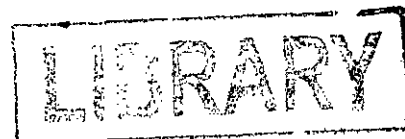


**CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH, KOLKATA**



O.A/350/483/2016

Date of Order: 05.02.2020

**Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative Member**



Haripada Patra, son of Late Purna Chandra Patra, aged about 57 years, by occupation unemployed upon removal from service, earlier working as Chief Depot Material Superintendent, Engineering Stores Depot, Kharagpur in the office of the Assistant Material Manager, Engineering Stores Depot Kharagpur, permanently residing at village & post Office- Baratala, District – Purba Medinipur, Pin 721431.

.....Applicant

Vrs.

1. The Union of India, service through the General Manager, South Eastern Railway, Garden Reach, Calcutta 700043.
2. The Controller of Store, South Eastern Railway, Garden Reach, Calcutta 700043.
3. The Chief Materials Manager (M), South Eastern Railway, Garden Reach, Calcutta 700043.

&amp;

Appellate Authority

4. The Deputy Chief Materials Manager (M), General Stores Depot, South Eastern Railway, Kharagpur – 721301.

&amp;

Disciplinary Authority.

.....Respondents

For The Applicant(s): Mr. D.Samanta, Counsel

For The Respondent(s): Mr. S.Banerjee, Counsel

ORDER (ORAL)

Ms. Bidisha Banerjee, Member (J):

Heard Ld. Counsels for both the parties.



2. The applicant has preferred this O.A. to seek the following reliefs:

*"a) Direction do issue quashing and setting aside the charge memorandum dated 09.03.2014 being Annexure "A-1" hereto, the enquiry report dated 08.09.2014, being Annexure "A-21" hereto holding the applicant guilty of the charge Nos. II, III, IV, VI and VIII, the Final Order dated 31.10.2014 of the Disciplinary Authority being Annexure "A-23" hereto, the Appellate Order dated 26.05.2015 being Annexure "A-26" hereto, and thereupon directions do issue upon the respondent authorities to grant all consequential benefits with restoration of seniority to the applicant as if there had been no such departmental proceeding;*

*b) Injunction do issue restraining the respondent authorities from acting in any manner or any further manner on the basis of the Final Order dated 31.10.2014 of the Disciplinary Authority being Annexure "A-23" hereto as affirmed by the Appellate Order dated 26.05.2015 being Annexure "A-26" hereto;*

*c) Direction in the nature of certiorari do issue upon the respondent authorities directing them to produce and/or cause to be produced the entire records of the case and thereupon to pass necessary orders for rendering conscionable justice;*

*d) Cost and costs incidental hereto;*

*e) And/or to pass such other or further order or orders as to your Lordships may deem fit and proper."*

3. Ld. Counsel for the respondents, Mr. S.Banerjee, has produced letter dated 30.01.2020 of the Asstt. Personnel Officer (S)/KGP for Dy. CMM(GSD)/KGP, which reads as under:

It is informed that three staff S/Shri J.Sanmukh Rao, H.P.Patra & Nurul Alam were found direct responsible and Shri D.K.Saha, CDMS, Brindaban Nag, Stock Verifier, Rajesh, SSE/Signal/Muri were found as indirect responsible for that Incident.

The following punishments were imposed against three co accused staff pertaining to stores deptt by common proceedings but S.F/5 were issued separately.

- i) Shri J. Sanmukh Rao, DMS—Dismissal from service with recovery of pecuniary loss of Rly property to the tune of Rs 6,34,865/-
- ii) Shri H.P. Patra DMS—Removal from service with recovery of pecuniary loss of Rly property to the tune of Rs 6,34,865/-
- iii) Sk. Nurul Alam, DMS—pay reduced to the initial stage of the bottom seniority with permanent effect.

The case of Shri D.K.Saha is under process being retired staff for cut in pension under rule 9 of R.S (pension) Rules 1993.

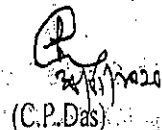
It is also informed that Shri J.Sanmukh Rao, the then DMS has filed an O.A bearing No: 1588/15 before the Hon'ble CAT/CAL, praying to quash the punishment order toward Dismissal from service and another O.A bearing No: 483/16 has also been filed by Shri H. P. Patra, the then DMS on the same reason.

After that as per PCPO/GRC's instruction and with the approval of the competent authority i.e Dy.CMM/GSD/KGP full case has been put up to the Principal Chief Material Manager /SERIy/GRC on 06.01.2020 for nomination of a SAG Officer to act as D.A. for common proceedings in all four cases by cancelling the earlier Charge Sheet and punishment orders issued against three staff i.e S/Shri J.Sanmukh Rao, H.P.Patra & Sk Nurul Alam but the decision is awaiting till now.

In view of above, you are requested to make your submission before the Hon'ble CAT/CAL on the above line and pray sufficient time to take a decision on the case of D.K.Saha as well as entitlement the benefit of the co-accused i.e the applicants (J.Sanmukh Rao in O.A.No.1588/15 & Haripada Patra in O.A.No.483/16).

Thanking you.

Yours faithfully,

  
(C.P.Das)

Asstt. Personnel Officer (S)/KGP.  
for Dy.CMM(GSD)/KGP.

3. Mr. D.Samanta, Ld. Counsel for the applicant, produced a letter dated 28.11.2018 addressed to the General Manager (P), S.E.Railways, Kolkata and submits that he will be satisfied if the authorities are directed to take a decision in the light of letter dated 28.11.2018, i.e. in the case of Sri D.K.Saha, issued by the Railway Board.

4. We have gone through the letter dated 28.11.2018, which is produced hereunder:



GOVERNMENT OF INDIA  
MINISTRY OF RAILWAYS  
(RAILWAY BOARD)

No.E(D&A) 2018 AE 9-4

Dated: 28.11.18

The General Manager (P),  
South Eastern Railway,  
Kolkata.



[Kind Attn: Sh. B.N. Soren, Dy. CPO/HQ]

**Subject:** Disciplinary action against Shri D.K. Saha, ret'd.  
CDMS under AMM/ESD/KGP, South Eastern  
Railway under Rule-9 of RS(Pension) Rules, 1993.

**Ref:** Railway's letters No. SER/P-HQ/DAR/410/13/DKS/16  
dated 19.02.2018.

Please refer to your letter dated 19.02.2018 quoted above vide which disciplinary case of Shri **D.K. Saha** was sent to Board's office for President's consideration under Rule 9 of RS(Pension) Rules, 1993.

2. The case papers have been examined in this case. In the instant case, it is seen that a fact finding inquiry was done and the Disciplinary Authority viz. Dy.CMM(GSD) has functioned as a member of fact finding inquiry. In this connection, instructions circulated vide Board's letter No. E(D&A) 63/RG-6-16 dated 23.05.1969 and 23.12.1968 lays down that the person/member who has come to a definite conclusion regarding the guilt of the employee can not act as a Disciplinary Authority. In the instant case, Dy.CMM(GSD)/KGP can not act as a Disciplinary Authority since he has functioned as a Member of Departmental fact finding inquiry and has come to a conclusion that Shri D.K. Saha is guilty in this case.

3. Further, it is seen that the said fact finding inquiry has been done by three JA grade Officer viz. Dy. CMM, Sr. DFM and Sr. DSC. Based on this Committee's findings and recommendation, a charge memorandum dated 13.02.2014 was issued to Shri D.K. Saha and after his denial to the charges, an inquiry was ordered by the Disciplinary Authority in this case. Accordingly, a Board of Inquiry was appointed consisting three Sr. Scale Officer viz. AMM. Inquiry Officer held Article-1 of the charges as proved and article-2 of the charges as not proved levelled against Charged officer.

4. In this connection, attention of the Railway is invited to the instructions contained in E(D&A) 62/RG-6-19 dated 10.04.1962 (copy enclosed) which lays down that where the departmental enquiry was held by an officer of a status lower than the one who had conducted the fact-finding enquiry, there was a possibility of the Enquiry Officer being influenced by the findings of the superior authority. It further

*[Handwritten signature]*

*[Handwritten mark]*

prescribes that departmental enquiries for disciplinary action should not be entrusted to an officer lower in status than that of the officer who conducted the fact finding inquiry. In the instant case the aforementioned instructions have not been adhered to by the Railway as fact finding inquiry was conducted by JA grade officers whereas departmental inquiry was conducted by Jr. Scale officer. In view of above, the case is remitted back for conducting further inquiry by appointing a fresh inquiry officer in terms of the aforementioned instructions.

5. Further, if the case is again referred to President after removal of the said infirmities as mentioned in para 2 and 4 above, additional information regarding action taken against the co-accuseds may also be furnished.

6. In view of the forgoing, laid procedure may be followed and the case may be sent to Board's office for President's consideration through Single Window System in case the authority competent recommend to this effect after following due procedure.

67. Documents (Folder-A to Folder-F) as received from Railway are returned herewith.

5. In view of the fact that common proceedings was initiated against the said D.K.Saha and the present applicant, and a fresh inquiry has been ordered for D.K.Saha, we are satisfied that the present O.A. can be disposed of with a direction to consider the applicant's case in the light of the order supra.

6. In view of the above and with the consent of both sides, we direct the competent authority to take a decision in regard to the present applicant, viz. J.Sammukh Rao, and pass appropriate order within a period of two months from the date of receipt of a copy of the order.

7. We make it clear that we have not entered into the merit of the matter.

8. With the aforesaid observation and direction, the O.A. stands disposed of.

No costs.

(Nandita Chatterjee)  
Member (A)

(Bidisha Banerjee)  
Member (J)

RK