

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00528/2018

DATED THIS THE 08th DAY OF AUGUST, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Sri. Prakash Chaudhary, 49 years
S/o Sri.D.R.Chaudhary
Occn: Senior Divisional Safety Officer
South Western Railway
Gadag Road
Hubli:580 020.

....Applicant

(By Advocate Sri P.A.Kulkarni)

Vs.

1. Union of India
to be represented by its Secretary
Ministry of Railways
Railway Board
Rail Bhavan
New Delhi:110 001.

2. Railway Board
Rail Bhavan
New Delhi: 110 001
to be represented by its Secretary.

3. General Manager
South Western Railway
Gadag Road
Hubli: 580 020.

4. Union Public Service Commission
Dholpur House
Shahjahan Road
New Delhi: 110 069
to be represented by its Secretary.Respondents

(By Advocate Sri N.S.Prasad)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN)

The brief facts of the case is that the applicant belongs to Indian Railway Service of Mechanical Engineers(IRSME) Group 'A' cadre of 1992 batch with DITS(Date for Increment on the Time Scale) as 8.4.1994. While functioning in the capacity of Dy.CWM/MYSS in Carriage and Repair Workshop, SW Railways, Mysuru during the years 2009 to 2012, he was served with a major penalty charge memorandum by the General Manager, SW Railways, Hubli dtd.8.4.2013(Annexure-A1) alleging the following Articles of Charge:

Charge No.1: *While working as Deputy CWM/MYSS has carried out transactions totalling to Rs.29,47,932/- through joint SB Account No:30789084037 of State Bank of India standing in the name of his wife Smt.Saroj Chaudhary and himself and also the joint SB account No:0877101026454 of Canara Bank held by himself and his wife Smt.Saroj Chaudhary. The transactions were for receiving gift amount, loans from relatives, loans from guests, house building loan from DHFL Mysuru, Gold loans from Muthoot Finance etc., without intimation/prior sanction for the above transactions from the Railway Administration.”*

Charge No.2: *While working as Deputy CWM/MYSS has purchased site No.67, property No:1105, Khatha No.1269, situated at Tandavapura Village, Nanjangud Taluk valued at Rs.4,32,000+ stamp and registration charge of Rs.34,220/- on his wife's name and executed the sale deed on 24.3.2010 and acquired the immovable property without intimation/prior sanction for this transaction by the Railway administration.*

Charge No.3: *While working as Deputy CWM/MYSS started construction of a house at site No.67 property No.1105, khatha janjar No:1269 situated at Tandavapura Village, Nanjangud Taluk at an estimated cost of*

Rs.20,00,000/- without intimation/prior sanction for this transaction by the Railway Administration.

2. Applicant submits that before issuance of the charge memo, there was internal vigilance enquiries on 8.12.2011 and on 14.12.2011. The applicant submitted his answers on 20.12.2011. Copy of the questionnaire of the vigilance enquiry from 1 to 21 and the answers given by the applicant is produced at Annexure-A2. Since the charge memo was issued to the applicant, he submitted his written statement on 7.5.2013(Annexure-A3) stating that no misconduct is committed by him at any point of time. The transactions alleged in the charge memo in respect of all the three charges are absolutely valid and legal and attributable to his wife. It is also not correct to allege that he failed to intimate the Railway administration timely. IO held three sittings. First sitting i.e. preliminary hearing was held on 10.12.2013 on which day the IO straightaway takes on record the prosecution documents Ex.PD.1 to 10(Annexure-A4). Thereafter, on 22.1.2014 the IO straightaway proceeds to examine the Charged Official(CO) by putting question No.1 to 19 and answers to the same were recorded in the daily order sheet No.2(Annexure-A5). Thereafter the final sitting held on 12.2.2014(Annexure-A6) when the IO after obtaining a detailed statement of defence dtd.10.2.2014(Annexure-A7) from the applicant has closed the inquiry. Presenting Officer on 8.3.2014(Annexure-A8) has submitted his written brief as per Rule 9 of the Railway Servants(Discipline and Appeal) Rules 1968. Thereafter, applicant also submitted his written brief dtd.15.4.2014(Annexure-A9). On 5.2.2015, the GM, SWR, Hubli had issued 2nd show cause notice(Annexure-A11) to the applicant along with copy of the IO's report(Annexure-A10). In response to the second show cause notice, the applicant submits his representation

dtd.2.3.2015(Annexure-A12). In addition, he also submitted supplementary representation dtd.13.7.2015 to the DA(Annexure-A13). Thereafter, the applicant continuously represented to the administration at all levels for speedy disposal of his disciplinary proceedings as it was coming in the way of his getting NFSG benefit when his juniors were being considered for such benefit(Annexures-14, A15, A16 & A17). The Railway board passes the punishment order on 11.8.2016(Annexure-A18) imposing the penalty of 'reduction in the time scale of pay by two stages for a period of two years without the effect of postponing his future increments of pay'. Then the applicant exercises his right of appeal to the President of India as provided under Rule 19 r/w Rule 21 of the DA Rules on 26.10.2016(Annexure-A19). He submits that there is no misconduct on his part in not intimating the transactions which can at the most be a technical lapse on his part which should not deserve a harsh major penalty like the one imposed against him. The Appellate Authority by order dtd.8.2.2018(Annexure-A21) taking into account the advice of UPSC dtd.28.11.2017(Annexure-A20) has rejected the appeal. The view taken by the UPSC is that omission to intimate the transactions appearing in the joint SB account of applicant and his wife in time is deliberate and therefore there is a violation of Rule 13 & 18 of the Conduct Rules which cannot be brought under technical lapse. Appellate Authority has not taken his independent view in the matter except relying on the advice tendered by the UPSC. In fact it is a settled law that DA or the AA are not under obligation to accept the advice of the UPSC straightaway and the UPSC advice is only a guiding factor in deciding the matter independently. Applicant submits that even if the punishment order in question is justified, it cannot subject the applicant to such sufferance on account of the undue delay caused by the administration in

passing the punishment order. If the timely punishment order was passed, his placement to next grade i.e., Non-Functional SA Grade could have been possible much earlier but he is still in JAG Selection Grade Scale only. As far as allegation of violation of Rule 13 of the Conduct Rules, it may at the most amount to 'error of judgment' on the part of the applicant and error of judgment cannot be classified as 'misconduct' so as to punish him in the matter. Therefore, he filed the present OA seeking the following relief:

- a. *Quash the order bearing No:E(O) I-2016/PU-2/SWR/42, dated 11.08.2016, Annexure-A18, passed by Railway Board New Delhi R-2 herein and No:E(O)I-2017/AE-3/SWR/07, dated 08.02.2018, Annexure-A21, passed by the Railway Board New Delhi R-2 herein;*
- b. *Direct further the respondents to restore the pay of the applicant in the time scale of the pay drawn by him as on the date of passing of the DA's punishment order dtd.11.8.2016 Ann-A18 with all consequential service benefits including holding of review DPC in respect of the promotional exercise undertaken by the administration and to extend on par with benefits drawn by his juniors during the period when the punishment order was in currency.*

3. On the other hand, the respondents in their reply statement have submitted that the applicant has sought multiple reliefs in the OA viz., he challenged the penalty order dtd.11.8.2016 and the Appellate Authority's order dtd.8.2.2018. He has also sought direction to restore his pay in time scale of the pay drawn by him as on the date of passing of the penalty order dtd.11.8.2016 with all consequential service benefits, including of holding of review DPC in respect of promotional exercise undertaken by the administration, which is against Section 10 of CAT(Procedure) Rules 1987.

4. They submit that the Articles of Charge 1 & 2 were based on the transactions of receiving gift amount, loans from relatives, house building loans from DHFL-Mysore etc., are made without intimation/prior sanction from the Railway

Administration. Further Charge 3 was based on the transaction of totalling Rs.29,47,932 through joint savings bank accounts with State Bank of India and Canara Bank held by the applicant and his wife Smt.Saroj Chaudhary. Applicant has confirmed the transaction of movable property to the Administration on 20.12.2011 for only Rs.5,00,000/-. But the total transaction of Rs.29,47,932/- was made without any intimation to the Railway Administration and hence violated Rule 13 & 18(3) of Railway Service (Conduct) Rules, 1966. Against the orders of the Disciplinary Authority, the applicant filed appeal to the appellate authority i.e., the President of India on 26.10.2016. The President being the Appellate Authority, UPSC needed to be consulted in terms of Article 320(3) (C) (i) and Rule 22(2) (C) (i) of Railway Servant (Discipline & Appeal) Rules, 1968. On receipt of UPSC's advice, the Appellate Authority i.e., the President of India taking into consideration the entire records of the case, including UPSC's advice, not finding the penalty earlier imposed excessive, rejected the appeal being devoid of merit vide order dtd.8.2.2018 and the same was communicated to the applicant along with the UPSC's advice on 8.2.2018. The Commission observed at para 4.3.6 of the advice that the applicant has consistently maintained that he was not rule-bound to intimate about the transactions as the said transactions were not in his knowledge and were entirely done by his wife from her own funds which are distinct from his funds. During the course of enquiry, the applicant took the support of the CVC letter, para 4(2) of that letter and stated that since this was not a case of assets, disproportionate to known source of income, failure to intimate should be treated as technical lapse. It needs noting that this was never a case of assets, disproportionate to known sources of income. The applicant was neither charged for nor the charge proved as a case of assets, disproportionate

to known sources of income. It was a charge of violations of Rule 13, Rule 18(2) and Rule 18(3) of Railway Services (Conduct) Rules 1966 by the applicant which is quite distinct from 'Technical lapse'.

5. The respondents further submit that every case is thoroughly examined by the Commission with the prime focus on upholding the Principle of Natural Justice and an independent opinion, without any bias, is tendered on the basis of conclusions arrived at after thorough, judicious and independent consideration of all the relevant facts, charges framed and representation of the Charged Officer and other circumstances supported by the evidence on record and the documents made available by the Ministry in each individual case. While tendering advice, the Commission recommend penalty commensurate with the misconduct proved against the CO in that individual case. The Disciplinary Authority, however, arrives at his own conclusions after taking into consideration the advice of the Commission, among other things. The averment of the applicant that there is an inordinate delay in issuing the charge memorandum is disputed as can be seen by the various stages takes place. The disciplinary proceedings initiated by the Railway Administration is purely on the basis of instructions contained in Master Circular 67(Annexure-R1) and the applicant would be eligible for promotion to SAG automatically on completion of the punishment as it has no effect on his seniority, duly assessing his service records. The OA is thus deserved to be dismissed.
6. We have heard the Learned Counsel for both the parties and perused the materials placed on record and also written arguments note filed by both the parties in detail. In this case, there were three articles of charge. The first one

was relating to non-intimation/prior sanction for transactions totalling to Rs.29,47,932/- through joint SB Accounts held by the applicant along with his wife and a number of transactions relating to receiving gift amount, loans from relatives, loans from guests, house building loan from DHFL Mysuru, Gold loans from Muthoot Finance etc. The second charge was relating to purchase of a site valued Rs.4,32,000 in the name of the wife of the applicant and non-intimation/prior sanction for the same and the third article of charge related to the construction of a house at the above site at the estimated cost of Rs.20 lakhs without any intimation/prior sanction to the above transaction. The inquiry officer had concluded that all the charges are proved and intimation if any, given by the applicant for a partial amount of the transaction was only after the vigilance inquiry was started and the three charges against the applicant were clearly proved. The applicant all along denied any knowledge of the transactions in the bank accounts as well as the purchase of an immovable property and construction of the house thereon. During the inquiry, it was established that the spouse of the applicant did not have any separate source of income since she was not stated to be employed anywhere and further the applicant had signed in the loan documents for house building and therefore his denying of any knowledge of the transactions done by the spouse was clearly not acceptable. The applicant at a later stage would turn around and admit that even if the lapses were there on his part, the same could be considered as technical lapses. Finally, he would claim that because of the considerable delay in finalising the proceedings, he was put to irreparable loss in view of losing his promotions with his juniors getting a march over him. He would also claim that the appellate authority should not have simply gone by the advice of the UPSC and should

have formed its own assessment and therefore, he challenges the Annexure-A21. Even though the said order cites consultation with the UPSC and coming to the conclusion for the reasons given in the UPSC's advice, this cannot be construed as though the appellate authority had gone only by the advice of the UPSC. The details of the facts and the punishment that has been given would amply prove that the claims of the applicant are devoid of any merit.

7. The OA is dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred by the applicant in OA.No.170/00528/2018

Annexure-A1: Copy of the charge memo dtd.8.4.2013

Annexure-A2: In house CVC enquiry proceedings starting from 8.12.2011

Annexure-A3: Written statement dtd.7.5.2013

Annexure-A4: Copy of the IO's daily order sheet no.1 dtd.10.12.2013

Annexure-A5: Copy of the IO's daily order sheet no.2 dtd.22.1.2014

Annexure-A6: Copy of the IO's daily order sheet no.3 dtd.12.2.2014

Annexure-A7: Copy of the note dtd.10.2.2014 submitted by the applicant before IO

Annexure-A8: Copy of the Presenting Officer's brief before IO
Annexure-A9: Copy of the Charged officer's brief before IO
Annexure-A10: Copy of the inquiry report
Annexure-A11: Copy of the 2nd show cause notice dtd.5.2.2015
Annexure-A12: Copy of the representation dtd.2.3.2015 to the 2nd SCN
Annexure-A13: Copy of the supplementary representation dtd.13.7.2015 along with copy of the CVC's guidelines dtd.26.2.2001
Annexure-A14: Copy of the representation dtd.18.4.2016 addressed to GM SWR Hubli
Annexure-A15: Copy of the representation dtd.16.5.2016 addressed to Member Mechanical Railway Board New Delhi
Annexure-A16: Copy of the representation dtd.16.5.2016 addressed to Secretary Railway Board
Annexure-A17: Copy of the representation dtd.8.8.2016 addressed to the Member Traffic Railway Board
Annexure-A18: Impugned punishment order dtd.11.8.2016 passed by Railway Board
Annexure-A19: Copy of the appeal memorandum dtd.26.10.2016
Annexure-A20: Copy of the UPSC advice dtd.28.11.2017
Annexure-A21: Impugned Appellate Authority order dtd.8.2.2018 passed by Railway Board along with typed copy

Annexures with reply statement:

Annexure-R1: The copy of Master Circular 67

Annexures with written arguments note filed by the applicant:

-NIL-

Annexures with written arguments note filed by the respondents:

Annexure-1: Order dtd.18.10.2018
