

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/610/2019

Date of Reserve: 22.11.2019
Date of Order: 03.01.2020

CORAM:

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

Manoranjan Ray, aged about 49 years, S/o. Late Rajendra Baliarsingh, at present working as Track Maintainer-II (Group-C), Gang No.35, under Senior Section Engineer (P.Way)/East Coast Railway, Kalupadaghat, permanent resident of Baniatangi, PO-Bajpur, PS-Khurda, Sadar, Dist-Khurda, Odisha.

...Applicant

By the Advocate(s)-M/s.N.R.Routray
Smt.J.Pradhan
T.K.Choudhury
S.K.Mohanty

-VERSUS-

Union of India represented through:

1. The General Manager, E.Co.Rly, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda-751 017.
2. Assistant Divisional Engineer & Disciplinary Authority, East Coast railway, A/PO-Balugaon, Dist-Khurda-753 030.
3. Mr.A.Srinivas Rao, Enquiry Officer-cum-Senior Section Engineer (Works), East Coast Railway, At/PO-Balugaon, Dist-Khurda-753 030.

...Respondents

By the Advocate(s)-Mr.S.K.Ojha
ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is presently working as Track Maintainer-II (Group-C) under the Respondent-Railways. He has approached this Tribunal in this O.A. seeking for the following reliefs:

- i) To quash the Memorandum dated 12.09.2019 under Annexure-A/4.
- ii) And to direct the Respondent No.3 to pay Rs.50000.00 cost for unnecessary harassment.

2. Shorn of unnecessary details, it would suffice to note that vide A/1 dated 07.03.2018, applicant was issued with a Memorandum under Rule-9 of Railway Servants (Discipline & Appeal) Rules, 1968 under the following Articles of Charge.

Article-I

That Sri Manoranjan Ray, TM-III of DTM-36 working under SSE(P.Way)/KAPG had marked to Smt.Sasmita Parida on dt. 20.03.2007 as per Hindu custom who is a railway employee presently working as Sr.Clerk under Sr.DSO/KUR office. Due to family disturbance in between them and the family life was deserted and conjugal life was destroyed, finally the family court Khurda accepted the decree of divorce between them on dt. 21.11.15.

Sri Manoranjan Ray, however, had marked another lady named Smt.Minati Mohanty @ Mini Kumari Mohanty prior to his divorce with Smt.Sasmit Parida and also had two children on 05.09.2013 & 25.04.2015 out of his second marriage. The second marriage prior to the divorce with his first wife is established from the inquiry of Ch.S&WI and the statement of villagers of Baniatangi as well as birth documents of the children as well as the family record of the mother of Manoranjan Ray.

By this act, Sri Manoranjan Ray has violated Rule No.3(1)(ii) and 21 of R.S. conduct rules, 1966.

Article-II

That Sri Manoranjan Ray, Trackmaintainer-III impersonated himself as Madan Mohan Ray while making registration in the birth record of the two children born out of his second marriage as detailed in Annexure-II of the charge Sheet.

By the above act he has failed to maintain absolute integrity and acted in a manner of unbecoming of a Railway servant in contravention to article 3.1(i) & (iii) and 21 of RS (Conduct) Rule, 1966 and has thus rendered himself liable for disciplinary action under R.S. D&A Rule, 1968, as amended from time to time".

3. In response to this, the applicant submitted his written statement of defence denying the allegations levelled against him. Thereafter, the Disciplinary Authority appointed Respondent No.3 as Inquiry Officer to enquire into the charges. On conclusion of the inquiry, the IO submitted his report to the Disciplinary Authority. Accordingly, the Disciplinary Authority vide letter dated 02.05.2019 (A/2 series) communicated the same to the applicant requiring him to make representation if any. In response to this, the applicant submitted his written representation dated 19.05.2019 vide A/3. While the matter stood thus, the I.O. vide Memorandum dated 12.09.2019 (A/4) intimated the applicant to appear before him on 21.09.2019 to participate in the 5th sitting of the Enquiry in connection with the Memorandum of Charge dated 07.03.2018. On receipt of the same, the applicant

submitted a representation dated 19.09.2019 (A/5) to the Disciplinary Authority with a request to direct the I.O. not to proceed any further in connection with the Memorandum of Charge dated 07.03.2018. Since, there was no response, the applicant has approached this Tribunal in the instant O.A. seeking for the reliefs as referred to above.

4. This matter came up for admission on 20.09.2019. This Tribunal while directing notice to the respondents to file a short reply on the point of maintainability, as an ad interim measure, stayed the operation of A/4 and this ad interim order is in force as on date.

5. In response to the notice, the respondents have filed an objection/short reply to the O.A.

6. We have heard the learned counsels for both the sides and perused the records. From the pleadings of the parties, the short point to be decided is whether the Respondents or for that matter the Disciplinary Authority is within his right to direct further inquiry into the charges on which the I.O., on conclusion of inquiry had submitted his report to which the applicant had also filed written representation to the report of the O.A.

7. It is the case of the applicant that once he has submitted written representation to the Disciplinary Authority to the report of the I.O., it is no longer open for the Disciplinary Authority to again conduct inquiry in furtherance of inquiry already conducted and report submitted, to which written representation had also been made by the applicant. On the other hand, it is the case of the respondents that there being some deficiency in the report of the IO, the Disciplinary Authority is within its authority under the rules to remand the matter for further inquiry which he exercised after coming to know of the same. The basic ground on which the further inquiry is to be conducted is that some of the vital witness, i.e., PWs have not been examined during the inquiry.

8. Applicant has filed written notes of submission in which it has been submitted that the Disciplinary Authority being a quasi-judicial authority is expected to act independently and impartially and as it reveals from the letter dated 22.08.2018 (R/1), the Disciplinary Authority is backed by the advice of the Personnel Department .

9. We have considered the rival submissions. It is an admitted position that disciplinary proceeding culminates in imposition of punishment or exoneration of the delinquent, as the case may be, by the orders of the Disciplinary Authority. In the instant case, admittedly, the applicant has submitted his written representation to the report of the I.O. At this stage, it was imperative on the part of the Disciplinary Authority to consider the totality of the circumstances in order to come to a definite conclusion. However, in this context it is to be considered whether by such an action on the part of the Disciplinary Authority, any prejudice has caused to the applicant. Applicant has not urged any such point that as a measure of further inquiry, he is going to be prejudiced or adversely affected in any way. Since some of the vital witness, i.e., PWs have indisputably not been examined, there has been procedural irregularities in the conduct of inquiry proceedings and thereby, the legality of the disciplinary proceedings may be called in question. The vital limb of disciplinary proceedings is reasonable opportunity to the delinquent to defend his case. It is not the case of the applicant that by dint of further examination of PWs, his right to defend in the inquiry proceeding is being taken away. In view of this, we are not inclined to interfere with the matter.

10. In view of the above discussions, we dismiss this O.A. at the very threshold, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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