

**Central Administrative Tribunal
Principal Bench**

**OA No.3388/2014
MA No.741/2018**

New Delhi, this the 3rd day of April, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Hirdesh Kumar, Age 37 years,
Sr. Section Engineer (P. Way/Plg),
DRM Office,
Northern Railway,
State Entry Road, New Delhi
R/o 2/3 Railway Colony, Ram Nagar,
Paharganj, New Delhi-55.

...Applicant

(By Advocate : Ms. Meenu Mainee)

Versus

Union of India : Through

1. Secretary,
Railway Board,
Ministry of Railways,
Rail Bhawan, New Delhi.
2. General Manager,
East Coast Railway,
Bhubneshwar.
3. Principal Chief Engineer,
East Coast Railway,
Bhubneshwar.
4. Divisional Railway Manager,
East Coast Railway,
Sambalpur.
5. Divisional Railway Manager,
Northern Railway,
State Entry Road, New Delhi.

...Respondents

(By Advocate : Shri Shailendra Tiwari)

ORDER (ORAL)**Justice L.Narasimha Reddy, Chairman :-**

The applicant was working as Senior Section Engineer (SSE) in the East Coast Railways in the year 2007. He was issued a charge memo dated 29.01.2007, alleging that he permitted the loading of scrap material in excess of the permitted quantity and that the same was loaded by the concerned contractor. The value of the excess payment was mentioned as Rs.13,330/-. The applicant was required to explain as to why disciplinary action be not taken against him.

2. On receipt of the charge memo, the applicant submitted his explanation. Not satisfied with the same, Disciplinary Authority (for short, DA) i.e. the Senior Divisional Engineer directed inquiry. The inquiry officer submitted his report on 29.01.2007, holding that the charge is not proved. Thereafter, the DA forwarded the report of the inquiry officer, alongwith relevant material, to the vigilance officer. The latter in turn, offered his remarks. The report of the inquiry officer vis-a-vis the comments of the vigilance officer, were made available to the applicant. He submitted an explanation to the same.

After taking the same into account, the DA passed an order dated 05.03.2009, imposing the punishment of reduction of pay scale by two stages for a period of six months with a condition that it will not have the effect of postponing the future increment of pay, on expiry of such period. The appeal preferred by the applicant was rejected on 03.01.2012. Hence, this OA.

3. The applicant contends that the entire proceedings were initiated on account of the fact that the DA did not apply its mind in the context of disagreement with the findings of the inquiry officer. It is also submitted that it has virtually surrendered its powers to the vigilance wing and the same is impermissible in law. Other grounds are also raised.

4. The Respondents filed counter affidavit opposing the OA. It is stated that the applicant was provided with ample opportunity, be it in the context of allegation contained in the charge memo or the disagreement with the findings recorded by the inquiry officer. It is also stated that the DA took every aspect into account while imposing the punishment and the appellate authority has also considered the matter, in detail.

5. We heard Ms. Meenu Mainee, learned counsel for the applicant and Sh. Shailendra Tiwary, learned counsel for the respondents.

6. The charge framed against the applicant reads as under:

“Article – I

That the said Shri Hridesh Kumar, the then SE/P/AMB while witnessing delivery of sold Railway Scrap materials at his Depot at Ambodala on 12.01.2004 & 13.01.2004, delivered excess of 1.907 MTMS Tie bars to M/s Ritika Steel Traders/Rourkela loaded in Truck No.OR-158-1975. He delivered the excess Railway scrap materials i.e. MS Tie bars as custodian & witnessing official in connivance with other two witnessing officials i.e., SV/SBP & SI/RPF/TIG, which is against the Railway Services (Conduct) Rules. This causes loss to Railway of Rs.25,420/- considering Scrap sale value of MS Tie bar as Rs.13,330/- per MT as per SRO No.S/ECOR/S6/2003-04/Auction/25.11.03/08/012 dt. 18.12.2003.

By the above mentioned act, Sri Hridesh Kumar, the then SE(P.Way)/AMB now SSE(P.Way)/USFD/KBJ has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway servant contravening rule 3.1(I), (ii) and (iii) of Railway Service (Conduct) Rules, 1966, rendering himself liable for disciplinary action being taken against him in terms of Railway servants (D&A)

rules, 1968 as amended from time to time.”

7. The applicant denied the charge and in that view of the matter the inquiry officer was appointed. Submissions were made before him and in his report, the inquiry officer categorically held that the charge is not proved. The same reads as under :-

“Conclusion :-

From the enquiry & the other related documents it is concluded that the Charge framed against the CO, Sri Hirdesh Kumar SSE/P/USFD/KBJ could not be proved.”

8. It is always competent for a DA to disagree with the findings recorded by the inquiry officer. However, the procedure prescribed by law in this behalf is in nutshell. In fact, the DA must issue a tentative note of disagreement, duly indicating the reasons on account of which, he intends to disagree with the findings. After receiving the explanation of the employee in this behalf, it has to form an opinion whether or not to disagree with the findings. It is only thereafter that he can proceed to take other steps.

9. In the instant case, the DA has simply forwarded the report of the inquiry officer together with relevant records, to the vigilance wing of the establishment. The latter in turn offered detailed comments. On receipt of the same, the DA forwarded the report of the inquiry officer and the comments of the vigilance wing to the applicant through order dated 24.02.2009, which reads as under:

“The Vigilance’s comments on Inquiry Officer’s analysis and findings in respect of major penalty charge sheet no.DAR/HK /SSE(P.)/USFD/SBP dt.25/29.01.2007 with IO’s findings/report in your case are enclosed herewith. In case you wish to make any submission or any representation against it, you may do so in writing and forward the same to the undersigned within 15 days of the receipt of this letter, failing which it will be deemed to have been accepted by you and that you have nothing to say against it. Therefore, it will take action on Vigilance comments on Inquiry Officer’s analysis and findings and the final defence (if received).”

10. From this it becomes clear that left to himself, the DA did not disagree with the findings and he depended upon the vigilance wing entirely for this purpose. It presents a dual case of abdication of duties and surrender of power, on the part of DA. This is in contravention of the prescribed procedure. Therefore, the

order of punishment based on such a disagreement is not sustainable in law.

11. Accordingly, the OA is allowed and the impugned order is set aside. In case the applicant has been denied any promotion on account of order of punishment, the respondents shall consider the feasibility of restoring it, but the applicant shall not be entitled for back wages in this behalf.

Pending MAs, if any, also stand disposed of.

There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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