

CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH, CUTTACK

**O.A.No.385 of 2012**

Cuttack this the 7<sup>th</sup> day of March, 2016

P.T. Rao...Applicant

**-VERSUS-**

Union of India & Ors ...Respondents

**FOR INSTRUCTIONS**

1. Whether it be referred to reporters or not? *NB*
2. Whether it be referred to CAT,PB, New Delhi for being circulated to various Benches of the Tribunal or not? *NB*

  
**(R.C.MISRA)**  
**MEMBER(A)**

  
**(A.K.PATNAIK)**  
**MEMBER(J)**

## CENTRAL ADMINISTRATIVE TRIBUNAL

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## CORAM

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

HON'BLE SHRI R.C.MISRA, MEMBER(A)

P.T. Rao,

Aged about 51 years

S/o-Late P. Papa Rao

Technician (SMW) Sheet Metal Worker

Under Chief Workshop Manager

Mancheswar,

E.Co.Rly.

Residing at Qr No.CON/A/1/B

Railway Colony,

P.O.Ashoknagar,

Dist-Khurda

PIN-751 001.

...Applicant

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

**-VERSUS-**

Union of India represented through

1. The General Manager

E.Co.Railway,

ECoR Sadan

Chandrakesharpur,

Bhubaneswar,

PIN-751 017

2. The Chief Workshop Manager,

Carriage Repair Workshop

ECoRly,

Mancheswar,

Bhubaneswar,

PIN-751017

3. Works Manager,

Carriage Repair Workshop

ECoRly, Mancheswar,

Bhubaneswar,

PIN-751 017



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4. The Dy.CME (ws.),  
Carriage Repair Workshop  
ECoRly, Mancheswar,  
Bhubaneswar,  
PIN-751 017
5. Inquiry Officer,  
Office of Chief Vigilance Officer  
E.Co.Rly,  
Mancheswar,  
PIN-751017
6. Sri Dayanand Sahu,  
Dy. CME (WS),  
Carriage Repair Workshop,  
E.Co.Rly,  
Mancheswar,  
Bhubaneswar,  
PIN-751 017

...Respondents

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

**ORDER**  
**R.C.MISRA, MEMBER(A)**

While working as Tech.I under the respondent-railways, applicant was issued with a Memorandum of Charge dated 2.7.2007, *inter alia*, on the allegations as under.

*"Shri P.Tarakeswar Rao, Tech.I, Card No.395 working under SSE/IED/MM was arranging Class - IV jobs in the Railway, collected illegal gratification in the form of money from fifteen Job aspirants. He not only indulged himself in bribery but also brought bad name to his employer by his said activities.*

*By the above act, Shri P.T.Rao, tech-I/CRW/MCS failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway Servant in contravention to provision of Rule No.3(i)(iii) of Railway Service Conduct Rules, 1956 and thereby rendered himself liable for disciplinary*

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*action under Railway Servant D&A Rules, 1968  
as amended from time to time".*

2. By virtue of the said Memorandum, applicant had been directed to file his written statement of defence within a stipulated time. In response to this, applicant submitted his written statement defence vide A/2 dated 22.9.2007 denying all the allegations leveled against him. In the above background, an enquiry into the allegations was conducted and on receipt of the report of the Inquiry Officer, applicant submitted his reply dated 5.8.2008 and in consideration of the same, the Disciplinary Authority imposed punishment vide A/5 dated 29.8.2008, which reads as under.

*"That you are reverted to the post of Tech.III(SMW) from the post of Tech.I(SMW) & your pay Rs.6250/- in scale Rs.4500-7000/- is reduced to the time scale of Rs.3050-4590/- with immediate effect & pay fixed Rs.4050/- for a period of 03(three) years with non cumulative effect".*

3. Being aggrieved, applicant preferred an appeal dated 11.9.2008, whereafter, the appellate authority, vide order dated 11.03.2009 rejected the same by upholding the punishment as imposed by the disciplinary authority. Thereafter, applicant submitted a revision petition dated 24.4.2009, which was too rejected vide order dated 25.5.2009 by the reviewing authority.

4. Challenging the legality and validity of the disciplinary proceedings initiated against him vide Memorandum dated 2.7.2007, including the orders passed by the disciplinary



authority, appellate authority and the reviewing authority, applicant had moved this Tribunal in O.A.No.185 of 2010. This Tribunal, vide order dated 9.1.2012 disposed of the said O.A. in the following terms.

*"In view of the above, without expressing any opinion on the initiation of disciplinary proceedings and the imposition of punishment by the Disciplinary Authority, we quash the order of the Appellate Authority under Annexure-A/6 and the order of the Revisional Authority under Annexure-A/7 and remit the matter back to the Appellate Authority <sup>who</sup> should consider the appeal of the applicant afresh with reference to the Rules and communicate his decision in a well reasoned order within a period of ninety days from the date of receipt of <sup>the</sup> copy of this order".*

5. In compliance with the above direction of the Tribunal, appellate authority considered the appeal of the applicant afresh and issued a speaking order which was communicated to the applicant vide A/11 dated 7.4.2012, to the following effect.

*"The punishment "that you are reverted to the post of Technician Gr.III(SMW) from the post of Tech. Gr.I(SMW) and your pay Rs.6250/- in the scale Rs.4500 to Rs.7000/- is reduced in the time scale of pay Rs.3050-4590/-with immediate" effect stands good".*

6. Being dissatisfied with the above decision of the appellate authority taken in pursuance of the direction of this Tribunal in O.A.No.185 of 2010, applicant has again invoked the



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jurisdiction of this Tribunal in the instant O.A., wherein, he has sought for the following relief.

- (i) To quash the charge sheet under Annexure-A/1; report of the IO under Annexure-A/3, order of the Disciplinary Authority under Annexure-A/5, order of the Appellate Authority under Annexure-A/7 & Annexure-A/11, order of the Revisionary Authority under Annexure-A/9 and <sup>as</sup> a consequence direct the Respondents to restore the place and position of the Applicant forthwith;
- (ii) To direct the respondents to pay the Applicant all his consequential service and financial benefits retrospectively;
- (iii) To allow this OA with costs.

7. Respondents have filed a counter-reply in which a submission has been made that the Tribunal in their order dated 9.1.2012 in O.A.No.185 of 2010 had quashed the order of the Appellate Authority as well as Revisional Authority, and remitted the matter back to the Appellate Authority with certain instructions for reconsideration of the appeal petition. The Appellate Authority has duly reconsidered the appeal petition in obedience to the orders of the Tribunal, and communicated the order dated 7.4.2012, which the applicant has challenged in this O.A. It is further submitted that the Inquiry Officer has conducted the inquiry as per law, and the order of punishment has also been passed in due compliance with law. In the earlier O.A., the Tribunal has not interfered with these orders, and only directed the Appellate Authority to

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reconsider the appeal petition. On reconsideration of the appeal petition, the Appellate Authority has found nothing illegal about the process of inquiry and orders of the Disciplinary Authority. The order of punishment being confirmed again, appellant has no cogent ground left with him, to challenge the said order. The respondents have, therefore, urged that the O.A. should be dismissed.

8. Having heard the learned counsels for both the sides, we have perused the records. We have also gone through the written notes of submission filed by both the parties.

9. The contents of the speaking order dated 7.1.2012 passed by the Appellate Authority vide A/11 in compliance of the orders of this Tribunal in O.A.No.185 of 2010 which is impugned in this O.A. are as under.

*"I have gone through the complete case file. It is observed that the major penalty charge sheet was issued to Shri P.T. Rao, as per advised of Vigilance branch of East Coast Railway. The charge sheet was served to Shri P.T. Rao through registered post which was acknowledged by him. Shri P.T. Rao has submitted representation and asked to supply documents mentioned in Annexure-3 of Charge sheet which was supplied to the charged official. The charged official has submitted his representation. Enquiry Officer was nominated by Disciplinary Authority to enquire into the charge against Shri P.T. Rao. The inquiry officer has conducted the enquiry and submitted his report to Disciplinary Authority. Disciplinary Authority has sent the enquiry*

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report together with findings to the charged officials for making defence brief. Charged official has submitted his defence. Disciplinary Authority after going through the enquiry report and defence brief has accepted the findings and imposed the penalty.

*It is observed that procedure laid-down as per D&A rules have been fully complied with.*

*It is undisputed fact that the Charge Memo which was issued to the CO related to his integrity on allegation of collection of illegal gratification from the aspirant candidates of Gr. D Post selection in Railway conducted by KUR Division, assuring them to help in selection. The collection of gratification was done in a planned manner through a joint Account with one of the aspirant/complainant (Evidence & under RUD-2&3). The huge amount so called and deposited in a joint account opened in CO's favour with one Sri G.Sanmukh Rao, one of the complainant is sufficient enough to establish CO's involvement in the collection of money and deposited the same in Bank A/C. Bank A/C opened jointly with one Sri G.Sanmukh Rao is considered adequate evidences and CO has never proved that he is in any way supposed to be the joint account holder with Sri G.Sanmukh Rao. I have gone through the Inquiry Officer's report in detail wherein the prosecution witness himself investigated against illegal money collection have submitted report with authenticated documents i.e. mentioned in Charge Memo No.1571 dtd.02.07.2001 under RUD-1, RUD-2& RUD-4. The CO was given opportunity by the I.O. for his defence which has been taken on record by the I.O. The C.O. has never proved his innocence of non-involvement in collection of illegal gratification by way of huge amount and also he has never proved the amount so deposited was out of his own legal earnings. The I.O. have considered the*

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materials submitted by the investigating authority as well as by CO's representation and defence statement submitted to I.O. Therefore, I.O. proved his findings with following observation:-

*"In the light of documentary and oral evidence adduced and pleadings of the prosecution and defence, it is held that the charges leveled against Sri P.T. Rao, vide Annexure-I & II of the charge memorandum regarding collection of illegal gratification to the extent of Rs.5,20,000/- only and indulging in bribery are proved."*

*After following the due process and giving adequate opportunity the CO, the DA imposed the punishment.*

*Even if the CO had submitted his defence statement on 22.09.2007 wherein he had stated that he had not arranged any Class IV job to any body as because that is beyond his capacity. On that respect although the statement is true in sense but his activities is in violation of this statement as well as Conduct Rules which has already been established through investigation. No money is required to get any job wherein he had collected money and acted in a manner which is contrary to Conduct Rules.*

*Further the CO has also started that the story narrated in Annexure-II of Charge Memo is a imaginary one and fabricated and planned and bought bad same to his organization for harassing him is not correct. Since the same has not just narrated but proved under investigation with authenticated evidence through the departmental Investigating Authority. His further statement in way of defence is also taken into examination in which he has stated that RUD-1 & RUD-4 included in Annex-3 are fabricated statement*



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without inclusion of the special presence as prosecution witness in Annex-4 which indicated the mala fide intention of the staff of the story. In this connection, I do not find any merit in CO's allegation and the matter has been correctly taken into account and all the required witness are adequately taken into consideration by the I.O. and for which non inclusion of some persons has no ground and the case initiated against him on all angles have been sufficiently established and therefore there is no other option than to admit the rules and facts as narrated in the Memorandum of Charge sheet giving details of statement of allegation and imputation of misconduct and misbehaviours of the CO under DA rules. Therefore it is concluded that the charges were proved beyond doubt.

While imposing major penalty punishment DA has gone through the enquiry report and findings of the defence. The Enquiry Officer has conducted the enquiry by examining the list of document and witnesses mentioned in the charge sheet. The Enquiry Officer concluded that the charge against Sri P.T. Rao vide Annex-1 & 2 of the charge memorandum regarding collection of illegal gratification and indulging in bribery was proved.

Therefore, it is concluded that findings of the Disciplinary Authority was on the basis of evidence available on record.

In view of the documentary evidence and after going through the case file I have come to the conclusion that huge sum of money was paid to Sri P.T. Rao I find no reason for leniency in the case and is of the opinion that the punishment is adequate. This punishment shall also serve signal to other railway servant to desist such nefarious activity.

The punishment "that you are reverted to the post of Technician Gr.II(SMW) from the post of

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*Tech.Gr.I(SMW) and your pay Rs.6250/- in the scale Rs.4500/- to Rs.7000/- is reduced to the time scale of Pay Rs.3050 to Rs.4590/- with immediate effect" stands good".*

10. Applicant had earlier approached this Tribunal by filing O.A.No.185 of 2010 in which he had challenged the charge sheet, report of the I.O., orders of the Disciplinary Authority, the Appellate Authority as well as the Revisional Authority. The Tribunal after hearing the matter decided that the orders of the Appellate Authority and Revisional Authority are not in accordance with the Rules. The Tribunal had in their order dated 09.01.2012 observed that "*a duty is cast upon the appellate authority/revisional authority to consider the appeal/revision preferred by an employee against an orders of punishment imposed by the Disciplinary Authority*". The word '**considered**' provided in the Rules implies consider only with '**due application of mind**'. It is clear in terms of the Rules that the Appellate Authority is required to consider;- (i) whether the procedure laid down in the Rules has been complied with, and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice, (ii) whether the findings of the Disciplinary Authority are warranted by the evidence on the record; and (iii) whether the penalty imposed is adequate and therefore, pass orders confirming, enhancing, etc. the penalty or may remit back the case to the authority which imposed the same. Rule also casts a

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duty on the Revisional Authority to consider the relevant factors set forth in the rules. Evidently, the Tribunal in its orders referred to Rule-22 of the Railway Servants(Discipline & Appeal) Rules, 1968.

11. The Tribunal had further observed that the Appellate Authority in the earlier orders that was challenged in the earlier lis did not satisfy himself on any of the aspects indicated in Rule-22. The Appellate Authority's order revealed total non-application of mind. The order of ~~dismissal~~<sup>rejection</sup> was devoid of reasons. Based on these grounds, the Tribunal set aside the Appellate Authority's order, and remitted the matter back to the Appellate Authority for reconsideration and disposal of the appeal with reference to the Rule. It is, therefore, evident that the order of this Tribunal in O.A.No.185 of 2010 is the referral point for consideration of the present O.A.

12. In obedience to the directions of the Tribunal, the Appellate Authority passed a speaking order dated 07.01.2012. This is an exhaustive order in which the Appellate Authority has confirmed the order of punishment imposed on the applicant, i.e., his reversion from the post of Grade-I to Grade-III. Therefore, the applicant being further aggrieved has filed the present O.A. On perusal of this detailed order, it is seen that the Appellate Authority has reached the following three conclusions, by adducing reasons for the same.



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- i) It is observed that the procedures laid down as per D&A Rules have been fully complied with.
- ii) It is concluded that findings of the Disciplinary Authority were on the basis of evidence available on record.
- iii) ...I find no reason for leniency in the case and am of the opinion that the punishment is adequate. The punishment shall also serve as signal to other railway servants to desist from such nefarious activity.

13. The Appellate Authority has given detailed consideration to the appeal as per the direction issued by the Tribunal in O.A.No.185 of 2010, and the aspects that need to be considered as per Rule-22 of the Railway Servants (D&A) Rules, 1968, have been taken into account. The order of the Appellate Authority cannot be faulted on account of non-application of mind, nor can it be alleged that it is a cryptic order in which reasons have not been assigned for reaching the conclusions. The order also conforms to the statutory provisions of the relevant Rules for disciplinary actions against Railway Servants.

14. Learned counsel for the applicant in his written notes has contended that the Appellate Authority has again rejected the appeal without looking into specific provision of Rule-22(2) of the Rules, 1968. In view of the discussions made above, the allegation of the applicant cannot be sustained. The learned counsel has further drawn our attention to the decision of the Hon'ble Apex Court in M.B.Biglani vs. Union of India & Ors. and

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Krishnakant B.Parmar vs. UOI & Anr. to establish that "the IO cannot hold the charge proved by shifting the burden on the delinquent to disprove". On the other hand, the learned counsel for the Railways has contended that in O.A.No.185 of 2010, the Tribunal had only quashed the orders of the Appellate Authority and remanded the matter back. The Tribunal did not quash the charge sheet, or the orders of the Disciplinary Authority, even though such prayer was made by the applicant. This order has not been challenged by the applicant, and therefore, prayer for quashing of charge sheet and order of punishment is hit by the principle of res judi cata.

15. Considering the orders of the Tribunal in the earlier O.A.No.185 of 2010, we are more inclined to agree with the contention of the learned counsel for the respondents. The Tribunal at this stage would be inclined to examine whether the Appellate Authority reconsidered and disposed of the appeal petition in accordance with the directions issued in the earlier O.A., which are again based upon statutory provision of Rule-22(2) of the Rules of 1968. We are not persuaded to reopen the issues all over again. Since the present order of the Appellate Authority is in conformity with the direction of the Tribunal and the statutory principles, and is also detailed and supported by reasons, we are not inclined to interfere with the same.



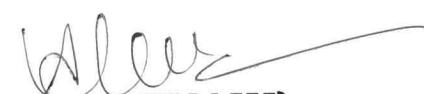
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16. The scope of judicial review in a disciplinary proceeding is laid down by the Hon'ble Apex Court in ***B.C.Chaturvedi vs. UOI & Ors. reported in AIR 1996 SC 484***, the relevant portion of which is quoted below.

“The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence”.

17. Based upon the discussions as made above, we are of the opinion that this O.A. is devoid of merit and is thus, dismissed with no costs to the parties.

  
**(R.C.MISRA)**  
**MEMBER(A)**

  
**(A.K.PATNAIK)**  
**MEMBER(J)**

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