

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No.718 of 2013

Cuttack this the 11th day of May, 2018

CORAM:

THE HON'BLE SHRI S.K.PATTNAIK, MEMBER(J)  
THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Khirod Chandra Panda, aged about 56 years, S/o. Sugriba Panda, Compulsory Retired as Enquiry-cum-Reservation Clerk under East Coast Railway, Bhubaneswar

...Applicant

By the Advocate(s)-M/s.S.B.Jena  
S.Behera

-VERSUS-

Union of India represented through :

1. The General Manager, East Coast Railway, Chandrasekharapur, Rail Vihar, Bhubaneswar-751 023.
2. Chief Personnel Officer, East Coast Railway, Bhubaneswar, 2<sup>nd</sup> Floor, South Block, Railway Sadan, Bhubaneswar-751 017, District-Khurda.
3. Divisional Commercial Manager, East Coast Railway, Khurda Road Division, At/PO/District-Khurda

...Respondents

By the Advocate(s)-Mr.R.S.Behera

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant who was working as Enquiry-cum-Reservation Clerk under the East Coast Railway, Bhubaneswar has filed this O.A. praying for the following reliefs:

“...to quash the impugned order dated 30.06.2006, 20.10.2006, 12.02.2008 and 06.06.2013 passed by the Respondent No. 1 to 4 under Annexure-A/15, 16,A/18 and A/20 respectively;

And further be pleased to direct the Respondents to reinstate the applicant into service with all consequential service benefits.

Or pass any other order/orders, direction/directions be issued so as to give complete relief to the applicant;

And allow this Original Application with cost.

2. The brief facts of the case are as follows:

The applicant had initially joined service on 17.4.1982 as a Commercial Clerk in Chakradharpur Division under S.E.Railways. He was promoted to the post of Enquiry-cum-Reservation Clerk on 17.11.1992. While he was on duty as Enquiry-cum-Reservation Clerk at Chandrasekharpur Reservation Office, on 10.8.1999, a team of vigilance officials conducted a decoy check in his office. The applicant was under the impression that they were miscreants and he resisted their entry and claims that he was assaulted by them. However, the vigilance team filed an FIR No.106 on 10.8.1999 against the applicant that he had assaulted them and restrained them from carrying out their official duties. A case was registered against the applicant under Sections 353/341/222/323/324/326/294/307/427 IPC and he was arrested and subsequently released on bail. After investigation a charge sheet was filed against the applicant under Sections

307/325/353 IPC. However, after trial in the Court of Additional Sessions Judge (Fast Track), Bhubaneswar, the applicant was found not guilty and was honourably acquitted vide judgment dated 29.1.2004. In the meanwhile consequent to the FIR and arrest of the applicant, he was placed under suspension vide order dated 10.8.1999 and was reinstated subsequently on 16.3.2000. A charge sheet under Rule-9 of Railway Servants (Discipline & Appeal) Rules, 1968 was issued against him dated 14.3.2000.

The applicant filed reply to the charge sheet in which he stated that a criminal case was pending against him containing the same charges and he will be highly prejudiced if he is forced to reveal his defence before commencement of criminal trial. Therefore, the disciplinary proceedings should be kept in abeyance till conclusion of the trial in the criminal case. He also asked for copies of documents and statements of witnesses to file his show cause, but the same was not provided to him. Despite the objections of the applicant, one Shri A.K.Singh, who belongs to vigilance staff of East Coast Railways was appointed as Enquiry Officer vide order dated 2.5.2000. The applicant claims that copies of the documents basing on which charges were framed against him were not supplied to him and despite the applicant's prayer to keep the disciplinary proceedings in abeyance, the Enquiry Officer went ahead with the disciplinary inquiry. The applicant had also raised objection to the fact that

the Enquiry Officer Shri A.K.Singh belongs to Vigilance Branch and therefore, the Enquiry Officer may not be impartial and free from bias and prejudice. While the representation of the applicant was pending before the Enquiry Officer as well as the Disciplinary Authority, the findings of the Enquiry Officer were communicated to him vide notice dated 6.11.2001 asking him to submit his representation against the inquiry report. The applicant submitted a representation to Respondent No.3 stating that the criminal case was pending against him and the charges leveled against him being similar to the allegations in the disciplinary proceedings, the departmental proceedings should be kept in abeyance until conclusion of the trial in the criminal case. Moreover, the applicant had objected to the appointment of Shri A.K.Singh as I.O. since Shri Singh belongs to Vigilance Department of S.E. Railways and the applicant had serious doubt about the impartiality of the inquiry. The applicant alleged that the inquiry had been conducted by Shri A.K.Singh ex parte and inquiry report submitted is in violation of the principles of natural justice and mandatory provisions of law. On 21.10.2002, Respondent No.4 informed the applicant that as per his request, the I.O. had been changed and Shri K.Ranga Rao was appointed as I.O. in place of Shri A.K.Singh. The applicant also filed an O.A.No.113/2002 in this Tribunal challenging the inaction of the respondents in not supplying the necessary documents to the applicant. The O.A.No.113/02 was

disposed by this Tribunal on 11.3.2005 directing the respondents to finalize the proceeding within a period of six months. On 1.7.2005, Respondents appointed Shri N.K.Jaisingh as I.O. to enquire in to the charges against the applicant afresh. The applicant's prayer for supply of copies of necessary documents was not acceded to. On 17.8.2005, the I.O. informed him that there was no justification to supply the copies of the documents asked for since copies of the statements of the persons and witnesses on the basis of which charges were framed had already been supplied with the Relied Upon Documents as per A/3 to the charge sheet and the other documents called for by the applicant had no relevance to the inquiry.

The I.O. fixed the date of inquiry to 2.9.2005 and again on 12.9.2005. However, the applicant feared that the inquiry would not be impartial and raised objection the manner in which the inquiry was being conducted. He also filed O.A.No.756/2005 praying for a direction for supply of documents with a further prayer that till further documents were supplied, inquiry should not be proceeded. This Tribunal disposed of the said O.A. on 9.9.2005 directing that the applicant should be given an opportunity to put up a consolidated representation before the Disciplinary Authority by 19.9.2005 which should receive due consideration of the Disciplinary Authority by end of October, 2005. The

Disciplinary Authority and the Inquiry Officer were directed to complete the proceedings within a period of eight months. The applicant alleges that the documents prayed for by him were not supplied to him and the Inquiry Officer proceeded with the inquiry. The witnesses who were examined are the same as in the criminal trial and on receipt of the Inquiry Officer's report, the Disciplinary Authority vide letter dated 30.6.2006 inflicted punishment of compulsory retirement against the applicant. The appeals filed by him before the Appellate Authority and the Revisional Authority have been rejected by Respondent No.3 and 2 respectively and the petition filed before Respondent No.1 was also rejected. The applicant has challenged all these orders dated 30.6.2006, 20.10.2006, 12.2.2008 and 6.2.2013 and has prayed for the reliefs as at Para-1 above.

3. The applicant has based his prayer on the ground that the inquiry against him is illegal, arbitrary and mala fide with an oblique motive to punish an innocent person. Since he is honourably acquitted in the criminal case, there is no justifiable reason to proceed with the disciplinary proceedings and impose punishment. Despite the orders of this Tribunal in O.A.No.756/2005 dated 9.9.2005, documents called for by him were not supplied to him and the punishment of compulsory retirement was imposed in an arbitrary and illegal manner. The witnesses in the disciplinary proceedings were the same as in the criminal proceedings and they did not come forward to

offer evidence in the criminal case nor in the disciplinary proceedings. The applicant has not been given a fair opportunity in the disciplinary proceedings nor he has been supplied with the documents called for by him and therefore, the punishment imposed on him is illegal and the authorities should be directed to reinstate him in service with all consequential benefits.

4. The respondents in their counter filed on 20.8.2014 have contested the claim of the applicant and justified their action in imposing punishment on the applicant. It is their contention that they had received specific information that some of the dishonest reservation Clerks working at Reservation Office at Chandrasekharpur, Bhubaneswar were in the habit of demanding and collecting illegal gratification from the passengers purchasing reservation tickets. Therefore a decoy check was organized at the reservation counter on 10.8.1999 by the Headquarters Vigilance Team, Khurda Road, S.E. Railway with the approval of the competent authority by deploying Shri R.G.Ram, ASI/CIB/RPF/GRC to act as decoy. The applicant demanded and collected an illegal gratification for a sleeper class ticket by the train of 2801 dated 10.8.1999 from Khurda Road to Tata. The Vigilance Team entered into the reservation office and asked the applicant to show his cash. The applicant resisted the Vigilance Team and attempted to assault them. He broke the window glass and attacked Vigilance Team with a

broken glass piece. The entire Vigilance Team were injured to some extent. Shri T.K.Bhattacharjee, Chief Vigilance Inspector, Garden Reach got severed injury in the right hand palm and had to rush to the Health Unit of Chandrasekharpur where his right hand palm was stitched. The necessary medical memo for this treatment is filed as Annexure-R/1. On completion of check in the counter, an amount of Rs.36/- was found in excess in the counter cash of the applicant. Due to the criminal action of the applicant, an FIR was lodged in Chandrasekharpur Police Station under Sections 353/341/323/324/326/294/307/427 IPC and a case was registered for trial in the Court of Law. The applicant did not cooperate with the Inquiry Officer during the disciplinary proceedings. On his prayer the Inquiry Officer was changed from Shri A.K.Singh of the Vigilance Branch to Shri K.Ranga Rao vide order dated 21.1.2002. The new I.O. fixed the preliminary hearing on 11.3.2002, but the applicant instead of attending the inquiry filed O.A.No.113/2002 and this Tribunal had passed an interim order on 6.3.2002 staying the inquiry proceedings. Meanwhile, Shri K.Ranga Rao was transferred to Bilaspur and Shri D.B.Mitra Inquiry Officer, Khurda Road was nominated for conducting disciplinary proceedings against the applicant vide order dated 26.12.2002. However, due to continuation of stay in O.A.No.113/02 Shri Mitra also could not conduct the inquiry and returned the case filed. The O.A.No.113/2002 was disposed of by this Tribunal vide order

dated 11.04.2005 with a direction to the applicant to cooperate with the IO so that the inquiry could be completed within a period of six months giving full opportunity to the applicant to defend his case. Consequent upon the order of this Tribunal dated 11.4.2005 in O.A.No.113/02, the Disciplinary Authority vide his order dated 1.7.2005 nominated Shri N.K.Jaisingh, Assistant Operational Manager, Khurda Road as I.O. to conduct inquiry afresh from the initial stage. The Inquiry Officer submitted his report dated 1.4.2006 holding all the charges as proved. The copy of inquiry report was supplied to the applicant vide letter dated 4.4.2006 to which the applicant filed a representation on 29.4.2006. Respondent No.4 in the capacity of disciplinary authority examined the case in detail and found the applicant guilty of the charges. Through his order dated 30.6.2006, he passed a reasoned and speaking order imposing punishment of compulsory retirement on the applicant with full pensionary benefits as admissible under the rules. The appeal and revision filed by the applicant with the higher authorities were rejected after detailed examination and his finally petition to Respondent No.1 was also rejected after due consideration. The respondents have alleged that the applicant had attended only two sittings on 30.6.2000 and the regular hearing on 14.12.2000 when the inquiry was being conducted by Shri A.K.Singh as the I.O. and after that he has applied only delaying tactics by submitting repeated representations and asking for

irrelevant documents. They have also challenged the claim of the applicant that the charges in the criminal proceedings and the departmental proceedings were similar. It is the contention of the respondents that the charges are different from legal angles. The ingredients of the delinquency/misconduct in criminal prosecution and the departmental proceedings as well as standard of proof required in both the cases are not identical. On the request of the applicant, the I.O. was changed from Shri A.K.Singh to Shri K.Ranga Rao and despite the order of this Tribunal dated 11.4.2005 directing the applicant to cooperate with the I.O., he did not do so. He avoided the inquiry sitting by sending repeated representations from time to time for non-supply of documents. The representations submitted by the applicant have been duly considered and suitably disposed of by the I.O. as well as the Disciplinary Authority vide communications dated 17.8.2005(A/10) and dated 2.9.2005(R/6) and dated 1.3.2006(R/7) respectively. Acquittal in the criminal proceedings has no bearing on the departmental proceedings since in a criminal case the standard of proof required for conviction is beyond all reasonable doubt whereas in departmental proceedings, the standard of proof required is preponderance of probability for holding the charges as proved. The punishment of compulsory retirement with full benefits has been imposed on the applicant after following the due procedure and therefore, the same calls for no intervention.

The Disciplinary Authority, Appellate Authority and Revisional Authority have passed reasoned and detailed orders and the applicant's challenge of the same is without any basis. Finally, mercy petition submitted by him to Respondent No.1 has also been disposed of through a reasoned order and therefore, there is no ground of intervention in the matter. The O.A. being devoid of merit is liable to be dismissed.

5. The applicant has filed a rejoinder on 18.2.2015 in which he has reiterated that the respondents have acted in contravention of Railway Servants (Discipline & Appeal) Rules, 1968. The exercise of power by them has been done in an illegal and arbitrary manner. The applicant has reiterated that the charges leveled against him in the disciplinary proceedings and the criminal proceedings being same and the criminal proceedings having been dismissed, there was no reason to impose the punishment of compulsory retirement on him. The applicant has been denied reasonable opportunity during disciplinary inquiry and has not been supplied with the documents called for by him. The Inquiry Officer did not give an opportunity to cross-examine the witnesses, nor did he record some of the findings and facts during the course of inquiry. The findings of the I.O. are therefore, perverse and unsustainable and consequently, the subsequent orders passed by the Disciplinary Authority, Appellate Authority and the Revisional

Authority as well as the rejection of his mercy petition by Respondent No.1 are all illegal.

6. We have heard the learned counsels from both the sides and perused the documents submitted by them. The issue to be decided in the present O.A. is whether the order of punishment of compulsory retirement against the applicant by the Disciplinary Authority and the subsequent orders rejecting his appeal/petition at various levels can stand the scrutiny of law.

7. The charges framed against the applicant under Rule-9 of Railway Servants (Discipline & Appeal) Rules, 1968 are as follows:

ARTICLE-I

That the said Sri K.K.Panda, ERC/BBCH while working at computerized Reservation Office, BBCH on 10.8.99 committed grave misconduct in as much as he demanded and collected illegal gratification of Rs.10/- from Sri R.G.Ram, ASI/RPF/CIB/GRC who purchased one sleeper class JCRT Ex. KUR to TATA by 2801 of 10.8.99 in presence of an independent witness.

ARTICLE-II

That the said Sri K.P.Panda, ECR/BBCH while working at computerized Reservation Office, BBCH on 10.8.99 committed grave misconduct inasmuch as he obstructed the Vigilance team from discharging their official duty.

ARTICLE-III

That the said Sri K.P.Panda, ECR/BBCH while working at computerized Reservation Office, BBCH on 10.8.99 committed grave misconduct inasmuch as he broke the window glass and attacked the Vigilance team with a broken glass piece causing injury to Sri T.K.Bhattacharyya, CVI©.

ARTICLE-IV

That the said Sri K.P.Panda, ECR/BBCH while working at computerized Reservation Office, BBCH on 10.8.99 committed grave misconduct inasmuch as an amount of Rs.38/- was found excess in his counter cash.

By his above action, Sri K.K.Panda, ERC/BBCH failed to maintain absolute integrity, devotion to duty and acted in manner unbecoming of a Railway Servant in contravention of Rule 3-1(i), (ii) & (iii) of Rly. Service Conduct Rules-1966 as amended from time to time and has thereby rendered himself liable for disciplinary action.

8. We have perused the orders of the Additional Sessions Judge (Fast Track No.3) dated 29.1.2004. The charges against the applicant were under Sections 307/325/353 IPC which relate to attempt to murder, punishment for voluntarily causing grievous hurt and assault to public servants while discharging of duties. The relevant extract from the order is as follows:

“...Police Officer P.W. 1 is a post occurrence witness and he has deposed facts regarding his investigation. Neither the informant nor any material witness to the occurrence has been examined. Seizure of incrimination materials deposed by the Police officer P.W. 1 gets no corroboration from evidence of any independent witness. None of the material witnesses could be examined due to their non-appearance in spite of taking all necessary steps which fact have been clearly mentioned in the order sheet of the case record. Only injury reports of injured Tapan Kumar Bhattacharya has been marked Exhibits even though the concerned Doctor has not been examined. Injury report only proves the existence of injury on injured person. Injuries are simple in nature. There is no evidence as to who caused such injuries. On the whole there is no iota of evidence regarding involvement of accused for the commission of the alleged crime. Prosecution has utterly failed to prove its case against the accused

person. Hence the accused person is found not guilty of the offence u/ss 307/325/353 IPC and is acquitted thereof u/s 235 Cr.P.C. The seized articles be destroyed four months after the appeal period and in case of appeal as per order of the appellate Court”.

9. Thus it is quite clear that the charges in the disciplinary proceedings are not exactly identical to the charges in the criminal trial. In addition to the charge of assault to vigilance officials and obstructions in their duties, there are charges relating to collection of illegal gratification of Rs.10/- from the decoy passenger in the presence of an independent witness and also the excess cash of Rs.36/- being found in the cash counter. We have also perused the Doctor's certificate issued by the Chandrasekharpur Health Unit. It is mentioned that stitches were given to Shri Tapan Kumar Bhattacharjee, Chief Vigilance Officer at the time of the treatment on 10.8.1999. The report of the I.O. shows that witnesses were examined in connection with Article of Charge No.III relating to injury caused to Shri T.K.Bhattacharjee and the breaking of the window glass and use of a broken piece of glass by the applicant in causing injury to Shri Bhattacharjee. The IO had also examined a number of witnesses in connection with the charges relating to illegal gratification and the finding of excess cash in the cash counter.
10. The Additional Sessions Judge (Fast Track) had not found the applicant guilty in the criminal case. It is settled law that the proof required in a criminal case is much more stringent and

meticulous and no person can be punished under criminal law unless his guilt is proved beyond all reasonable doubts. On the other hand, in the disciplinary proceedings, the standard of proof is more on preponderance of probability.[Cpt.M.Paul Anthony vs.Bharat Gold Mines Ltd. & Anr. (AIR 1999 SC 1416), Delhi Cloth & General Mills Ltd. vs. Kushal Bhan 1960 (3) SCR 227, Jang Bahadur Singh vs. Baij Nath Tiwari 1969 (1) SCR 134, Nelson Motis vs.Union of India & ors. (1992) 4 SCC 711 and State of Rajasthan vs. B.K.Meena & ors. (1996) 6 SCC 417]. In Capt.Paul Anthony case (supra), the Hon'ble Supreme Court had made the following observations:

“This question, as observed earlier, is of a perennial nature and has arisen more often than not in spite of the judicial pronouncements, specially by this Court, having settled the question and provided the answer. Still, the problem is raised either by the employer or by the employee in one or the other form. In the instant case, the order of dismissal had already been passed before the decision of the criminal case which ultimately resulted in the acquittal of the appellant. Whether the acquittal coupled with other circumstances, specially ex-parte proceedings, of the case, will have the effect of vitiating the departmental proceedings or the order of dismissal passed against the appellant, is the question which is to be considered in this appeal.

As we shall presently see, there is a consensus of judicial opinion amongst the High Courts whose decisions we do not intend to refer in this case, and the various pronouncements of this Court, which shall be copiously referred to, on the basic principle that proceedings in a criminal case and the departmental proceedings can proceed

simultaneously with a little exception. As we understand, the basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the Disciplinary Authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in the those proceedings is also different than that required in a criminal case. While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubts. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance.

11. In the present O.A. taking note of the acquittal of the applicant in the criminal case, we find no irregularity in the finding of the I.O. inasmuch as he has examined the witnesses and come to the conclusion of guilt on the part of the applicant. Inasmuch as the I.O. has come to the conclusion that the applicant was responsible for assault on the vigilance team and causing injury to Shri Bhattacharjee, the punishment imposed on the applicant appears to be perfectly valid, legal and sustainable in the eyes of law. In addition to that the two other charges relating to demand of illegal gratification and finding of excess cash and the IO's findings on both the charges adds to the seriousness of the delinquency and to that extent the punishment imposed by the Disciplinary Authority and

confirmed by the Appellate Authority/Revisional Authority/Respondent No.1 seems to be perfectly in order. The applicant has challenged the punishment order on the ground that he was not given copies of the documents called for by him. However, from the reply given to him vide communications dated 17.8.2005(A/10), 2.9.2005(R/6) and 1.3.2006(R/7) respectively shows that the copies of the relevant documents were already given to him along with the charge sheet. The other documents which were irrelevant and not required for the inquiry were not given which cannot form the basis for challenge to the impugned punishment imposed on the applicant. The applicant was directed by this Tribunal in order dated 11.04.2005 in O.A.No.113/2002 to cooperate with the IO so that the inquiry could be completed within a period of six months. In the 2<sup>nd</sup> O.A. No.756/2005 this Tribunal vide order dated 9.9.2005 directed the applicant to submit a consolidated representation and the respondents were directed to take action on the representation and complete the inquiry within eight months. The relevant portion of the orders of the Tribunal are as follows:

- “6. Having heard the Ld. Counsels for both the parties, I am of the opinion that supply of documents to the applicant is a matter which should receive due consideration of the disciplinary authority and, therefore, the applicant should make an elaborate representation to the disciplinary authority pointing out his claims and, in all fairness of things, the Disciplinary Authority should expeditiously consider the same, because of

the time constraint. In all fairness of things, the Inquiry Officer/Respondent No.4 should await the orders of the Disciplinary Authority instead of proceeding with the enquiry.

7. Therefore, the Applicant is hereby given an opportunity to put up a consolidated representation before the Disciplinary Authority by 19.9.05; which should receive due consideration of the Disciplinary Authority by end of October, 2005. In the meantime, the enquiry that has been fixed on 12.9.05, in all fairness, be deferred/adjourned to a date not before 10.11.05. The Disciplinary Authority of the applicant and the I.O.(Respondent No.4) are directed to act accordingly, so as to complete the proceeding within a period of eight months”.
8. With the aforesaid observation and direction, this O.A. stands disposed of at admission stage”.

12. Record shows that instead of cooperating with the inquiry the applicant adopted dilatory tactics and tried to obstruct conduct of the disciplinary proceedings despite the order passed by this Tribunal in O.A.No.113/02. Having forfeited the opportunity to participate in the disciplinary proceedings in right manner and spirit, the applicant has no justification to challenge the findings of the IO and the subsequent orders passed by the statutory higher authorities. We have also carefully perused the orders passed by the Disciplinary Authority, Appellate Authority, Revisional Authority and Respondent No.1 and we find those orders to be well reasoned and with due application of mind and therefore, we find no ground to interfere with these orders.

13. In view of the above, we dismiss the O.A. filed by the applicant as devoid of merit.

14. No costs.

(DR.MRUTYUNJAY SARANGI)  
MEMBER(A)

(S.K.PATTNAIK)  
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No.718 of 2013

Cuttack this the            day of May, 2018

Khirod Chandra Panda...Applicant

-VERSUS-

Union of India & Ors...Respondents

FOR INSTRUCTIONS

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

(DR.MRUTYUNJAY SARANGI)  
MEMBER(A)

(S.K.PATTNAIK)  
MEMBER(J)

Pre-delivery order in O.A.No.718 of 2013 is placed below for kind perusal and concurrence.

MEMBER(A)

HON'BLE MEMBER(J)