

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 718 of 2015

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Pinaki Charan Biswas, aged about 40 years, S/o Sri Bimal Chandra Biswas, At-Hata Bazar Mohapatra Colony, PO/PS-Jatni, Dist.- Khurda. Odisha.

.....Applicants

VERSUS

1. General Manager, East Coast Railway, Chandrasekharpur, Rail Vihar, Bhubaneswar, Dist-Khurda, Odisha.
2. Additional Divisional Railway Manager, East Coast Railway, Khurda Road, At/PO-Jatni, Dist. - Khurda, Pin - 752050, Odisha.
3. Senior Divisional Electrical Engineer (TRS), East Coast Railway, Electric Loco Shed, Angul, PO-Turanga, PS/Dist.- Angul, Pin - 759122, Odisha.

.....Respondents.

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.S.K.Ojha, counsellor

Heard & reserved on : 6.1.2020

Order on : 24.1.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has prayed for the following relief in the present OA :

"In view of the submissions set forth in para-4 above, the Applicant humbly prays that your lordship may be graciously pleased to admit the Original Application, call for the records of the Disciplinary Proceeding and be further pleased to quash the charge sheet at Annexure A/1, the Inquiry Report at Annexure A/4, the order of the punishment at Annexure-A/7 and the order of the Appellate Authority at Annexure A/10 for the ends of justice.

AND

Be further pleased to direct Respondent No.2 to reinstate the Applicant in service as Senior Section Engineer with all consequential service benefits and entitlements with effect 4.12.2013 for the ends of justice.

AND

Be further pleased to direct Respondent No.2 to extend all consequential financial benefits including arrears with effect from 4.12.2013 consequent upon reinstatement of the Applicant in service as Senior Section Engineer for the ends of justice.

For such kind acts, the Applicant, as is duty bound, shall every pray.”

2. The applicant while working in Electric Loco Shed, Angul under the respondents was asked on 23.4.2013 to explain the discrepancy of 306 litres of HSD oil in the log book and stock register. He submitted his explanation. Thereafter, charge sheet dated 2.5.2013 (Annexure A/1) was issued under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, (in short DAR) for discrepancy of accounting of 124 litres of HSD oil. The applicant submitted his explanation denying the charge on 18.5.2013 which was not considered and Inquiry Officer (in short IO) was appointed to enquire into the matter. The report of the IO was submitted on 14.9.2013 (Annexure A/4) which was communicated to the applicant who submitted his reply to the IO's report on 3.10.2013 (Annexure A/5). Thereafter the Disciplinary Authority i.e. the respondent No.3 passed the order dated 4.12.2013 dismissing the applicant from service (Annexure A/6 and A/7).

3. The applicant submitted his appeal dated 9.12.2013 (Annexure A/8) to the respondent No.2 against the order dated 4.12.2013. he also submitted another appeal dated 13.2.2014 (Annexure A/9) submitting some additional grounds to Appellate Authority, who considered the first appeal dated 9.12.2013 and modified the punishment to compulsory retirement with full compensation pension with 2/3rd gratuity vide his order dated 26.3.2014 (Annexure A/10). The applicant filed OA No. 359/2014 which was withdrawn vide order dated 30.9.2015 with observation that the applicant may file better OA with petition for condonation of delay. Accordingly, the present OA is filed by the applicant.

4. MA No. 830/2015 has been filed alongwith the OA explaining the delay in filing the OA from the date of communication of the order of the Appellate Authority i.e. on 4.4.2014 and for condoning the delay of about six months in filing the OA.

5. Upon notice, the respondents filed the counter stating that the IO's report proved the charges and the Disciplinary Authority had imposed the penalty of dismissal from service. The Appellate Authority, in consideration of the appeal dated 9.12.2013 of the applicant, modified the penalty to compulsory retirement. It is submitted that the OA is not maintainable because of the principle of res judicata, since the earlier OA No. 359/2014 was withdrawn by the applicant and no liberty was granted to the applicant to file fresh OA, for which, this OA cannot be filed with the same prayer as made in OA No. 359/2014. It is stated in the Counter that no ground has been made out in the OA for violation of principles of natural justice or any statutory rules and that the applicant has not exhausted the remedies available under the statute since he has approached this Tribunal without first approaching the

Revisonal Authority. It is stated that reasonable opportunity was afforded to the applicant at all stages of the Disciplinary Proceeding. The contention that the order of punishment by the Disciplinary Authority was pre-conceived has been denied. It is further averred that the shortage of HSD oil was ascertained from the records maintained by the applicant himself and that the amount of shortage of stock for misappropriation will not be relevant for deciding the quantum of punishment as per the judgment of Hon'ble Apex Court in Delhi Transport Corporation Case.

6. Rejoinder has been filed by the applicant. It is mentioned in paragraph 5 of the Rejoinder as under :

"Respondents did not take into consideration the joint inspection report at Annexure A/14 which clearly speaks the calculation of consumption of the HSD oil of fork lifter in both ideal and working condition. This could have definitely thrown light in the consumption of oil for fork lifter. Similarly the consumption of HSD oil for DG set was high on the following grounds which was taken by the Applicant in the enquiry;

- (a) The DG set was not in a good condition and there was frequent tripping due to overheating as is evident from Annexure A/16
- (b) The DG set requiring repair is also evident from Annexure A/17.

Therefore, non-accountal of 124 liters of HSD oil, in fact used for Railway purpose. At this point the Applicant reiterates that during his tenure the overall yearly consumption of HSD oil was approximately 1500 liters against the estimated annual consumption of 12000 liters. Instead of appreciating and patting the Applicant for minutely observing oil economy of Railway, he was hit at his belly by imposing the punishment of 'dismissal from service' which was modified to 'compulsory retirement'.

The grounds taken by the Applicant in the OA from para 5.1 to 5.17 are once again relied on to refute and rebut the counter of the Respondents."

It is also submitted in the Rejoinder that for discrepancies of the accounting of 124 litres of HSD oil which he claims to have been used for Railway purpose, he has been inflicted with a severe punishment.

7. Heard learned counsels for the applicant and the respondents. Applicant's counsel submitted that earlier OA filed by the applicant challenging punishment orders was withdrawn to file better application vide order dated 30.9.2015 (Annexure A/18) enclosed with the MA No. 830/2015 with prayer for condoning delay in filing the OA. He also submitted that there is no allegation of fraud against the applicant and only charge related to accounting of 124 litres of HSD oil on the record.

8. Per contra, learned counsel for the respondents submitted that the charge against the applicant related to misuse of public money and failure of maintaining absolute integrity. He also highlighted the limited scope of judicial review of the disciplinary proceedings in view of the judgments of Hon'ble Apex Court in a number of cases. The following cases were cited by learned counsel for the respondents :

- (i) State of Meghalaya & Ors. -vs- Mecken Singh N. Marak [AIR 2008 SC 2862]
- (ii) Sk. Issac -vs- Jalikha Bibi & Others [2015 (1) OLR 783]

9. In the case of **State of Meghalaya -vs- Mecken Sing N. Marak [2008 (7) SCC 580]** the employee concerned was a police officer, who violated the instruction to proceed to Shillong in a departmental vehicle with other police personnel with cash and certain ammunitions. He disobeyed the instruction to come back to the Headquarters in the departmental vehicle in which he had gone to Shillong. On way back he lost his belongings and his service revolver and balance undisbursed amount having accepted a packet of biscuit from one of his co-passenger after which he slept off. In the proceedings, the charges were established against him and he challenged before Hon'ble High Court. It was observed by Hon'ble Apex Court in the case as under :

“9.“A court or a tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment is not commensurate with the proved charges. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The jurisdiction of High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. The punishment imposed by the disciplinary authority or the Appellate Authority unless shocking to the conscience of the court, cannot be subjected to judicial review. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice.”

In the above case since no justification was given for finding that the punishment was disproportionate, the judgment of the Hon'ble High Court was set aside by the Hon'ble Apex Court and the order of the Disciplinary Proceeding removing the respondents from the service was upheld.

10. In the judgment of Jalikha Bibi & Ors. of Hon'ble High Court it was held that in the case of withdrawal of a writ filed by the petitioner without permission to institute fresh petition, the petitioner will be precluded to file a writ petition in respect of the same cause of action. This case has no application for the present OA in which the Tribunal while allowing the OA to be withdrawn had allowed the applicant to file a better OA with application for condonation of delay. In this case the Tribunal while allowing the withdrawal of earlier OA vide order dated 30.9.2015 (Annexure A/12) passed the following order as under :

“Memo filed by Ld. Counsel for the applicant at Flag-A to withdraw this O.A. is allowed. Mr. Kanungo wants to withdraw this O.A. and file a better application. Though we have not given any liberty but he may do so along with the petition for condonation of delay.

This O.A. is disposed of being withdrawn.”

11. We have considered the pleadings as well as submission of the learned counsels for both the sides. The charge framed against the applicant is as under :

“124 litres (approx) HSD oil was drawn from Custody Store through LM-32 in different dates (listed in Annexure-II) and received from Custody Store by himself directly during working in M&P section but neither used for the Railway purpose (i.e. fuel for DG set and For, lifters) for which it was drawn nor traceable in concerned records maintained M&P section under his supervision and thus, he has no accountal for aforesaid quantity of HSD oil at all.

Moreover, HSD oil was brought from Custody Store by himself and in contrary issued to himself i.e. received and supervised by same official, by posting in sectional DMTR in the name of Fork lifters/DG set but not maintained a operational log book for Fork lifters in appropriate format so as to work out the actual consumption of HSD oil even after DEE/TRS/ANGL asked him for Log book vide Sr. DEE/TRS/Angul office letter No. ELS/ANGL/Store/S-I/12/4216, dated 6.10.2012.

Whereas Sri Pinaki Charan Biswas, SSE/TRS/SNGL was maintaining a “issue-return” register for Fork lifter in lieu of operational log book to mislead the Railway Administration regarding accountal of HSD oil consumption in Fork Lifters.

Furthermore, the entries made in operational log book of the DG set under his custody were tampered or manipulated by Sri Pinaki Charan Biswas, SSE/TRS/ANGL time to time for adjustment of HSD oil drawn from custody store and further by storing in M&P section in contrary to established procedure & made other irregularities regarding the accountal of HSD oil in aforesaid records.

(The details are mentioned in Annexure-II)

Thus, Sri Pinaki Charan Biswas, SSE/TRS/ANGL, by his above acts, failed to maintain absolute integrity, exhibited lack of devotion to duty & acted in a manner of unbecoming of a Railway Servant, thereby contravening to Rule- 3(I)(i), 3(1)(ii) & 3 (1)(iii) of the Railway Services (Conduct) Rules, 1966 respectively as amended from time to time and has rendered himself liable for D&A action under The Railway Servants (Discipline & Appeal) Rules, 1968 as amended from time to time.”

The charge was enquired into by the IO and in his report the following conclusion was arrived at :

“The above analysis reveals that, the said quantity of HSD oil (30 lits) was not used for railway purpose.

So, the charges are established and proved.

Thus, CO had exhibited lack of absolute integrity and acted in a manner of unbecoming of a Railway Servant.

CONCLUSION :

On the basis of assessment of evidences/depositions adduced during inquiry, I as an Inquiry Officer conclude that, Sri Pinaki Charan Biswas, SSE/TRS/SNGL failed to maintain absolute integrity, exhibited lack of devotion to duty & acted in a manner of unbecoming of a Railway Servant, thereby contravening to Rule- 3(1)(i), 3(1)(ii) & 3(1)(iii) of The Railway Services (Conduct) Rule, 1966 respectively as amended from time to time and has rendered himself liable for D&A action under The Railway Servant (Discipline & Appeal) Rules, 1968 as amended from time to time.

FINDINGS

(Article of charges vide para-2 of this report) : Article-I held ‘proved’ to the extent as mentioned in major penalty charge sheet dated: 02.05.2013 issued to the Charged Official (Sri P.C.Biswas, SSE/TRS/ANGL).”

12. The Disciplinary Authority vide order dated 4.12.2013 (Annexure A/7) has passed the order of dismissal from service and recorded the following findings :

“6.6 CO had received HSD oil dated: 05.04.2012 (LM-32 No.-34174), 17.04.2012 (LM-32 No-43238), 27.04.2012 (LM-32 No.34318) etc. from custody store personally through LM-32 but posted in oil consumption register (i.e. sectional DMTR) as “received by Sri Rasheed Kumar Sahoo, PW-4 (staff under his control) from custody store” by taking his ‘signature’ on it and verified by CO himself.

Thus, CO had also made discrepancies (fraud) in posting of HSD oil in sectional DMTR of M&P section.

Being a senior supervisor, the above acts clearly contravene the provision of Railway Servant (Conduct) Rules, 1966 i.e. Rule-3(2)(i) read as-

'Every Railway Servant holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all Railways for the time being under his control and authority.'

On the basis of above facts it can be concluded that, CO had made forgery & manipulation in staff booking register to show the HSD oil which not used for Railway purpose, broken the earlier procedure of receiving of HSD oil from custody store in M&P section in his own interest, not maintained the oil consumption register (i.e. sectional DMTR) appropriately and tried to mislead the Railway Administration by 'not recording' relevant data (i.e. engine hour meter, monthly summary of HSD oil consumption etc.) in log book of fork lifters & made manipulation/ tempering in log book of DG set for adjustment of HSD oil not used for Railway purpose.

7. Thus, based on evidences/depositions produced before the Inquiry Officer, which are duly considered in his inquiry report & I have carefully examined all the facts brought out in the inquiry report and have come to the conclusion that the 'Article of charges' framed in Major Penalty charge sheet dated 02.05.2013 have been 'proved' beyond doubt by inquiry officer and I agree with the 'findings' of the Inquiry Officer.

As a Railway servant, Sri Pinaki Charan Biswa, SSE/TRS/ANGL is bound to perform his duty sincerely & honestly, to ensure devotion to duty and not to mislead Railway Administration by manipulation/tampering & forging in records.

I, as a Disciplinary Authority, find Sri Pinaki Charan Biswas, SSE/TRS/ANGL to be 'guilty of charges' leveled against him and therefore, I have decided to impose the major penalty of "**DISMISSAL**" from **Railway Services with immediate effect.**"

13. The applicant has thereafter filed an appeal dated 9.12.2013 (Annexure A/8) and when the said appeal was pending he also submitted another appeal dated 13.2.2014 (Annexure A/9) in which it is stated as under :

"In retrospect, I realize that some very important information, vital to my defense were not mentioned in this appeal. I am resubmitting another appeal incorporating these issues which are detailed below-

Xxx xxx xxx xxx xx

It is requested that this appeal may please be treated as a **continuation of the earlier appeal**. It is also requested that I am given an opportunity of a **personal hearing** such that I can explain my case in

There is no doubt that an apparent irregularity occurred in the records, but the shortage of diesel oil, entrusted to my care can be ascertained only and only by a physical check of the quantity inside the storage tank in my custody. **This has never been done** and I can say with confidence that even if irregularities were detected in the posting of

the ledgers/DMTRs there was never really any shortage of diesel oil in the tanks and consequently **no loss to the Railway has occurred.**

Even for sake of argument it is conclude that I had misappropriated 124 litres of diesel oil, it comes to a paltry amount of not more than Rs.7000/-. Is this ground enough for a DISMISSAL from service?"

14. The Appellate Authority i.e. respondent No.2 considered his appeal dated 9.12.2013 filed by the applicant and modified the punishment of compulsory retirement vide order dated 26.3.2014 (Annexure A/10) recording the findings as under :

"The undersigned, being the Appellate Authority in this case, has gone though the documents available in the case file, including the Inquiry Report and the appeal of Shri Pinaki Charan Biswas, ex-SSE/TRS, the CO, working under Sr.DEE/TRS/ANGL

1. Consequent to the Major Penalty Chargesheet No. ELS/ANGL/D&A/PCB/13/1845 dated 2/5/2013, punishment of Dismissal from Railway Service was imposed by Sr.DEE/TRS/ANGL, the DA in this case.
2. The CO has now submitted his appeal to the undersigned vide his application dated 9/12/2013.
3. On perusal of documents and facts of the case, it is observed that the charges leveled against the CO have been established beyond doubt by the IO.
4. On going through the defence submitted by the CO to the DA and the speaking order of the DA, it is observed that the DA has explained each and every point raised by the CO properly and in great detail. It is only after evaluating all the aspects of the case and due application of mind that the DA has arrived at the conclusion drawn by him through his speaking order. Thus, in my opinion, the penalty imposed by the DA is in order.
5. On receiving the appeal of the CO, the undersigned has gone through the case file in detail. All relevant records were called for from Sr.DEE/TRS/ANGL and have been examined thoroughly. It is further observed that the CO has not brought any new facts to light through his appeal dated 9/112/2013. The facts mentioned in his appeal have already been explained by the DA in great detail and examined by the undersigned thoroughly. Therefore, there is no need to explain it further.
6. On thorough examination of the documents available in the case file as well as other related documents pertaining to ELS/ANGL, it is observed that the charges leveled against the CO through the charge memorandum dated 2/5/2013 are proved beyond doubt. The actions of the CO in not maintaining the records properly speak of malafide intention on his part. The actions of the CO have resulted in pecuniary loss to the railway administration as well. Therefore, in my considered opinion and after due application of mind, I believe the CO deserves to be punished for his misdeeds.
7. It is, however, observed that the CO has completed more than 10 years of railway service and has the responsibility of looking after of his family as well. Therefore, taking a compassionate view and on humanitarian ground alone, I am inclined to reduce the punishment of Dismissal from Railway Service to –

"Compulsory Retirement from Railway service with full compensation pension and 2/3rd gratuity" as admissible to the charged official on the date of his Compulsory Retirement."

15. It is seen that the appeal dated 13.2.2014 of the applicant has not been considered by the Appellate Authority while passing the order dated 26.3.2014 (Annexure A/10). In the sub para (T) of para 2 of the Counter, it is stated that

there is no provisions for filing successive appeals challenging one order. Nothing has been stated in the Counter as to why the appeal dated 13.2.2014 in which the applicant had raised the point about quantum of punishment and other relevant issues relating to the Disciplinary Proceeding has not been considered by the Appellate Authority. Following provisions of the DAR regarding consideration of appeal as stated in Rule 22 (2) of the DAR are relevant for consideration of the applicant's appeal :

“22. Consideration of appeal –

(1) xxx xxx xxx

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider :-

(a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders:-

- (i) confirming, enhancing, reducing or setting aside the penalty; or
- (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case.

16. From above, it is clear that the Appellate Authority is required under the rules to examine if the punishment was disproportionate and if the findings of the disciplinary authority are based on misappropriation. The reasons for not considering the appeal dated 13.2.2014 (Annexure A/9) have not been explained by the respondents in their pleadings. It is clear that the Appellate Authority has not adhered to the provisions of the Rule 22(2) of the DAR while passing his order dated 26.3.2014 (Annexure A/10).

17. In view of the above discussions and taking into account the fact that the Appellate Authority has not considered all the grounds mentioned in the appeal dated 9.12.2013 and 13.2.2014 and that the applicant has not exhausted the Revision forum as per the DAR, we dispose of this OA with liberty to the applicant to file a Revision Petition before the respondent No.1/competent revisionary authority with the grounds which may include the grounds mentioned in this OA as well as in the appeal dated 13.2.2014. If the applicant files the Revision Petition as above before the Revisionary Authority within two weeks from the date of receipt of a copy of this order, then the said Revisionary Authority shall consider the grounds mentioned in the Revision Petition as per

the provisions of law and dispose of the same by passing a speaking and reasoned order to be intimated to the applicant within two months from the date of submissions of the Revision Petition as above. It is clarified that the grounds/issues raised in this OA have not been considered and these are left open while passing this order.

18. The OA stands disposed of with the above direction. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath