

## CENTRAL ADMINISTRATIVE TRIBUNAL

## GUWAHATI BENCH

Original Application No. 040/00397/2016

Date of Decision: 29.01.2019

**THE HON'BLE MRS. MANJULA DAS, JUDICIAL MEMBER  
THE HON'BLE MR. N. NEIHSIAL, ADMINISTRATIVE MEMBER**

Sri Hiralal Sarkar, Ex-Senor Divisional  
Commercial Manager,  
N.F.Railway, Lumding Division,  
Lumding.  
District:- Nagaon , Assam

By Advocate : Mr.S.N.Tamuli

-Versus-

1. The Union of India  
Represented by the Secretary Chairman,  
Railway Board  
Rail Bhawan  
New Delhi – 1.
2. The Director(P), Railway Board ,  
New Delhi-1.
3. The General Manager, N.F.Railway,  
Maligaon, Assam, Pin-781011.
4. The Divisional Railway Manager,  
Lumding Division , N.F.Railway,  
Lumding, District-Nagaon, Assam

.....Respondents

By Advocate: Mr. B.K.Das, Railway Counsel

### **ORDER (ORAL)**

**Hon'ble Mr.N.Neihsial, Administrative Member:**

The applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act 1985, with the following reliefs:-

“ 8.1 To set aside and quash the Memorandum No.E(O)1-2014/PU-2/N.F.R/82 issued under the seal and signature of the Director/E(O), Ministry of Railways (Railway Board), Government of India whereby the Disciplinary Proceeding was initiated against the applicant under Rule 9 of the Railway Services (Pension) Rules 1993.

8.2. To set aside and quash the Letter No.E(O)1-2014/PU-2/N.FR/82, dated 19.08.2016, issued by the Director /E(O) whereby it was decided to proceed with the inquiry against the applicant and letter No.E/74/dated 02.09.16, whereby the decision of the Railway Board to proceed with the inquiry was communicated to the applicant.”

2. The facts of the case is that the applicant was initially appointed as Clerk in the N.F.Railway. Subsequently, he got promotion to the post of Senior Division Commercial Manager, Lumding Division (Sr.DCM/LMG, in short) of the N.F.Railway. He retired on 31.03.2011 as Sr.DCM/LMG on superannuation. Subsequent to this he has been issued of Memorandum of Charge Sheet No.E(O)I-2014/PU-2/N.F.R/82 dated 29.10.2014 (Annexure-1) containing the following charges:-

### **Article of Charge-1**

He failed to initiate any suitable penal action (including legal action) against the Contractor, Shri Madan Singh Yadav, resident of Netaji Colony, Dimapur, for non-payment of License Fee for the year 2010-11 and instead allowed him to continue running the Parking Stand at Dimapur Railway Station, despite his (Contractor's) non-payment of the License Fee Till then. He thus, showed an undue favour to the defaulting party, causing financial loss to the Railways.

### **Article of Charge-II**

He also failed to act properly by allowing the Contractor the said Shri Madan Singh Yadav to pay License Fee for the year from 26.04.2010 to 25.04.2011 in

four (4) instalments vide letter No.C/257/LM/Parking/09(Loose) dated 31.10.2010 without entering into an Agreement, which finally resulted in huge loss of revenue. When, the said Contractor failed to follow the time limit set by the Railway Administration, he (the said Shri H.L Sarkar) did not terminate the contract, which led to loss of Railway revenue amounting to Rs.4.05 lakhs.

Thus, by the above acts of omission and commission, the said Shri Hira Lal Sarkar, exhibited and acted in a manner, which is unbecoming of a Railway servant and thereby contravened the Rule 3.1(i), (ii) & (iii) of Railway Services (Conduct) Rules,1966.

3. The above Disciplinary Proceedings has been challenged by the applicant in this O.A. on the ground that the same has been initiated against the retired applicant after the lapse of 4 years from the incident of the alleged misbehaving/misconduct and is not maintainable in terms of Rule 9(2) (b) (ii) of the Railway Services (Pension) Rules, 1993.

4. In response to the submission made by the applicant, the respondents in their written statement filed on 04.04.2017 at Para 8 has contested as under:

“That the statements made in paragraph 4.7 of the application are not correct and the same are denied by the answering respondent.

Though the period from 26.4.2010 to 31.3.2011 have been mentioned in the charge memo but the articles of charges justifies the imputation of misconduct against the applicant based on the letter dated 31.10.2010 vide letter No.C/257/LM/Parking/09/(loose) issued by applicant by which the applicant had permitted the contractor to continue the parking lot at Dimapur Railway Station without any written agreement between the contractor and Railway Administration as a result caused huge monitory loss of Railway. The letter dated 31.10.2010 is the prime allegation against the applicant by which the Administration has clearly established the lapses on the part of the applicant. Basing on the specific allegations, the Departmental proceedings has been initiated within 4(four) years of time against the Applicant as per law i.e right from the cause of action till the date of issue of the impugned charge sheet."

5. We have gone through the submissions and pleadings made by both the parties. We have also given detailed hearings to the counsel of both the parties. It is seen from the records that the applicant was charge sheeted for failure to take penal action (including legal action) in his official capacity against the Contractor, Shri Madan Singh Yadav for non payment of License Fee for the year 2010-11. He had also allowed the Contractor to pay

pending License Fee for the year 2010-11 in four (4) instalments vide letter No.C/257/LM/Parking/09 (loose) dated 31.10.2010.

6. From the records, it is seen that a clarification was sought from the Railway Ministry in this regard. The Ministry vide letter No.E(O)I-2014/PU-2/NFR/82 dated 19.8.2016 clarified that the determining date whether the Disciplinary Proceedings would follow within a period of 4 years would be with reference to the letter dated 31.10.2010 issued by the applicant for making payment for 4 (four) instalments though the irregularities continued till 25.04.2011. As such, the initiation of Disciplinary Proceedings initiated vide order No.E(O)I-2014/PU-2/N.F.R/82 dated 29.10.2014 is not barred by limitation as provided in the Railways Services (Pension) Rules, 1993.

7. After careful consideration, we are in agreement with the view and clarification issued by the Ministry of Railways vide letter dated 19.8.2016. Therefore, the

contention of the applicant found to be devoid of merit and is liable to be dismissed.

8. Accordingly, the O.A. is dismissed. No order as to costs.

(N.NEIHSIAL)  
ADMINISTRATIVE MEMBER

(MANJULA DAS)  
JUDICIAL MEMBER

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