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CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

No. OA 350/1631/2016

Date of order : 20.2.2017

Present: Hon'ble Mr.A.K.Patnaik, Judicial Member  
Hon'ble Ms.Jaya Das Gupta, Administrative Member

**KOUSHIK MUKHOPADHYAYA**

Aged about 58 years  
S/o Late Salil Kumar Mukherjee  
R/o Flat No. 1B, Rail Minar,  
1/1A Judges' Court Road,  
Alipore, Kolkata - 27,  
Working in the post of  
Chief Transport Planning Manager,  
South Eastern Railway,  
11 Garden Reach Road,  
Kolkata - 700034.

...APPLICANT

VERSUS

1. Union of India, service through  
The Secretary,  
Railway Board,  
Ministry of Railways,  
Government of India,  
Rail Bhawan,  
New Delhi - 110001
2. The Chairman,  
Railway Board,  
Ministry of Railways,  
Government of India,  
Rail Bhawan,  
New Delhi - 110001
3. The Member Traffic,  
Railway Board,  
Ministry of Railways,  
Government of India,  
Rail Bhawan,  
New Delhi - 110001
4. The Joint Secretary (Establishment II),  
Railway Board,  
Ministry of Railways,  
Government of India,  
Rail Bhawan,  
New Delhi - 110001
5. The Director (D&A),  
Railway Board,  
Ministry of Railways,  
Government of India,  
Rail Bhawan,  
New Delhi - 110001

...RESPONDENTS.

20/2

For the applicant : Mr.P.C.Das, counsel  
Ms.T.Maity, counsel

For the respondents: Mr.B.L.Gangopadhyay

### O R D E R

Ms. Jaya Das Gupta, A.M.

Heard Mr.P.CDas, Id. Counsel along with Ms.T.Maity, Id. Counsel appearing for the applicants and Mr.B.L.Gangopadhyay, Id. Counsel appearing for the respondents.

2. The applicant Shri Koushik Mukhopadhyay, who is working in the post of Chief Transport Planning Manager, S.E. Railway, has filed the present OA seeking the following reliefs in the Disciplinary Proceeding case :

- a) To quash and/or set aside the impugned major penalty charge sheet memorandum being No. ECR/HRD/Gaz.(Con) 74/420 dated 28.7.2014 issued by the Director (D&A), Railway Board, New Delhi against your applicant which was communicated to the present applicant by the General Manager, East Central Railway, Hajipur, Bihar dated 12.8.2014 being Annexure A/2 of this original application.
- b) To quash and/or set aside the impugned 1<sup>st</sup> Enquiry Report supplied by the Disciplinary Authority to the applicant vide office order dated 12.2.2016 which was submitted before the Disciplinary Authority on 28.4.2015 by the Enquiry Officer being Annexure A/4 of this original application.
- c) To quash and/or set aside the impugned penalty order of punishment imposed by the disciplinary Authority vide office order dated 22.4.2016 by which penalty of 'reduction in the time scale of pay by two stages for a period of three months without the effect of postponing the future increments of his pay' has been imposed against the applicant being Annexure A/10 of this original application.
- d) To declare that the entire proceeding which was communicated by the Disciplinary Authority by not supplying with the 2<sup>nd</sup> Enquiry Report i.e. de novo Enquiry Report and by not considering the written statement of defence as adduced by the applicant against the 1<sup>st</sup> Enquiry Report is utter violation of the decision as laid down by the Hon'ble Supreme Court in the case of Union of India & Ors. -vs- R.P.Singh reported in (2014) 7 SCC, page 340.
- e) To declare that proceeding which has been conducted by the Disciplinary Authority is wholly bad in law and illegal and on the ground of that, the entire proceedings may be set aside and/or quashed along with all consequential benefits.
- f) To pass an appropriate order directing upon the respondent authority to give all consequential benefits to the present applicant including the promotional benefit which was held up because of such proceedings so that before retirement being an honest and sincere employee of the Administration, your applicant may get his legitimate claim after rendering long years of service to the Railway Administration.

3. In this case the major penalty charge sheet memorandum has been issued by the Director (D&A), Railway Board, New Delhi which is as follows :

GOVERNMENT OF INDIA  
MINISTRY OF RAILWAYS  
(RAILWAY BOARD)

New Delhi, Dated 28.7.2014

**Confidential**

No.E(O)I-2014/PU-2/ECR/63

**MEMORANDUM**

The Railway Board propose to hold an inquiry against Shri Kaushik Mukhoupadhyay, the then CGM/NR while posted and functioning as Chief General Manager, Inland Container Depot, Container Corporation of India Ltd. (CONCOR), Tughlakabad, New Delhi presently working as Chief Safety Officer, East Central Railway, Hajipur under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure I). A statement of imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexure III & IV)

2. Shri Kaushik Mukhoupadhyay, is hereby informed that if he so desires, he can inspect and take, extracts from the documents mentioned in the enclosed list of documents (Annexure III) at any time during office hours within ten days of receipt of this Memorandum. For this purpose he should contact the General Manager, East Central Railway immediately on receipt of this Memorandum.

3. Shri Kaushik Mukhoupadhyay, is further informed that he may, if he so desires, take the assistance of any other Railway servant (who satisfies the requirements of Rule 9(13) of the Railway Servants (Discipline & Appeal) Rules, 1968 for inspecting the documents and assisting him in presenting his case before the Inquiry Authority in the event of an oral inquiry being held. For this purpose, he should nominate one or more persons in order of preference. Before nominating the assisting Railway Servant(s), Shri Kaushik Mukhoupadhyay should obtain an undertaking from the nominee (s) that he (they) is (are) willing to assist him during the disciplinary proceedings. The undertaking should also contain the particulars of other/case(s), if any, in which the nominee(s) had already undertaken to assist and the undertaking should be furnished to the General Manager, East Central Railway along with the nomination.

4. Shri Kaushik Mukhoupadhyay is hereby directed to submit to the undersigned (through the General manager, East Central Railway) a written statement of his defence (which should reach the said General Manager, East Central Railway) within ten days of receipt of this Memorandum, if he does not desire to inspect any documents for the preparation of his defence, and within ten days after completion of inspection of documents, if he desires to inspect documents, and also:

- a) to state whether he wishes to be heard in person, and
- b) to furnish the names and addresses of the witnesses, if any, whom he wishes to call in support of his defence.

5. Shri Kaushik Mukhoupadhyay is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.

6. Shri Kaushik Mukhoupadhyay is further informed that if he does not submit his written statement of defence within the period specified in para 4 or does not appear in persons before the Inquiring Authority or

otherwise fails or refuses to comply with the provisions of Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968, or the orders/directions issued in pursuance of the said rule, the Inquiring Authority may hold the inquiry ex parte.

7. The attention of Shri Kaushik Mukhoupadhyay is invited to Rule 20 of the Railway Services (Conduct) Rules, 1966 under which no Railway Servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt within these proceedings, it will be presumed that Shri Kaushik Mukhoupadhyay is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the Railway Services (Conduct) Rules, 1966.

8. The receipt of this Memorandum may be acknowledged.

(SUNIL KUMAR)  
DIRECTOR (D&A)  
RAILWAY BOARD"

4. On completion of the enquiry the impugned penalty order (Annexure A/10) has been issued which is set out below :

GOVERNMENT OF INDIA  
MINISTRY OF RAILWAYS  
(RAILWAY BOARD)

**Confidential**

No.E(O)I-2014/PU-2/ECR/63

New Delhi, Dated 22.4.2016

**ORDER**

Whereas, disciplinary proceedings under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 were initiated against Shri Kaushik Mukhoupadhyay, the then CGM/CONCOR/Northern Zone and presently Chief Transport Planning Manager, South Eastern Railway, by the Railway Board vide Charge Memorandum No. E(O)I-2014/PU-2/ECR/63 dated 28.7.2014.

2. Now therefore, the Disciplinary Authority i.e. Railway Board after going through the Charge Memorandum of even number dated 28.7.2014, report of the inquiry officer, the representation dated 15.2.2016 of Shri Kaushik Mukhoupadhyay to the inquiry report and the disagreement memo served on him and other relevant records has observed/decided in the matter, as under :-

"1. Shri Kaushik Mukhoupadhyay approved the proposal dated 28.8.08 which was beyond his competence as per Delegation of power. He transgressed his authority in awarding his contract although in his defence he has stated that post facto approval of MD was taken. In this connection, I however note that while according post facto approval, the MD/CONCOR has cautioned him, which is indicative of the irregularities committed by him.

2. He was duty bound to take all steps so as to arrive at reasonability of rate, exercising diligence and application of mind, in which he failed. He did not obtain any finance concurrence before processing the contract. His contention that negotiations are invalid because post tender negotiations are irregular, does not stand good because the proposal in the stated cases were on quotation basis and not on the basis of tender.

*Signature*

3. He failed to notice the deficiencies in the proposal for disposal of hazardous waste before according approval. The deficiency regarding whether payment is to be made on actual weight or bill of lading had already been raised by the finance in the previous contract pertaining to expired food stuff disposal. Thus, while according approval to the second proposal regarding the disposal of hazardous waste he was required to show due diligence and should have addressed all the issues.

4. He was duty bound to ensure that due procedure for the incurred expenditure was followed. He should have ensured that the documents were reliable and genuine. The verdict given by the Hon'ble Supreme Court (WPC No.657 of 1995) that the cost of destruction of the hazardous was to be borne by importers was ignored.

Considering facts and circumstances and taking an overall view of the case, I have come to the conclusion that the CO is responsible for the acts of omission and commission pertaining to the articles of Charge I, II, III & IV, I find that the due diligence and propriety was not exercised by Shri Kaushik Mukhoupadhyay, the then CGM/CONCOR/Northern Zone and therefore, I hold that ends of justice would be met by imposing a major penalty of 'reduction in the time scale of pay by two stages for a period of 3 (three) months without the effect of postponing the future increments of his pay', on the said Shri Kaushik Mukhoupadhyay, which I hereby do."

3. As decided by the Railway Board above, the penalty of 'reduction in the time scale of pay by two stages for a period of 3 (three) months without the effect of postponing the future increments of his pay' is hereby imposed accordingly on the said Shri Kaushik Mukhoupadhyay.

4. The said Shri Kaushik Mukhoupadhyay, has a right to prefer an appeal against this order, to the President of India, within 45 days of the delivery of this order under the Railway Servants (Discipline & Appeal) Rules, 1968.

5. The said Shri Kaushik Mukhoupadhyay, is required to acknowledge receipt of this order, in writing.

By order and in the name of the Railway Board.

(B. MAJUMDAR)  
Joint Secretary/Estt.-II  
Railway Board.

Shri Kaushik Mukhoupadhyay, IRTS  
Chief Transport Planning Manager,  
South Eastern Railway.  
Kolkata."

5. Against such impugned order the applicant has filed a statutory appeal addressed to the Hon'ble President of India dated 24.5.2016 which is still pending with the Appellate Authority. Though this Bench on 18.11.16 ordered for filing reply and rejoinder, as the pending of the appeal was not mentioned in the Open Court, we think for the ends of justice it would be proper to complete the DA Proceeding as per the statute in Railway Servants (Discipline & Appeal) Rules before going into the merit of the case.

6. Hence the respondent authorities are directed to dispose of the appeal as expeditiously as possible, preferably within three months of getting a certified copy of this order.

7. With the above direction the OA is disposed of. No order as to costs.



(JAYA DAS GUPTA)  
MEMBER (A)



(A.K. PATNAIK)  
MEMBER (J)

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