

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

OA No. 783 of 2014

OA No. 220 of 2015

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Sushanta Kumar Sahoo, aged about 48 years, S/o Iswar Chandra Sahoo, a permanent resident of vill/PO/PS-Kujanga, Dist-Jagatsinghpur working as Senior Section Engineer (P.Way)(special), ECO Rly., Anugul.

.....Applicant

VERSUS

1. Union of India, represented through its General Manager, East Coast Railways, Chandrasekharpur, Rail Vihar, Bhubaneswar, Dist.-Khurda.
2. The Divisional Railways Manager (Engineering), East Coast Railway, Sambalpur.
3. The Senior Divisional Personnel Officer, East Coast Railways, Sambalpur.
4. The Senior Divisional Engineer (Coordination), East Coast Railways, Sambalpur.
5. Pankaj Kumar Nagwani, Assistant Divisional Engineer, East Coast Railway, Rairakhol.

.....Respondents.

For the applicant : Mr.G. Rath, counsel

For the respondents: Mr.R.N.Pal, counsel

Heard & reserved on : 1.7.2019

Order on : 6.9.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicant has prayed for the following reliefs in these OAs :

OA 783/2014

- “(i) To quash the order of the General Manager (Respondent No.1) dated 29.5.2014 being contrary to the provisions of Rules.
- (ii) To quash the charge sheet dated 10.7.2014 (Annexure A/4);
- (iii) To quash the report of the IO supplied to applicant vide letter dated 8.10.2014 (Annexure A/8)
- (iv) To pass any other order/orders as deemed fit and proper.”

OA 220/2015

- “(i) To direct the respondents to allow the applicant to discharge his duty and to release the arrear salary by quashing the order dt. 6.4.2015 under Annexure A/15.
- (ii) To pass any other order/orders as deemed fit and proper.”

2. Both the OAs have been filed by the same applicant. The OA No. 783/2014 challenges the disciplinary proceedings initiated against the applicant and the other OA is directed against the decision of the respondents not to allow the applicant to join duty on his return from leave. The facts in brief are that while the applicant was working as Senior Section Engineer (in short SSE) at Angul, he was proceeded against for a derailment that took place in the train no. 18422 Ajmer-Puri express on 27.4.2014 on the track which was under the charge of the applicant. A Committee was constituted to look into the reasons for the accident and submitted its report on 7.5.2014 (Annexure-A/2 in both the OAs). The applicant claims that the Committee held him to be responsible as a secondary person for the accident and did not hold him to be primarily responsible.

3. But the respondent No. 1 held the applicant to be primarily responsible for the accident vide his order dated 29.5.2014 (Annexure-A/3 of both the OAs) and a charge memorandum dated 10.7.2014 was issued (Annexure-A/4 in both the OAs) against the applicant. The applicant submitted his reply dated 6.8.2014 (Annexure-A/6 in OA 783/14), requesting to drop the proceedings due to various reasons as mentioned therein, but it was rejected. The inquiry was concluded ex-parte as the applicant did not participate in it. The inquiry report dated 1.10.2014 was intimated to the applicant vide letter dated 8.10.2014 (Annexure-A/8). The applicant vide letter dated 22.10.2014 (A/9) requested for 10 days time for submitting the reply. Being aggrieved, he filed the OA No. 783/2014 on 3.11.2014, which was considered by the Tribunal and vide order dated 7.11.2014, an interim order was passed directing the respondents to proceed with the enquiry, but not to pass any order without leave of the Tribunal. The applicant filed the OA No. 220/2015 on 11.4.2015 after he was not allowed to sign the attendance register after 19.11.2014 without any order of the competent authority.

4. The main ground taken by the applicant in OA No. 783/14 is that the SAG level official Committee in its report dated 7.5.2014 on the accident held the applicant not primarily responsible as the cause of the accident was due to the fact that adequate ballast was not available. The Divisional Engineer and Senior Divisional Engineer should have made arrangement for sufficient quantity of ballast required for that section. It is averred that no member of the SAG Committee was examined by the Inquiry Officer (In short IO) before coming to the conclusion that the applicant was responsible for the accident. Hence, the inquiry report in the proceedings against the applicant is stated to be illegal. It is also averred that the SAG Committee did not hold him primarily responsible for the accident, but the GM reversed the finding of the Committee

and before taking the decision, the applicant was not allowed an opportunity of hearing to explain his position. Higher authorities have not pointed out inadequate ballast at that location during inspections. It is also stated that there is no enabling provision under the rules for the accepting authority (i.e. respondent No. 1) to disagree with the report of the SAG level inquiry, for which, the charge-memo issued to him and subsequent action taken in pursuance to it, were contrary to the rules and law. It is further stated that the IO's report is contrary to the rules as it does not specifically hold that the charges are proved. It is further averred that the applicant was on medical leave as admitted by the IO, who did not supply him copy of the proceeding of the inquiry.

5. The respondents opposed the OA No. 783/14 by filing the Counter on 21.5.2015, in which it is stated that the OA is not maintainable as the applicant has no cause of action. It is averred that the applicant was responsible for maintenance of the track in his jurisdiction in which the accident occurred. The charge-sheet issued was duly inquired into and the applicant was imposed a punishment of dismissal from railway service vide order dated 29.10.2014. It is stated in the Counter that the Tribunal in OA No. 783/2014 passed an interim order dated 7.11.2014 directing the respondents to proceed with the inquiry and that no final order will be passed. But the final order was already passed on 29.10.2014 prior to passing of the order dated 7.11.2014. It is further stated in the Counter that the accident occurred within the jurisdiction of the applicant and the accident inquiry committee duly modified/accepted by the GM, held the applicant to be primarily responsible. It is stated that it is within the jurisdiction of the respondent No. 1 to pass order dated 29.5.2014, by which the applicant was held to be responsible by the respond no. 1. Charges for major penalty were issued on 10.7.2014. It is stated that the applicant did not participate in the inquiry and he asked for extension of time. It is stated he was not allowed beyond 31.7.2014 for submitting the reply and then the IO was appointed. The applicant submitted a representation which was rejected on 20.8.2014. The applicant attended the inquiry on 21.8.2014, but he did not sign on the proceedings and he asked for 4 days leave to arrange for defence counsel. He was allowed leave, but no defence counsel was appointed by the applicant.

6. It is stated in the Counter that the next date of inquiry was 28.8.2014, when the applicant did not attend the inquiry. Then the date was fixed on 19.9.2014 and then on 27.9.2014, but the applicant failed to appear although he had received the notice. It is contended that the applicant was given reasonable opportunity. When the applicant failed to appear on 27.9.2014, the

IO decided to proceed ex-parte and submitted his report on 7.10.2014. Copy of the inquiry report was sent to the applicant on 9.10.2014 to submit representation within 15 days. Since no representation was received till 27.10.2014, the disciplinary authority passed the punishment order dated 29.10.2014, but the applicant refused to receive the order on 30.10.2014. It is further stated in the Counter that the applicant was given adequate opportunity to present his case and he did not inform the IO to defer the inquiry due to his illness. It is stated that the applicant willingly reported sick through private medical certificate on every occasion of inquiry.

7. The applicant filed Rejoinder in OA 783/14, reiterating the contentions in the OA that the SAG level inquiry into the accident did not hold him primarily responsible for the accident. It is stated that the Committee held Mr. SP Mishra, AEN/RAIR as blame worthy, but he is continuing in service, where the applicant was punished. The applicant denied the contentions in the Counter that reasonable opportunity was allowed to him. He stated that additional documents requested by him were received on 24.7.2014, but time prayed for submission of reply was disallowed. Hence, appointment of IO on 1.8.2014 is not in accordance with the rules. He submitted the representation on 6.8.2014 for placing before GM, but the Sr. DEN rejected his appeal without placing it before the GM. It is stated that the IO fixed the inquiry although the applicant was sanctioned sick leave during the period and on 27.9.2014, he recorded the statement of witnesses behind his back, although the copy of the statement was supplied to him. It is stated that the inquiry report is not in accordance with the sub rule 25 of the rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 (in short 'Rules'). It is stated that the instruction of the Board that the charged officer is to be given 10 days advance notice for holding the inquiry, which has not been followed. Further, the procedure for holding ex-parte inquiry as per the letter dated 18.4.1990 was not followed. It is stated that the notice of punishment was supposed to have been served on him on 30.10.2014 when the applicant was on sick leave. It is contended in the Rejoinder that no order of punishment has been issued till date and the notice of punishment which was not served on him, is not sustainable as it violated the principles of natural justice.

8. The respondents have filed a reply to the Rejoinder denying the contentions in the Rejoinder and reiterating the averments in the counter. The reply has mentioned the list of letters written to the applicant to participate in the inquiry and it is stated that from the letters "it can be construed that, the charged official was in a mind not to attend any of the inquiry dates as fixed

and also not to give the name of defence counsel to deal the derailment inquiry, but to hinder and frustrate the process of inquiry."

9. In the OA No. 220/2015, the applicant is aggrieved since he was not allowed to join duty after he recovered from illness. In the OA, apart from repeating the facts and averments made in the OA No. 783/14, the applicant has stated that after he recovered from sickness, he reported for duty on 15.11.2014 till 19.11.2014 and he had signed the attendance register. It is also stated that since he was not allowed to join duty in spite of representations, he had filed the OA No. 134/15 which was disposed of at admission stage with direction to the respondents to dispose of his representation to be allowed to join duty by a speaking order (Annexure-A/14 of the OA No. 220/15). Thereafter, the respondent no. 4 passed the order dated 6.4.2015 rejecting the representation since he has been dismissed from railway service w.e.f. 29.10.2014 before the order dated 7.11.2014 was passed by the Tribunal directing that no final order will be passed in the disciplinary proceeding. It is stated in the OA that the order dated 29.10.2014 has never been served on the applicant as the authorities have mentioned in the order dated 6.4.2015 that the order was sent on 30.10.2014 through special messenger but the applicant refused to accept it, which shows that the order has not been served on the applicant.

10. The respondents have filed Counter, repeating the contentions in OA No. 783/14 as far as the disciplinary proceedings and issue and service of the punishment order dated 29.10.2014 are concerned. Regarding joining duty by the applicant, it is stated in para 11 that the applicant had signed the attendance register from 15.11.2014 to 19.11.2014 in a clandestine manner on 19.11.2014. The applicant approached the authority at Angul office and submitted with a PMC fitness certificate and requested the PMC to be sent to the Medical Officer, without disclosing the fact that he was dismissed from service in the meantime. When the authorities came to know, he was denied to sign the register.

11. In the Rejoinder filed in OA No. 220/15, the applicant stated that the notice of punishment order was not served on him and that the respondents should have taken steps to serve the order as per law. It is further stated that it is termed by the respondent to be notice of punishment and not punishment order and that starting from the charge-sheet till issue of punishment notice, all actions are without competence, jurisdiction and are in violation of the principles of natural justice.

12. We have heard Mr. G. Rath, learned counsel for the applicant who argued that all actions taken by the respondents in this case from 29.5.2014 when the respondent no. 1 passed the order dated 29.5.2014 (Annexure-A/3) and thereafter were not sustainable, since the respondent no. 1 could not have disagreed with the report of the SAG level Committee which fixed secondary responsibility on the applicant for the accident. He further submitted that the dismissal order dated 29.10.2014 claimed to have been passed by the disciplinary authority, was not served on the applicant and hence, it cannot be treated as a valid order. It was pointed out by learned counsel for the applicant that the respondents did not bother to enclose a copy of the dismissal order in their pleadings and it was filed through a memo at the time of hearing after the pleadings were completed, for which, it cannot be taken as a document for the purpose of this OA. It was further submitted that the applicant was not allowed reasonable opportunity to cross-examine the witnesses whose statement was recorded on a day when the applicant was on medical leave. Learned counsel for the applicant further submitted that the ex-parte inquiry that was conducted was bad in law and the applicant, vide letter dated 22.10.2014 (Annexure- A/9) had requested for further 15 days time to submit his reply to the inquiry report dated 1.10.2014, which was not allowed. Learned counsel for the applicant also filed copy of the following judgments in support of his arguments:-

- i) Dulu Devi -vs- State of Assam & others [(2016) 1 SCC 622]
- ii) Union of India & Others -vs- Dinanath Shantaram Karekar & others [AIR 1998 SC 2722]
- iii) Harikisan -vs- State of Maharashtra & others [1962 AIR 911]
- iv) Surjit Ghosh -vs- Chairman & Managing Director, United Commercial Bank & Others [(1995) 2 SCC 474]
- v) Jagannath Mohapatra -vs- Utkal University [OJC No. 522 of 1977]
- vi) Ranjit Singh -vs- Union of India & Others [1981 AIR 461]
- vii) Laxminarayan R.Bhattad & Others -vs- State of Maharashtra & Another [(2003) 5 SCC 413]
- viii) Union of India & Anoterh -vs- International Trading Co. & Another [(2003) 5 SCC 437]

Learned counsel for the applicant submitted that the Rejoinder in OA No. 783/14 may be treated as his written note of argument.

13. Per contra, the respondents' counsel submitted that the respondents have followed the procedure as laid down under the Rules at each and every stage and have passed the order dated 29.10.2014 dismissing the applicant from service. The applicant refused to accept this order on the ground that he was on medical leave. Learned counsel for the respondents also filed copy of the following judgments in support of the respondents' case:-

- i) Union of India & Others -vs- Dinanath Shantaram Karekar others [AIR 1998 SC 2722]

- ii) Rajesh & others -vs- State of Maharashtra with Taufiq Ahmed Aminuddin -vs- State of Maharashtra [AIR 1998 SC 2724]
- iii) Union of India & Others -vs- G.Annadurai [Civil Appeal No. 2829 of 2009]
- iv) Uttarakhand Transport Corporation (Earlier known as UPSRTC) & Others -vs- Sukhveer Singh [Civil Appeal No. 18448 of 2017]

14. Learned counsel for the respondents has also filed written notes of argument in OA 220/15 stating that the order dated 29.10.2014 was served by affixture on 30.10.2014. It is also stated that the applicant did not receive the order dated 6.4.2015, which was also served by affixing the same in the quarter of the applicant in presence of two witnesses and by taking a photograph of the same (copy annexed to the written note). The written note of arguments filed by the respondents' counsel for the OA no. 783/14 defended the decision of the GM vide order dated 29.5.2014 to hold the applicant primarily responsible for the accident as the accepting authority of the accident inquiry report has the discretion to modify/accept/reject the findings of the SGA Committee as per the para 9.25 (4) and (5) of the East Coast Railway Accident Manual. It was stated that the order dated 29.10.2014 was served by affixture. The procedure to be adopted for holding the ex-parte inquiry as per the Master Circular No. 67 was also mentioned in the written notes. In the said circular it was stated that "a copy of the record of the day-to-day proceedings of the inquiry and notices for the hearings should be sent to the charged official regularly so that he is aware of what has transpired during the proceedings..."

15. Having regard to the submissions of the learned counsels for both the sides and the pleadings available on record, it is noted that the SAG level Committee on the accident has admittedly found fixed the secondary responsibility on the applicant for the accident in question, vide the report dated 7.5.2014 (Annexure-A/2 of both the OAs) for his failure to maintain "safest possible ballast profile with whatever ballast was available." Even with secondary responsibility, it cannot be said that the applicant was not liable for any disciplinary action as per the rules. Learned counsel for the applicant argued that the respondent no. 1 did not have authority to take a different view from the report of the SAG level Committee. We are unable to agree with such contentions in absence of any specific rule or authority produced before us to that effect. As per the rules, the report of the SAG Committee is to be approved by the respondent No.1, which implies that he has the authority not to accept such report fully or in part in view of no specific provision to the contrary. In view of the observations of the SAG Committee about the failure of the applicant to ensure safest possible ballast profile with the materials available, the applicant cannot avoid responsibility for the accident even as per the report of the Committee.

16. In view of the above discussions, we are not able to accept the applicant's contentions that the order dated 29.5.2014 of the respondent no.1 and the charge memo dated 10.7.2014 (Annexure-A/4) are not sustainable on the ground that the respondent no.1 has differed with the SAG Committee in fixing primary responsibility on him instead of secondary responsibility suggested by the Committee. Such accidents are major safety issues and hence, it will be against the interest of the operation of the railways to accept such grounds to avoid responsibility for accidents. Hence, we cannot fault the decision of the respondents to issue the charge-sheet dated 10.7.2014 (Annexure-A/4) against the applicant after acceptance of the committee report by the respondent No.1.

17. But the reasons as discussed above do not imply that the respondents can deviate from the statutory rules while disposing of the proceedings. From the record of the disciplinary proceedings placed before us, we are of the view that there has been violation of the procedure laid down under the rules while finalizing the inquiry report and taking subsequent action as the respondents have not allowed a reasonable opportunity to the applicant while finalizing the report of the Inquiry Officer dated 1.10.2014 (Annexure-A/8 of the OA 783/14). The inquiry was conducted ex-parte as the applicant did not cooperate. From record, it is obvious that the applicant reported sick on a number of occasion on the date fixed for inquiry. No details of the nature of the sickness affecting the applicant on the date fixed for inquiry has not been produced before us by the applicant, for which, such contentions of the applicant that he could not appear in the inquiry, have been rightly rejected by the Inquiry Officer who decided to proceed ex-parte. However, the applicant's contentions in the OA that he was not supplied with the statement of the witnesses recorded in the ex-parte inquiry, has force, since there is no record produced by the respondents and there is no mention to that effect in the inquiry report, to show that the statement of prosecution witnesses recorded during ex-parte inquiry have been supplied to the applicant.

18. It is further seen that the IO had recorded statement of all three prosecution witnesses on 27.9.2014 as mentioned in the IO's report (A/8) and he has come to conclusion immediately by recording as under:-

"From the statement of all three witnesses given on 27.9.2014 it is clear that the variation of versine and cross level was beyond permissible limit in circular portion of curve between station -28 to station -31."

After recording as above, the IO went ahead and finalized his report. No opportunity was given to the applicant to place his defence after recording of the statement of the prosecution as required under the sub rule 19 of the rule 9 of the Railway Servants (discipline and Appeal) Rules, 1968. Even in the ex-parte proceedings, it was mandatory on the part of the IO to have

communicated the copy of the statements of the prosecution witnesses recorded ex-parte on 27.9.2014 and given the applicant an opportunity to place his defence. If the applicant would have failed to produce his defence, then the IO could have decided either to give more opportunity or to close the inquiry. On the face of the evidence that the provisions of the rule 9(19) of the Rules, 1968 have not been adhered to by the IO, implies that the applicant has not been allowed a reasonable opportunity by the IO as averred by him in his pleadings. There is no explanation by the respondents about non-adherence of the rule 9(19) while finalizing the report of the IO. It is noticed that the copy of the subsidiary instructions enclosed with the Memo dated 26.4.2019 of the respondents' counsel, it is mentioned that the accused officer be informed about what transpired during ex-parte inquiry including the depositions and it is clear that these instructions have not been adhered to by the IO while finalizing his report.

19. It is also noticed that the sub rule 25(i) of the rule 9 of the Railway Servants (discipline and Appeal) Rules, 1968 states as under:-

"(i) After the conclusion of the inquiry, a report shall be prepared and it shall contain -

- (a) the articles of charge and the statement of imputations of misconduct or misbehaviour;
- (b) the defence of the Railway servant in respect of each article of charge;
- (c) an assessment of the evidence in respect of each article of charge; and
- (d) the findings on each article of charge and the reasons therefor.

Explanation - If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original articles of charge, it may record its findings on such article of charge:

Provided that the findings on such article of charge shall not be recorded unless the Railway servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge."

20. Perusal of the report of the IO reveals that the IO has not assessed the evidence with reference to the documents and the statements of the prosecution witnesses recorded ex-parte on 27.9.2014 in respect of each of the charges framed against the applicant and come to a finding in respect of each charge after such assessment. In this case, the IO has routinely accepted the version of the prosecution/management without adhering to the provisions of the rules. Some these deficiencies of the IO's report have been averred in para 4.19 of the OA and also para 5 of the Rejoinder in OA No. 783/15, which have not been contradicted by the respondents with reference to specific provisions of the rules.

21. Regarding the controversy in passing the punishment order dated 29.10.2014 by the disciplinary authority dismissing the applicant from service,

it is seen that the respondents did not produce a copy of the order in their pleadings in both the OAs. This is in spite of the averment of the applicant that he was not duly served the said punishment order, which was referred to by the respondents while passing the order dated 6.4.2015 (Annexure-A/15 in OA 220/15), which was passed by the respondent no. 4 who has also functioned as the disciplinary authority in this case. This order was passed in compliance to the direction of this Tribunal vide order dated 19.3.2015 of this Tribunal in OA No. 134/2015 filed by the applicant, to dispose of the applicant's representation dated 27.11.2014 (Annexure-A/11 of the OA 220/15), which stated that the applicant was not allowed to join duty from 19.11.2014 after he returned from medical leave. The order dated 6.4.2015 stated that the disciplinary authority has issued notice dismissing him from service vide order dated 29.10.2014 which was sent to him through special messenger on 30.10.2014 and the applicant refused to receive the same on the ground of sickness. But a copy of the order dated 29.10.2014 was not enclosed with the order dated 6.4.2015 by the respondent no. 4.

22. It is seen from the pleadings of the applicant in OA No. 220/2015 that there is no specific denial of the contention of the respondents as per the order dated 6.4.2015 that the order dated 29.10.2014 was sent to him through special messenger on 30.10.2014 and he refused to receive the same as he was on medical leave from 30.10.2014. It is noticed that the applicant in para 4(i) of the OA No. 220/2015 has stated as under:-

"That copy of the aforesaid report was supplied to the applicant in letter dated 8.10.2014. The applicant vide letter dated 22.10.2014 had sought ten days time to file his reply to the report of the IO as he was not well and due to his preoccupation in official work. The applicant was on medical leave from 30.10.2014 but instead of allowing time the respondents are going ahead to pass the final order."

23. From above, it is clear that the applicant was aware of the final order being passed by the disciplinary authority in the proceedings without allowing him further time to reply to the report of the IO. Failure to reply in time has been explained by the applicant for the reason that "he was not well and due to his preoccupation in official work." This shows that the applicant was attending to duty till 29.10.2014 and on 30.10.2014, he went on medical leave and there is nothing on record to show that the applicant was not in a position to accept the order dated 29.10.2014 on 30.10.2014 due to illness. Hence, we are of the view that the applicant was well aware of the punishment order/notice dated 29.10.2014, for which, his plea in para 10 of the Rejoinder that "the respondents should have taken steps to serve the said order on him as per the Law" sounds hollow and it is unacceptable. The fact that the applicant was dismissed from service has been intimated to him vide order dated 6.4.2015 which has been duly received by the applicant and challenged

by him in OA No. 220/2014. In the facts and circumstances of the case, we are of the considered view that the order dated 29.10.2014 dismissing the applicant from service was known to the applicant on 30.10.2014 and the said punishment was informed to him vide order dated 6.4.2015 (Annexure-A/15 of the OA No. 220/2015).

24. It is a matter of concern that the respondents have not been able to serve a copy of the order dated 29.10.2014 on the applicant when he attended duty from 15.11.2014 till 19.4.2014, after passing of the order of punishment of dismissal. They have also failed to enclose a copy of the said order with the order dated 6.4.2015 and to bring to the notice of this Tribunal about passing of such order dated 29.10.2014 after the interim order dated 7.11.2014 was passed in the OA No. 783/2014, directing the respondents not to take a final decision in the matter. If by that time the respondents had taken the final decision by passing the order dated 29.10.2014, this Tribunal should have been informed immediately by the respondents after receipt of a copy of the order dated 7.11.2014. But for the reasons best known to the respondents, the Tribunal was not informed about such order, which was not even enclosed with the Counter filed in the OA No. 783/2014. Had the Tribunal been informed about passing of the order dated 29.10.2014 immediately after receipt of a copy of the order dated 7.11.2014, the applicant would not have got the scope to raise the issue of non-service of the order. It is seen that the respondents had filed a Memo on 26.4.2019 in OA No. 783/14, enclosing a copy of the order dated 29.10.2014 for the first time without including the same as a part of their pleadings. After filing of the Memo dated 26.4.2019 in OA No. 783/14 enclosing a copy of the order dated 29.10.2014, the applicant stuck to his averment of non-service of the said order on him as per provisions of law.

25. Learned counsel for the applicant has cited the judgment of Hon'ble Apex Court in the case of Dulu Devi (supra) in which the decision to terminate service of the petitioner was taken in the file, but the same was not communicated to the petitioner. But in the present OA, the respondents have claimed to have served the order dated 29.10.2014 by special messenger, which was refused by the applicant as discussed earlier. Hence, the cited case is factually distinguishable. The judgment of Hon'ble Apex Court in the case of Harikisan (supra) related to the issue of detention under the Preventive Detention Act, 1950 and the said judgment is not applicable in the present OA, which is factually different.

26. In the case of Ranjit Singh (supra) cited by the applicant's counsel, the issue involved was the charge-sheet on the allegations of disproportionate asset, in which the IO's report had found the charges not proved against the

charged officer, but the disciplinary authority had served the disagreement note. The appellant did not file reply requesting twice for 10 days time to file his reply, which was allowed. He also filed another request for 3-4 days of time, which was not allowed. The disciplinary authority passed the punishment order presuming the charges to be proved. It was held that the principles of natural justice were required to be followed in that case and the disciplinary authority was required to apply his mind to the materials on record to state the reasons as to why the findings of the IO in favour of the applicant were liable to be over turned. In the circumstances, the order of penalty was set aside and the disciplinary authority was directed to consider the matter afresh. In the present OA, the facts are different and the procedure followed by the IO was found to be in violation of the Rules, 1968 and the applicant was not allowed reasonable opportunity as discussed earlier. Hence, the judgment in the case of Ranjit Singh (supra) will also apply to the present OA.

27. Learned counsel for the applicant has also cited the case of Surjit Ghosh (supra) in which the punishment order was passed by the appellate authority and no appeal was allowed to the charged official, for which, the punishment order was set aside. The case is factually distinguishable from the present OA. In the case of Jagannath Mohapatra (supra), it was observed that the IO was appointed before submission of written statement and the appellate authority did not consider such deficiency in the proceedings. Hence, the proceeding was set aside by Hon'ble High Court. In this OA also there was violation of mandatory provisions of the rules as discussed earlier. In the case of Dinanath Shantaram Karekar (supra) cited on behalf of the applicant, the service of the charge-sheet was found to be defective, unlike the present OA in which the applicant refused to accept the punishment order dated 29.10.2014 when it was sent through special messenger on the ground that he was on medical leave and the applicant knew about passing of such order. Hence, the cited judgment is inapplicable to the OA. Other cases cited by the applicant's counsel are factually distinguishable.

28. Learned counsel for the respondents has cited the judgment of Hon'ble Apex Court in the case of Sukhveer Singh (supra) in which the controversy related to supply of the report of the IO. It was held that the charged official has to show 'prejudice' due to such non-supply of the report and that no prejudice was claimed in the writ petition. The present OA is factually different since in OA No. 783/14, there were violations of the mandatory provisions of the Rules, 1968. Hence, the cited judgment will have no application in this OA.

29. In the case of G. Annadurai (supra) cited by the respondents' counsel, the employee was a constable under the CRPF and he remained in

unauthorized absence, for which disciplinary proceedings were initiated. The charge-sheet and report of ex-parte inquiry were sent to the applicant in his home address by registered post. Still there was no reply from the employee. It was observed that after conclusion of inquiry show cause notice was served by newspaper publication. It was held by Hon'ble Apex Court that adequate opportunity has been allowed to the employee concerned to participate in the proceedings, for which it was held that the action taken should not have been interfered. In the present OA, the dispute related to non-service of the punishment order and flawed inquiry conducted against the applicant. There has been violation of the statutory rules during the inquiry conducted by the IO as discussed in para 17-20 supra. Hence, the cited judgment will not be applicable for the present OAs.

30. In view of the discussions above, we are of the considered view that the impugned inquiry report of the IO dated 1.10.2014 (Annexure-A/8 of the OA No. 783/2015) has been finalized in contravention to the provisions of Railway Servants (Discipline and Appeal) Rules, 1968 and hence, the said report as well as subsequent orders passed by the respondents based on this inquiry report are liable to be set aside. We order accordingly. The matter is remitted to the disciplinary authority to restart the process from the stage of the recording of the statement of prosecution witnesses which was completed on 28.9.2014 and to dispose of the disciplinary proceedings by passing a fresh order as per provisions of the law, within a period of four months from the date of receipt of a copy of this order. The applicant will be supplied copy of the statements of the witnesses recorded on 28.9.2014 and if he submits an application before the IO to be allowed opportunity to cross-examine these witnesses, the same will be duly considered by the IO as per law. The applicant is to participate in the inquiry so that the disciplinary proceedings are completed within the time stipulated as above and in the event of his failure to participate, the respondents will be at liberty to proceed ex-parte in accordance with the rules as well as the instructions of the Railway Board in the Master Circular No. 67 referred by the respondents in their written submissions filed in the OA No. 783/2015. Till disposal of the matter afresh as per this order, the applicant's service will be regulated in accordance with the rule 5(4) of the Railway Servants (Discipline and Appeal) Rules, 1968.

31. The OA No. 783/2014 and OA No. 220/2015 are allowed in terms of the para 30 above. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath