

Reserved**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**
CIRCUIT SITTING : BILASPUR**Original Application No.203/00118/2015**

Bilaspur, this Thursday, the 04th day of April, 2019

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Abhishek Kumar, S/o Late Rajendra Prasad Jha, aged about 37 years, r/o c/o Shankar Tiwari Buniyad Nagar, Bhanpuri PO Birgoan, District Raipur Chhattisgarh 493221 **-Applicant**

(By Advocate – Shri A.V. Shridhar)

V e r s u s

1. Union of India through the Secretary, Railway Board, Rail Bhawan, New Delhi – 110001.
2. General Manager, South East Central Railway, New GM Building, Bilaspur Chhattisgarh 495004.
3. Senior Divisional Mechanical Engineer (Diesel), South East Central Railway, Raipur, Chhattisgarh 492008.
4. Divisional Mechanical Engineer (Diesel), South East Central Railway, Raipur, Chhattisgarh 492008.
5. Assistant Personnel Officer, South East Central Railway, Raipur, Chhattisgarh 492008 **-Respondents**

(By Advocate – Shri Vijay Tripathi)

(Date of reserving order : 01.04.2019)

O R D E R

By Ramesh Singh Thakur, JM.

The applicant has filed this Original Application against the order dated 07.10.2014 (Annexure A-1) passed by the

Appellate Authority, whereby the order dated 15.07.2014 passed by the Disciplinary Authority imposing punishment of reversion from the post of Tech-II in pay scale of Rs.5200-20200 Grade Pay 2400 to the post of Tech-III in PB-1 at initial stage of pay Rs.5830 with Grade Pay 1900/- for a period of three years from 03.06.2014 with cumulative effect, has been confirmed.

2. The applicant has, therefore, sought for the following reliefs:

“8.1 That, the learned Tribunal may kindly be pleased to quash the order dated 07.10.2014 whereby the imposition of punishment of reversion from the post of Tech II in pay scale of Rs.5200-20200 GP 2400 to the post of Tech III in PB 1 at initial stage of pay 5830+1900 GP for a period of three years from 03.06.2014 with cumulative effect has been affirmed. Annexure A/1.

8.2 Cost of the Original Application.

8.3 Any other relief which the learned Tribunal deems fit and proper may be awarded.”

3. Brief facts of the case are that the applicant, while working as Technician Grade-II with the respondent department, made an application for mutual transfer. However, the same was rejected by the respondents. Aggrieved by rejection of his application for transfer, the applicant made an

application dated 16.11.2013 (Annexure A-2) under Right to Information Act, 2005. On receiving the application, the Public Information Officer sent the matter to the DGM (G) South East Central Railway (SECR) for supplying necessary information (Annexure A-3). The respondent No.5, vide his letter dated 16.01.2014 (Annexure A-4), provided the requisite information available with him and forwarded the application to the respondent No.3 to provide the remaining information. On 11.02.2014 (Annexure A-5), the respondent No.3 issued a chargesheet (SF-5) to the applicant alleging false allegations against the Railway administration in his RTI application.

4. The applicant filed an Original Application No.203/00265/2014 before this Tribunal on 08.04.2014 challenging the aforesaid chargesheet. In the departmental proceedings, he was directed to submit his defence statement and the applicant submitted the same on 08.05.2014 (Annexure A-9). The Inquiry Officer submitted the enquiry report on 10.05.2014 and the applicant was directed to submit his final defence statement. On 15.07.2014 (Annexure A-11), the Disciplinary Authority imposed punishment of reversion from the post of Tech II in pay scale of Rs.5200-20200 Grade Pay

Rs.2400/- to the post of Tech III in PB-1 at initial stage of pay 5830+1900 Grade Pay for a period of three years from 03.06.2014 with cumulative effect.

5. Since during the pendency of OA No.203/00265/2014, the applicant was imposed with the punishment, therefore, he withdrew the OA with liberty to file a fresh Original Application. On 07.08.2014, the applicant filed OA No.203/00609/2014. Subsequently, he filed his appeal on 28.08.2014 against the punishment order dated 15.07.2014. Vide order dated 07.10.2014, the appeal of the applicant was rejected by affirming the order passed by the Disciplinary Authority. Therefore, OA No.203/00609/2014 was dismissed as having become infructuous.

6. The respondents have filed their reply. It has been submitted that the applicant while working as Tech-II at Diesel Loco shed of SECR, applied for mutual transfer with another employee Shri Ashok Kumar Sah, Tech-II working at Electric Loco Shed Bundamunda of S.E. Railway Chandrakadhpur Division. The mutual transfer case of the applicant was rejected in terms of Establishment Rule 198/2009, as both the employees

are having seniority in different cadre and also working in different wings.

7. It has been further submitted by the respondents that after rejection of his application for mutual transfer, the applicant submitted RTI application dated 16.11.2013 by levelling false and grave allegations against the higher officer of the respondent department. Therefore, the above act of the applicant is constituted as misconduct under Rule 3(1)(iii) of the Railway Servant (Conduct) Rules, 1966 and Rule 9 of RBE No.37/97 dated 10.03.1997 and, accordingly, he was served with a chargesheet dated 11.02.2014 with as many as eight allegations levelled against him. After considering the explanation of the applicant, the Disciplinary Authority appointed the Inquiry Officer vide order dated 18.02.2014 to conduct departmental enquiry against the applicant.

8. The Inquiry Officer enquired into the charges against the applicant and after analyzing the evidence produced before him, he submitted the enquiry report on 11.05.2014 (Annexure A-10) with the findings that the charges framed against the applicant are proved. The Disciplinary Authority, after considering the findings of the enquiry report and the final defence of the

applicant, imposed punishment vide order dated 04.06.2014/15.07.2014 (Annexure A-11) by reverting the applicant at initial stage of pay for a period of three years with cumulative effect. The Appellate Authority considered the entire facts and circumstances of the case and rejected the appeal of the applicant vide impugned order dated 07.10.2014 (Annexure A/1).

9. The respondents have submitted that the applicant was given reasonable opportunity to defend his case at every stage of enquiry and he failed to point out any procedural irregularities in conducting enquiry. The Disciplinary Authority, before imposing punishment, has considered the misconduct of the applicant and according to the gravity of the misconduct, awarded the adequate punishment to him. The appeal of the applicant was duly considered by the Appellate Authority and it was found that there was no adequate and substantial justification for considering the appeal and hence the same was rejected. Therefore, there is no illegality in the orders passed by the Disciplinary Authority/Appellate Authority.

10. We have heard the learned counsel for the parties and perused the pleadings and documents available on record.

11. It is an admitted fact that the applicant made an application for mutual transfer with Shri Ashok Kumar Sah, which was rejected by the respondents, as both the persons belong to different cadre and their seniority is maintained in different units. It is also not in dispute that after rejection of his application, the applicant made an application dated 16.11.2013 under the RTI asking for certain information, in pursuance to which, he was served with a chargesheet and after conducting the departmental enquiry, he was awarded punishment, which has been affirmed in appeal.

12. It is the case of the applicant that initiating the disciplinary proceedings on the basis of the application submitted under the provisions of Right to Information Act, is *per se* illegal and contrary to the letter and spirits of the Right to Information Act. The Public Information Officer is only empowered to disclose the information or state that the requisite information is not available, but the same cannot be used to initiate any disciplinary action.

13. We have gone through the application dated 16.11.2013 (Annexure A-2) submitted by the applicant under the right to

information Act. In Para (2) and (3) of the application, the applicant has stated as under:

“(2) जब मेरे म्यूचुअल ट्रांसफर में 19812009 (प्रति संलग्न P-2) नियम लगाकर regrett किया गया जो कि RB letter E (REP)-11-2011/SEC/6/15 dt 15.02.2011 Railway Board से आया था तो इन 14 कर्मचारियों का (जो सूची I(P-1) में हैं) Mech to Elec कितने रूपये लेकर Mutual Transfer हुआ/ स्पष्ट एवं उचित सूचना के साथ प्रतिलिपि उपलब्ध कराएँ/ इसमें Railway Board/रेल मंत्रालय का कितना हिस्सा (commission) था ।

(3) मेरे Mutual Transfer के लिए कितने रूपये देना होगा ? यह भी स्पष्ट करें या मेरा भी Mutual Transfer इस rule के तहत किस प्रकार नहीं होगा । जिस नियम के तहत सूची I (P-1) में उपलब्ध 14 कर्मचारियों का म्यूचुअल ट्रांसफर हुआ है ।”

The contents of the application itself make it clear that the applicant has levelled certain grave allegations against the higher authorities, while asking information under RTI Act. Therefore, the act of the applicant was constituted under Rule 3(1)(iii) of the Railway Servant (Conduct) Rules, 1966 and he was served with a chargesheet.

14. Though the learned counsel for the applicant has tried to justify case of the applicant that the information asked for under RTI Act cannot be subjected to initiation of any disciplinary action, as the Public Information Officer is only empowered to disclose the information or state that the requisite information is not available, however, contents of the application, particularly in Para (2) and (3) are not in such manner, which justify the

stand taken by learned counsel for the applicant. The ambit and scope of Right to Information Act, 2005 is entirely different from Discipline and Appeal Rules. No Government employee is expected to do anything which makes him liable for unbecoming of a Government servant.

15. In the present case, the applicant has levelled certain grave allegation, such as asking for bribe and commission of the higher authorities in the case of mutual transfer. Therefore, the act of the applicant was constituted as misconduct under Rule 3(1)(iii) of the Railway Servant (Conduct) Rules, 1966 and a chargesheet was served to him. The applicant participated in the enquiry proceedings and submitted his explanation to the charges. He was afforded reasonable opportunity to defend his case. The Inquiry Officer conducted the regular enquiry and on the basis of documentary evidences and the witness adduced during the enquiry, has proved the charges against the applicant. The applicant has failed to point out any procedural irregularity in conducting the enquiry, which warrants judicial review by this Tribunal. The Disciplinary Authority, after considering the material produced before him and looking to the gravity of charges, had rightly awarded the punishment by lowering the

applicant's pay at initial stage for a period of three years with cumulative effect. The Appellate Authority, after due application of mind, rejected the appeal of the applicant by finding no merits on it. Therefore, we do not find any lacuna in initiating the disciplinary proceedings against the applicant and awarding punishment thereupon.

16. In the result, we do not find any illegality in the impugned order dated 07.10.2014 (Annexure A-1) passed by the Appellate Authority in affirming the order of punishment dated 15.07.2014 of the Disciplinary Authority.

17. Accordingly, the O.A is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

am/-