

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

OA No. 728 of 2013

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

Trinath Prasad Patra, aged about 50 years, S/o. late Narasingho Patra, At-Karana Street, Parlakhemundi, Dist-Gajapati was working as Office Superintendent Senior Divisional Operation Manager Office, East Coast Railways, Sambalpur, Odisha.

...Applicant

-VERSUS-

Union of India represented through:

1. The General Manager, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
2. Divisional Railway Manager (P) East Coast Railway, Sambalpur, At/PO/Dist-Sambalpur.
3. Divisional Railway Manager, East Coast Railway, Sambalpur, At/PO/Dist-Sambalpur.
4. Addl. Divisional Railway Manager, East Coast Railway, Sambalpur, At/PO/Dist-Sambalpur.
5. Senior Divisional Operations Manager, East Coast Railway, Sambalpur, At/PO/Dist-Sambalpur.

...Respondents

For the Applicant : Mr..R.Ku.Pattnayak, counsel
Mr.T.K.Dwibedy, counsel
Mr.B.Jally, counsel
Mr.U.Patnaik, counsel

For the respondents: Mr.T.Rath, counsel

Heard & reserved on : 14.2.2020

Order on : 26.2.2020

O R D E R

PER GOKUL CHANDRA PATI, MEMBER(A):

In this Original Application, the applicant, while working as Head Clerk under the respondent-railways faced a major punishment charge sheet and was imposed punishment. The Article of Charges framed against the applicant consisted of his remaining unauthorized absence from duty from 9.8.1999 to 15.8.1999 and then from 18.8.1999 till the date of issuance of charge sheet on 16.8.2000 (Annexure-2 of the O.A.). In the first phase, the applicant was imposed punishment of reduction to a lower time scale of pay to the post of Senior Clerk for a period of four years without cumulative effect by the Disciplinary Authority, which was upheld by the Appellate Authority. Being aggrieved, the applicant filed O.A.No.628/2005 before this Tribunal, which was disposed of vide order dated 30.01.2009 with a finding that the inquiry conducted by the I.O. was vitiated due to non-adherence to the rules.

Accordingly, the matter was remitted back to the Disciplinary Authority to cause de novo inquiry in the state of submission of reply to the Memorandum of Charges by the applicant. Thereafter, fresh inquiry was conducted and the IO submitted his report to the Disciplinary Authority (Respondent No.5), who imposed the punishment vide order dated 24.11.2011 (Annexure-11 to the OA), which reads as follows:

“Now, therefore, in exercise of the power conferred on me in the Railway Service (D&A) Rules, 1968, the undersigned hereby impose the punishment on Shri T.P.Patra, Ex.Head Clerk/now O.S./Optg. for removal from service with effect from the date of issuance of punishment notice with compensatory allowance and gratuity up to the maximum extent permissible as per rules”

2. The appeal dated 12.01.2012 (Annexure-12) preferred by the applicant was considered by the Appellate Authority (Respondent No.4), who passed order dated 1.6.2012 (Annexure-13) remitting the case back to the disciplinary authority to conduct fresh enquiry through an IO other than Sri F.Minz who had functioned as IO earlier. It is also stated in the order dated 1.6.2012 that the Appellate Authority has not examined the merit of the case. It is noticed that the applicant had filed a detailed appeal dated 12.01.2012 (Annexure-12) raising the grounds like non-supply of relevant documents as per the rules by IO without communicating his decision about relevancy of these documents, fairness of the IO, non-consideration of representation dated 24.10.2011 to the disciplinary authority and non-adherence to the rules by the disciplinary authority etc.

3. Both the orders of punishment at Annexure-11 and the Appellate Authority's order at Annexure-13 have been challenged in this O.A. by the applicant.

4. This Tribunal, while considering the prayer for interim relief, on 2.4.2014 directed that the order dated 1.6.2012 passed under Annexure-13 will not be acted upon till filing of the objection. Thereafter, vide order dated 5.5.2014, this interim order was allowed to continue until further orders.

5. The grounds taken by the applicant to challenge the punishment order are that reasonable opportunity of being heard has not been provided. Hence, there is a violation of the principle of natural justice. It is also stated in the O.A. that the authorities have not adhered to the rules while dealing with the matter and imposed harsh punishment. One of the grounds taken is that there was an attempt of destroying the material evidence in the official records so as to punish the applicant. The ground of inordinate delay has also been taken by the applicant. It is also stated in the O.A. that the punishment order dated

24.11.2011 (Annexure-11) and the appellate order dated 1.6.2012 (Annexure-13) are not supported by any material evidence and hence, the same being vitiated, are not legally sustainable.

6. In the Counter filed by the respondents it is averred that the Appellate Authority has remitted the matter back to the Disciplinary Authority for conducting fresh enquiry, without providing any relief to the punishment imposed, by a new IO other than the one who had earlier conducted inquiry. It is stated that the applicant sent a Telegram on 10.08.1999 (Annexure-R/2) seeking leave from 09.08.1999 to 13.08.1999 stating sickness of his wife, which was not considered by the competent authority nor the leave was sanctioned. It is stated that after availing of compensatory rest, leave is not permissible. Therefore, the applicant was suspended on the date of resumption to duty, i.e., 16.08.1999 after unauthorized absence from duty. It has been stated that the applicant should not have left the headquarters without obtaining prior permission from the competent authority. But, he submitted an application on 17.8.1999 for medical examination of his wife seeking headquarters leaving permission without mentioning any specific period, which was not considered by the competent authority. Respondents have stated that even in the absence of permission to leave headquarters, the applicant had left headquarters of posting unauthorizedly and remained absent. It has been submitted that although the applicant was provided with a Railway quarters, it was under lock and key as he was not leaving in the quarters.

7. No rejoinder has been filed by the applicant.

8. Heard learned counsel for the applicant, who submitted that he had filed the detailed written notes of submission on 7.9.2015, which may be taken into consideration for the adjudication of this O.A. It was further submitted by the applicant's counsel that when the Appellate Authority remitted the matter for fresh inquiry, the impugned order of punishment should have been set aside. It was not set aside and the punishment was kept alive as would appear from the order of the Appellate Authority. It is also stated that no dues have been paid although the order at Annexure-11 permitted compensatory allowance and gratuity upto the extent permissible as per rules. Learned counsel for the applicant has cited the judgment of the Hon'ble High Court of Calcutta in **A.K.Dutta vs. Union of India & Ors.** in support of his case. He also has cited the judgment of the Hon'ble Apex Court in **Khem Chand vs. Union of India and others, reported in 1958 AIR 300.** Learned counsel for the applicant has pointed out that as explained in the written notes of submission, the punishment imposed is highly disproportionate and it is against the established norms and jurisprudence. A copy of the order dated 30.01.2009 of

this Tribunal in O.A.No.628/2005 has been filed by the applicant's counsel and it is taken on record.

9. Heard learned counsel for the respondents, who submitted that the period of unauthorized absence extended beyond the period from 9.8.1999 to 26.8.1999 as stated under Article-II of the Charge. Hence, after suspension, the applicant left the headquarters without obtaining prior permission of the competent authority. To a query as to whether the punishment at Annexure-11 would be enforced after the order of the Appellate Authority at Annexure-13, it was stated by the learned counsel for the respondents that the said punishment will not be enforced, particularly when the matter has been remitted back by the order of the Appellate Authority (Annexure-13) for fresh enquiry by an IO other than the one who had earlier conducted the inquiry.

10. We have duly considered the pleadings as well as submissions in the matter by both the parties. It is seen from the enquiry report (Annexure-9 of the OA) that the applicant did not appear before IO for de-novo enquiry as per the order dated 30.1.2009 in OA No. 628/2005, for which the IO completed enquiry ex-parte and the report was sent to the applicant. The applicant in his representation at Annexure-10 of the OA has stated as under:-

“You were requested to examine my representation dated 27.09.2001 for supply of relevant documents enlisted therein which includes supply of copy of muster roll abstracts sent to the DPO office for the period from August 1999 to August 2000 of this charged official along with other relevant documents enclosed with the abstract muster roll on the basis of which subsistence allowance and other payments were done in favour of the undersigned charged official. To see how it can be treated as irrelevant documents of this case. In spite of repeated appeal of you have not supplied all the relevant documents enlisted in my representation dated 27.09.2001 and you have not yet communicated to me the reasons whether the asked documents relevant to the case or not with reasons.”

As per the rules, the applicant should have asked for additional documents required by him to the IO. Instead of that he approached the disciplinary, appellate and revisionary authority on some issue or other and he wanted the IO to wait for the decision of the authorities on his appeal/letter before proceeding with the enquiry. The appellate authority has also taken note of this fact and has observed in the order dated 1.6.2012 (Annexure-13) as under:-

“2. Records available in the case file reveal lack of intent on part of charged officer for smooth conduct of Enquiry proceedings. Statements in appeal reveals that charged officer is aware that his representation is not available with administration to furnish him the replies/re-dressal. He repeatedly quoted the supply of documents stated in the representation dt. 27/09/2001. There are no visible intents of seeking fresh documents in context of de-novo enquiry.

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5. Without going into the merits of contentions submitted in the appeal, I wish to extend further opportunity to the charged officer.

The charged officer may have collected number of documents as on now. He may submit fresh requisitions of remaining documents. The competent authority should positively examine the relevancy and respond to such requests. In the mean time, the charged officer may submit evidences in support of charges against administration.

As such, I remit the case back to the DA for conducting fresh enquiry, without providing relief to the punishment imposed. The I.O. nominated should be other than Shri Fakir Minz, AOM(G) as the charged officer lacks faith on Shri F.Minz, AOM(G)."

11. As per the paragraph 4 of the Master Circular No. 67 of the Railway Board relating to conduct of disciplinary proceedings, the appellate authority is required to act as under:-

“4.The Appellate Authority has to consider three main aspects viz.

- i. whether the procedure was followed correctly and there has been no failure of justice;
- ii. Whether the Disciplinary Authority's findings are based on the evidence taken on record during the inquiry; and
- iii. Whether the quantum of penalty imposed is commensurate to the gravity of offence.

After considering the above points the case should, if necessary, be remitted back to the Disciplinary Authority with directions; otherwise the Appellate Authority should pass reasoned, speaking orders, confirming, enhancing, reducing or setting aside the penalty. The orders of the Appellate Authority should be signed by the authority himself and not on his behalf.

(Rule 22(2) of RS(D&A) Rules& Board's letter No.E(D&A) 78/RG6-11 dt. 3.3.78)”

12. In this case, the appellate authority has remitted the matter to the disciplinary authority for conducting fresh enquiry through a different IO without setting aside the punishment order dated 24.11.2011 of the disciplinary authority (Annexure-11 of the OA), which is incorrect since the disciplinary authority will be required to pass a fresh order after considering fresh enquiry as per the order of the appellate authority.

13. The question of delay has been raised by the applicant in the OA. We observe that the applicant is also partly responsible for delay as he did not appear before the IO on the ground that the IO was biased. From the Article-2 of the charge memo (Annexure-2), the allegation was that the applicant continued to remain absent from 18.8.199 till the issue of the charge memo on 16.8.2000. The punishment of reduction in rank was imposed which was challenged by the applicant in OA No. 628/2005. After disposal of the OA in which the punishment was set aside and the authorities were directed for de-novo enquiry, the applicant did not appear for which the enquiry was completed ex-parte. The appellate authority's order at Annexure-13 for de-novo enquiry was not acted upon by the respondents in view of the Tribunal's

interim order passed in this OA on 2.4.2014. Hence, we are unable to accept the ground of delay raised by the applicant in the OA.

14. In the case of Khem Chand (supra) cited by the applicant's counsel, the IO suggested the punishment to the disciplinary authority. In this case, Hon'ble Apex Court has held as under:-

"It is on the facts quite clear that, when Shri J. B. Tandon concluded his enquiry and definitely found the appellant guilty of practically all the charges he for the first time suggested that the punishment of dismissal should be the proper form of punishment in this case. Shri J. B. Tandon was not, however, the competent authority to dismiss the appellant and, therefore, he could only make a report to the Deputy Commissioner who was the person competent to dismiss the appellant. When the Deputy Commissioner accepted the report and confirmed the opinion that the punishment of dismissal should be inflicted on the appellant, it was on that stage being reached that the appellant was entitled to have a further opportunity given to him to show cause why that particular punishment should not be inflicted on him. There is, therefore, no getting away from the fact that Art. 311(2) has not been fully complied with and the appellant has not had the benefit of all the constitutional protection and accordingly his dismissal cannot be supported."

In this case, the applicant's submission that he was not allowed reasonable opportunity in the enquiry has been duly considered by the Appellate Authority who, in his order dated 1.06.2012 (Annexure-13), has directed for fresh enquiry through another IO since the applicant had alleged biased against him earlier.

15. In the case of A.K. Dutta (supra), the charged officer had asked for inspection of some documents which could not be ensured by the concerned department as the said documents could not be traced out and also, copy of the statements of the witnesses referred to in the charge-sheet were not supplied in spite of repeated requests of the charged officer. In the present OA, the applicant claims that he was not supplied the documents as asked for by him in a letter and he did not ask for afresh before the IO and he did not make any fresh request for documents at the time of de-novo enquiry as stated by the Appellate Authority in the impugned order dated 1.6.2012 and no document has been furnished in applicant's pleadings to contradict such finding of the Appellate Authority. Therefore, the judgment in the case of A.K. Dutta (supra) will be of no assistance to the applicant.

16. The applicant has prayed for quashing of the charge memo dated 16.8.2000 (Annexure-2 of the OA). The allegations in the charge memo include unauthorized absence from the place of posting of the applicant without permission of the competent authority and the Appellate Authority has ordered fresh enquiry through another IO. Therefore, we are not inclined to quash the charge memo as prayed for in the OA.

17. For the reasons discussed earlier, we quash the order dated 24.11.2011 of the disciplinary authority (Annexure-11 of the OA) since the order of fresh enquiry by the Appellate Authority would imply setting aside/quashing of the punishment of order of the disciplinary authority, who is expected to consider the matter afresh to pass a fresh order after completion of enquiry by another IO as ordered by the Appellate Authority. The order dated 1.6.2012 (Annexure-13) of the Appellate Authority is defective since it was not clear about the validity of the order punishment by the disciplinary authority. Hence, the order dated 1.6.2012 (Annexure-13) of the Appellate Authority is also quashed and the matter is remitted to the disciplinary authority for passing an order on the disciplinary proceeding as per the charge memo. It is made clear that if it is decided by the disciplinary authority to conduct enquiry, then it shall be conducted afresh through an officer other than Sri F. Minz as ordered by the Appellate Authority. In view of the delay in the matter, the disciplinary authority will do well to pass final order in the disciplinary proceeding as per the charge memo dated 16.8.2000 (Annexure-2 of the OA) within four months from the date of receipt of a copy of this order. If the applicant wants additional documents, then he will inform the new IO on first sitting of the enquiry on which the IO will take an expeditious appropriate decision in accordance with the rules so as to complete enquiry within time if specified by the disciplinary authority. Pending fresh order to be passed by the disciplinary authority, the applicant's service will be governed by the rule 5(4) of the Railway Servants (Discipline and Appeal) Rules, 1968.

18. The OA is allowed accordingly as above. It is further clarified that in this order no opinion has been expressed by us regarding the issue of quantum of punishment raised by the applicant in the OA. There will be no order as to costs.

(SWARIP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)