, the applicant initiated a note on 14.09.2004 in which he diplomatically explained the contents of the Board's letter dated 15.11.2002 that once a rake has already been weighed at the loading point and duly witnessed by Railway Staff, 'weighment enroute' or 'at the destination' should not be undertaken in normal circumstances. However, for want of such information, some rakes are weighed enroute and bills for overloading penalty charges are given to the customers on the basis of the second weighment. He further indicated that "It is logically follows from the Board's letter that if second weighment is undertaken enroute or at destination, punitive charges should not be levied on the customers on the basis of the second weighment. I have issued orders to this effect which may kindly be confirmed".

8. According to respondents, earlier SECR had requested the Railway Board vide their letter dated 19.02.2004 to clarify certain issues with regard to the instructions contained in Railway Board's letter dated 15.11.2002. Respondents have pointed out that on scrutiny of the noting for Board's letter dated 15.11.2002 under Para-B of NS-17 (Page-39 of the OA), it reveals that the applicant mentioned to CCM & GM/SECR that he had some efforts earlier in this regard when he was posted to South Eastern Railway by taking up the matter with the Railway Board, but the Board did not pay any heed to his letter. In the said letter, the applicant had sought for orders regarding reweighment both retrospective and prospective effect to 15.11.2002, which transpires that the applicant was well aware of the fact that only Railway Board is the competent authority to frame any policy on the subject matter and there is no specific stipulation in the Railway Board's letter dated 15.11.2002 to ignore the second weighment. It has been contended that

Section-78 of the Railways Act, 1989 states that "notwithstanding anything contained in the Railway Receipt, the Railway Administration may, before the delivery of the consignment, have the right to re-measure, re-weigh or reclassify any consignment". Therefore, there is no ambiguity that railway authorities can reweight any consignment before its delivery. But the local policy designed by the applicant and circulated vide SEC Railway's letter dated 22.09.2004 ignored the results of second weighing if (i) the rake has already been weighed at the booking point under supervision of railway staff and such weighing was confirmed from RR, and (2) the second weighing is conducted by any agency other than Headquarters Commercial Officers or Vigilance Department. According to respondents, this policy limited the powers of reweighment to the HQ Commercial Officers and Vigilance Department only, in violation of Section-78 of the Railway Act, 1989 and Board's instructions dated 15.11.2002. The applicant recommended to the GM/SECR to approve the above policy proposals on 14.09.2004 when the representation of M/s. Nova to drop their fifteen bills of punitive charges was examined by him and was submitted to CCM/SECR for further submission to GM/SECR for his orders. It has been pointed out that a special All India Vigilance Drive to check overloading of rakes was launched on 04.04.2005. During this drive, a rake booked under RR No.347699 dated 03.04.2004 from Banspani to Bhilai Goods, was reweighed at Marauda weighbridge on 05.04.2005 and found to be overloaded. Punitive Charges of Rs.21,75,081/- was raised on this overloaded rake, against the consignee M/s.Shree Nakoda Ispat Ltd.

9. Applicant on 19.04.2005 recommended to CCM/SECR for withholding this bill of Rs.21,75,081/- without examining the same in terms of SECR's

policy letter dated 22.09.2004, which provides that the result of second weighment should be ignored unless such weighment was specifically ordered by Vigilance/HQ Commercial officers. On the other hand, in the instant case, it was clearly mentioned on the recovery notice dated 06.04.2005 that this rake was reweighed at the behest of Vigilance. Despite this, the applicant recommended withdrawal of the bill of punitive charges, thereby violated the instructions of SECR's policy letter dated 22.09.2004. According to respondents, the charges levelled against the applicant have been proved, this Tribunal should not interfere with the matter.

10. Applicant has filed rejoinder to the counter-reply in which he has pointed out that in the South East Central Railway an order postulating the procedure had been issued with the approval of the General Manager that if a rake was weighed under the supervision of railway staff, punitive charges should not be levied on the customer on subsequent reweighment unless the same was done at the behest of commercial or vigilance department. The Commercial Committee endorsed the recommendation of the Rates Manager's Sub-Committee observing that no reweighment of rakes should be done once the weighment has been done earlier and in case of re-weighment, the results shall be ignored for charging purpose.

11. Commercial Department is the custodian of the weighbridges of the railway and also is responsible for sale or transport/marketing railway traffic and day-to-day interaction with the rail users. The vigilance department is also authorized to check any aspect of railway working. Therefore, the aforesaid circular issued by the S.E.C. Railway empowers the aforesaid two Departments to go for reweighment. There are other 16 departments in Railways including Operating, Mechanical, Civil Engg, Electrical Engg. Stores,

S&T, Personnel Railway Administration. If those departments are also allowed to order for re-weighment, then it would open a pandora's box.

12. While working in S.E. Railway, the applicant had occasion to refer to the aforesaid Railway Board's order on the subject. The applicant was concerned about harassment caused to the rail users due to multiple weighments/multiple billings and in the said circumstances, he has raised the issue having been empowered to do so in terms of the Board's letter which says the C.C.M/Freight Marketing is the single window service provider for siding owners/rail users. The interpretation of Board's letter certainly advanced by the applicant which was tabled before the General Manager. The General Manager having felt the interpretation to be correct one, did not object to the same. Therefore, the question of misleading the General Manager does not arise.

13. According to applicant, it was not a case to be moved before the Finance Department. However, the interpretation advanced was marked to the Finance Department. Though there was a vigilance check on the rake of M/S Nakoda Ispat, the same was not informed to the Sr. D.C.M nor to the CCM of the Headquarters. In spite of the vigilance drive, the same was neither informed by the dealer or by the SCM/FS, Therefore, the applicant recommended for withdrawal of the bills and as such, he cannot be alleged to have violated the Conduct Rules. The weighment having been done under the supervision of the Railway Staff, the question of collusion with the weighbridge clerk is without any basis.

14. Since the entire amount of Rs. 21,75,081/- was recovered from the party after it was intimated to the applicant that as per re-weighment

conducted by the vigilance department, the party was liable to pay the aforesaid amount, there was no loss sustained by the Railways.

15. The enquiry officer who worked as a FA & CAO in the Railways was quite an efficient officer who after going through all the papers acquitted the applicant from all the charges, but the Disciplinary Authority without any sufficient reason and without weighing the evidence in its proper perspective differed with the findings and directed the applicant to submit his representation. The Disciplinary authority considering the points raised in the said representation, imposed a major penalty on the applicant. The applicant submitted an Appeal before the Hon'ble President of India. Union Public Service Commission, on being requested, also without weighing the evidence, advised for dismissal of the appeal on a wrong notion that the Railway has sustained loss whereas, no loss has caused to the Railways.

16. We have heard the learned counsels for both the sides and perused the records. We have also gone through the written notes of submission filed by the applicant. In order to decide the matter, it would be proper to quote hereunder the reasons on disagreement by the Disciplinary Authority with that of the I.O. as communicated to the applicant vide Memorandum dated 2.9.2009.

Article-1

- (a) The CO has put up a note (Ex.P1), the para-1 of that note reads as – "Board vide their letter No.TC-1/2002/109/5 dated 15.11.2002, have stated that once a rake has already been weighed at the loading point and are witnessed by Railway staff, weighment enroute or at the destination station should not be undertaken in normal circumstances. However, for want of such information, some rakes are weighed enroute and bills for overloading penalty charges are given to the customers. It logically

follows from Board's letter that if second weighment is undertaken enroute or at the destination station punitive charges should not be levied on the customers on the basis of the second weighment. I have issued orders to this effect, which may kindly confirm". But Railway board's letter (Exh.P2) says "Once a wagon/rake has already been weighed on a weighbridge station under the supervision of railway staff, these should not be weighed at enroute/destination stations under normal circumstances. Reweighment of such wagon/rakes should be considered only when there are reasonable grounds for the same". Thus, the circular issued by Railway Board clearly permits the provision for second weighment. CO knew that only Board can decide policy matter on freight, that is why he, earlier wrote a DO letter dated 22.3.2004 (Ex.P6) to EDTC(R), requesting Board to decide about recovery of punitive charges pertaining to rakes reweighed during the period prior to 15.11.2002. Board's reply dated 12.5.2004 (Exh.P7) is quite clear that there was no change in the policy, and the undercharges raised were to be dealt with the zonal Railways as per the extant rules. Shri Sahoo went through this reply on 18.5.04. Yet, in his noting dated 14.9.04, while recommending that the results of the second weighment may be ignored, he did not mention Board's clarification in this regard.

- (b) Shri Pramod Kumar, the then GM/SECR (DW-1) while giving reply to Q.No.11 stated that 'Board's order (Exh.P2) is 'incomplete' and "The note put up through CO only sought to correct the problems being faced by the field staff and followed the spirit of the Board's order". This answer itself reflects that CO misled the then GM. The CO misled the GM by not putting up the actual position as reflected in Railway Board's reply dated 12.5.2004 (Exh.P7). If, Shri Sahoo had mentioned the Railway Board's reply in his note dated 14.9.2004, Shri Pramod Kumar, the then GM/SECR (DW-1) would not have said that the Board's letter was incomplete. Since he did not know about Board's clarification regarding second weighment, that's why, he said that the Railway Board's letter was incomplete. The Board's reply dated 12.5.2004 clearly says that "there was no change in the policy, and

undercharges raised were to be dealt with by the zonal Railways as per the extant rules”.

- (c) The CO did not mention in his note that the Railway Board has permitted re-weighment (i.e., second weighment) of wagons/rake, if there were reasonable grounds.
- (d) The CO did not mention about the Competence of GM for approving such a policy. When asked regarding misleading of GM by CO about his (GM's) competence, Shri Pramod Kumar, the then GM/SECR in his deposition as DW-1, stated in reply to Q.No.11 that the note put up by the CO did not make any mention about his competence or otherwise of approving this policy. Further, Shri Pramod Kumar, the then GM/SECR DW-1 stated in reply to Q. No.26 that the normal practice on Zonal Railways is to point out clearly to GM whether the issue requires Board's approval. Otherwise it is assumed that the matter is within GM's competence. Thus, the CO should have mentioned that this would need Board's approval.

In view of the above, Article-1 of charge is considered as substantially proved, against the CO.

Article II

- (a) Comparing the recommendation of the CO with the decision of cancellation of trains or diversion of the goods traffic, which is related to operational convenience, is not acceptable. IO has admitted about the violation of Accounts Code & Financial Code by the CO, but he, without any evidence to the contrary, has held this Article of Charge as “not proved”. In this regard, it is pertinent to refer 3rd para, page-7 of the IO's report, which reads as :- “CO has followed a practice, which is in conflict with the provisions as contained in Para Nos. 1503, 1504, 1505 & 1514 of the Indian Railway Code for the Accounts Department, part-I and Para Nos. 112, 113 & 114 of the Indian Railway Financial Code, Volume I”.
- (b) While, discussing the CO's submission in Para 8.3.3.3 of the defence brief, IO has also held that withdrawal of an allegedly wrong punitive bill

is not exactly analogous to the situations alluded to, by the CO.

- (c) The CO was specifically aware (as CCM/FM/SER) that the under charges raised on the basis of second weightment could be dealt and considered only with Finance view on record and that was the reason that he had sent similar cases to FA&CAO/SER.

In view of the above, it is reasonable that the said policy proposal, which had significant financial implications, should have been got scrutinized by the Finance, before being recommended to CCM/GM for approval. Thus, this Article of Charge is considered as substantially proved, against the CO.

Article-III

- (a) The IO has not been able to determine the sequence of the orders issued by Advisor (Vigilance), Railway Board, regarding the special drive launched on the order of the then Hon'ble Minister of Railways, to check the overloading in goods rakes. The correct sequence is as under:
- i) Issue of fax message dated 4/5.4.2005 marked as Exh.D1
 - ii) Issue of Board's order dated 5.4.2005 marked as Exh.P 10.
 - iii) Issue of Board's letter dated 5.4.2005 marked as Exh.D2.

A mere reading of Exh.D2 clearly substantiates this stand. Further, the PO has been misquoted. The IO has held that according to PO, Exh.P.10 supersedes Exh.D.2, whereas the PO had stated in Para 3 of the page 12 of his brief that "the subsequent order Exh.D2, which was received by CCM/SECR on 6.4.2005, restricted diversion if operationally found inconvenient. Since the rake had been weighed on 5.4.2005 there was no violation of Board's instructions since, the rake was correctly diverted and weighed in compliance to the instructions contained in Exh.P10". Thus, the PO has nowhere mentioned that Exh.P10 supersedes Exh.D2.

It is further seen that this issue is in no way relevant to the Article of Charge against the CO as the charge is about irregular withdrawal of

punitive charges raised as a consequence of detection of overloading, during the reweighment on 5.4.2005.

- (b) Exh.P.14 itself indicates that the subject rake was taken for reweighment during the drive period, and subjected to reweighment. It is quite obvious that the said movement was with a view to check overloading in the rake in terms of Exh.P.10.
- (c) From the findings of the IO pertaining to a handwritten note from CGS/BIA, it appears that according to him, the CVO had phoned to CGS/BIA directly instead of bringing the matter to the notice of his counter-part in Commercial Department. However, it generally happens in day to day working that such a routine message is passed on, by the Control on the advice of the Competent Officer. CGS/BIA has quoted CVO not because CVO had spoken to him but because this message had been issued, at the instance of vigilance department. Even, if the message did not contain CVO's reference, its impact could not have been anything different.
- (d) Exh.P14 given to the party by CGS/BIA is precise, as has also been observed by IO himself. The issue raised by IO in this regard that Exh.P14 did not mention why and when rake came to MXA from BSPX on its way to BIA goods shed, is again not relevant to the issue of legality of raising and withdrawing the punitive undercharges. Exp.P14 is a reliable and authorized document as the details mentioned therein clearly show that it is based on the weighment advice received by MXA (where the rake was reweighed to check the overloading as a part of the drive launched by the Vigilance department, on the instruction of the then Hon'ble Minister of Railways.
- (e) The evidence of CVO and CGS/BIA is also not relevant to the charge. The contention that the principles of natural justice required the CO to be given an opportunity to examine the two officials, is not well founded. If, IO had felt the necessity, he could have very well called these two officials in the inquiry and given an opportunity to CO for examining them. The IO did not use his discretion and authority in this matter. It is, therefore, not reasonable for IO to

conclude that Exh.P 14 loses its evidentiary value and it cannot be relied upon to prove the charge against the CO, simply because CGS/BIA and CVO have not been cross-examined by the CO. It is also seen that the result of weighment (Exh.P11) and calculation of undercharge (Exh.P12) have been considered without ascertaining the reasons/circumstances leading to re-weighment of the rake. If, the re-weighment was not permissible under any circumstances, DW-2 and CO were expected to treat this reweighment as violation of instructions and to ask for fixing the responsibility, for this irregular weighment. However, no such action has been taken in this regard. All these circumstances clearly indicate that DW-2 and CO were aware of the re-weighment of the rake during the drive launched by the Vigilance Department.

- (f) Regarding non-production of Railway Receipt, it is mentioned that it has neither been included in the list of RUDs nor demanded by the CO at any stage of the inquiry. If, the CO had considered it relevant to the charge, he could have asked for it at the time of submitting his defence or during the preliminary hearing as defence document or at any point, during the regular hearings. Similarly IO did not attach relevance to the RR, during the PH or subsequent regular hearings, otherwise he could have directed the PO to produce this document. The record of proceedings shows that neither the defence nor the IO ever sought this document from the PO.
- (g) IO seems to have gone by the plea of the COP that Exh.P 14 was not put up to him at the time of recommending withdrawal of punitive charges. During the 10th regular hearing on 10.5.2008 Shri K.S.Sahoo (as DW-2) in the case of Shri Asit Gupta) in reply to Q.No.42 & 43, has agreed that a recovery memo of CGS/BIA was there but not in the form as Exh.P14. There is no other recovery memo of CGS/BIA on record. If, the said memo was different and did not mention about the reweighment being undertaken during the drive, CO had the option of producing the same as his defence document. IO could have also directed the PO to produce the said recovery memo claimed to have been issued by the CGS/BIA and whose copy was annexed to

the letter of the party. IO had also the option of calling the party to present the same/clarify the issue.

- (h) Shri K.S.Sahoo (as DW-2) in the case of Shri Asit Gupta) has also stated that he does not think that such enclosure was attached to Exh.P13 in response to Q.No.40. This stand of Shri Sahoo is just opposite to the stand taken by him in response to Q.No.42. In view of the above, it is reasonable to hold that Exh.P 14 had been put along with Exh.P 13 at the time of Shri K.S.Sahoo (DW-2, in the case of Dr.Asit Gupta) recommending the withdrawal of punitive charges. Hence, it is reasonable to mention that Shri K.S.Sahoo was aware that the rake in question was reweighed at the behest of Vigilance. Thus, it is also reasonable to hold that CO has recommended withdrawal of a correctly levied penalty which includes an element of freight as well; and not recommended the withdrawal of a wrong bill, as held by the IO.
- (i) It is further mentioned that though the said amount of Rs.21,75,081/- was recovered from the party M/s Shree Nakoda Ispat Ltd. At the instance of Vigilance, however, this does not dilute the position that the said Shri K.S.Sahoo was not correct in recommending to withdraw its bill of punitive charges, which were raised correctly and that their withdrawal was not warranted.

Thus, Shri K.S.Sahoo's action in this regard was not in accordance with the provisions as contained in Railway Board's letter dated 15.11.2002 or as per SEC Railways' policy circular dated 22.9.2004. Hence, this Article of Charge against the CO is considered as proved".

17. In response to this, the applicant submitted his representation on 4.11.2009 (A/10). The Disciplinary Authority, after considering the representation and other materials on record, passed order of punishment vide No. E(O)I-2006/PU-2/SECR/12 dated 19.5.2010 (A/11), the relevant portion of which reads as follows:

- "2. And whereas, after considering Shri K.S. Sahoo's statement of defence dated 13-12-2006, it was decided by the Disciplinary Authority, to remit the case to inquiry, appointing Shri K.K. Mitra, Retd. FA&CAO/S.E. Railway, as the Inquiry Officer, who, submitted his report dated 28-7-2008, holding that Articles of Charge I & II against the Charged Officer are not substantiated. As regards, Article of Charge III, it was held that though the said Shri K. S. Sahoo has followed a practice, which is in conflict with the relevant provisions, however, it cannot be established that he failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Railway servant.
- 3.0 And whereas, after considering the inquiry report, it was tentatively decided by the Disciplinary Authority to hold Articles of Charge-I & II as substantially Proved, while, Article of Charge-III as Proved, against the said Shri K. S. Sahoo. Accordingly, a Memorandum of Disagreement of even number dated 2-9-2009 was issued enclosing therewith a copy of the inquiry report, enabling the said Shri K.S. Sahoo, to make a representation thereagainst, if any.
- 4.0 And whereas, in response to above, the said Shri K. S. Sahoo submitted his representation dated 4-11-2009 giving a background of the case as well as his submissions pertaining to all the three Articles of Charge, concluding that there has been no misconduct on his part. Neither he failed to maintain absolute integrity nor the displayed lack of devotion to duty. He has acted in good faith for the interest both Railways and Rail users. Whatever recommendation he has made, the same were not for any consideration, but out of his conviction and also with the approval of the higher authorities.
- 5.0 And, now, therefore, after careful consideration of the Charge Memorandum, the inquiry report, Memorandum of Disagreement, representation of the said Shri K. S. Sahoo, thereagainst, the Disciplinary Authority has observed/ordered as under:-
- i) "First charged against CO was that he misled the General Manager/SECR about his competence and irregularly recommended to him to approve the irregular policy.
 - ii) This charge as per IO was not substantiated and so says the CO. On examination of this case, it has been noticed that CO

has put up the case to GM/SECR for approval of irregular policy. Accordingly, local policy instructions were issued on SECR to ignore the results of the second weighment. Railway Board, vide letter No. TC-I/2002/109/5 dated 15-11-2002, states that once a wagon/rake has already been weighed on a weighbridge under the supervision of Railway staff, this should not be reweighed at enroute/destination stations under normal circumstances. Re-weighment of such wagons/rakes should be considered only when there are reasonable grounds for the same.

- iii) CO wrote a letter to Railway Board on 22-3-2004 seeking a decision on waiver of punitive charge on reweighment conducted before the issue of Railway Board's instructions. Railway Board replied on 12-5-2004 that no changes have been effected in the rules regarding weighment and undercharge raised by Zonal Railways would have to be dealt with by them as per extant rules. This reply of the Railway Board, which was received on SECR on 18-5-2004, did not extend any power to the Railways to withdraw or waive off any charges.
- iv) After that on 14-9-2004, CO initiated a note saying that 'Board vide letter dated 15-11-2002 have stated that once a rake has already been weighed and witnessed by Railway staff, weighment enroute or at the destination should not be undertaken in normal circumstances. However, for want of such information, some rakes are weighed enroute and bills for overloading penalty charges are given to the customers. It logically follows from, Board's letter that if second weighment is undertaken or at destination, punitive charges should not be levied on the basis of second weighment. This was recommended by CCM/SECR and approval of GM/SECR was obtained on 21-9-2004.
- v) This led to issue of local instruction on SECR on 22-9-2004 illustrating to ignore the results of second weighment, if it already weighed or if the second weighment is conducted by any agency other than HQ, commercial officers or vigilance.
- vi) It is clear from the facts illustrated above that CO was aware that the policy was laid down by Railway Board and Zonal Railway is not competent to alter or modify this. This is substantiated with the fact that CO had himself written a letter to Railway Board on 22-3-2004. Moreover, CO did not mention in his note that Railway Board has permitted

reweighment of wagons if there was reasonable ground. CO did not mention about competence of GM for approving such a policy.

vii) Hence, it is clear that CO misled the GM/SECR about his competence and got the irregular policy approved. Therefore, the charge illustrated in Article I stand proved.

5.1 As regards Article II, which having financial implication illustrate recommending the policy to GM/SECR without its scrutiny by Finance and, thus, amounting to violation of provisions of Financial Code and Code for Accounts Department – the facts of the case substantiate it. The policy circular formulated by CO for SECR definitely has financial implications involved. CO's defence while comparing this issue with cancellation of trains and diversion of goods traffic is not appropriate. Hence, charge illustrated in Article II also stand proved.

5.2 As regards Article III, it has been imputed that in order to favour M/s Shree Nakoda Ispat Ltd., recommended to withdraw its bill of punitive charges of Rs. 21,75,081/- violating Railway Board's direction and causing loss to Railway revenue.

i) The CO reiterated that recommendation for withdrawal of bill for Rs. 21,75,081/- was made due to ignorance of the fact that the said rake was reweighed at the orders of Vigilance. He further stated that he would not have recommended withdrawal of punitive charges, if at any stage, it was pointed out that Vigilance has made this reweighment. When, it was brought to the notice that the said rake was reweighed at the behest of Vigilance, they had to recover the amount of Rs. 21,75,081/- from the party.

ii) The act of CO to recommend the withdrawal of punitive charge was not appropriate. The circular from Railway Board allows reweighment of rake, when there are reasonable grounds for the same. The reweighment was effected by Vigilance organisations and is covered well within the Railway Board's instructions. Moreover, Railway Board has not issued any instruction permitting a Zonal Railway to waive off/withdraw punitive charges. Therefore, charge under Article III also stand proved.

After carefully examining the case as also the defence put up by the CO, I hold the Charged Officer, Shri K. S. Sahoo, guilty of all the charges and impose a major penalty of 'reduction to a lower stage in the time scale of pay for a period of one

year, which will have the effect of postponing the future increments of his pay'."

- 6.0 The penalty as decided by the Disciplinary Authority above, is hereby imposed accordingly on the said Shri K. S. Sahoo.
- 7.0 The said Shri K. S. Sahoo has a right to prefer an appeal against this order, to the President, within 45 days of receipt of the order under RS(D&A) Rules, 1968.
- 8.0 The said Shri K. S. Sahoo is also required to acknowledge receipt of this order in writing.

By order and in the name of the Railway Board".

18. In the above backdrop, it is of much significance to quote hereunder the relevant circular dated 15.11.2002 issued by the Railway Board on the subject of Re-weighment of wagons/rakes at enroute/destination stations:

"With the increase in the number of electronic in-motion weighbridges on the Railways, some of the loaded wagons/rakes are being subjected to re-weighment at enroute stations, even if such wagons/rakes have already been weighed at the original station or at an earlier station.

Rail users have represented that despite weighment at the original station conducted under supervision of Railways, re-weighment is done in some cases at enroute/destination stations and that there are variations between the two weighment results. ***Such variations during re-weighment have made them to pay undercharges for such "excess loading" detected during the re-weighment.*** The rail-users have contended that since both weighments are being done by the railways on weighbridges which are certified to be in working condition, the two sets of results should have been consistent with each other.

It has, therefore, been decided by Board that once a wagon/rake has already been weighed on a weighbridge at originating station/first available weighbridge station under the supervision of railway staff, these should not be reweighed at enroute/destination stations under normal circumstances. ***Re-weighment of such wagons/rakes should be considered only when there are reasonable grounds for the same. This issues with the approval of the Vigilance Directorate".***

19. Perusal of the directives issued by the Railway Board vide circular dated 15.11.2002 makes it clear that reweighment is permissible when there are reasonable grounds for the same and that the charges for excess loading during reweighment is payable to the consignee. If that be so, the applicant being an IRTS officer, it was not expected of him to submit a proposal for withdrawal of the excess charges to the tune of Rs. 21,75,081/- levied on the consignee on account of detection of overloading without thinking and verifying the genesis of levying such excess charge. The plea taken by the applicant he was not aware that the excess charge had been levied on the consignee on account of reweighment at the instance of Vigilance Department since there was no communication to that effect made to him, does not convince us to tilt a view in his favour. It is not a matter of ignorance - rather it is a matter of fact that the applicant being aware of the circumstances under which reweighment is permissible and the charges levied due to overloading is payable by the consignee, he ought not to have interceded in the matter and put up a proposal to the General Manager for waiving out or withdrawal the said charge due to the Railways towards revenue. By this, the applicant cannot be said to have acted in a manner to bring about integrity and transparency in all spheres of his activities. It is not a matter of interpretation of the Railway Board's circular – rather it was an attempt clandestinely resorted to give undue benefit to a party at the cost of the Railways. A Government servant like the applicant was supposed to be circumspect and if at all there was reweighment, he should have in the first instance, having regard to the provisions of Railway Boards' letter dated 15.11.2002, convinced himself the circumstances under which there has been reweighment and punitive charges levied or else, gathered information the reason behind such reweighment

which was completely within his reach. Instead of doing so, he should not have made a wild suggestion for withdrawal of the charges levied towards excess loading. Failure of the applicant to comply with the Railway Board's Circular dated 15.11.2002 definitely casts a doubt on his integrity and therefore, the relevant provisions of Railway Services (Conduct) Rules have rightly been adhered to. Thus, the respondents were within their prerogative to frame charges against the applicant since he failed to bring to the notice of the General Manager the exact contents of that circular, while putting up his note for approval purportedly to withdraw the penal charges.

20. The applicant in his written submission has pointed out that in the last five lines of Paragraph-5 of the counter available in Page-16 states that a wrong interpretation of rule or instruction can warrant disciplinary proceedings and according to him, such a proposition is alien to the service jurisprudence. We do not think, this plea of the applicant will improve his case any way, inasmuch as, the entire facts and circumstances, have to be considered in the light of the charges levelled against the applicant. In a disciplinary proceedings, the scope of judicial review by the Tribunal has been well defined in an umpteen number of judicial pronouncements by the Hon'ble Supreme Court. The Court or Tribunal could interfere in the matter if the charges are vague, unspecific or based on no evidence. The interference by the Tribunal is possible if there has been violation of the principles of natural justice or the there has been procedural irregularity. Applicant's plea that he was not provided a personal hearing, in our considered opinion, cannot be read into the procedural irregularity or violation of the principle of natural since no prejudice has caused thereby.

21. We would like to note at this stage that the Disciplinary Authority, for the reasons to be recorded in writing, is within his competence to disagree with the findings arrived at by the I.O. in his report and this having been done, it cannot be said that the proceedings conducted is vitiated. We have also gone through the report of the IO, finding on disagreement by the Disciplinary Authority, representation submitted by the applicant thereto as well as the orders passed by the Disciplinary Authority. We do not find any flaw or vulnerability with the action of the Disciplinary Authority in this regard. The Disciplinary Authority meticulously and with due application of mind, has taken into consideration the grounds urged by the applicant and the materials available to arrive at a just conclusion, which a reasonable person could reach. Therefore, we are of the considered opinion that this is not a case of no evidence and the charges levelled against the applicant having been brought home to by the Disciplinary Authority on the basis of materials on record, there is hardly any scope for this Tribunal to intervene in the matter.

22. For the reasons aforesaid, the O.A. being devoid of merit is dismissed, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

BKS

