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**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA
(Through Video Conferencing)**

O.A/350/753/2021

Date of Order: 25.06.2021

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative Member

Gourab Kumar Roy
Son of Barun Kumar Roy,
Aged about 34 years,
Working as Track Maintainer IV,
Under the overall control of
Divisional Railway Manager,
South Eastern Railway, Kharagpur
At present residing at near Railway Ground,
Deul Para, P.O. Naihati, District 24 Parganas (North),
West Bengal, PIN – 743 165.

..... Applicant.

Versus

1. Union of India,
through General Manager,
S. E Railway,
Garden Reach,
Kolkata – 700 043.
2. The Divisional Railway Manager,
S. E. Railway,
Kharagpur, Pin 721301.
3. The Divisional Engineer (South)
S E. Railway,
Kharagpur, Pin – 721301.
4. The Asstt. Divisional Engineer,
S. E. Railway,
Balasore, Pin

..... Respondents.

For The Applicant(s): Mr. C. Sinha, counsel

For The Respondent(s): Ms. G. Roy, counsel

O R D E R (O R A L)

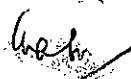
Per: Dr. Nandita Chatterjee, Member (A):

Alleging violation of principle of natural and procedural justice in imposing punishment, the applicant has approached this Tribunal praying for the following relief:

"8.a) To set aside and quash Impugned Charge Memorandum no. D&A/I/ADEN/BLS dated 05.02.2021 issued by the Asstt. Divisional Engineer, S. E. Railway, Balasore.

b) To set aside and quash Impugned Punishment Order No. D&A/I/ADEN/BLS dated 25.03.2021 issued by the Asstt. Divisional Engineer, S.E. Railway, Balasore.

c) Any other order or orders as the Hon'ble Tribunal deems fit and proper."



2. Heard Ld. Counsel, examined documents on record as well as that brought forth by Ld. Counsel for the respondents by way of instructions.

3. Ld. Counsel for the applicant would submit that, the applicant is working as a Track Maintainer-IV under the overall control of Divisional Railway Manager, South Eastern Railway, Kharagpur.

A charge memorandum dated 05.02.2021 was issued to the applicant (as per Annexure A-1 to the O.A) with a single imputation of charge alleging violation of Rule 3 (ii) and (iii) of the Railway Service (Conduct) Rules, 1966.

 The applicant, in response, had requested for a copy of the report submitted by one Shri B. Halder, based on whose reporting, the imputation of misconduct was drawn up against the applicant. The said report was furnished to him by the respondents on 01.03.2021, as per Annexure A-3 to the O.A, but the applicant reportedly received the same only on 25.03.2021.

Ld. Counsel for the applicant would agitate that, despite the fact that he received the vital document only on 25.03.2021, the punishment order was issued to him on 25.03.2021 itself (as per Annexure A-4 to the OA), imposing the following punishment as under:

"Stoppage of one year annual increment for the year 2021 with non-cumulative effect".

Being aggrieved, the applicant preferred an appeal (Annexure A5 to the O.A) in which he alleged that natural and procedural justice was denied to him as he has not been given enough opportunities to defend himself against the contents of the incriminating report.

4. Ld. Counsel for the respondents, on instructions, would bring forth before us a communication from the Appellate Authority dated 22.06.2021, which reads as follows:

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he/hm

To
 Gourab Kumar Roy
 Track Maintainer Gr.IV
 Under SSE(P.Way) ROP

On dtd. 16.06.2021, this office was receipt your appeal dtd. 12.04.2021 and after going through the entire case file it is noticed that a minor penalty charge sheet No. D&A/1/ADEN/BLS dtd. 05.02.2021 has been issued to you for negligence on duty in the night on 30/31.01.2021 on the basis of ambush night inspection report of SSE(P.Way) ROP which is acknowledged by you on 22.02.2021 and after receipt the same you have applied on 26.02.2021 to supply the RUD to prepare you representation against the above mentioned Charge memorandum.

As desired the RUD is received by you on 25.03.2021 from the ADEN/BLS office and accordingly the punishment order dtd. 25.03.2021 i.e. "**Stoppage of one year annual increment for the year 2021 with non cumulative effect**" is also received by you on 29.03.2021, although the punishment order was issued on 25.03.2021.

Now you have submitted an appeal dtd. 12.04.2020 to the undersigned against the punishment order No. D&A/1/ADEN/BLS dtd. 25.03.2021 imposed by the Disciplinary Authority i.e. ADEN/BLS. After perusing the appeal dtd. 12.04.2021, it is noticed that, you have mentioned that no sufficient time is given to you to submit you representation (defence statement) against the charge memorandum. But you have not mentioned any remarks against the charge framed against you.

However, after received the RUD, you have a sufficient time in your hands to submit your defence statement regarding the allegation of charges frame against you by the ADEN/BLS vide memorandum no D & A/1/ADEN/BLS dtd. 05.02.2021 to the Appellate Authority.

So, you are advised to submit your defence statement against the above said charge memorandum to the undersigned i.e Appellate Authority for dispose off your appeal at this end.

Divl. Engineer (South)
 S.E. Railway, Kharagpur"

5. Upon examination of the abovenoted communication, it appears that the Appellate Authority has observed as follows:

- That, the RUD, namely, the incriminating report, was received by the applicant on 25.03.2021.
- That, on 25.03.2021 itself, he was punished with the penalty of stoppage of one year annual increment for the year 2021 with non-cumulative effect.

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- c) That, the applicant/appellant had mentioned in his appeal that he was not given sufficient time to submit his defence statement.
- d) The applicant/appellant, however, has not proffered any remarks against the charge framed against him.
- e) That, the applicant/appellant had sufficient time to hand in his defence statement to the Appellate Authority.
- f) The Appellate Authority, thereafter, advised the applicant/appellant to submit his defence statement to the Appellate authority to enable him to dispose of the appeal at his end.



From the communication of the Appellate Authority, we infer the following procedural errors:

- i) The Appellate Authority has admitted that the penalty was imposed on the same date on which the applicant has received his RUD. Hence, no time or opportunity was accorded to the applicant/appellant to submit his defence.
- ii) The Appellate Authority's observations that sufficient time was given to the applicant/appellant to submit his defence after having received the RUD is contradicted by his own observation at para 2 of his communication wherein he has admitted that the date of receipt of the RUD coincided with the date of the penalty order.
- iii) The applicant's right to file his defence statement against the charge memorandum is with reference to the Disciplinary Authority only and not at the level of the Appellate Authority. Accordingly, the applicant has been denied any opportunity in preferring his defence statement to the appropriate authority.
- iv) It is settled principle of governance that, in any departmental proceedings/disciplinary proceedings, the charged officer is to be given sufficient time and opportunity to respond to the charge memorandum which

A handwritten signature in black ink, appearing to be 'R. B. B.' followed by a surname.

should essentially contain the list of documents relied upon while constructing the imputation of charges.

In the instant context, no documents or RUDs were furnished as annexures to the charge memorandum and the applicant/charged officer had to specifically seek the report from the office of the Disciplinary authority (as per Annexure A-2 to the OA).

No defence statement could be preferred by the applicant/charged officer in the absence of the report, precluding any enquiry into the allegations. The Disciplinary Authority issued the penalty without any reference to a defence statement of the applicant/charged officer or to any enquiry on the charged levelled against the applicant/charged officer.

Each of these omissions leads us to conclude that the disciplinary authority failed to adhere to the principle of natural and procedural justice in this case.

It is also a settled preposition that no penalty can precede procedural formalities. Hence, the Appellate Authority's direction to the applicant/charged officer to file his defence statement against the charge memorandum after imposition of the penalty emerges as a "procedural paradox" in which the proverbial cart of penalty has been placed before the procedural horse.

6. Accordingly, we are of the considered view that the said penalty order dated 25.03.2021 deserves to be quashed and set aside. The applicant should be given enough opportunity to respond to the charge memorandum by way of his defence statement. Now that he has received the RUD, he may prefer his defence statement within 4 weeks of the date of receipt of a copy of this order. Once so received, the disciplinary authority shall conduct and conclude the proceedings in accordance with law.

We, hence, quash the penalty order, and, in the light of ratio in **LIC of India vs A. Masilamani** 2012 (8) Supreme Today 234 (SC) remand the matter back to the Disciplinary Authority to act in accordance with law

7. With these directions, the O.A. is disposed of. There will be no orders on costs.

hch
(Nandita Chatterjee)
Member (A)

bb
(Bidisha Banerjee)
Member (J)

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