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CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH

ORIGINAL APPLICATION NO.150 OF 1987.

Date of decision .. November 30, 1987.

Dhaneswar Sethi, son of Madhu Sudan Sethi,
Loco Shunter, Office of the Shed Foreman, South
Eastern Railway, Puri.

..... APPLICANT

VERSUS

1. General Manager, South Eastern Railway,
Garden Reach, Calcutta.
2. Divisional Railway Manager, South Eastern
Railway, Khurda Road.
3. Divisional Mech. Engineer, South Eastern
Railway, Khurda Road, Dist- Puri.

..... RESPONDENTS

M/s M.M. Basu & B.P. Tripathy,
Advocates. .. For Applicant.

Mr. Ashok Mohanty, Standing Counsel
for Railway Administration. .. For Respondents.

C O R A M :

THE HON'BLE MR. B.R. PATEL, VICE CHAIRMAN

A N D

THE HON'BLE MR. K.P. ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes .
2. To be referred to the Reporters or not ? No .
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes .

JUDGMENT

K.P. ACHARYA, MEMBER (J), In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant challenges the order passed by the disciplinary authority removing the applicant from service due to non-vacation of the Government quarters allotted to him for occupying at Talcher.

2. Shortly stated, the case of the applicant is that having belonged to the scheduled caste, he was appointed as a Khalasi under the South Eastern Railway in the year 1965 and in gradual process of time, the applicant was promoted to the post of Loco Shunter and was stationed at Talcher. On 5.3.1981 the applicant, vide Annexure-1 was transferred from Talcher to Puri. Despite his efforts to get the transfer order cancelled, the applicant ultimately joined at Puri as his labour to get the order of transfer cancelled proved fruitless. After joining at Puri, the applicant did not vacate the quarters which was allotted to him and was under his occupation at Talcher and therefore a disciplinary proceeding was initiated against the applicant for having mis-conducted himself in not obeying the directions of his authorities to vacate the quarters. After a regular inquiry, the Inquiring Officer found the applicant guilty of the charges and accordingly delivered his findings to the disciplinary authority who in his turn concurred with the findings of the Inquiring Officer and ultimately ordered removal of the applicant from service, vide Annexure-5 which is under challenge.

3. In their counter, the respondents maintained that no illegality having been committed during the course of inquiry and all reasonable opportunities having been given to the petitioner to effectively defend himself in the inquiry and in view of the gross mis-conduct committed by the applicant in dis-obeying the orders of his superior authority to vacate the quarters in question, the applicant was rightly found guilty of the charge and he was rightly punished by removing him from service and therefore, the order of removal should not be unsettled.

4. We have heard Mr. Basu, learned counsel for the applicant and Mr. Ashok Mohanty, learned Standing Counsel for the Railway Administration at some length. We have also perused the material documents. It was urged by Mr. Basu that transfer of the applicant from Talcher to Puri is against the prescribed rules as the applicant having belonged to scheduled caste enjoys certain privileges under the rules so far as transfer from one station to the other is concerned. We need not ~~dictate~~ over this point in detail because the grievance of the applicant sought to be redressed in this application is only in respect of the order of removal from service. This application has been filed long after the applicant joined at Puri. Therefore, rightly the applicant did not seek any relief in the application so far as his transfer is concerned; hence we do not feel inclined to entertain any arguments attempting to assail the order of transfer and therefore, we find no merit in the aforesaid contention of the learned counsel for the applicant.

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5. After giving our anxious consideration to the arguments advanced at the Bar and after perusing all the material documents on record, we find that there has been no lacuna on the part of the disciplinary authority or the Inquiring Officer in affording a reasonable opportunity ^{to defend himself} ~~to him~~ to the applicant did not vacate the quarters in question in obedience to the order of the superior authority was not disputed before us. The only argument advanced on this score was that the authorities not having provided the applicant a quarters at Puri, the applicant had no other way out but to retain the quarters at Talcher. Providing ~~a~~ quarters at Puri to the applicant is subject to its availability and despite availability the quarters can be allotted to the applicant when his turn comes in the waiting list. Nothing could be pointed out to us regarding the availability of the quarters at Puri and so also the position at which the applicant stood in the waiting list to have a right to get the quarters according to his placement in waiting list. Such being the situation, we find no merit in the aforesaid contention of the learned counsel for the applicant. After perusing the relevant documents and giving our anxious consideration to the arguments advanced at the Bar, we find that the applicant was rightly found guilty by the Inquiring Officer and the disciplinary authority and therefore, such finding is hereby confirmed but we are of opinion that an extreme deterrent penalty has been imposed on the applicant on a trifling charge. In our opinion, order of

removal of the applicant from service is dis-proportionate to the charge . Therefore, we would hereby set aside the order passed by the competent authority removing the applicant from service and we would direct re-instatement of the applicant. As a measure of punishment, we would direct that two future increments of the applicant be stopped without cumulative effect . We further direct that the applicant would be entitled to his emoluments from the date on which he reports to duty before the Divisional Mechanical Engineer (RespondentNo.3) .

It was submitted to us that the applicant should be made entitled to his full salary during the period of his suspension. We would direct that the period of suspension to be treated as such though the time occupied from the date of suspension till the date previous to which he reports to duty before the Divisional Mechanical Engineer would be treated as DIES NON .

6. Thus, the application is accordingly disposed of leaving the parties to bear their own costs .

leg. case 30-XI-87
..... 30.XI.87 ..
Member (Judicial)

B.R. PATEL, VICE CHAIRMAN, 9 agree :

Ambedkar 30.11.87
..... 30.11.87 ..
Vice Chairman.

Central Administrative Tribunal
Cuttack Bench
November 30 , 1987/ Roy SPA.

