

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 909/2016

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

Pradip Kumar Sahoo, aged about 35 years, S/o Biswanath Sahoo, At - Deulasahi, PO - Talasipur, Cuttack, presently working as JE (P.Way)/SLZ, At - QRT.NO.RE/TY/B-1, Railway Colony, Balugaon, PO - Balugaon, Dist. - Khurda.

.....Applicant

VERSUS

1. Union of India, represented through its General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
2. Principal Chief Engineer, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
3. Additional Divisional Railway Manager, Khurda Road, At/PO-Jatni, Dist. – Khurda.
4. Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/PO-Jatni, Dist. – Khurda.
5. Senior Divisional Engineer (South), East Coast Railway, Khurda Road Division, At/PO-Jatni, Dist. – Khurda.
6. Comptroller & Auditor General of India, 9 Deen Dayal Upadhyaya Marg, New Delhi – 110124.
7. Accountant General (A&E), Odisha, Puri Branch, Puri.
8. Deputy Accountant General (Works Account), Odisha, At/PO/Dist- Puri.

.....Respondents.

For the applicant : Mr.D.P.Dhalsamant
Mr.C.Mahanta, counsel
For the respondents: Mr.J.K.Nayak, counsel

Heard & reserved on : 28.6.2019 Order on : 12.7.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has prayed for the following reliefs in this OA:-

- "(1) that the memorandum of charges dated 9.8.2016 (A/4), Order of punishment dated 14.9.2016 (A/8), order of appellate authority dated 25.10.2016 (A/11) and the order dated 15.11.2016 (A/14) rejecting the technical resignation of the applicant passed by the respondent No.5 be quashed.
- (2) That the respondent No.5 be directed to relieve the applicant to enable him to join under respondent No.8.
- (3) That the respondent No.6-8 be directed to allow the applicant to join under the respondent No.8 as Divisional Accountant.

(4) Any other orders/direction as may be deemed fit and proper to give complete relief to the applicant."

2. The applicant was appointed as Supervisor P.W. under the Railways in the year 2006 and was promoted as senior supervisor in 2010 which was redesignated as Junior Engineer (in short JE) in 2014. He appeared in the Staff Selection Commission (in short SSC) examination in 2014 after obtaining no objection certificate from competent authority and he was selected in 2015. He was offered an appointment by the respondent no. 8 after which the applicant requested the respondent no. 4 on 27.7.2016 (Annexure-A/3) to accept his technical resignation and to relieve him to joining the new assignment. On 9.8.2016, a charge-sheet for minor penalty (Annexure-A/4) was issued to him and he submitted the representation on 11.8.2016. The applicant requested for extension of time to the respondent no. 8, which was allowed till 14.9.2016 vide letter dated 29.8.2016 (Annexure-A/9) and then to 13.10.2016.

3. As no decision on the technical resignation was taken, the applicant vide letter dated 7.9.2016 (Annexure-A/7) requested to the respondent no. 5 to relieve him quickly and he undertook to participate in the inquiry to the charges as and when it will be required. The respondents imposed the punishment of reduction of pay by one stage for a period of three years without cumulative effect vide order dated 14.9.2016 (Annexure-A/8). Appeal dated 27.9.2016 (A/10) was filed by the applicant before the respondent no. 3 who upheld the punishment vide order dated 25.10.2016 (Annexure-A/11). Thereafter, vide order dated 15.11.2016 (Annexure-A/14), the respondent no. 5 rejected the request for technical resignation of the applicant on the ground that the punishment has been imposed.

4. The applicant is aggrieved by the charge-sheet dated 9.8.2016 (A/4), punishment order dated 14.9.2016 (A/8), the order of the appellate authority dated 25.10.2016 (A/11) and the order dated 15.11.2016 (A/14) rejecting his technical resignation and has challenged these orders on the following grounds:-

- (i) The charge-sheet is vague. Hence, the charge-sheet and punishment order are bad in law.
- (ii) The applicant is not responsible for the offence committed by Sri Jogi Patra, as the charge-sheet noted that he did not obey the instruction of the applicant not to move.
- (iii) His representation dated 11.8.2016 stating that DTM 25 did not respond to his call was not considered by the disciplinary authority. The applicant is responsible for the DTM 27 which was not involved in the incident.
- (iv) The order of the appellate authority and the disciplinary authority are cryptic without considering the submissions of the applicant and it has been passed in a casual manner.

- (v) Not relieving the applicant to join in the new post violates Article 14 & 16 of the Constitution of India.
- (vi) Action of the respondent no. 6-8 in not extending the joining time is not sustainable.

5. The respondent no. 1 to 5 (of the Railways) filed their counter stating that the applicant has not availed alternative remedy under law and that the applicant was proceeded against for a train accident on 21.7.2016 for which the applicant was found responsible. It is stated that the applicant has filed Revision before the respondent no. 2 and it has been forwarded to him on 21.12.2016. His technical resignation to join new post was not accepted by the respondent no. 5 since the applicant was undergoing the punishment. It is stated the work was to be undertaken by the DTM 25, 26 and 27 under overall supervision of the applicant. DTM 25 under A. Jogi Patra proceeded to work site without waiting for instructions, for which an accident occurred. The Accident inquiry committee found the applicant to be responsible as a secondary person as he failed to supervise the work programme properly.

6. The respondent no. 6-8 have filed Counter dated 22.5.2017, in which it is averred that as per the order dated 21.12.2016 of the Tribunal, one post is to be kept vacant in the cadre of Divisional Accountant provided the posts are not filled up. It is stated that the respondent no. 6-8 have extended time till 14.1.2017 vide letter at Annexure-R/1 series. It is further stated that since the applicant failed to join within six months from the issue of the appointment letter, no further extension can be granted and the appointment has already lapsed.

7. No Rejoinder has been filed by the applicant. He had filed the MA No. 266/17 seeking a direction from the Tribunal to the respondent no. 6-8 to allow the applicant to join as Divisional Accountant by extending joining time. This MA was considered by the Tribunal and vide order dated 19.5.2017 it was observed that the Revisionary authority during pendency of the OA disposed of the Revision modifying the penalty to "withholding of two sets of Privilege Passes and two sets of P.T.O.s due for the year 2017". After modification of the penalty, the Railway authorities, vide letter dated 27.3.2017, accepted the technical resignation of the applicant so as to enable him to join in his new post. On 13.4.2017, the applicant submitted a representation to the respondent no. 8 for extension of joining time till 31.5.2017. The MA No. 266/17 was disposed of with the following direction by Tribunal:-

"Since the representation has been submitted to the respondent no. 8, without going into the merits of the matter, the respondent no. 8 is directed to consider the prayer of applicant made in his representation dated 13.4.2017 and if required, obtain instructions from the higher authorities i.e. respondents No. 6 and 7 and dispose of the pending representation. "

It is seen from records that no compliance of the order dated 19.5.2017 in the MA No. 266/17 in this OA was filed by the respondent no. 6 to 8. At the time of hearing, Mr. J.K. Nayak learned counsel for the respondent no. 6-8 has reiterated their stand in the counter that no extension of time is possible as the appointment of the applicant has lapsed due to failure of the applicant to join within the stipulated time.

8. We have heard learned counsel for all the parties and perused the pleadings on record. Vide order dated 21.12.2016, this Tribunal ordered the respondent no. 6-8 to keep one post vacant, which was also stated in their counter dated 22.5.2017. This implies that one post has been kept vacant in compliance of the order dated 22.12.2016. As observed in the order dated 19.5.2017 of this Tribunal, the technical resignation of the applicant has been accepted by the Railways after modification of the punishment order of the applicant by the Revisionary authority, after which the applicant submitted the representation dated 13.4.2017 to be allowed to join by 31.5.2017. This Tribunal directed the respondent no. 8 to consider the said representation of the applicant. There is nothing on record to show that the respondent no. 6 to 8 have considered the representation dated 13.4.2017 of the applicant and communicated their decision in the matter to the applicant, although it is mentioned in their counter that no further extension can be allowed to the applicant.

9. It is noted that failure of the applicant to join as per the terms of the appointment letter issued by the respondent no. 8 was due to the fact that the Railway authorities did not relieve him due to the pending proceedings and punishment. But the Railway authorities, after modification of the punishment by the Revisionary authority vide order dated 2.3.2017 have accepted the applicant's technical resignation vide letter dated 27.3.2017, as noted in the order dated 19.5.2017 of the Tribunal in this OA. The respondent no. 6 to 8 had allowed time to the applicant till 14.1.2017 as stated in their counter, taking into account the representation of the applicant. But no further extension was considered on the ground that after extension of six months, the appointment order issued to the applicant as Divisional Accountant will lapse as stated in their counter dated 22.5.2017 (para 4).

10. Perusal of the appointment order dated 15.7.2016 (Annexure-A/2 of the OA), it is seen that there is no such clause that after six months, the appointment will lapse. It is stated in the order dated 15.7.2016 that if the acceptance is not received by 14.8.2016, then the offer will be treated as withdrawn. It is not the case of the respondent no. 6 to 8 that the applicant has failed to intimate his acceptance by the stipulated date. In the letter dated

12.1.2017 (Annexure-R/1 of the counter filed by the respondent no. 6-8) it is mentioned that " request for further extension will not be entertained and the offer of appointment would lapse on that date." This letter dated 12.1.2017 has not been signed by the authority who had issued the appointment order dated 15.7.2016. Hence, addition of the condition of lapsing of the appointment order has not been incorporated in the letter dated 12.1.2017 with the approval of the respondent no. 6 to 8.

11. Taking into the facts and circumstances as discussed above, we are of the considered opinion that the applicant should have been allowed one more opportunity to join the post after acceptance of his technical resignation by Railways on 27.3.2017 and not allowing such opportunity would be injustice to the applicant who could not join within the time 14.1.2017 since the Railway did not accept his technical resignation by that time and for that the applicant cannot be faulted. Therefore, in the interest of justice, we direct the respondent no. 6,7 and 8 to allow one more opportunity to the applicant to join the post as per the terms and conditions of the order dated 15.7.2016 (A/2) except for allowing a last opportunity to the applicant to join within a reasonable time. This order is to be complied by the respondent no. 6 to 8 within three months from the date of receipt of this order.

12. We are not inclined to allow any other reliefs prayed for in the OA, which is allowed in part in terms of the directions in para 11 above. No order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath