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**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-1303/2003

New Delhi this the 3rd day of May, 2011.

Hon'ble Mrs. Meera Chhibber, Member (J)
Hon'ble Dr. A.K. Mishra, Member (A)

Sh. P.K. Gupta,
S/o late Sh. Bhagwan Das Gupta,
R/o 120, Mithila Apartment,
76, Patparganj,
Delhi-92. Applicant

(through Sh. A.K. Behera with Sh. P. Chandra, Advocate)

Versus

1. Union of India through
Secretary,
Ministry of Railways,
Rail Bhawan, New Delhi.
2. Member Engineering,
Railway Board, Rail Bhawan,
New Delhi.
3. General Manager (CON)
Maligaon, N.F. Railways,
Guwahati. Respondents

(through Sh. VSR Krishna with Sh. Rajinder Khatter, Advocate)

ORDER

Dr. A.K. Mishra, Member (A)

The applicant has filed the present O.A. in the year 2003 challenging the order dated 05.10.1999 of the Disciplinary Authority by which the penalty of reducing his pay by two stages for a period of three months with the effect of postponing his future increments was imposed on him. Further, the applicant has challenged the





Presidential order dated 11.03.2003, whereby, post retirement, after consultation with the Union Public Service Commission (UPSC), a penalty of 25% cut in his pension on permanent basis was imposed. The prayer is to set aside these two orders as well as the findings dated 22.11.1998 and 31.07.2001 in the departmental inquiries made against him. He further prays for a direction to respondents to release the withheld gratuity amount and other retiral benefits as are payable to him.

1.1 By way of prelude, it is necessary to give a background of the tortuous course this O.A. has taken so far. The Tribunal partly allowed the O.A. on 02.09.2004 and set aside the impugned order dated 11.03.2003 with the direction that the applicant would be entitled to all consequential benefits. Thereafter, Government filed Writ Petition (C) No. 907-09/2005, challenging this order. Relying on the judgment of the Supreme Court in **U.O.I. & Anr. Vs. T.V. Patel**, the Hon'ble High Court of Delhi held that a penalty could not be set aside simply on the ground that the copy of the advice report of the UPSC had not been furnished to the applicant and on that basis set aside the order of the Tribunal in its order dated 05.10.2007 and remitted the case for decision on merits on all surviving points. On remand, the Tribunal, reconsidered the matter and on 22.02.2008 allowed the O.A., set aside the impugned orders and directed that consequences would follow as per law. Thereafter, Government filed Writ Petition (C)-597/2010 challenging the order dated 22.02.2008 of the Tribunal; the Hon'ble High Court of Delhi in its order



dated 21.12.2010 again remanded the matter to the Tribunal with observation that the facts of two different disciplinary proceedings should not be intermixed and the contentions raised in respect of these two cases should be dealt with separately.

2. Brief facts of the case are as follows:-

2.1 While the applicant was working as Deputy Chief Engineer (DCE) (Construction) in North Frontier Railway a disciplinary proceeding was initiated against him on 15.09.1997 containing three articles of charges relating to allegations of intentional delay on his part in clearing the bills of the supplier. On denial of the charges, a departmental inquiry was conducted in which charge No.II was held to be not proved and the other two charges were held as proved. The DA, on consideration of the inquiry report and the representation of the applicant thereon, concurred with the findings with the Inquiry Officer (IO) and imposed the penalty of reduction of his pay by two stages for a period of three months having the effect of postponing his increment. The applicant made an appeal against this order to the President of India and his appeal petition was referred to the UPSC which, on a detailed examination of the evidence on record, found that charge No.1 was partially proved against the applicant. It would be relevant to give an extract of paragraph-4.2 of the letter dated 25.09.2001 of UPSC; it reads as under:-

"With regard to Article-I of Charge the Commission observe that nine bills were paid against the CA No. CON/LD/182 dated 28.8.96. It is seen from





records that out of 9 bills 2 bills (Bill No.SL/37/LD/10%/96-97 and Bill No.SL/38/LD/90%/96-97) detained/delayed for a period of seven days. The CO in his defence has stated that the Bill No. SL/37/LD/10%/96-97 was put up by office Superintendent on 4.10.96 and was sent to account department vide Bill (Register) No. CON/LD/312 dated 7.10.1996, i.e. 3 days out of which two days i.e. 5.10.96 and 6.10.96 were Saturday and Sunday. Similarly, Bill No. SL/38/LD/90%/96-97 put up by OS on 9.10.96 and was sent to account department vide Bill (Register) No. CON/LD/315 dated 14-10-96 i.e. five days out of which 12.10.96 and 13.10.96 were Saturday and Sunday. On perusal of Bill submitted by the firm and Calendar of 1996 the contention of the CO appears to be correct. In both the cases there has not been any undue delay and the bills were passed as mentioned above. Further, it is observed that CO issued a letter on 9-10-1996 addressed to XEN/IOW with a copy to the firm M/s Daya Engineering Works for information and necessary action to make necessary arrangement for checking the sleepers. The firm gave a complaint against the letter issued by the CO to inspect the sleepers. It is clear that there is no provision for test checking by the CO, while passing the bills for which Inspection certificate (I.C.) has already been issued. The CO had already inspected the concrete sleeper factory at Mirja on 8-1-1996 and there was no necessity to issue such letter for such inspection. In view of the above facts the article of charge partly proved against the CO."

The UPSC also concurred with the findings of IO that the Charge No. 2 was not proved and that Charge No.III was proved. Accepting the advice of the Commission the Appellate Authority (AA) rejected the appeal of the applicant in its order dated 31.01.2002. This appellate order, however, has not been challenged in this O.A.

3. It is seen from the order dated 02.09.2004 of this Tribunal that the respondents had taken the preliminary objection that the applicant was seeking multiple reliefs, which is barred under Rule-10 of Central Administrative Tribunal (Procedure) Rules, 1987. The



observations of the Tribunal on this preliminary objection is as under:-

"3. Rule 10 of the Rules ibid bars an application to be based upon multiple cause of actions and what has been permitted is to seek one or more reliefs provided they are consequential to each other. Plural remedies are barred. In the light of the above, as the applicant has not only assailed the punishment order but also the major penalty awarded on 5.10.1999, the relief is clearly hit being multiple reliefs and plural remedies under Rule 10 of the Rules ibid. Accordingly, we reject the relief of the applicant pertaining to the penalty imposed, while he was in service, by an order dated 5.10.1999. The OA is entertained only on the penalty imposed upon 11.3.2003."

It is further seen that the relief sought by the applicant was confined only in respect of the penalty imposed on 11.03.2003. The applicant has not challenged this decision of the Tribunal. Neither the respondents had any grievance about this order. They only challenged that part of the order by which the penalty imposed by President on 11.03.2003 was set aside. This fact is also coming out clearly in the order of the Hon'ble High Court in W.P.(C) No. 907-909/2009. It begins with the observation that the Union of India had preferred the Writ Petition against the order dated 02.09.2004 of the Tribunal by which the penalty imposed in the order dated 11.03.2003 was set aside. It does not say anything about the observations of the Tribunal about the objection relating to multiple reliefs and confining the O.A. only to the penalty order dated 11.03.2003. In the circumstances, the observation of the Tribunal to exclude the penalty order of DA dated 05.10.1999 from the preview of this O.A. and to confine it only to the impugned Presidential order dated 11.03.2003 has attained finality.



4. The second disciplinary proceeding was initiated against the applicant with the issuance of a charge sheet on 29.09.2000 containing the following allegations:-

"Sri P.K. Gupta was posted and functioning in the capacity of Dy.CE/Con/GC/MLG/N.F.Railway during the year 1996-97. M/s Daya Engineering Works Ltd. (Dew Ltd.), Mirza, Kamrup, who as a Railway Contractor were supplying sleepers to N.F. Railway, and having official dealing with Sri P.K. Gupta, Dy.CE/Con/GC/MLG during the material period.

Sri P.K. Gupta, while functioning as Dy.CE/Con/GC/MLG/N.F. Railway, during 1996-97 failed to maintain absolute integrity and acted in unbecoming manner by taking a sum of Rs. 50,000,00 from M/s Dew Ltd., Mirza with whom he had official dealings, purportedly as a loan through Bank Draft No. 422966 dt. 6.9.96 issued in favour of DDA as per his desire. Having no intention to repay the said amount to M/s Dew Ltd. and in order to succeed in his design, Sri P.K. Gupta first asked M/s. Dew Ltd. Official to forget about it and when M/s Dew Ltd. did not agree to his proposal, Sri Gupta harassed them by delaying the issue of technical sanction of their bill dt. 5.10.96 submitted on 8.10.96 for a sum of Rs. 23,56,813.00. Further Sri Gupta threatened them to cause serious harm to their business by getting their factory at Mirza closed and harassed them by issuing a letter on 9.10.96 for carrying out test check of sleepers supplied by M/s. Dew Ltd., which had been already inspected and found in order and inspection certificate issued

the aforesaid bill.

Sri Gupta by his above action, contravened Rules 3.1(i), 3.1(iii) and 16⁽³⁾(i)(a) of Railway Services (Conduct) Rules, 1966."

5. On denial of charges, a detailed inquiry was conducted against the applicant. The IO in its report dated 31.07.2000 came to a finding that the charge was established against the applicant. By then, the applicant had retired from railway service. The DA

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submitted his report to the President for imposing a penalty under Rule-9 of the Railway Servants (Pension) Rules, 1968. On reference, UPSC held that the charge was proved against the applicant and advised for imposing a penalty of 25% cut in the pension on permanent basis. The President accepted the reasons given in the advice letter of the UPSC and held that the charges were proved against the applicant; accordingly, the impugned penalty was imposed which has been challenged in this O.A.

6. At the time of hearing, learned counsel for the applicant submits that the applicant has been subjected to double jeopardy in that for the same offence he has been given a penalty by the DA in the order dated 05.10.1999 and again the same allegations are utilized for imposing the impugned penalty of cut in pension. An analysis of the allegations in the charge sheet dated 29.09.2000 would reveal the following two components:(i) the applicant had taken a sum of Rs.50,000/- purportedly as a loan from a firm with whom he had official dealings; (ii) he had harassed the firm by delaying sanction of their bill for Rs. 23,56,8013/- submitted on 08.10.1996. It is contended that the second part of the allegations is the same which constituted the charge No.1 in the earlier disciplinary proceeding. This charge was held as partially proved particularly on the ground of attempted harassment of the firm by the applicant although as could be seen from the analysis of the UPSC there was no justification to sustain the allegation of delay. In

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this connection, the discussion made by the UPSC at paragraph-4.2 of their report dated 25.09.2001 is relevant, it reads as under:-

"With regard to Article-I of Charge the Commission observe that nine bills were paid against the CA No. CON/LD/182 dated 28.8.96. It is seen from records that out of 9 bills 2 bills (Bill No.SL/37/LD/10%/96-97 and Bill No. SL/38/LD/90%/96-97) detained/delayed for a period of seven days. The CO in his defence has stated that the Bill No. SL/37/LD/10%/96-97 was put up by office Superintendent on 4.10.96 and was sent to account department vide Bill (Register) No.CON/LD/312 dated 7-10-1996, i.e. 3 days out of which two days i.e. 5.10.96 and 6.10.96 were Saturday and Sunday. Similarly, Bill No. SL/38/LD/90%/96-97 put up by OS on 9.10.96 and was sent to account department vide Bill (Register) No. CON/LD/315 dated 14-10-1996 i.e. five days out of which 12.10.96 and 13.10.96 were Saturday and Sunday. On perusal of Bill submitted by the firm and Calender of 1996 the contention of the CO appears to be correct. In both the cases there has not been any undue delay and the bills were passed as mentioned above. Further, it is observed that CO issued a letter on 9-10-1996 addressed to XEN/IOW with a copy to the firm M/s Daya Engineering Works for information and necessary action to make necessary arrangement for checking the sleepers. The firm gave a complaint against the letter issued by the CO to inspect the sleepers. The firm gave a complaint against the letter issued by the CO to inspect the sleepers. It is clear that there is no provision for test checking by the CO, while passing the bills for which Inspection certificate (I.C.) has already been issued. The CO had already inspected the concrete sleeper factory at Mirja on 8-1-1996 and there was no necessity to issue such letter for such inspection. In view of the above facts the article of charge partly proved against the CO."

6.1 Now, in this context, let us examine the observations made by the Commission at Para 4.1 of their letter dated 05.02.2003 while dealing with the allegations contained in the charge sheet dated 29.09.2000:-

"The Commission note that the case papers clearly reveal that a D.D. dated 06.09.1996 was obtained from M/s. DEW Ltd., Mirza for an amount of

Rs.50,000 in favour of DDA. It is also clear from the records that this demand draft was annexed with the application for IX SFS of DDA to book a flat in which the applicant's name was shown as Sh. Samir Kumar, S/o Sh. P.K. Gupta, CO. It is, therefore, abundantly clear the CO had obtained a DD from M/s DEW Limited, railway contractor who was supplying concrete sleepers in NF Railway. The records also reveal that M/s. DEW Ltd. submitted on 08.10.1996 a bill for Rs. 23.56 lakhs for according technical sanction by the CO. The CO ordered that he would carry out a test check of sleepers supplied by M/s DEW Ltd. on 15.10.1996 although they were inspected and found in order by the Junior Engineer on 28.09.1996 who is authorized to inspect the same and the bill was also found to be in order by the Senior Divisional Accountant. In the meanwhile, a letter of complaint was sent by a former Member of Parliament whose son owns M/s DEW Ltd. to the Chief Engineer complaining about the harassment by the CO to the M/s. DEW to clear the bill for payment. While there is no evidence on record that the CO had any information about the complaint made by MP, it is, however, clear from the records that the CO has cleared the bill on 14.10.1996, without carrying out any inspection scheduled to be held on 15.10.1996. It is seen from the sequence of the events of obtaining a loan from M/s. DEW Ltd., with whom he has official dealings ordering inspection of concrete sleepers already inspected by a competent officer, and sanctioning the bill in post haste without carrying out the inspection clearly shows malafides on the part of CO, is clearly proved. However, the mitigating factor which goes in favour of the CO was that the loan of Rs.50,000 was repaid by his son from USA."

7. We have extracted the advice of the Commission in respect of the two separate charge sheets in extenso in order to appreciate the contention that the allegations except for the one relating to taking of loan of Rs.50,000/- are almost similar. The second component of the second charge sheet is also about alleged harassment of M/s DEW in respect of clearing the same bills, a fact which was taken into consideration in holding the charge No.1 of the earlier charge sheet as partially proved.





8. However, the allegation about taking a loan of Rs.50,000/- is a new allegation which deserves separate examination. Learned counsel for the applicant submits that the charge includes contravention by the applicant of Rule-16(4)(i)(a) of Railway Services (Conduct) Rules, 1966. Rule-16 prohibits railway servants from lending or borrowing money either himself or through any member of his family to or from any company or firm with whom he is likely to have official dealings. The term 'Members of family' which has been defined under Rule-2(c) of the said Rules does not include an independent son. In the present case, according to the learned counsel, the loan was taken for purchase of a DDA flat in the name of Sh. Samir Kumar, son of the applicant who was working with a company in the USA. He was financially independent and wanted a flat in his own name at Delhi. He arranged temporary loan of Rs. 50,000/- which was attached in shape of a bank draft issued in favour of DDA along with his application for allotment of a flat. His son refunded the loan amount within a very short time. Since his son did not constitute a member of his family as per the definition in the Conduct Rules, the charge of violation of Rule-16 (4)(i)(a) of the Railway Services (Conduct) Rules, 1966 is misplaced. It is contended that this defence plea has not been considered in the impugned penalty order. Neither has it been discussed properly in the advice letter of the UPSC. Learned counsel further submits that the letter dated 31.03.1997 of the complainant Sh. Daya Nand Sahai former Member of Parliament Rajya Sabha in which he had



retracted his earlier complaint and stated in clear terms that the amount of Rs.50,000/- was given by way of temporary loan to one Sh. Samir Kumar and the amount had since been returned through a bank draft dated 23.10.1996 of Heritage Bank was not given due consideration by the respondent authority. In this letter, the complainant has absolved the applicant completely from any involvement in the matter of temporary loan. According to Sh. Sahai, the original complaint had arisen out of a misunderstanding. The letter of Sh. Sahai addressed to the Member, Engineering, Railway Board reads as under:-

"Ref: My letter regarding DEW complaint about their payments for supply of sleepers of Maligaon, N.F. Railway dated 14th of October'96.

Dear Sri Ravindran,

I am thankful for the prompt action taken by you and I am also pleased to inform you that DEW Ltd. has been getting its payments regularly and their work is progressing smoothly.

Regarding the draft of Rs.50,000/-, mentioned in my complaint letter, I have got the matter further investigated in detail and come to the following conclusions;

- That – 1.** One Mr. Samir Kumar, a close relative of Mr. P.K. Gupta, who belongs to the same village – that of DEW Manager's, approached the Manager of Mirza factory of Daya Engineering Works Ltd. for temporary loan of Rs. 50,000/- in the name of D.D.A. Delhi.
2. this amount of Rs.50,000/-, though was a personal transaction between the Manager and Mr. Samir, the Manager of DEW recorded it in the cashbook of the company and put the name of Mr. P.K. Gupta thinking that Mr. P.K. Gupta's goodwill and status is much higher than that of Mr. Samir. It was purely to protect his position in the company.
3. However it is further reported to me by Daya Engineering Works Ltd., that this amount has been returned vide bank draft no. 122029587:68/490673 dated October 23,1996 of Heritage Bank in favour of

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Daya Engineering Works Ltd.. Thus this has been squared up in total.

I feel the above complaint of mine has cause enough mental torture to Mr. P.K. Gupta, Dy. Chief Engineer (Construction), N.F. Railway for no fault of his. This happened only because of a personal deal between his relative and DEW factory Manager. I am really sorry for this and request that Mr. P.K. Gupta may please be exonerated from any charges on this account and misunderstanding."

9. It is submitted by the respondents that this plea of the applicant was considered by the IO. On the basis of the evidence on record the IO held that the applicant asked employees Sh. Shashi Bhushan and Sh. Subhash Chandra employees of DEW to arrange a draft in favour of DDA in order to book a flat in the name of his son. The draft was made from the accounts of M/s DEW on 06.09.1996; it was annexed to the application to the applicant's son. The IO further held that the applicant was trying to delay the release of payment of the pending bills when the representatives of the firm did not agree to his request to waive his liability in respect of the loan amount. Therefore, he contended that the applicant was guilty of taking loan of Rs.50,000/- from a firm with whom he had official dealings and, as such, acted in a manner unbecoming of an officer.

10. The impugned order dated 11.03.2003 says that a copy of the inquiry report was given to the applicant and his representation on the findings of IO was considered. But the pleas of non applicability of Rule 16(4) (i)(a) of Conduct Rules, ibid have not been discussed in the impugned order, nor in the advice letter of



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the UPSC on the basis of which the impugned penalty order was passed.


11. As discussed earlier, a simultaneous reading of the letters dated 05.02.2003 and 31.01.2002 of the UPSC would show that the allegation of harassing the firm by delaying payment of their bills is already included in the article No.1 of the Memorandum of charges in the previous proceedings and that charge was held to be partially proved only on consideration of that allegation. The same allegation could not have been utilized once again against the applicant while considering the impugned penalty. Further, though the plea of his son taking a temporary loan from the firm with whom the applicant had official dealings has been examined by the IO, there is no mention about this plea in the discussion of the UPSC nor in the impugned order passed accepting the reasonings of the UPSC. We find that the applicant had given a comprehensive representation on 07.05.2002 against the findings of the inquiry report. Among other grounds he had submitted that the charge of violation of Rule-16(4) *ibid* was never established against him. There was no evidence about his direct involvement in the transaction made by his independent son. There was no evidence that he ever travelled from Guwahati to deposit the bank draft in the office of DDA at Delhi, or that there was any intention of not returning the temporary loan. He had alleged that the prosecution instead of proving the allegation of disinclination to return the loan, had left the onus on the applicant to disprove the insinuation. He had also

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questioned the assumption of the IO that the letter of ex-MP in which he was absolved of all responsibility with regard to the transaction was a consequence of the applicant's influence. We find that the various pleas taken by the applicant have not been considered in the impugned order.

12. In the circumstances, we set aside the impugned order dated 11.03.2003 and remit the matter to Respondent No.1 to re-examine the pleas of the applicant taken in his representation against the findings of the IO as well as those made at the time of hearing of this O.A. and take appropriate decision according to law. The O.A. is disposed of in aforesaid terms. No costs.



(Dr. A.K. Mishra)
Member (A)



(Mrs. Meera Chhibber)
Member (J)



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