

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/0030 OF 2014

Cuttack, this the 16th day of February, 2018

CORAM

HON'BLE MR. S. K. PATTNAIK, MEMBER(J)

HON'BLE DR. M. SARANGI, MEMBER (A)

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Chittaranjan Panda,
aged about 57 years,
S/o- Late Sudarsan Panda,
a permanent resident of At- Kutilo,
PO- Baghuni, P.S-Salepur, Dist- Cuttack, Odisha,
presently serving as Deputy Chief Safety Officer,
East Coast Railway, Bhubaneswar, Odisha.

...Applicant

(By the Advocate-M/s. G.Rath, S. Rath, B. K. Nayak-3, D. K. Mohanty)

-VERSUS-

Union of India Represented through

1. Secretary to Govt. of India, Ministry of Railways, Railway Board, Rail Bhawan, New Delhi.
2. The Director/E (O)-1, Govt. of India, Ministry of Railways, Railway Board, Rail Bhawan, New Delhi.
3. Union Public Service Commission, represented through its Secretary, Dholpur House, New Delhi.
4. General Manager, East Coast Railway, Rail Sadan, Samanta Vihar, Chandrasekharapur, Bhubaneswar, Odisha, Pin:-751017.
5. Chief Personnel Officer, East Coast Railway, Rail Sadan, Samanta Vihar, Chandrasekharapur, Bhubaneswar, Odisha, Pin:-751017.

...Respondents

(By the Advocate- Mr. N. K. Singh)

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ORDER

S. K. PATTNAIK, MEMBER (J):

The applicant seeks quashing of the charge sheet dated 03.04.2012 (Annexure-A/2) on the ground of inordinate delay as the cause of action had arisen way back on 22.02.2002, i.e. after a lapse of 10 years. The applicant also challenges the order of the Disciplinary Authority dated 09.08.2012 (Annexure-A/5) and the Appellate Authority Order dated 25.09.2013 (Annexure-A/7) wherein in a minor penalty proceeding, the applicant has been imposed punishment of reduction to a lower stage in the time scale of pay by one stage for a period of three years without cumulative effect.

2. The case of the applicant, in short, runs as follows :

(a) The applicant was posted as Divisional Commercial Manager, E.Co. Rly., Waltair Division, during November, 1999. The applicant, along with two others viz. Mr. V. Satyanarayan, Divisional Accounts Officer and Mr. K. Ramachandran, Divisional Engineer, E.Co.Rly, Waltair, was nominated to be the members of the Committee for considering the award of Scooter & Car parking stand, Vizianagaram station from dated 01.04.2002 to 31.03.2005. Shri C. R. Swain, Sr. D.C.M./WAT was the accepting authority of the report of the Committee so to say was the Chairman of the said Committee. On 22.03.2002 meeting of the committee was convened and report was submitted by the Committee relating to award of the Scooter and Car parking Stand at Vizianagaram Station to the Accepting Authority, i.e. Shri C. R. Swain, Sr. D.C.M., WAT. It has been submitted that irrespective of the

recommendation made by the committee, the competent authority extended the tenure of the contract of the cycle stand in favour of the contractor to which this applicant was in no way connected/concerned or answerable being not the decision making authority of the department. On 12.04.2002 the applicant was transferred to S.E.Rly., Kolkata. The recommendation made by the Committee was not agreed upon by the accepting authority, i.e. Sri C. R. Swain, Sr. D.C.M/WAT. However, as per the order of the competent authority new tender committee was constituted as the appellant was in the meantime transferred. On 31.05.2002 the new tender Committee submitted its report in so far as awarding the scooter and cycle parking stand. The applicant has submitted that since the applicant was transferred from Waltair, the subsequent happening with regard to the awarding of tender was not known to him. In the meantime, Mr. V. Satyanarayana, DAO, E.Co. Rly, WAT and Mr. K. Ramachandran, DEN, E.Co.Rly WAT, the Members of the Committee superannuated from service on 30.09.2002 31.05.2003 respectively.

(b) The grievance of the applicant is that after about 10 years while the applicant was working as Deputy Chief Security Officer (Traffic), East Coast Railways, Bhubaneswar, he was issued with a Memorandum dated 3.4.2012 (Annexure-A/2) enclosing thereto the statement of imputation and a list of documents thereby calling upon him to submit his representation, if any, against the proposed action to be taken against him under Rule-11 of Railway Servants (Discipline &

Appeal) Rules, 1968. In this connection, it is to be noted that the aforesaid memorandum was issued to him in respect of misconduct that he had committed while working as DCM/WAT in the year 2001. However, applicant submitted his representation dated 11.07.2012 (Annexure-A/3) denying the charges leveled against him. The Disciplinary Authority, i.e., General Manager, East Coast Railways (Res.No.4) in consideration of the representation, vide order dated 09.08.2012 (Annexure-A/5) imposed punishment of reduction to a lower stage in the time scale of pay by one stage for a period of three years without cumulative effect on the applicant. Appeal preferred against this punishment to the President, which having been turned down vide order dated 25.9.2013 (Annexure-A/7), he has preferred this O.A. seeking for the relief as aforementioned.

(c) Applicant in support of his case, has pleaded that the disciplinary authority, without considering all the points raised by him in the representation and, on the other hand, being swayed away by the advice tendered by the CVC imposed punishment on him. Similarly, appeal preferred was also rejected by the Appellate Authority without considering the same in its proper perspective. According to applicant, the allegations based on which charges were framed and Memorandum issued, are founded by the involvement and action of several officers. It has been pointed out that there was a Committee constituted in which applicant was one of the members. The Senior D.C.M. being the accepting authority was to take a final decision in the matter and he

having taken such decision, no blame could be attributed to the applicant only. If at all the proceedings were to be initiated, the same should have been drawn up against all the members of the Committee including the Sr.DCM who were also at the helm of affairs. But in the instant case, he has alone been proceeded against by the Railway Administration. According to him, the charge sheet was prepared by an authority who was not competent to do so whereas the General Manager, in the capacity of disciplinary authority, without applying his mind, endorsed and issued the same.

(d) Applicant has contended that in violation of the provisions of Circular No.99/DSP/1 dated 20.6.2003 issued by the CVC which stipulates two kinds of minor penalties, i.e. (i) suitable minor penalty and (ii) minor penalty without censure, the CVC advised to initiate stiff minor penalty proceedings which no doubt has influenced the disciplinary authority in that behalf. Further, applicant has contended that the Disciplinary Authority imposed punishment without supplying him a copy of CVC advice to have his say in the matter and thereby there has been violation of the principles of natural justice.

3. Respondent-Railways contested the case by filing a counter. It has been averred that Waltair Division had floated a tender to grant license of Cycle/Scooter/Car Parking Stand at VZM vide tender notice dated 28.1.2002. The reserve price for the same was fixed at Rs.6,09,238/- per annum. Against the said reserve price, the highest bid came at Rs.4,12,346/-. Prior to tender, while the existing license fees/

LAR was only Rs.1,05,000/- per annum, the applicant being the DCM/WAT was the convener of the Tender Committee. On 22.3.2002, the applicant instead of assessing the appropriateness of the highest bid in the tender and ignoring the fact that the highest bid was substantially higher (about four times) than the existing license fees, recommended for the discharge of the tender. By doing so, the applicant indirectly helped the existing licensee to continue at a much lower rate than the tender bid. Further, during the applicant's tenure as DCM/WAT, a decision was taken by the Sr.DCM/WAT to terminate the contract of the VZM Cycle Stand and run the same departmentally which was approved by the ADRM/WAT on 12.12.2001. The decision was taken due to non-payment of license fees and receipt of complaints against the licensee. An Office Memorandum to this effect was issued on 24.12.2001 nominating staff to take possession of the cycle stand with effect from 09.00 hrs. of 30.12.2001. Meanwhile, the contractor, in response to a seven days' notice, deposited the outstanding amount without interest accrued thereon to the tune of Rs.1 lakh. On 26.12.2001, the applicant in the capacity of DCM/WAT took the decision not to take possession of the Cycle Stand by the department and to keep in abeyance the departmental management of the Cycle Stand taking the plea that the contractor had paid the outstanding license fees. He did not take cognizance of the non-payment of interest accrued for being defaulter in paying the license fees in time and the bad performance of the contractor, which propelled the administration to take such prudent

decision to terminate his license contract. The applicant did not take approval of any higher authority for this decision and merely recorded that the Sr.DCM/WAT was out of headquarters on leave. By way of over-riding the earlier decision of ADRM/WAT, the applicant arbitrarily took such hasty decision with ulterior motive. However, the respondents have pointed out that there has been no violation of the principles of natural justice in the matter of conduct of departmental proceedings and the disciplinary authority, after considering the totality of the circumstances, has rightly imposed punishment on the applicant. The disciplinary proceedings were instituted and finalized as per RS (D&A) rules, 1968 and there is no such provision for supply of CVC's advice to the applicant. Respondents have submitted that the applicant neither requested for full fledged hearing nor made any allegation for he being prejudiced for non-providing of any relevant document or for any delayed initiation of proceeding initiated after lapse of 10 years of incident. The appeal preferred has also been rightly rejected by the Appellate Authorities. Therefore, there being no merit, the O.A. is liable to be dismissed, the respondents have added.

4. Ld. Counsel for the applicant challenges the very initiation of the disciplinary proceeding after lapse of 10 years on the ground of inordinate delay and further pleaded that even though four members were involved in the Tender Committee, i.e. three members constituting the Tender Committee and one officer approving the tender, the applicant being only one of the members of the tender committee was

singled out and made a scapegoat and intentionally other members of the Tender Committee, viz. Mr. V. Satyanarayana, DAO, E.Co. Rly, WAT and Mr. K. Ramachandran, DEN, E.Co.Rly WAT, were allowed to retire respectively on 30.09.2002 and 31.05.2003. Even within four years from the cause of action though a disciplinary proceeding could have been initiated as per rule 9 of the Railway Service (Pension) Rules, it was not resorted to for the reasons best known to the authorities and the applicant was singled out by issuing a charge memo 10 years after the incident.

5. The other ground of attack is that since the applicant was not the final authority to knock down the tender and the Sr. DCM was the accepting authority and as no visible action was initiated against him, it makes the whole case fishy and motivated. The next ground of attack is that the applicant was never supplied with any copy of CVC advice, which could have given him an opportunity to explain the role in the entire tender process. Last but not the least, the main plank of argument of the applicant is that the charge is vague and there is no specific allegation as to what loss was caused to the department in the said tender process and even there is no explanation what the department was doing for all these 10 years.

6. Heard both the Ld. Counsels at length.

7. On going through the entire record, it can be safely concluded that the initiation of the disciplinary proceeding only against the present applicant leaving other stakeholders at large does not stand to

legal scrutiny and the whole exercise becomes vitiated and motivated. The grounds for coming to such conclusion may be summarized as follows:

(a) Initiation of a disciplinary proceeding on 03.04.2012 for a misconduct in recommending a tender proceeding on 28.01.2002 sans any logic and common sense and there is no explanation for such delay. On the ground of in-ordinate delay, the disciplinary proceeding is liable to be quashed in the light of the ratio propounded by the Hon'ble Apex Court in the case of ***P.V.Mahadevan Vs. M.D., Tamil Nadu Housing Board reported in (2005) SCC (L&S) 861***. According to Their Lordships, initiation of proceeding after 10 years of alleged misconduct without any explanation does not seem to be bonafide.

(b) The question of delay could have been ignored had there been direct allegation of misappropriation of money or lack of integrity attributed to the delinquent employee. There is absolutely no charge that by the conduct of the delinquent employee what was the loss to the department.

(c) Further, there is no specific charge regarding any categorical infringement of any rule or circular making the delinquent employee answerable and liable for misconduct.

8. Last but not the least, awarding of tender was a function of a tender committee to be approved by the higher authority. Applicant, the DCM, Waltair, was only a member of the tender committee. There is considerable force in the submission of the Ld. Counsel for the applicant

that the applicant, along with two others, viz. Sri V.Satyanarayan, DAO, and Sri K.Ramachandran, D.E., of E.Co.Railways, were nominated to be member of the committee for considering the awarding of Scooter & Car parking stand and one Sri C.R.Swain, Sr. D.C.M., Waltair, was the Accepting Authority. On 22.03.2002 the meeting of the committee was convened and report was submitted by the committee to the Accepting Authority, i.e. Sri C.R.Swain, Sr. DCM, Waltair. On 27.03.2002 irrespective of the recommendation made by the committee, the competent authority extended the tenure of the contract of the cycle stand in favour of the contractor to which the applicant was no-way connected. Furthermore, the applicant was transferred on 12.04.2002 and, on 22.04.2002, the recommendation made by the committee was not agreed upon by the accepting authority and as per the order of the competent authority, new tender committee was constituted and the new tender committee, to which the applicant was not a member, awarded the tender on 31.05.2002. The other ground relied upon is that on 30.09.2002 Sri V.Satyanarayan, DAO, one of the members of the earlier committee superannuated from service and on 31.05.2003 Sri K.Ramachandran, D.E., another member of the earlier committee, superannuated from service. However, on 03.04.2012, i.e. after more than 10 years, a charge memo was issued only against the applicant thereby he was alone made a scapegoat for the collective decision of the tender committee. Had the department initiated disciplinary proceeding against all the members of the tender committee including the Accepting

Authority, the matter would have been different. The department has absolutely no explanation that why no action was taken against the other three persons. In the case of *Bongaigaon Refinery & Petrochemicals Ltd. & ors. Vs. Girish Chandra Sarma, reported in (2007) 2 SCC(L&S) 638*, Their Lordships of the Hon'ble Apex Court has observed that one person alone cannot be made scapegoat for collective decision in which others have also collectively participated.

8. To conclude, if there was any irregularity in awarding tender or not accepting the tender, the Sr. DCM, who was the Accepting Authority, should have been made answerable whereas the applicant being one of the members of the tender committee should not have been singled out giving a clean chit to other members, which speaks malafide and smells arbitrariness. Considering the pros and cons of the entire materials on the record, we find since the disciplinary proceeding was initiated after 10 years of the tender committee and that too without any specification of impropriety or financial irregularities or causing loss to the department, the charge becomes baseless and is liable to be quashed at the threshold. Hence ordered.

9. O.A. is allowed. The disciplinary proceeding so also the punishment imposed on the delinquent employee are hereby quashed. No costs.

(M. SARANGI)
Member (Admn.)

(S.K.PATTNAIK)
Member (Judl.)