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CENTRAL ADMINISTRATIVE TRIBUNAL CALCUTTA BENCH

No. O.A. 1101 of 2012

Present : Hon'ble Mr. Justice Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

Shri Narendra Prasad,
Son of Late Bindeshwar Lal,
Aged about 56 years,
Worked as Office Superintendent Grade II
Under Sr. DCM, S.E. Railway, Kharagpur,
Residing at Arora Mension, Chhattispara,
Bapunagar, Kharida, P.O. – Kharagpur,
Dist. – Paschim Medinipore,
Pin – 721 301.

.. Applicant

- V E R S U S -

1. The Union of India
Through the General Manager,
S.E. Railway, Garden Reach,
Kolkata – 700 043.
2. The Chief Personnel Officer,
S.E. Railway,
Garden Reach,
Kolkata – 700 043.
3. The Chief Commercial Manager,
14, Strand Road (8 Floor),
S.E. Railway,
Kolkata – 700 001.
- 3A. Additional Divisional Railway Manager,
S.E. Railway, Kharagpur,
P.O. + P.S. – Kharagpur,
Dist. Paschim Midnapore.
4. The Sr. Divisional Commercial Manager,
S.E. Railway, Kharagpur,
P.O. + P.S. – Kharagpur,
Dist. Paschim Midnapore.
5. Shri M.L. Appa Rao,
The Chief Commercial Manager FM,
East Coast Railway,
Bhubaneswar.

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6. Shri A.K. Helder,
The Sr. Divisional Commercial Manager,
Chakradharpur, (Enquiry Officer).

7. Mr. Azhar Shams,
The then Sr. DEM/KGP, working now Sr. DEM/KGP,
Pin – 721 301.

.. Respondents

For the Applicant : Mr. A. Chakraborty, Counsel

For the Respondents : Mr. B.L. Gangopadhyay, Counsel

Order dated: 8.11.2016

ORDER

Per Ms. Jaya Das Gupta, Administrative Member:

The applicant, Shri Narendra Prasad, has approached Central Administrative Tribunal under Section 19 of the AT Act, 1985 seeking the following reliefs:-

"8.(i) An order by directing the respondents to cancel, rescind and for withdraw and quash and set aside the impugned order of removal dated 31.3.2011 and Appellate order dated 27.1.2012.

(ii) Office Order being No. P/SC/Com-V/NP/12 dated 31.10.2012 issued by the Chief Commercial Manager & Revising Authority, South Eastern Railway cannot be tenable in the eye of law and therefore the same may be quashed.

(iii) An order by directing the respondent to re-instate the applicant in the present post with arrears of back wages and all consequential benefits therewith."

2. It is the case of the applicant that he joined S.E. Railway initially as a Call Boy on 10.6.1981. Ultimately he took charge of Kharagpur Catering

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Unit as Manager Refreshment Room vide order issued on 18.8.1999. It is his contention that his duty as Manager which was circulated vide a circular dated 5.11.1984 is as follows:-

“ To remit Cash, Posting of stock book, writing CD 69, supervision of quality of Food, service etc. by boosting up sales, daily marketing, supervision of stock (stock and block stock) and supervision of work done by the AMRR Clerk and the bill Issuer Maintenance of M/Roll etc.”

He has further submitted that the above circular dated 5.11.1984 was in vogue when IRCTC (Indian Railway Catering & Tourism Corporation) came into existence in 2006 whereby provisions of option was made for Railway Departmental Catering staffs to be transferred to IRCTC. Options from the staffs of Railway Departmental Catering were invited as to whether they will remain in the Railway itself or be placed in the Indian Railway Catering & Tourism Corporation. Accordingly, the applicant opted for remaining in the Railway Department and he was absorbed in the Commercial Department of Kharagpur Division being posted as Office Superintendent Gr. II under Sr. Divisional Commercial Manager's Office under Kharagpur Division.

3. In the meantime, he has alleged, that one Agreement was signed between Sr. Divisional Commercial Manager and a contractor named M/S. Dynamic International, Kharagpur where falsely the applicant was involved in the dealings leading to the signing of the Agreement, and a charge-sheet was served upon him. The allegation was that he had wrongly advised the Sr. Divisional Commercial Manager to sign the Agreement in connivance with the Head Clerk of the Commercial Department which led to the Agreement being effective for 21 long years w.e.f. 1.4.2001 to 31.12.2021 which was not normal. A penalty was imposed as a result of the disciplinary proceeding and he was removed from service. He had appealed against



such penalty order both to the appellate authority in first appeal and to the revising authority in second appeal but to no avail. Hence, he has approached this Central Administrative Tribunal asking for the relief of quashing of the orders of the disciplinary authority, and the appellate authority since he had in no way wrongly advised or influenced the Sr. Divisional Commercial Manager for signing an Agreement which was effective from 1.4.2001 to 31.12.2021.

4. Per contra, the respondent authorities have denied all the submissions of the applicant and have submitted for rejection of the reliefs sought for. Details of submission of respondents will be discussed subsequently.

5. Heard both sides and consulted the records.

6. The relevant extracts of the Agreement regarding which the misconduct has arisen are as follows:-

"AGREEMENT FOR SUPPLY/SALE OF "HALDIRAM MADAN LAL" AND HALDIRAM PRODUCTS THROUGH DEPARTMENTAL CATERING STALLS ON RE-SALE BASIS AT KHARAGPUR RAILWAY STATION OF S.E. RAILWAY

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

"9. This Agreement shall take effect from 1st June, 2001 and remain in force until 31st December, 2021."

FOR DYNAMIC INTERNATIONAL
VIKASH KUMAR

Sr. Divl. Comml. Manager
S.E. Railway, KGP
On behalf of President
Of India
N.B. White Ink applied
In one place at Page No.
2 of Clause 9 of the
Agreement"

A similar agreement was signed between the same parties, the period of execution being from 1.4.2001 to 31.12.2021 where similar allegations

have been made.

7. The article of charge which was served on the applicant dated 20.10.2008 is extracted below:-

"Statement of imputation of misconduct in support of the article of charges framed against Sri Narendra Prasad, the then MRR/KGP and now working as OS/Gr. II under Sr. DCM/KGP

Article – I:

During the period from December, 2000 to June, 2001 some short term contracts were executed between M/S. Dynamic International and the Railway Administration for supply/sale of various food items through departmental catering unit at Kharagpur Station on commission sharing basis in the ratio of 75:25. Such contract were executed during December, 2000 to June, 2001 when Shri Narendra Prasad was working as the MRR/KGP.

Shri Narendra Prasad denied his knowledge completely regarding the agreement entered with the suppliers by the Railway administration from where he was to accept supply in accordance with the demand placed by him and pays the commission to the suppliers as per agreement. Shri A.K. Rao, Head Clerk/Sr. DCM's Office/KGP and Shri M.L. Appa Rao, the then Sr. DCM/KGP in their statements had confirmed that Shri Narendra Prasad, MRR/KGP played major role in execution of all agreements related to Catg. Matter of KGP station. As such, it is not credulous that Shri Narendra Prasad, MRR/KGP had no knowledge about the agreements. Rather the circumstantial evidences speak of playing foul by the beneficiary i.e. the contractor M/s. Dynamic International in connivance with Shri Narendra Prasad, MRR/KGP and Shri A.K. Rao, Head Clerk/Sr. DCM's Office/KGP. Being MRR/KGP Shri Narendra Prasad, had easy access to the then Sr. DCM/KGP in all CAtg. Matters of KGP station including execution of agreements. Sr. DCM/KGP Sri Appa Rao relied and depended on Shri Narendra Prasad, MRR/KGP in all Catg. Mattersrelated to KGP Station. Shri Narendra Prasad availed this opportunity and misused this reliance and got additional signatures of Sri Appa Rao in the agreements in order to help the contractor M/s. Dynamic International by manipulating the contract period in the agreements. During clarification Shri M.L. Appa Rao categorically mentioned that the contractor in connivance with Shri Narendra Prasad MRR/KGP tampered the agreements.

Shri Narendra Prasad the then MRR/KGP illegally helped the contractor M/s. Dynamic International and manipulated the agreements for the benefit of getting the contract for a longer period of more than 20 years. In order to extend his illegal co-operation to the contractor M/s. Dynamic International for manipulation in the agreements, he took advantage of his proximity with Sr. DCM/KGP, misused his position of MRR/KGP and got additional signatures signed by Shri Appa Rao in the agreements in order to establish the future manipulation as legal. To

make his illegal plan successful, he connived with Shri A. Kameswar Rao, HC/Catg./KGP and took away Catg. Files including the two files containing the manipulated documents.

In order to cover up his wrong doings and connivance with the contractor for manipulation in the agreements, he did not keep any record of his involvement in any file or papers related to manipulation. Rather when asked by Vigilance he even denied the knowledge about the execution of the agreements in catering matters related to his own unit of KGP station. Thus, it is established that he deposed false statement to vigilance as the statements given by Sri M.L. Appa Rao and Shri A.K. Rao regarding his dealing with the file gain credence because his name repeatedly figured in various questions asked by Vigilance.

By the aforesaid acts, Shri Narendra Prasad, the then MRR/KGP and now working as OS/Gr. II under Sr. DCM/KGP committed grave misconduct and irregularity and thus failed to maintain absolute integrity and devotion to duty. Thus he acted in a manner unbecoming of a Railway servant in contravention of Rule No. 3.1 (i), (ii) & (iii) of the Railway Services Conduct Rules, 1966 and thus rendered himself liable for disciplinary action in terms of Railway Servants D&A Rules, 1968 as amended from time to time.

(M.S. Pal)
Sr. Divl. Commercial Manager
S.E. Railway/Kharagpur"

8. The articles of charge which have been laid out above contain conclusions drawn which are beyond office ethics. These are as follows:-

- (a) Why should the Manager Refreshment Room, the Charged Officer be allowed to take advantage of his proximity with Sr. DCM?
- (b) How can the Charged Officer be allowed to get additional signature of Sr. DCM in the Agreement Paper?
- (c) How can the Charged Officer be allowed to take away the catering files including the two files containing the manipulated agreement when at that point of time i.e. in 2001 he is not a part of the Establishment of Sr. DCMs office.

9. However as per Rules full enquiry was held and as penalty of removal from service was imposed on the charged officer.

10. The order of penalty given by the disciplinary authority under Railway Servants (Discipline & Appeal) Rules, 1968 at Annexure A-14 is extracted below:-

SOUTH EASTERN RAILWAY

Office of the
Divl. Railway Manager,
Kharagpur,

No. DS/CON/2806

Date: 31.3.2014

To
Sri Narendra Prasad,
OS-Gr. II under Sr. DCM/KGP

// Through : Ch.OS (Comml.)-KGP//

Sub: Penalty under RS (D&A) Rules.
Ref: Charge Memo No. DS/CON/2806 dtd. 20.10.2008.

I have gone through the case file in detail along with your comments on the report of enquiry officer.

The main charges against you is that "while working as MRR/KGP you were directly involved in the conspiracy to manipulate the agreement signed between M/s. Dynamic International and the Railway Administration to see the interest of the contractor."

The enquiry officer has proved the charge in his enquiry report.

The prosecution side has produced cogent documentary evidences in support of the charge. The copy of the contracts agreement available in the case file cited (RUD) confirms that the contract period has been tampered with, as the contract period is for abnormal prolonged period i.e. twenty yrs. which defies any same logic. Use of whitener to modify the contract period only confirms the fact that it was manipulated.

The principal prosecution witness, the then Sr. DCM/KGP has deposed in the enquiry that the contracts period was for one yr. and had been manipulated, interpolated by you. The PW4 in his statement dated 16.10.06 to the reply of Question No. 6,8 and 10 has submitted that his additional signatures in the last two pages of the agreements had been obtained for the attestation of signatures of the witnesses and were fraudulently misused by you to increase the period of contract, and in that way you cheated the Railway Administration.

You in your defence have emphasized that you have no knowledge regarding the said agreement. But PW-2 has confirmed that you had played major role in execution of all agreements related to catering matters in KGP Division.

It is also a documented fact, that you were the nodal supervisor for

all catering related activities of the KGP Units and files were processed and brought to Sr. DCM/KGP by you and dealer (authenticated by PW-1) your contention is that you were unaware about the fraud cannot be accepted as you were the supervisor, and nothing of such great magnitude can happen without your active involvement.

Another significant point here is that you were the custodian of the said agreement files. But the files clearly show that these are devoid of any noting, day to day movements of files, clearly establishing that you were having this fraud in mind and deliberately did all these so as to misrepresent the case at any later enquiry stage if at all it was needed.

On the basis of above deliberations your involvement in the fraud is established beyond doubt.

Such kind of staff are blot on the system leading not only to the loss of revenue to the govt. exchequer but the loss of image of the Railway Administration also the quantification of which is beyond comprehension.

You have not brought out any such point to prove you innocent or lessen the gravity of offence committed by you. A staff with a fraudulent bent of mind cannot be retained in the Railway Services.

Thus I agree with the EO and hold that you are guilty of the charges.

Considering the above, I accept the findings of Enquiry Officer and hold you responsible for violation of Rule 3.1 (i)(ii) & (iii) of Railway Service (Conduct) Rules, 1966 as amended from time to time.

In view of the above, I have decided to impose the following punishment in order to commensurate with the gravity of offence and to meet the ends of justice:

" You are hereby Removed from Railway Service with immediate effect as a measure of Disciplinary action without any compassionate allowance".

If you wish to prefer any appeal, you may do so in writing before the ADRM/KGP within 45 days from the date on which the Notice is served on you in a polite and decent language.

You are to acknowledge receipt of this Notice."

11. The Charged officer made an appeal to the appellate authority and the order of appellate authority is extracted below.

SOUTH EASTERN RAILWAY

(Through Sr. DPO/KGP)

Reg.: Punishment notice no. DS/Con/2806 dt. 31.3.2011.

I have carefully gone through the entire case file comprising of SF-5 No. DS/CON/2806 dt. 20.10.2008, your representation dt. 12.12.08, punishment notice no DS/CON/2806 dt. 31.3.11, statements of all the witnesses, your appeal dt. 26.2.2011, enquiry reports, proceedings & all other documents.

The following points are observed from the above documents:

1. It is understood that you were the nodal Supervisor for all catering related activities of the KGP units and files were processed and brought to Sr. DCM/KGP by you and dealer Sri A.K. Rao in Sr. DCM's office (authenticated by PW-1). Your contention that you were unaware about the fraud cannot be accepted as you were the supervisor, and such type of manipulation / tampering of documents cannot happen without your active involvement.
2. As per statement of dealer this particular agreement file was dealt by the then Sr. DCM/KGP with the help of you & as per verbal instruction of Sr. DCM/KGP, the file was also handed over to you by dealer Shri A.K. Rao without any acknowledgement.
3. Though you are not the dealer of the agreement file but as per statement of Sr. DCM & dealer Shri A.K. Rao you have played a significant role in execution of this agreement with M/s Dynamic International which has been established during enquiry.
4. As per statement of Sr. DCM/KGP the agreement was tampered subsequently & the corrections were done to extend benefit to contractor.
5. You have not brought out any such point to prove your innocence or lessen the gravity of offence committed by you. This type of activity is not only causing loss of Railway revenue but also loss of image of the Railway quantification of which is beyond comprehension. A staff with a fraudulent bent of mind cannot be retained in the Rly. Service.

Keeping all the above points, I have decided to uphold the decision of D.A. and keep the penalty unchanged.

You are, however at liberty to prefer revision petition if any in polite & decent language before the Revising Authority i.e. CCM/SER within 45 days from the date of receipt of this order.

(P.K. Mandal)
Appellate Authority

&

Addl. Divl. Railway Manager

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Kharagpur, S.E. Railway"

12. The Charged Officer again made a second appeal to the revisional authority which is extracted below:-

SOUTH EASTERN RAILWAY

Office of the
Chief Commercial Manager
14, Strand Road,
Kolkata – 31.10.2012

Reg.: Revision petition dt. 20.02.12 of Shri
Narendra Prasad, Ex. OS under
Sr. DCM/Kharagpur.

ORDER

In exercise of the power conferred under rule 25 of RS (DA) Rules, 1968, I the undersigned have carefully gone through the revision petition dt. 20.02.2012 of Sri Narendra Prasad, Ex. OS under Sr. DCM/KGP vis-à-vis Inquiry report. Imputation of charge and all other related documents of this case as Revising Authority.

It has been proved in the enquiry that Sri Narendra Prasad the then MRR/KGP while working as such was directly involved in the conspiracy to manipulate the agreement signed between M/s. Dynamic International and Railway administration to suit the interest of contractor.

It is clear from the enquiry that Shri Narendra Prasad was the nodal supervisor for all catering related activity of Kharagpur units and files were processed and brought to Sr. DCM/KGP through him.

As per the statement of the dealer, the particular agreement file was dealt by the then, Sr. DCM with the help of Sri Narendra Prasad as per verbal instruction of Sr. DCM Shri Narendra Prasad has played significant role in execution of the agreement. The agreement was tampered subsequently and the correction were done to extend the benefit of favour of the contractor. The record of the movement of the file was deliberately not done.

Considering seriousness of charge of manipulation of agreement causing loss of revenue of Railways and also loss of Image of Railway, I uphold the punishment of Removal from service given by the Disciplinary authority and subsequently upheld by the Appellate Authority. The appeal of revision petition is regretted.



(J.N. Jha)
Chief Commercial Manager

&

Revising Authority"

13. The penalty order dated 31.3.2011 which has been quoted supra raises some questions.

(a) The disciplinary authority has mentioned "but PW2 has confirmed that you had played major role in execution of all agreements related to catering matters in KGP Division."

The "PW2" is Shri A.K. Rao the Head Clerk and Dealer.

Why is the disciplinary authority depending on the submissions of PW2, Shri A.K. Rao, who is the dealer and Head Clerk in Sr. DCMs Office when the said Head Clerk himself was the custodian of files (as submitted by the respondents in the reply) and was himself chargesheeted on major penalty charges?

(b) The disciplinary authority has also raised the point namely:-

"Another significant point here is that you were the custodian of the said agreement files but the files clearly show that these are devoid of any notings, day to day movement of files clearly establishing that you are having this in mind and deliberately did this so as to misrepresent the case at any later enquiry stage if at all it was needed."

Our question will be that how can the Charged Officer be the custodian of said agreement files when in 2001 i.e. the period when the agreement was signed he was not a part of Establishment Office of Sr. DCM, KGP. In fact, from the reply submitted by the

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respondents it is clear from para 15 that it was the Head Clerk, the Dealer Shri A.K. Rao who was the custodian of files.

14. The appellate order dated 27.1.2012 also suffers from deficiencies.

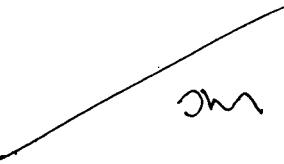
In para 1 the appellate authority mentions that, "It is understood that you are the nodal supervisor in all catering related activities of the KGP Units and files were processed and brought to Sr. DCM, KGP by you and Dealer Shri A.K. Rao in Sr. DCMs Office (authenticated by PW1). Your contention that you were unaware of the fraud cannot be accepted as you were the supervisor and such type of manipulation/tampering of document cannot happen without your active involvement.

However in same appellate order in para 3 the authority mentions "though you are not the dealer of the agreement file but as per statement of Sr. DCM and statement of Dealer Shri A.K.Rao you have played a significant role in the agreement with M/s Dynamic International which has been established during enquiry."

Our question will be that why is the appellate authority depending on the statement of dealer Shri A.K. Rao, when Shri A.K. Rao himself was chargesheeted with major penalty charges.

Also the disciplinary authority in his penalty order has mentioned that there was no signature of the Charged Officer in any agreement files. In that case how is the appellate authority mentioning in para 1 of his order that files were processed and brought to Sr. DCM/KGP by the charged officer?

15. The Charged Officer has also made a second appeal in Revision to the Chief Commercial Manager. We also find that the revisionary order dated 31.10.2012 shows that the authority again depended on the statement of the Head Clerk the dealer Shri A.K. Rao in trying to prove their



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points to establish the misconduct of the charged officer. We also find that the order of the revisionary authority is cryptic.

16. It has also been alleged by the applicant that the enquiry officer and the Vigilance Officer at whose instance the DA proceeding was started were same. The Ld. Counsel for the applicant has submitted that in the case of **Union of India & ors. v. Prakash Kumar Tandon (2009) 1 SCC (L&S) 394** in para 12 the Hon'ble Apex Court in its findings has said that:

“The disciplinary proceedings were initiated only after a raid was conducted by the Vigilance Department. The enquiry officer was the Chief of the Vigilance Department. He evidently being from the Vigilance Department, with a view to be fair to the delinquent officer should not have been appointed as an Enquiry Officer at all.”

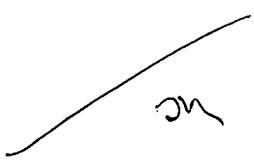
The applicant has also alleged that none of the witnesses to the Agreement were examined during enquiry.

17. From the pleadings it appears that the applicant was posted as Office Superintendent Gr. II in the Commercial Department of South Eastern Railway vide order dated 3.10.2008 i.e. he became a Commercial Departmental Staff only from October, 2008. When the agreements were signed on 22.3.2001 and 1.6.2001 he was not in the Commercial Department and belonged to the departmental catering unit. Obviously all official files were to be kept in the custody of the Head Assistant of the Commercial Department and initiated and dealt by him i.e. the Head Assistant. In Para 6 of the Reply submitted by the respondent authorities a mention has been made that the charged officer connived with the dealer i.e. the Head Assistant. If the charged officer connived with the Head Assistant then how did the authorities depend on the submissions made by the Head Assistant in the enquiry proceeding to come to a conclusion holding the applicant guilty. The dependence on the submission of the

Head Assistant is apparent in the orders of the disciplinary authority, the appellate authority and the revising authority. It should be mentioned that the HA was also removed from service.

18. The charged officer, not being in the Commercial Department at the relevant point of time cannot be the custodian of the relevant file. Para 15 of the reply itself manifests that the Head Assistant is the custodian of files. In para 6 of the Reply allegation has been made that the applicant had easy access to all the papers. Is this not a failure on the part of the respondent authorities that easy access of all papers should be given to an employee, in confidential matters, when that employee does not belong to the Commercial Department at that point of time. As per submission made in Para 13 of the Reply it is submitted that the charged officer might have had a role regarding advising the concerned person in favour of the contractor i.e. contractor belonging to Dynamic International. But it was the bounden duty of the signing authority who is a superior authority of the Govt. of India to act in the interest of the Railway and verify the facts and implications at the appropriate time of signing the agreement. That some manipulation has been done in the agreement regarding the terms of validity of the agreement is not in dispute. But from the analysis of the orders of the disciplinary authority, the appellate authority and the revising authority it is definitely clear that a balanced conclusion has not been reached.

19. Hence in the interest of justice, the Review order dated 31.10.2012 which is the final order is quashed and set aside. Taking recourse to Rule 25(1)(v) of RS (DA) Rules, 1968 the revising authorities shall call for the records of the enquiry and revise any order made under the rules and may confirm and modify the order and confirm or reduce the penalty or remit the case to the authority which made the order or to any other authority



directing the said authority to make such further enquiry as it may consider appropriate in the circumstances of the case or pass such other order as it deems fit. Accordingly, the case is remanded back to the revising authority.

It is directed that this exercise shall be undertaken and completed by the respondent authorities preferably within four months of getting a copy of this order and such decision shall be intimated to the applicant within one week thereafter.

20. The matter is disposed of accordingly. No costs.

(Jaya Das Gupta)
MEMBER(A)

(Vishnu Chandra Gupta)
MEMBER(J)

SP