

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No.239 of 2014

Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)
Hon'ble Mr. T. Jacob, Member (A)

1. Sri Prabhat Kumar Sahoo aged about 65 years, S/o
Late Rama Chandra Sahoo of Gajapati Nagar
(Bhutnath Mandir) PO - JatniDist – Khurda.

.....Applicant.

VERSUS

1. Union of India, represented through theGeneral
Manager, East Coast Railway, Rail Vihar,
Chandrasekharpur, Bhubaneswar, Dist – Khurda.
2. Chief Operations Manager, East Coast Railway,
Ground Floor, Chandrasekharpur, Bhubaneswar,
Dist – Khurda.
3. Chief Personnel Officer, East Coast Railway, At –
Chandrasekharpur, Bhubaneswar Dist – Khurda.
4. Senior Divisional Mechanical Engineer, East Coast
Railway, Khurda Road, PO – JatniDist – Khurda.

5. Divisional Mechanical Engineer, East Coast Railway,
Khurda Road, PO – Jatni Dist – Khurda.

.....Respondents.

For the applicant : Mr. B. Dash, Advocate.

For the respondents: Mr. S. K. Ojha, Advocate.

Heard & reserved on : 01.04.2021

Order on : 16.06.2021

O R D E R

Per Mr. Swarup Kumar Mishra, Member (J)

The applicant who was working as Loco Pilot was proceeded against in a disciplinary proceeding where the disciplinary authority after completion of inquiry had imposed a penalty of removal of service on the applicant. The appellate authority had upheld the order of disciplinary authority. The revisionary authority vide order dated 03.12.2010 communicated to the applicant vide letter dated 21.12.2010 (Annexure A/13) modified the punishment of dismissal to that of compulsory retirement from service with full compensation pension and 2/3rd of gratuity. The applicant has filed this OA challenging the above order and has prayed for the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

- (i) *The original application may be allowed.*
- (ii) *The impugned action in curtailing 1/3rd of gratuity of the applicant may be set aside. (Annexure A/13).*
- (iii) *The respondents may be directed to clear up the arrear 1/3rd gratuity with interest within a time to be stipulated by this Hon'ble Tribunal. And,*
- (iv) *Such other order(s)/direction(s) may be given in giving complete relief to the applicant.*

2. The respondents in their counter inter alia averred that the OA is not maintainable with the present prayers as no prayers has been made to quash or modify the order on the basis of which the consequential payments have been made. The respondents further submitted that the due process of law was followed during the inquiry, opportunity was given to the applicant and punishment as per rules was imposed on the applicant. The Respondents submitted that the Revisionary authority while imposing the punishment has acted in accordance with rules and since the reduced punishment is compulsory retirement hence

quantum of pension and gratuity has to be mentioned by the said authority as per para 64 of the Railway Services (Pension) Rules 1966.

3. Heard learned counsel for both the sides and have carefully gone through their pleadings and materials on record.
4. It was inter alia submitted by learned counsel for the applicant that the date of hearing was fixed by the disciplinary authority and in this regard he has drawn attention of this Tribunal to the documents vide Annexure A/3 to A/5. There is nothing wrong if the disciplinary authority has given any instruction to the inquiry officer for fixing of date of inquiry, when there is no material to show that the applicant has been prejudiced by said fixing of some of the dates by the inquiry officer on the instruction of disciplinary authority. That apart there is nothing on record to show that the inquiry officer has not acted independently and that he has acted at the behest of disciplinary authority for the purpose of conducting the entire inquiry and for giving the inquiry report in question.

There is no material to show that the applicant has in any way been prejudiced due to the said aspect.

5. It was submitted on behalf of the applicant that supply of some documents were prayed for but the same were not supplied to him. In this regard learned counsel for the applicant had drawn the attention of this Tribunal to the documents vide Annexures A/2(a), A/2(b), A/6 and A/7. The documents as mentioned in the statement of imputations have been mentioned in those documents. But it is seen that the documents have been supplied to him along with charge memo. In this regard learned counsel for the respondents had drawn attention of this Tribunal to the averment made in para 6 (ii) of the counter to the effect that the applicant was supplied with relevant additional documents as has been prayed for, on the date of preliminary enquiry on 08.06.2009 under acknowledgment to defend his case. In the circumstances the applicant has not been able to satisfy this Tribunal that any serious prejudice has been caused to him in this connection and he has been

in any way put in dis-advantageous position to effectively defend himself in the departmental inquiry in question.

6. The main plank of the argument on behalf of the applicant was that he was not given proper time to take rest and as the temperature was high and fan were not functioning properly, therefore he was not able to rest. It is also claimed on behalf of the applicant that he was feeling drowsy. Learned counsel for the applicant had drawn the attention of this Tribunal to the questions asked to the applicant during the inquiry and the answer given by him specifically to the question number 10, 15, 17 and 22. But there was no medical document to show that the applicant was having any health or medical problem during the relevant time. No request was also made by the applicant to the higher authorities or medical doctor for his examination, therefore the bald plea taken by the applicant that he had no adequate rest and not able to attend the duty cannot be accepted in view of the clear and categorical finding given by inquiry officer

in this regard. Whether the applicant was allowed to take reasonable rest and if it was unsafe for the applicant to work as loco pilot during the relevant time was for the subjective satisfaction of the inquiry officer on the basis of the materials produced before him. This Tribunal cannot reassess the evidence with respect to the said aspect as this is not a case of no evidence and the applicant has failed to show that any admissible evidence has been refused to be considered by the inquiry officer or any inadmissible evidence has been considered by him.

7. It was further submitted on behalf of the applicant that only 10 days time was granted to him for engagement of defence counsel as seen from annexure A/6 and before expiry of the said period the date of inquiry was fixed. The applicant could have prayed for the hearing in the departmental inquiry in case he was not able to engage defence counsel. In fact the prayer of the applicant for adjournment was allowed time to engage defence counsel on 08.06.2009 and further as per

request vide application dated 12.06.2009 and 20.06.2009, the proceeding was adjourned.

8. Although punishment of removal has not been challenged by the applicant in this instant OA, still then this Tribunal has gone through record and found that normal date of retirement of the applicant was April 2011 and he has been compulsory retired vide order dated 03.12.2010. The imposing of punishment of allowing the applicant only 2/3rd of gratuity admissible was also an integral part of punishment of compulsory retirement imposed on him. For reason best known to him the applicant has not challenged that part. Therefore this is an additional ground for not interfering with order of punishment by this Tribunal. It is ascertained that the order of Revisionary Authority is in accordance with Para -64 Chapter V of Railway Services (Pension) Rules, 1993 wherein it is mentioned that **“64. Compulsory retirement pension – (1) A railway servant compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty, pension or gratuity, or both at a rate not less than two-thirds and not more than full**

compensation pension or gratuity, or both admissible to him on the date of his compulsory retirement.”

9. Accordingly the OA is dismissed being devoid of merit but in the circumstances without any order as to cost.

(T. JACOB)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

(csk)