

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/214/2017

Date of Reserve: 08.03.2019
Date of Order: 29.04.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLR MR.SWARUP KUMAR MISHRA, MEMBER(J)

Aurobinda Barik, aged about 50 years, S/o. Late Dhaneswar Barik – at present working as OS in the O/o. Chief Personnel Officer, E.Co.Rly., Rail Sadan, Chandrasekharpur, Bhubaneswar – permanent resident - At-Arisol, PO-Chhatabar, PS-Jatni, Dist-Khurda, odisha.

...Applicant

By the Advocate(s)-M/s.N.R.Routray
T.K.Choudhury
Smt.J.Pradhan

-VERSUS-

Union of India represented through:

1. The General Manager, E.Co.Rly., Rail Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda, Odisha.
2. Workshop Personnel Officer, East Coast Railway, Mancheswar Carriage Repairing Workshop, At/PO-Mancheswar, Bhubaneswar, Dist-Khurda.

...Respondents

By the Advocate(s)-Mr.S.K.Ojha

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is presently working as O.S. in the office of Chief Personnel Officer, East Coast Railways. He has approached this Tribunal in this Original Application praying for the following reliefs:

- i) To quash the show cause notice dated 16.07.2013 and punishment order dated 21.08.2013 under Ann.A/5 & A/7 respectively.
ii) To direct the Respondents to grant increments and pay the arrears.
2. Facts in brief leading to filing of this O.A. are thus: While working as Senior Clerk, applicant was issued with a Memorandum of Charge dated

18.03.2010(A/1) proposing to hold an inquiry against him under Rule- 9 of Railway Servants (Discipline & Appeal) Rules, 1968. The imputation of misconduct/misbehaviour reads as follows:

Annexure-I

That Sri Aurobinda Barik working as Sr.Clerk under OS/Bills of WPO/MCS' office has not verified the document forming a claim of Children Education Allowance and Hostel Subsidy in favour of the children of Niranjan Behera, Tech. Gr.II(Painter), C.No.1499 working under SSE(W/S) (Paint) and one child of Sri S.K.Mohanty, Tech. Gr.I(Painter), C.No.1481 working under SSE(W/S) Paint of CRW/MCS passing Rupees 89,000/- and Rs.53,000/- respectively against the Bill Unit No.05-481 towards Hostel Subsidy within the same locality where the above staff are residing.

By the above act, Sri A.Barik, Sr.Clerk has failed to maintain devotion to duty and acted in a manner unbecoming of a Railway Servant in contravention to provision of Rule No.3(i), ii, iii of Railway Service Conduct Rules, 1966 and thereby rendered himself liable for disciplinary action under Railway Service D & A Rules, 1968 as amended from time to time.

Annexure-II

That Sri A.Barik, Sr.Clerk has been working in Bill Section under OS/Bills and has not verified documents properly like manipulated amount on the School Receipt without following the guidelines/instructions as contained in the JPO issued by CPO resulting in which over payment/fraudulent payment of Children Education Allowance (Hostel Subsidy) has been paid to the Niranjan Behera, Painter-II, C.No.1499 and S.K.Mohanty, painter, Gr. I C.No.1481 working under SSE(W/S) Paint of CRW/Mancheswar.

Thus Sri A.Barik, Sr.Clerk has wilfully ignored the instructions embodied in the said JO issued by CPO FA & CAO(G) vide No.ECoR/Pers/JPO/Children Education Assistance Scheme dated 16.12.2008 and allowed the claim for payment of Rs.89,000/- (Rupees eight nine thousand only) and Rs.53,000/- (Rupees fifty three thousand only) in favour of Sri Niranjan Behera, Tech. Gr.II(Painter) and Sri S.K.Mohanty, Tech.Gr.(Painter) respectively towards the Children Education Allowance (Hostel Subsidy).

3. The applicant having denied the aforementioned allegations, an enquiry was conducted against him and the inquiry officer submitted his report on 1.9.2010(A/3) with the following findings:

"It proves beyond doubt that he has verified the documents improperly. Thus he has failed to maintain devotion to duty and acted in a manner unbecoming of a Rly. servant contravening Rule-3.1 (ii) & (iii) of R.S. conduct Rules, 1966. The charge is sustained.

It is amply clear that JPO No.ECoR/Pers/JPO/Children Education Assistance Scheme dated 16.12.2008 signed by both PO & FA & CAO(G) does not speak about non-admissibility of Hostel subsidy for keeping children in a hostel of same locality (i.e., location of hostel and posting station of employee). The charge is not proved".

4. Thereafter, the Disciplinary Authority supplied a copy of the report of the I.O. to the applicant requiring him to submit his representation and after considering the materials on record, imposed punishment on the applicant vide order dated 04.10.2010 (A/4), which reads as follows:

"Withholding one set of privilege pass and three sets of PTOs for the current year 2010 pass account to meet the ends of justice".

5. While the matter stood thus, the applicant was issued with a notice dated 16.07.2013 (A/5) to show cause as to why enhanced penalty proposed will not be imposed on him rescinding the order of WPO/CRW/Mancheswar(DA) for the charges levelled against him vide major penalty charged Memorandum No.CRW/MCS/Pers./D&A/AB/11/440 dated 18.03.2010. The applicant submitted his reply vide A/6 dated 29.07.2013 by stating that the CEA was introduced newly and due to misinterpretation of the JPO on the CEA by his supervisors and on account of pressure for early clearance of CEA Bills by the trade union, the matter could not be meticulously kept in view which resulted in over payment. The associated accounts while passing the bills also did not raise any objection on the issue and passed the bills. Immediately after it was noticed that the overpayment has been made, the same was recovered from the concerned staff. According

to applicant, he is not solely responsible. According to applicant, suo motu revision proceedings has been initiated by Respondent No.1 after lapse of two years and nine months from the date of order of punishment passed by the Disciplinary Authority and in this respect, he has relied on the clarification issued by the Railway Board as to whether a case where an employee has already undergone a penalty can be reopened with a view to enhance the penalty, which reads thus:

"4. The Board, however, desire that in cases where an employee has already undergone the original penalty in whole or in part, this fact would be taken into account by the reviewing/appellate authority when deciding upon the higher penalty, so that unintended hardship is not caused to the employee. Alternatively, the feasibility of cancelling the original penalty while imposing the higher penalty may be considered".

6. Applicant has filed Misc. Application No.188 of 2017 seeking condonation of delay. Applicant has pointed out that being a Group-C employee he has been victimized by the Apex Authority of East Coast Railway by way of imposition of two punishments for the alleged one offence. Applicant has submitted that at the time of issuance of second punishment vide order dated 21.08.2013, Respondent No.1 has not only violated the provisions of suo motu revision under D&A Rules, 1968, but also violated instructions issued by the Railway Board time and again. As the enhanced punishment was imposed by the General Manager, being a Group-C employee he could not venture to challenge his order and therefore, the delay occurred in approaching this Tribunal.

7. Opposing the prayer of the applicant, respondents have filed a detailed counter. At the outset, it is pertinent to quote hereunder the relevant paragraphs of the order dated 21.08.2013 passed by the General Manager,

East Coast Railway (Res.No.1) imposing enhanced punishment on the applicant:

4. And whereas on receipt of the order of DA by the CO, he did not prefer any appeal to the Appellate Authority within the stipulated time. Later on, while going through the D&A case file of Shri Barik, CWM/CRW/Mancheswar (RA) found that the punishment imposed by the DA is inadequate to the quantum of irregularities committed by the CO. But, by that time it was more than one year old. Therefore, suo moto revision could not be conducted by the Revisionary Authority (CWW/CRW/MCS).
5. The undersigned, being the competent authority to exercise the power of suo moto revision in this case, after going through the charges, D&A Inquiry proceedings and all other relevant documents available in file found that the punishment imposed by the DA is inadequate to the quantum of irregularities committed by the CO. Therefore, I had proposed change the penalty imposed on Shri Aurobinda Barik (CO) vide how cause notice No.ECoR/Pers/NG/D&A/Revision/AB/253 dated 16.07.2013. The show cause notice was acknowledged by Shri Aurobinda Barik (CO) on 18.07.2015. In response to this, he submitted his representation dated 29.07.2013 the undersigned within the permissible time.
6. Being the Revisionary Authority, I have gone through the explanation dated 29.07.2013 of Shri Aurobinda Barik (CO) and it is not accepted. He cannot take the plea of being rushed for time and under Union pressure for having committed these mistakes. As a matter of fact, he was himself Branch Secretary of ECoRSC.

In view of the above, order issued by WPO/CRW/Mancheswar (DA) is hereby rescinded by the undersigned under RS(D&A) Rules, 1968 and to meet the ends of justice, punishment of withholding of increments of pay for a period of three years, which will have the effect of postponing the future increments of pay is imposed on Shri Aurobinda Barik".

8. In the counter, respondents have pointed out that based on Railway Board's letter No.E(W)/2008/ED-2/4 dated 01.10.2008 (RBE No.135 of 2008) circulated vide Chief Personnel Officer, East Coast Railway's letter No.ECoR/Pers/R/VIth PC dated 30.10.2008(Estt.Srl.No.PC-26/2008), a Joint

Procedure Order (hereinafter called as JPO) relating to grant of Children Education Assistance and Reimbursement of Tuition Fee duly signed by the Chief Personnel Officer (CPO/Admn.) and Financial Advisor & Chief Accounts Officer (FA&cao/g) OF hQrs., East Coast Railway, Bhubaneswar was issued on 16.12.2008 laying down the detailed procedure to be adopted in East Coast Railway by the dealing staff for drawal of CEA(Children Education Allowance) and Hostel Subsidy vide R/2. Respondents have pointed out that as per subsequent clarification issued by Railway Board's letter dated 06.11.2009 (RBE No.198/2009) Hostel Subsidy is reimbursable to all Central Government employees for keeping their children in the Hostel of Residential School away from the station they are posted/ or residing irrespective of any transfer liability. The existing rules have not been followed by the applicant while making payment of Hostel Subsidy. They have pointed out that due to violation of existing codal provision and JPO, an amount of Rs.15 lakhs had already been paid towards the Hostel Subsidy to some employees of CRW/Mancheswar during the period from January, 2009 to December, 2010. In this connection, respondents have submitted that the applicant while working as Sr.Clerk in the Bill Section during the period from July, 2000 to March, 2010 has drawn the Educational Assistance including Hostel Subsidy fraudulently in favour of staff who had applied for the same. Further, the respondents relying on the decision of Hon'ble Supreme Court in Regional Manager, U.P.SRTC, Etawah vs. Hoti Lal [(2003) 3 SCC 605] have submitted that since the Disciplinary Authority had taken the lenient view, a revision of the punishment order was necessitated and therefore, the General Manager in exercise of powers conferred under Rule-25(5) of RS(D&A), Rules, 1968, reviewed the punishment and accordingly issued show cause notice to the

applicant on the proposed enhanced punishment. According to respondents, the Hon'ble Supreme Court in State of Punjab & Ors. Vs.Dr.Harbhajan Singh Greasy [1996 (2) SCSLJ 138] has held that the court has limited scope to interfere in the matter of disciplinary proceedings. In the event any procedural lapses are pointed out in any stage of proceedings, the matter can be remanded to the authority to start the proceeding from that stage. It has been pointed out that it is trite that merely because the money has been recovered and the department did not sustain any loss, this by itself cannot be a ground to absolve the charged official.

9. On the point of limitation, it has been pleaded that the Hon'ble Apex Court has settled the law to the effect that the door is not always open for a party to approach the court of law as and when he desires. Even if, the applicant was working and he was in a proper state of mind to visualize the consequence of order, he should have approached the appropriate forum within the stipulated period. Hence, the respondents have submitted that the present O.A. besides being barred by limitation should also be dismissed on merit.

10. Applicant has filed a rejoinder to the counter more or less reiterating the same facts as averred in the O.A.

11. Heard the learned counsels for both the sides and perused the records. We have also gone through the written notes of submission filed by both the sides. Before coming to the merit of the case, it would be proper for the Tribunal to consider the point on delay. Admittedly, in this case, the cause of action arose when the General Manager, East Coast Railway (Res.No.1) had passed the order dated 21.08.2013 (A/7) enhancing the punishment and as per Section-21 of the A.T.Act, 1985, although the applicant should have

approached within one year from the date of passing of the order dated 21.08.2013 (A/7), he has approached this Tribunal in April, 2017, thus, there has been a delay of about two years and eight months. We have also considered the points urged by the applicant in Misc. Application No.188/2017 seeking condonation of delay. To buttress his contentions, applicant has relied on the decision of Hon'ble Supreme Court in H.D.Bhora vs. State of Maharashtra & Ors. (AIR 1984 SC 866), in which it has been held that the court can condone delay where it is found that there has been violation of substantive legal rights. Applicant has also relied on the decision of Hon'ble Supreme Court in Tukaram Kana Joshi & ors. Vs. MIDC & ors. (AIR 2013 SC 565), which reads as follows:

"No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred for the other side cannot claim to have a vested right in the injustice being done because of a non-deliberate delay. The Court should not harm on the part of the petitioner".

12. We have considered the rival submissions threadbare. Having regard to the factual matrix of the case, this Tribunal finds a *prima facie* case in favour of the applicant. Further, this Tribunal having regard to the facts and circumstances of the case is of the opinion that a substantial injustice has been meted out to the applicant, which needs to be remedied to secure the ends of justice. In view of this, the delay caused in approaching this Tribunal is condoned and accordingly, M.A.No.118 of 2017 stands allowed.

13. Coming to the merits of the matter, from the facts as described above, the IO submitted his report vide A/3) dated 1.9.2010 by holding that "it proves beyond doubt that the applicant had verified the documents improperly". At the same time, he has stated that "it is amply clear that JPO No.ECoR/Pers/JPO/Children Education Assistance Scheme dated 16.12.2008 signed by both PO & FA & CAO(G) does not speak about non-admissibility of Hostel subsidy for keeping children in a hostel of same locality (i.e., location of hostel and posting station of employee) and therefore, the charge is not proved". From this, it is quite evident that the allegation levelled against the applicant for drawal of the bill on account of hostel subsidy in respect of children staying in the hostel of the same locality, i.e., the same station where the concerned employee is posted is vague and ambiguous. On a perusal of JPO (R/2), there appears to be no such instructions contained therein and therefore, rightly, the IO has held that the said allegation is not proved. On the basis of the report of the IO, the Disciplinary Authority vide order dated 04.10.2010(A/4) imposed of punishment of withholding one set of privilege pass and three sets of PTOs for the current year 2010 pass account on the applicant. There is no doubt that the General Manager has the powers and authority to review such matters as in the instant case. But the fact remains that from the instructions of the Railway Board, as quoted above, feasibility of cancelling the original penalty while imposing the higher penalty may be considered, apparently, has not been taken into consideration by the General Manager (Res.No.1), while imposing higher/enhanced punishment on the applicant. As revealed from the punishment imposed by the Disciplinary Authority, it was directed to withhold one set of privilege pass and three sets of PTOs for the current year 2010 pass account. Thus, the said punishment

had already spent its force when the General Manager, East Coast Railway, issued show cause notice to the applicant on 16.08.2013(A/5) proposing to enhance punishment. This apart, since the punishment imposed vide order dated 04.10.2010 by the Disciplinary Authority was no longer in force, there was no scope for the General Manager to rescind the said order and hence, it cannot be said that it was feasible on the part of the General Manager to impose enhanced punishment on the applicant vide order dated 21.08.2013. This being the position, the impugned show cause notice dated 16.07.2013(A/5) and the order dated 21.08.2013(A/7) are not sustainable in the eye of law. Accordingly, A/5 dated 16.07.2013 and A/7 dated 21.08.2013 are quashed and set aside. Respondents, particularly, the General Manager, East Coast Railway (Res.No.1) is directed to release the increments of pay which have been withheld by virtue of order dated 21.08.2013 (A/7) in favour of the applicant within a period of 90 days from the date of communication of this order.

14. In the result, the O.A. is allowed as above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

BKS

(GOKUL CHANDRA PATI)
MEMBER(A)