

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/08/2013

Date of Reserve: 02.04.2019

Date of Order: 23.07.2019

CORAM:

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

Purnendu Sekhar Pati, aged about 61 years, S/o. Late Nani Gopal Pati, Retired Senior Section Engineer (Works), working under Sr.Divisional Engineer (Co.), E.Co.Rly., Khurda Road – presently residing at 4/19, MIG-11, BDA, Chandrasekharpur, Bhubaneswar, Dist-Khurda.

...Applicant

By the Advocate(s)-M/s.J.M.Pattnaik
C.Panigrahi

-VERSUS-

Union of India represented through:

1. The General Manager, E.Co.Rly, Chandrasekharpur, Bhubaneswar, PIN-751 023.
2. Chief Engg., E.Co.Rly., Chandrasekharpur, Bhubaneswar, PIN-751 023.
3. The Chief Workshop Engineer, E.Co.Rly., Chandrasekharpur, Bhubaneswar, PIN-751 023.
4. Sr.Divisional Engineer (Coordination), E.Co.Railway, Khurda Road, PO-Jatni, Dist-Khurda, PIN-752 050.
5. The Chief Workshop Manager (Coaching Repair Workshop), E.Co.Railway, Mancheswar, PIN-751 017.

...Respondents

By the Advocate(s)-Mr.B.B.Patnaik

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, the applicant has sought for the following reliefs:

- i) To quash the charge sheet dated 03.09.2004 at Annexure-A/3.
- ii) To quash the order of punishment 24.05.2006 at Annexure-A/9.
- iii) To quash the Appellate Authority's order dt. 31.01.2012 under Annexure-A/18.

- iv) To direct the Respondents to pay all the consequential service and financial benefits including revision of pension and pensionary benefits retrospectively forthwith.

2. Applicant while working as Section Engineer (Works), Carriage Repair Workshop, Mancheswar under the East Coast Railways, was issued with a Memorandum dated 3.9.2004(A/1) in contemplation of disciplinary proceedings under Rule-9 of Railway Servants (Discipline & Appeal) Rules, 1968 (in Short Rules, 1968), containing the following Articles of Charges:

Article-I

That the said Shri P.S.Pati while functioning as SE/Works during the period from Jan. 2002 to Feb. 2004 had collected paints and drums from SSE/Paint on challan and has not entered in DMTR and there is a mis-appropriation of Railway material. Thus, he failed to maintain devotion to duty as mentioned in Rule 3.1(ii) of RS Conduct Rules, 1966 as amended from time to time.

Article-II

That during the aforesaid period while functioning as SE/Works/MCS, the said Shri P.S.Pati allowed unauthorized construction by Shri C.K.Das, Contractor within the filter house are without obtaining permission from competent authority. Thus he failed to maintain devotion to duty as mentioned in Rule 3.1(ii) of RS Conduct Rules, 1966 as amended from time to time.

Article-III

That during the aforesaid period while functioning as SE/Works/MCS and Shri P.S.Pati constructed two nos. packed rooms as encroachment in his residential Quarter No.G/19/2 at Railway Colony, Mancheswar without any approval of competent authority. Thus he acted in a manner which is unbecoming of a Rly. Servant in Rule 3.1(iii) of RS Conduct Rules, 1966 as amended from time to time.

Article-IV

That during the aforesaid period while functioning as SE/Works/MCS claimed and received the Transport allowance Rs.200/- PM although his residential quarter is less than 01 km. Distance from his office. Thus he failed to maintain integrity and acted in a manner which is unbecoming of a Rly. Servant by way of hiding the fact as mentioned in Rule-3.1(i) and (iii) of RS Conduct Rules, 1966 as amended from time to time.

3. Vide order dated 28.9.2004, Inquiry Officer was appointed to enquire into the charges levelled against the applicant. The applicant submitted a representation dated 29.09.2004 (A/5) addressed to the Chief Workshop Manager, Carriage Repair Workshop with a request to cancel the charge sheet. He submitted another representation dated 04.10.2004 addressed to the Chief Workshop Manager objecting appointment of Shri N.Sahoo, Assistant Works Manager (Production), Carriage Repair Workshop as I.O. Since no decision was taken thereon, the applicant approached this Tribunal in OA.No.642/2004 which was disposed of by this Tribunal vide order dated 8.10.2004 with a direction to Respondent No.5 (IO) not to proceed with the enquiry without obtaining further instruction from the Disciplinary Authority of the applicant. Thereafter, the IO was changed and in his place Shri N.K.Samal, Works Manager, CRW/MCS was appointed as I.O., who on completion of inquiry, submitted his report dated 18/19.4.2006 to the Disciplinary Authority holding the charges proved against the applicant. Consequently, the applicant was supplied a copy of the report of the IO with a direction to submit his representation within 10 days from the date of receipt of letter dated 19.04.2006(A/7). The applicant submitted his representation to the Disciplinary Authority on 28.04.2006(A/8), inter alia, raising a point that Chief Workshop Manager, Carriage Repair Workshop, Mancheswar is not the authority competent to act as the Disciplinary Authority. However, the Disciplinary Authority imposed punishment vide order dated 24.05.2006 (A/9) reverting the applicant from the post of Senior Section Engineer (Works) in the scale of pay Rs.7450-11500/- to the grade of Section Engineer (Works) in the scale of Rs.650-10500/- for a period of 2 years on cumulative basis. It was directed that during the period of penalty, the applicant's basic

pay shall remain fixed at Rs.6500/- and during this period his Dearness Pay and Dearness Allowance shall be calculated on the basis of the fixed Basic Pay of Rs.6500/- and on completion of the period of penalty, his future increments shall stand postponed by these 2 years and seniority of the applicant shall be adversely affected accordingly. The applicant submitted an appeal dated 7.7.2006 (A/11) to the Chief Workshop Engineer, East Coast Railways and since it was not disposed of, he approached this Tribunal in O.A.No.737/2006. This Tribunal vide order dated 31.10.2006 disposed of the said O.A. with a direction to the Respondents to take a view on the appeal preferred by the applicant within a period of six weeks from the date of receipt of copy of the said order. The Appellate Authority vide order dated 09.12.2006 (A/13) upheld the order of punishment as passed by the Disciplinary Authority. Being aggrieved, the applicant approached this Tribunal in O.A.No. 81 of 2007 for quashing the charge sheet dated 03.09.2004, the report of the IO dated 18.04.2006, the order of punishment dated 24.05.2006 and the order of the Appellate Authority dated 09.12.2006 with a direction to respondents to reinstate the applicant to his former post of Senior Section Engineer (Works) in the scale of Rs.7450-11500/-, which he was holding prior to implementation of the punishment with his seniority and to pay him all his consequential benefits retrospectively forthwith. This Tribunal disposed of the said O.A. vide order dated 21.04.2010 in the following terms:

- "3. This position has also been highlighted in the subsequent Railway Board's instructions [No.E(D&A)78 RG 6-11 dated 3.3.78, E(D&A)86 RG 6-1 dated 20.1.1986, E(D&A) 91 RG 6-122 dated 21.2.92, E(D&A)2002/RG 6-27 dated 24.9.2002] providing that while exercising disciplinary powers, the disciplinary and appellate authorities perform quasi-judicial functions. Therefore, it is an essential legal requirement that in the case of decision by quasi-judicial authorities, the

reasons should be recorded in support thereof meeting/answering all the points raised by the Applicant in his appeal. The above instructions issued by the Railway Board are also well supported by the decisions of the Hon'ble Apex Court in the case of Mahavir Prasad vs. State of UP – air 1970 sc 1302. Ram Chander vs. Union of India and Others, AIR 1986 SC 1173 and Director (Mkt.) Indian Oil Corp. & Anr. Vs. Santosh Kumar – 2007 (1) SLJ 46 (SC). In view of the above dealing with the contentions raised by Learned Counsel for both sides may prejudice the decision making process of deciding the appeal of the Applicant as we propose to direct for reconsideration of the appeal of the Applicant and as such we refrain from doing so. In view of the above, without expressing any opinion on the merit of the matter, this Original Application is disposed of with direction to the Respondent No.3 (the Chief Workshop Engineer, ECoRly, Chandrasekharapur, Bhubaneswar) to give a fresh look/fresh consideration to the appeal of the applicant through a reasoned order meeting/answering all the points raised by the applicant in his appeal under Annexure-A/10 dated 07.07.2006 within a period of 90(ninety) days from the date of receipt of this order and communicate the result thereof to the Applicant. There shall be no order as to costs”.

4. In compliance of the above direction, the Chief Workshop Engineer, East Coast Railway passed an order dated 31.01.2012 (A/18) upholding the punishment imposed by the Disciplinary Authority. Hence, this Original Application with the reliefs as mentioned above.

5. The grounds on which the applicant has claimed reliefs are that the Chief Workshop Manager, Carriage Repair Workshop (Respondent No.5) being not the competent authority, could not have acted as the Disciplinary Authority. According to applicant, Respondent No.5 is neither his appointing authority nor his cadre controlling authority. Citing the provisions of Railway Board's letter No.E(D&A) 72-RG 6-13 dated 16.10.1973, it has been submitted by the applicant that Railway servants essentially belong to only one department and therefore, in his case Sr. Divisional Engg.(Co-ordination), Khurda Road is his Disciplinary Authority. It is stated that the applicant belongs to the cadre of SE(Works) in Civil Engineering Department and

therefore, his Disciplinary Authority, Appellate Authority and the Revisionary Authority are Sr.DEN(Co.)/KUR, DRM/ADRM-/KUR and Chief Engineer, respectively. In relation to this, the applicant has brought to the notice of this Tribunal the Railway Board's letter No.E(D&A) 94 RG 6-69 dated 04.08.1997 which reads as follows:

"Attention is invited to Board's Letter No.E(D&A) 72 RG-6-13 dt. 16.10.1973, wherein, while reiterating instructions contained in Board's letter No.E(D&A) 60 RG 6-30 dt. 28.07.1962 to the effect that the disciplinary action should be initiated and finalized by the authorities under whose administrative control the delinquent employees may be working...."

Based on this, it has been contended that with approval of Sr.DEN(Co.)/KUR, he was posted as S.E.(W),MCS and in the same line, he has undergone transfer and posting. Therefore, according to him, by no stretch of imagination Chief Workshop Manager (Respondent No.5) could act as the Disciplinary Authority.

6. It is the case of the applicant that even though on the basis of a joint representation made by some officials thereby making some allegations against him, a joint Committee comprising ADEN/BBS, AWM/MCS and OC/RPF/MCS conducted an inquiry and submitted its report to the Sr.DEN(Co.)/KUR vide Memorandum dated 14.08.2003 in pursuance of which disciplinary proceeding was initiated, but, neither the said joint representation nor the report of the Inquiry Committee formed part of the Relied Upon Documents nor the authors of those documents were cited as Prosecution Witness. In this connection, the applicant has drawn the attention of this Tribunal the speaking order passed by the Disciplinary Authority while imposing punishment, which amongst other, makes a mention as under:

"The inquiry committee submitted its report on 11.06.2004 Sr.DEN(Central)/KUR forwarded the report to the undersigned vide Letter No.SDE(Central)/CON/2004/174 dt. 13.07.2004 to

initiate suitable action as you were placed under the administrative control of CWM/CRS/MCS vide CE/Eco.R/BBS letter No.W/2/118/Pt.I/8317 dt. And Sr.DEN(Co-Ord)/KUR's Memorandum No.28/03 dt. 14.08.2003. Accordingly, the above charge sheet was framed".

7. By the above action, the applicant has stated that he has been prejudiced by the non-supply of the report of the Inquiry Committee. He has contended that the order passed by the Appellate Authority upholding the punishment is cryptic and unreasoned and an outcome of non-application of mind.

8. Contesting the claim of the applicant, respondents have filed their counter. Regarding competency of Chief Workshop Manager, CRW, Mancheswar to initiate disciplinary proceedings against the applicant, it has been submitted that vide letter No.28/03 dated 14.8.2003 and C.E., E.Co.Rly., BBSR No.W/2/1187 Pt.I/831/8317/ dated 3.6.2004, the Senior SEN (Co.)KUR had given full authority to the CWM/MCS to deal with matter as the applicant is under his administrative control. According to respondents, Mancheswar Workshop is an independent workshop of East Coast Railway having the administrative control of Chief Workshop Manager as per the order of the Chief Engineer wherein the Railway Safety Review Committee so also the Railway Board have decided that the SSE/SE(Works) in charge of Mancheswar Workshop shall be placed under the administrative control of CWN (WS), MCS treating the workshop complex as a separate zone. In this connection respondents have brought to the notice of this Tribunal an order dated 23.6.2003 (R/1). Further, it has been pointed out that the punishment imposed on the applicant is based on the report submitted by the Inquiry Committee. It is further submitted that the orders passed by the Appellate Authority is reasoned and cogent. They have, therefore, prayed that this

Tribunal should not interfere with the matter and the O.A. being devoid of merit is liable to be dismissed.

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

10. We have 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. From the pleadings of the parties, the following points to be adjudicated by this Tribunal are as follows:

- i) Whether the Chief Workshop Manager, Carriage Repair Workshop, Mancheswar is the authority competent to act as the Disciplinary Authority in case of the applicant.
- ii) Whether by not citing the joint representation and the report of the Inquiry Committee as Relied Upon Documents (RUD) to the Charge Memo, the applicant has been prejudiced.
- iii) Whether there has been violation of any procedure during the course of disciplinary proceedings to the prejudice of the applicant.

11. In this connection, we have gone through the report of the I.O, order dated 24.5.2006 (A/9) passed by the Disciplinary Authority and the order dated 31.1.2012(A/15) passed by the Appellate Authority in pursuance of the order dated 21.04.2010 passed by this Tribunal in O.A.No.81/2007. In Paragraph-2.4 of the order dated 24.5.2006(A/9) passed by the Disciplinary Authority has noted as follows:

"2.5. ...In this order it was clarified to you that in terms of Para-2(d) of Railway Board's letter No.E(D&A) 2001 RG 6-3 dated 20.10.02, circulated by SER's establishment serial No.38/2003, the Disciplinary Authority shall be the one under whose administrative control the delinquent employee works. As the Chief Engineer, being the Head of Civil Engineering Department of East Coast Railway has placed you under the administrative control of CWM,

CRW/MCS vide his letter No.W/2/118/Pt.I/8317 dated 23.6.03 in compliance to the policy decision of the Ministry of Railways, communicated vide Board's letter No.98/M(W)/814/42 Ptd. Dated 05.08.02 CWM/CRW/MCS has the undisputed disciplinary jurisdiction on your. In the order of the Disciplinary Authority dated 16.11.04, your application for change of Inquiry Officer was accepted to avoid any attribution of "bias" and Sri Atul Kanaujia, PE, CRW/MCS was appointed as the new Inquiry Officer

2.6. Subsequently, you made again a representation on 31.11.04 again challenging the jurisdiction of CWM/CRW/MCS as the Disciplinary Authority. The orders of the Disciplinary Authority was communicated by the Inquiry Officer to you vide letter No.MCSW/M/D&A/ASP-14/50 dated 05.01.05. You were informed that you have been placed under the administrative control of CWM/CRW/MCS by the competent authority, i.e., C.E, ECoR/BBS. As such, CWM/MCS continues to be the Disciplinary Authority in the instant case...."

12. We have also gone through the Board's letter No.E(D&A)/84-RG6-42 dated 8.8.84 (R/4) on the subject of Disciplinary Authority. Rule-2(d) speaks as under:

"While (a), (b) and (c) above refer to the level of the Disciplinary Authority, the Authority who actually functions as Disciplinary Authority can be none other than the one under whose administrative control the delinquent employee works..."

13. Annexure-R/1 dated 23.06.03 filed to the counter is on the subject Civil Engineering Maintenance of MCS(W/S) assets. It has been mentioned therein as follows:

"Keeping in line with recommendations of Railway Safety Review Committee and Railway Board's orders, it is decided that SSE/SE(Works)/in charge of Mancheswar Workshop and Colony shall be placed under the administrative control of CWM(WS)/MCS".

14. Objecting to this, applicant in the written notes of submission has pointed out the decision of the Board to the effect that SSE/SE(Works)/in

charge of Mancheswar Workshop and Colony shall be placed under the administrative control of CWM(WS)/MCS, will not leave aside the fact that he having been posted for the time being under CWM/MCS by the Sr.DEN(Co)./KUR in connection with Civil Engineering maintenance, Sr.DEN(Co)/KUR is not only the appointing authority but the authority under whose control the applicant works. Therefore, the instruction under Annexure-R/4 as quoted above, according to applicant, is not applicable to his case.

15. We have considered the points raised by both the sides regarding the competency of CWM/CRW/MCS to act as the Disciplinary Authority in respect of the applicant. At this juncture, we may note that prior to approaching this Tribunal in the instant O.A., the applicant had approached this Tribunal in three successive Original Applications, i.e., O.A.No.642/04, No.737/06 and No.81/07, but we are at loss to understand, at no point of time, he even did not challenge the competency of Chief Workshop Manager, Carriage Repair Workshop to act as the Disciplinary Authority albeit, he had been communicated the decision of the respondents vide letter dated 5.1.2005 that he was under the administrative control of CWM/CRW/MCS. Be that as it may, we do not find any force in the contention of the applicant that the CWM/CRW/MCS is not the proper Disciplinary Authority to initiate disciplinary proceedings against him. As already mentioned in the preceding paragraphs, the Disciplinary Authority in the instant case, can be none other than the CWS/CRW/MCS, because, under his administrative control the applicant works. The language used "under whose administrative control the delinquent works", in the facts and circumstances of this case, it implies that the CWS/CRW/MCS is his Disciplinary Authority and not the

Sr.DEN(Co.)/KUR, as claimed by the applicant. This being the position, we are of the considered view that the CWS/CRW/MCS was the authority competent to act as the Disciplinary Authority and to initiate disciplinary proceedings against the applicant. Accordingly, the Point No.(i) above is answered in the affirmative and against the applicant.

16. As regards Point No.(ii) as to whether by not citing the joint representation and the report of the Inquiry Committee as Relied Upon Documents (RUD) to the Charge Memo, the applicant has been prejudiced. In this respect, the whole grievance of the applicant revolves round the fact that the Disciplinary Authority while passing the order of punishment made a mention that on the basis of the inquiry committee report, charge was framed against him. In this connection, it would be profitable to note here that Clause-2 of Rule-9 of Railway Servants (Discipline & Appeal) Rules, 1968 provides that "whenever the disciplinary authority is of the opinion that there are grounds for inquiry in the truth of any imputation of misconduct or misbehaviour against a Railway servant, it may itself inquire into or appoint under this rule or under the provision of the Public Servant (Inquiries) Act, 1950 as the case may be, a Board of Inquiry or other authority to enquire into the truth thereof".

17. On the other hand, applicant has not made any such averments in the O.A. that by using the inputs in the joint representation as well as the report of the Inquiry Committee, the Inquiry Officer held him guilty of the charges. In this connection, we may add that on the basis of the report of the Inquiry Committee, the Disciplinary Authority took a decision as to whether there existed a prima facie case against the applicant or there were grounds for inquiring into the truth of any imputation of misconduct or misbehaviour

against the applicant by the appointment of I.O. Therefore, it goes without saying that the Disciplinary Authority used the report of the Inquiry Committee as if a preliminary inquiry report. Since, by not citing the joint representation and the report of the Inquiry Committee as RUD to the Charge Memo, the applicant has not been prejudiced, it cannot be said that the report of the IO and the further follow up action by the Disciplinary Authority and the Appellate Authority stood vitiated. Accordingly, the Point No.(ii) above is answered against the applicant and in favour of the respondents.

18. As regards Point No.(iii), we would like to note that nowhere the applicant has been able to substantiate that by violation of any such procedure or rules during the course of disciplinary inquiry, he has been prejudiced nor is it the case of the applicant that the findings recorded by the IO or for that matter the DA and AA are perverse or based on no evidence. In view of this, the Point No.(iii) is accordingly answered.

19. We have also taken note of the decisions relied upon by the applicant in support of his case, which in our considered view, are of no help, the facts and circumstances of the present case being distinguishable from the facts therein. Applicant has also brought to the notice of this Tribunal an order dated 8.12.2017 passed by this Tribunal in O.A.No.260/648/2014 to buttress his claim. In that case as it appears, the IO in the concluding paragraph of his Inquiry Report relied on the preliminary inquiry (fact finding inquiry conducted at the first instance) and on the basis of such report had concluded the guilt of the delinquent employee therein. In the above background, this Tribunal held preliminary inquiry goes to the oblivion once a regular inquiry is conducted and it cannot be relied on or acted upon for any purpose.

20. In the present case, there is no such circumstance in so far as report of the IO is concerned. This being the position, reliance placed by the applicant in the decision of this Tribunal (supra) is of no assistance.

21. Before coming to the closure, we would like to quote hereunder the decision of the Hon'ble Supreme Court in Bank of India and another vs. Degala Suryanarayana (AIR 1999 SC 2407) in which it has been observed as under:

"strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings".

22. Having regard to the above dictum of the Hon'ble Supreme Court, we are of the view that it is not a case of no evidence and the charges against the applicant have been substantiated based on materials on record.

23. Coming to the point that the applicant has been imposed multiple punishments by the Disciplinary Authority, which come under the purview of three different rules, viz., Rule-6(vi), 6(v) and 6(iv) of Railway Servants (Discipline & Appeal) Rules, 1968, as amended from time to time, we leave this matter to the Appellate Authority who shall consider the same in the light of the rules and instructions on the subject and pass appropriate orders within a period of sixty days from the date of receipt of this order. Ordered accordingly.

24. With the above observation and direction, this O.A. is disposed of, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

