

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 260/00262 of 2010
Cuttack, this the 14th day of September, 2017

CORAM
HON'BLE MR. S.K.PATTNAIK, MEMBER (J)
HON'BLE DR. M. SARANGI, MEMBER (A)

K.C.Dhada,
Retired Chief Goods Supervisor,
Jajpur, Keonjhar Road, E.Co.Railway,
Presently resides AT- Baralpokhari,
Dist- Bhadrak, Pin- 756001.

Advocates: M/s. D.P.Dhalsamant, N.M.Rout .

...Applicant

VERSUS

Union of India represented through

1. General Manager,
East Coast Railway, Rail Vihar,
Bhubaneshwar, Khurda.
2. Chief Commercial Manager,
O/o General Manager,
East Coast Railway, Rail Vihar,
Bhubaneshwar, Khurda.
3. Additional Divisional Railway Manager,
East Coast Railway,
Khurda Road, Jatni,
Dist- Khurda.
4. Senior Divisional Commercial Manager,
O/o D.R.M., E.Co.Railway,
Dist- Khurda.

Advocate(s) : Mr. T.Rath

..... Respondents

8/6/2017
14/9/17

ORDER

S.K.PATTNAIK, MEMBER (JUDL.):

The applicant has filed this O.A. challenging the order dated 12.06.2008 (Annexure-A/4) passed by the Disciplinary Authority and the order dated 30.09.2008 (Annexure-A/6) passed by the Appellate Authority.

2. Applicant's case, in short, runs as follows:

The applicant while serving as Chief Goods Supervisor at Jajpur, Keonjhar Road, was served with a charge memo dated 22.11.2006 (Annexure-A/1) on the allegation that on 14.09.2006 while working as CGS at Goods Office, Jajpur, Keonjhar Road recorded the time of loading completion of a BCN rake as 14.50 hrs. whereas loading was actually completed at 17.15 hrs and he did this deliberately to save the party from payment of demurrage charges to the Railways. On completion of inquiry the Disciplinary Authority supplied a copy of the inquiry report dated 31.03.2008 (Annexure-A/2) and the applicant submitted his reply on 21.04.2008 (Annexure-A/3). Finally, the Disciplinary Authority vide its order dated 12.06.2008 imposed a penalty of reduction in Grade Pay and reverted him to the post of Head Goods Clerk in the pay scale of Rs. 5000-8000/- with fixed pay of Rs. 8000/- with cumulative effect. Applicant preferred an appeal but without any success. According to the applicant, though Disciplinary Authority imposed the order of punishment, he was not reverted to the post of Chief Goods Supervisor and his pay was also not fixed in the scale of 5000-8000/-. Further case of the applicant is that when the order of

*Ref. No. 2017
14/9/17*

punishment was imposed, he was drawing Rs. 8700/- and one increment was granted to the applicant in July 2009 as he continued in the pay of Rs. 8700/- (pre-revised) and Rs. 21,500/- (revised) upto August, 2009. The applicant challenges the inquiry report being perverse and further submitted that since the delinquent official was not examined by Inquiry Officer under Rule 9(21) of the Railway Servant (D&A) Rules, 1968, the entire proceeding is vitiated. According to the applicant, the order of the Appellate Authority being cryptic is liable to be brushed aside and the punishment is bad in law.

3. Respondents contested the case by filing a counter. According to the Respondents one rack of 40 BCNE was made over to the party at 21.50 hrs. on 13.09.2006 for loading of Chrome Ore with stipulation of free time for loading up to 14.50 hrs on 14.09.2006 as per the extant provision under the supervision of the applicant as the Chief Goods Supervisor of the Jajpur-Keonjhar Road Railway Station. During the course of surprise check conducted by the Sr. Vigilance Inspector (T), E.Co.Railways, BBS, accompanied by the Chief Booking Supervisor of the Jajpur-Keonjhar Road Railway Station as the witness, and it was noticed that loading of the consignment was actually completed at 17.15 hrs. whereas the applicant with malafide intention recorded the completion period of loading as 14.50 hrs in the relevant T-39 Register causing loss of Railway revenue of Rs. 9000/-. A major penalty charge sheet dated 22.11.2006 was served on the delinquent employee and on receipt of explanation the case was inquired and the Inquiry Officer on completion of inquiry submitted his reply with findings dated

McGraw Hill
14/9/17

31.03.2008. The article of charge leveled against the applicant was proved. According to the Respondents, the applicant was given opportunity to submit his reply to the inquiry report and on receipt of the same, the Disciplinary Authority imposed the punishment of reversion from the post of CGS-I to the post of Head Goods Clerk in the scale of Rs. 5000-8000/- with fixed pay of Rs. 8000/- for one year with cumulative effect. The applicant was given opportunity to make a departmental appeal and the Appellate Authority on receipt of the memorandum of appeal considered the same and upheld the order of the Disciplinary Authority. The Respondents have further pleaded that during the aforesaid period, the applicant was approaching his normal retirement on 30.11.2009 and the above punishment could not be implemented immediately by the Personnel Branch as the service record of the applicant was taken up for review by the Accounts Branch and as per the assessment made during the course of review of the service sheet, the pay of the applicant was recast and the punishment was made effective from 12.06.2008 to 11.07.2009. The Respondents have enclosed detailed particulars of fixation of pay on review of the service sheet of the delinquent employee as per Annexure-R/1.

4. There is no dispute about the fact that even though the disciplinary order of punishment was passed on 12.06.2008 and the currency of punishment should have started from 01.07.2009, i.e. the date of annual increment, it was not immediately made effective due to non-availability of the service record and, subsequently, it has been

W. G. H. N. like
14/9/17

rectified and carried into effect. The details of the service particulars as per Annexure-R/1 are reflected below, which will give a clear picture of the fixation of pay and how punishment order has been given effect to.

RECAST OF PAY FIXATION OUT OF REVIEW OF SERVICE SHEET OF SRI
K.C.DHADA, RTD. CGS/JJKR { RETIRED ON 30.11.09}

<i>Nature of punishment</i>	<i>Grade/post after punishment</i>	<i>Effective date of punishment</i>	<i>Pay fixed after punishment</i>
<i>Reversion from the post of CGS to the post of Hd. GC in scale Rs. 5000-8000/- [as per 5th PC] with fixed pay of Rs. 8000/- for a period of one year with Cumulative Effect vide Punishment Notice No. SDCM/Con/Vig-63/06 dated 12.06.08</i>	<i>Head Goods Clerk in Pay Band-II [Rs. 9300-34800/-] with Grade Pay Rs. 4200/- as per 6th PC</i>	<i>12.06.08</i>	<i>Rs. 19080/-</i>
<i>Annual increment due on 01.07.09 not drawn due to continuity of the above punishment</i>	<i>-do-</i>	<i>Continuing</i>	<i>Rs. 19080/-</i>
<i>Pay restored on 12.06.09 after completion of the above punishment</i>	<i>Chief Goods Supervisor in Pay Band-II [Rs. 9300-34800/-] with Grade Pay Rs. 4600/- as per 6th PC</i>	<i>Period of punishment is over</i>	<i>Rs. 21270/-</i>
<i>Annual increment due on 01.07.09 not drawn due to previous punishment of stoppage of increment for a period of 04 months with Non-Cumulative Effect vide P. Notice No. SDCM/Con-02/07 dated 22.05.08</i>	<i>Chief Goods Supervisor in Pay Band-II [Rs 9300-34800/-] with Grade Pay Rs. 4600/- as per 6th PC</i>	<i>01.07.09 to 31.10.09</i>	<i>Rs. 21270/-</i>
<i>Pay restored on expiry of the above punishment</i>	<i>Chief Goods Supervisor in pay Band-II [Rs 9300-34800/-] with Grade Pay Rs. 4600/- as per 6th PC</i>	<i>01.11.09</i>	<i>Rs. 21910/-</i>
<i>Retirement of the applicant on 30.11.2009 out of superannuation</i>	<i>Chief Goods Supervisor in pay Band-II [Rs 9300-34800/-] with Grade Pay Rs. 4600/- as per 6th PC</i>	<i>-</i>	<i>Rs. 21910/-</i>

5. Going through the above, it is crystal clear that in view of the continuance of the currency of punishment, the pay was restored on 12.06.2009, i.e. on completion of currency of punishment of one year. Annual increment was due on 01.07.2009 but the same could not be

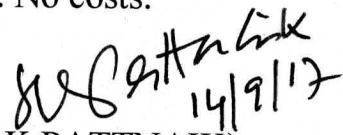
Recast
14/9/17

drawn as previous punishment of stoppage of increment for a period of four month with non-cumulative effect vide order dated 22.05.2008 was effective. So, actually the punishment continued from 01.07.2009 to 31.10.2009 and the pay of Rs. 21,270/- continued till 31.10.2009 and the pay was restored on 01.11.2009 and the applicant has been given pay scale of Rs. 21,910/- after annual increment till his retirement on 30.11.2009. So, there is nothing wrong in fixation of pay or carving out the currency of punishment as per Annexure-R/1 calling for interference.

6. Now coming to the legality of the disciplinary proceeding and the imposition of punishment, it is found that the misconduct of the applicant has been duly proved in the disciplinary proceeding and there are no procedural lapses calling for our interference. The applicant was given a scope to examine himself, which he denied for which there was no scope to confront the incriminating material appearing against him. Since the entire proceeding was conducted in presence of the applicant and he was given due opportunity of not only cross-examining the departmental witnesses but also was given option to produce his defence witnesses, no infirmity noticed calling for interference. Even the punishment also not found to be disproportionate to the degree of misconduct calling for intervention. Hence ordered.

7. O.A. being devoid of merit is dismissed. No costs.


(M. SARANGI)
Member (Admn.)


14/9/17
(S.K.PATTNAIK)
Member (Judl.)