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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

O.A. No. 280 of 1988.

Date of decision - February 26, 1990.

N.K. Das, S/o Late Balaram Das .... Petitioner

Versus

Union of India and others .... Respondents

For Applicant - M/s. D. Patnaik, C.R.Kar, S.Patnaik,  
Advocates.

For Respondents - Mr. L.K.Mohapatra, Standing Counsel  
(Railways)

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CORAM :

THE HONOURABLE MR. P.S.HABEEB MOHD., MEMBER (A)

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THE HONOURABLE MR. N.SENGUPTA, MEMBER (J)

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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 ?

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JUDGMENT.

N. SENGUPTA, MEMBER (J). The applicant has sought for quashing the orders at Annexures-3, 4 and 6 of the application dated 8.12.1986, 20.1.1987 and 11.3.1987 respectively.

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2. The applicant's case is that he was working as a Booking Clerk for about a decade till 1984. In August, 1988 he was working as a Parcel Clerk at Jharsuguda when

fish merchants wanted to get some undue advantage from him but he did not oblige them. On 13.8.84 he was on duty from 4 P.M. till midnight and he booked 11 baskets of fish but the same could not be loaded as the baskets rolled down from the trolley to the railway line of Platform No.2. Prior to that another group of fish merchants wanted to load some fish baskets but they could not be loaded in the Express train from Sambalpur to Howrah due to reasons of delay. These merchants conspired and arranged to get a trap party of the C.B.I. making a false allegation through one Md. Nayum that he (the applicant) wanted a bribe of Rs.10/- for booking ~~for~~ one fish basket. The C.B.I. after going through the formalities of investigation, did not file any charge sheet against him, but a departmental proceeding was started against him for having demanded and accepted Rs.10/- from Md. Nayum on 19.8.84 and for failure to declare his personal cash in the relevant register. To the Memo of charges was appended a list of 20 witnesses ~~only~~ out of only of whom 3 were examined and the rest were withheld with the oblique motive of getting an adverse finding against him (applicant) at any cost. The enquiry proceeded in a leisurely fashion and the Enquiry Officer did not act fairly against which the applicant made some protests and a copy of the petition filed ~~then~~ in that regard on 19.6.86 is Annexure-1 to the applicant. In the application there have been allegations of contradictory stands taken by the Presenting officer during the enquiry, the details thereof need not be mentioned in this judgment. He has

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further averred that he wanted to examine six witnesses in his defence but he was not allowed to do so and his application for examining the witnesses was not considered by the Enquiring Officer. After that, the Divisional Commercial Superintendent ( respondent No.3), the disciplinary authority, passed an order reverting him to the next lower scale of pay for a period of five years with loss of seniority, but he was not given a copy of the enquiry report before the disciplinary authority passed the order of punishment. The applicant has further alleged that the punishment meted out to him is disproportionate of the offence alleged to have been committed and the order of reversion is also illegal otherwise. Against the order of punishment, he preferred an appeal to the Senior Divisional Commercial Superintendent, Chakradharpur (respondent No.4) who passed the order of reversion to the next lower grade for a period of five years fixing his pay at Rs.1560/- in the scale of pay of Rs.1200-2040/-. A copy of this order is Annexure-4. It is alleged that the appellate authority passed the order without applying his mind to it. After that another appeal was preferred to the respondent No.4 who advised him to appeal against the punishment imposed by him (respondent No.4) to the Divisional Railway Manager and a copy of the said advice is at Annexure-5 to the application. After that the applicant preferred an appeal which was not accepted and it was communicated by the respondent No.4 that as per rule no second review of the case was permissible and hence ~~could~~ no action ~~can~~ be taken. Thereafter, he ( the applicant)

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made a representation ( copy at Annexure-7) on 26.12.87 and another representation dated 21.1.88 copy whereof is Annexure-8, but no orders on the representations were passed. On these allegations, the reliefs abovesaid have been sought.

3. The respondents in their counter have maintained that the applicant never reported to the competent authority about any fish merchant trying to get any undue advantage from him ( applicant). The non-filing of a charge sheet by the C.B.I. did not debar the departmental authorities from proceeding against the applicant departmentally. With regard to the allegations in the application about the non-examination of some of the witnesses named in the list annexed to the Memo. of charges, the case of the respondents is that the department was free to examine such of the witnesses as were sufficient to prove the charges without lengthening the proceeding by examination of a number of persons whose evidence might not have been of any avail either to the department or to the applicant himself. They have questioned the right of the applicant to make of allegations / unfairness against the enquiry officer. With regard to the applicant's allegation of non-examination of defence witnesses, case of the respondents is that the applicant could produce only one witness to be examined on his behalf and that witness was examined duly, and the enquiry officer gave ~~akk~~ opportunity to examine other witness if the applicant so liked but the applicant did not examine any other witness. Therefore, the applicant cannot make a grievance. They have further maintained that as respondent No. 4 had duly considered the case of the

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applicant and in a sympathetic way, the Divisional Railway Manager did not think it proper to review the order passed vide Annexure-4 and further that the Chief Commercial Superintendent had no further power to revise or review the order of punishment as the applicant approached the court for redressal. In short, the case of the respondents is that there was no illegality or irregularity in the conduct of the enquiry and that the punishment awarded was proper in the circumstances of the case.

4. We have heard Mr. D.R.Patnaik for the applicant and Mr. L.Mohapatra for the respondents. From the counter filed by the respondents it would be apparent that a copy of the enquiry report was supplied to the applicant only after the punishment was inflicted and along with the notice of punishment imposed. Mr. Patnaik has urged that in view of the Full Bench decision of this Tribunal in Premnath Sharma's case, the giving of a copy of the enquiry report prior to imposition of the penalty was necessary. For applying that case it is first to be found if the punishment that was inflicted was a reduction in rank. In order to decide this question it would be worthwhile to make a reference to Rule 6 of the Railway Servants (Discipline and Appeal) Rules, 1966. Clause (v) of that Rules speaks of reduction to a lower stage in the time scale of pay. Clause (vi) refers to reduction to lower time scale, grade, post of service. Rank as is understood in law, is associated with, besides other things, salary attached to a particular post. Therefore, when there is

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punishment of reduction to a lower time scale, it would amount to reduction in rank. Therefore, to the facts of the instant case, the principle decided in the Premanath Sharma's case would apply. Since admittedly no copy of the enquiry report was supplied to the applicant prior to the imposition of the penalty by the disciplinary authority, there was an incurable irregularity amounting to an illegality.

5. As has been stated above, the grievance of the applicant is that the appellate authority i.e. the Senior D.C.S., Chakradharpur did not apply his mind and passed the order as at Annexure-4 in a casual manner. From Annexure-4 it would be found that the D.C.S. Chakradharpur passed the order as the reviewing authority and he did not mention in Annexure-4 whether he really agreed with the conclusion of the disciplinary authority with regard to the guilt or otherwise of the applicant, he simply stated that he went through the entire case and the enquiry findings and decided that the punishment imposed by the D.C.S. Chakradharpur was not to be changed. ~~As such~~ Such ~~is~~ cryptic and cavalier orders are not envisaged under the rule. What the rules require is consideration of whether the procedure laid down in the rules had been complied with, whether the findings of the disciplinary authority were warranted by the evidence on record, whether the penalty imposed was adequate, inadequate or severe and thereafter to pass an order confirming, enhancing or reducing ~~the~~ or setting aside the penalty, the relevant rule is Rule 22 of the Railway Servants (Discipline and

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Appeal) Rules, 1966. It is also pertinent to note that in Annexure-4, the Senior D.C.S. described himself as the reviewing authority. Review is provided for in Rule 25-A of the said Rules. A review is competent only by the President and by none else. The very use of the words 'reviewing authority' by the Senior D.C.S., Chakradharpur would show non-application of his mind. By Annexure-5 instruction was given by the office of the Sr.D.C.S. Chakradharpur to the applicant to file an appeal to the Divisional Railway Manager, Chakradharpur and after the applicant filed an appeal, the D.R.M. passed an order that as per rule, no second review of the case was permissible. This action would go to show non-application of mind. In this regard, it is pertinent to refer to Rule 5(c) proviso (ii) of the Rules. Rule 5 is one providing for revision. As would be found from the language used in that rule, a revision may be made either suomotu or otherwise which would include a petition made by an aggrieved railway servant. Thus we find that there was an illegality at the stage of imposition of penalty for non-supply of a copy of the enquiry report and non-application of mind by the Sr.D.C.S. and the D.R.M. in disposing of the appeal and the petition for revision.

6. Though the applicant has come a little late to this because of Tribunal, but ✓ these unsatisfactory features and as no ground of limitation had been taken by the respondents and that the application was admitted unconditionally, we do not like to refuse the relief to the applicant on

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the ground of delay.

7. In the result, the application is allowed and the order of punishment is quashed. Now that the applicant has already had a copy of the enquiry report, the enquiry should start from the stage after submission of the enquiry report and it should be completed within a period of two months from the date of receipt of a copy of this judgment. There shall be no order as to costs.

PSI 26/2/1

26/2/1990

**Member (Admn.)**

New Eng<sup>y</sup> 26-2-90

Member (Judicial).

