

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 401 of 1988

Date of Decision: 15.7.1992.

T.P. Panda

Applicant

Versus

Union of India & Others

Respondents

For the applicant

Mr. M.M. Basu,
Advocate

For the respondents

Mr. B. Pal,
O.N. Ghosh
Standing Counsel
(Rly. Administration)

...

C O R A M

THE HONOURABLE MR. K.P. ACHARYA, VICE-CHAIRMAN

AND

THE HONOURABLE MISS USHA SAVARA (MEMBER (ADMN))

...

1. Whether the reporters of local newspapers may be allowed to see the judgment ? Yes
2. To be referred to reporters or not ? *ND*
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes

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C O R A M:

THE HONOURABLE MR.K.P.ACHARYA, VICE-CHAIRMAN

A N D

THE HONOURABLE MISS USHA SAVARA, MEMBER (ADMN.)

J U D G M E N T

K.P.ACHARYA, V.C. In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to quash Annexure-11 dated 11.5.1983 passed by the Divisional Mechanical Engineer, S.E.Railway, Khurda Road imposing punishment to the extent of removal of the applicant from service resulting from a disciplinary proceeding and Annexure-13, the order passed by the appellate authority dated 28.9.1988 confirming the order of punishment.

2. Shortlly stated, the case of the applicant is that he was initially appointed as Engine Cleaner on 30.6.1962 and ultimately worked as Driver Grade C, having been promoted. While he was discharging the duties of a Driver Grade C, a chargesheet was delivered to the applicant on an allegation that while an ambush check was conducted on 4.9.1981 it

was found that as soon as 214 Down train stopped at Delang Railway station, 20 Kgs. of raw coal was dropped from the engine with the connivance of the Driver, Shri T.P. Panda who is the petitioner in this application. A full fledged enquiry was held and the Enquiring Officer submitted his report to the Disciplinary authority finding that the charge had been established and the disciplinary authority in his turn confirmed the findings of the Enquiring Officer and ordered removal of the applicant from service and the appeal preferred by the applicant did not yield any fruitful result as the appellate authority confirmed the order passed by the disciplinary authority. Both these orders contained in Annexures-11 and 13 are sought to be quashed.

3. In their counter, the respondents maintained that there is overwhelming evidence on the side of the prosecution bringing home the charge against the applicant and furthermore principles of natural justice having been strictly complied the case is devoid of merit and is liable to be dismissed.

4. We have heard Mr. M. M. Basu, learned counsel for the applicant and Mr. B. Pal, learned Senior Standing Counsel (Railways) for the respondents at a considerable length.

5. Before we discuss the contentions advanced by learned counsel for both sides, it is worthwhile to mention that in an application under Article 226 of the Constitution the High Court can interfere in case of this nature when there has been a violation of principles of natural justice and/or when it is found that it is a case of no evidence.

In the case of S. P. Sampath Kumar v. Union of India and

others reported in AIR 1987 SC 386, Their Lordships of the Supreme Court have held that the Tribunal is a substitute for the High Court and not supplemental to the High Court. Therefore, exercising the same powers that of a High Court, a Tribunal could quash the order of punishment on both the abovementioned grounds. But in addition to the above, Section 14 of the Administrative Tribunals Act, 1985 authorises a Tribunal to exercise same jurisdiction as that of a High Court ^{or} ~~as~~ a Civil Court. The undisputed position is that the Civil Court can weigh and shift evidence and could come to its own findings on questions of fact. Therefore, in our opinion, in a case of this nature, a Tribunal can quash the order of punishment where it is found that the principles of natural justice have been violated and/or the facts relied upon by the prosecution did not warrant an order of punishment. This settled position of law was rightly and fairly not disputed at the Bar.

6. Mr. Basu, learned counsel for the applicant, invited our attention to the enquiry report, Annexure-10. The Enquiring Officer has stated that witness No. 1 in answer to question No. 2 stated that he cannot say who had actually dropped the raw coal. But the Driver being the custodian of the railway raw coal, he is responsible for such dropping. At another stage, the enquiry Officer stated that while answering to question No. 4 the witness No. 2 stated that he and another and witness No. 1 have seen that the coal was dropped from the Engine of 214 Down. From this evidence, the enquiry Officer observed as follows:

" From this it is evident that the dropping of the coal from the Engine was substantiated, although it is not substantiated actually who dropped the coal. "

(Emphasis is ours)

Again, at another stage, the Enquiry Officer observed as follows:

" In the above circumstances the charges framed against Shri T.P.Panda, is indirectly substantiated because the ~~coal which was~~ dropped from the engine cab cannot be dropped without connivance of the driver."

(Emphasis is ours)

From the above quoted findings of the Enquiry Officer, without least hesitation in our mind we cannot ^{but} drive ourselves to an irresistible conclusion that the Enquiring Officer has travelled on surmises and has allowed himself to be guided by presumptions. Law is well settled that even though in a departmental proceeding proof beyond reasonable doubt is not required as that of a criminal trial but the charge must be established with satisfactory evidence leaving no room for suspicion. The appellate authority has also allowed himself to be influenced by the fact that since the applicant was the Driver of the engine nobody ^{else} could have thrown the coal. This presumption is undoubtedly rebutted by the fact that there is a mention in the appellate order that the Fireman was also a member of the crew in the engine. Therefore, in our opinion, it cannot be said with utmost certainty that the Driver that is the applicant was responsible for throwing the raw coal and nobody else. In the case of Union of India versus H.C.Goel, reported in AIR 1964 SC 364 Their Lordships have been pleased to observe as follows:

" Though we fully appreciate the anxiety of the appellant to root out corruption from public service, we cannot ignore the fact that in carrying out the said purpose, mere suspicion should not be allowed to take the place of proof even in domestic enquiries. It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous

care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules. "

Applying the principles laid down by Their Lordships in the present case even if it is held that there is grave suspicion regarding the complicity of the applicant in the crime in question yet it cannot take the place of proof. Therefore, in our opinion, the charge has not been established against the applicant with satisfactory evidence.

7. In the present case, there appears to be another serious infirmity. From the order passed in Annexure-11 it is found that a copy of the enquiry report has been endorsed to the applicant along with the impugned order of punishment. In the case of Union of India and others v. Mohd. Ramzan Khan, reported in AIR 1991 SC 471, my Lord the Chief Justice of India Mr. R.N. Misra speaking for the Court was pleased to observe as follows:

" We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter. "

Applying the observations laid down by the Hon'ble Supreme Court in the case of Union of India v. Mohd. Ramzan Khan (Supra) it cannot but be held that principles of natural justice have been violated in the present case. Therefore, both on questions of fact and law, the order of punishment is not sustainable. Hence, we do hereby quash the order of

punishment passed by the disciplinary authority and that of the appellate authority (contained in Annexures-11 and 13) and we do hereby exonerate the applicant from the charges levelled against him and he stands acquitted. The applicant be reinstated to service within 30 days from the date of receipt of a copy of this judgment if he has not yet attained age of superannuation and within 60 days therefrom the applicant be paid his emoluments to which he would be entitled as if he was continuing in service.

8. Thus, the application stands allowed leaving the parties to bear their own costs.

U. Sawane
MEMBER (ADMINISTRATIVE)



Central Administrative Tribunal
Cuttack Bench, Cuttack
15. 11. 1992
B. S. Singh

[Signature]
15/11/92
VICE-CHAIRMAN



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D.No. 209 /193/XI+A

New Delhi, Dated 30th May 1993

From: Vinod Kumar, B.A.B.L.,
N.K. Chawala,
Assistant Registrar.

*S.O. (J)
Pl. inform
all concerned
immediately
ka
31/5*

To: The Registrar,
High Court of Central Administrative Tribunal,
Cuttack Bench, Cuttack.

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO(S). 8521 OF 1993
(Petition under Article 136 of the Constitution of India
for Special Leave to Appeal to the Supreme Court from the
Judgment and Order dated the 15-7-1992 of the High Court
of Central Administrative Tribunal, in Cuttack Bench,
Cuttack in Original Application No. 401 of 1988)

Union of India & Ors.

PETITIONER S

Tripati Prasad Panda VERSUS

RESPONDENT

Sir,

I am to inform you that ~~that~~ Petition above-mentioned for Special Leave to appeal to this Court was filed on behalf of the Petitioners above-named from the Judgment and Order above-noted and that the same was dismissed with some directions by this Court on the 29th day of April, 1993.

A certified copy of the Order of this Court as contained in the Record of Proceedings dated 29th April, 1993 in the matter is enclosed herewith for your information and record.

Please acknowledge receipt.

Yours faithfully,

[Signature]
Assistant Registrar.

*31/5
S.O. (J)*

31.5.93

sh. AKS.

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

33

Petition(s) for Special Leave to Appeal (Civil/Cr) No(s) 8521-93

(From the judgment and order dated 15.7.92

of the ~~High Court~~ CAT

Cuttack Bench in OA 401/88

Union of India & Ors.

Petitioner (s)

Versus

446964

Tripathi Prasad Panda

(With IA No. 1) Appn. for c/delay in filing SLP Respondent (s)

Date: 29.4.93

This/these petition (s) was/were called on for hearing today.

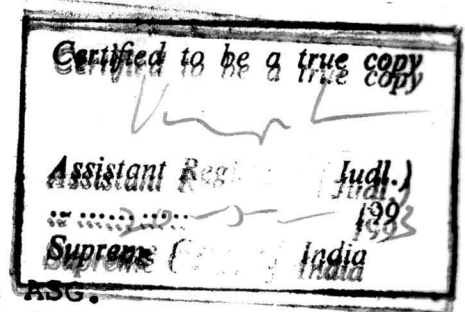
CORAM:

Hon'ble Mr. Justice P.B. Sawant
 Hon'ble Mr. Justice B.P. Jeevan Reddy
 Hon'ble Mr. Justice

For the petitioner (s)

Mr. Altaf Ahmed, ASG.
 Mr. Ranjan Mukherjee, Adv.
 Mr. V.K. Verma, Adv.

For the respondent (s)

UPON hearing counsel the Court made the following
ORDER

Delay condoned. M

We do not agree with the reasoning of the Tribunal that the Tribunal can interfere with the finding of fact arrived at by the enquiring and/or disciplinary authority and can also interfere with the punishment if it is disproportionate to the misconduct proved. The Tribunal's jurisdiction is the same as that of the High Court under Article 226 of the Constitution and no more. The observations made by the Tribunal are, therefore, not approved by us. It is high time that the Tribunal corrects its misconception in that behalf.

However, on the facts of this case, we are not inclined to interfere with the final conclusion of the Tribunal; Hence the special leave petition is dismissed.

(J.S. Chauhan)
 Court Master.

(I.L. Dhingra)
 Court Master.

2023/13/1993
 10/5/1995

Recd to day from Mr. Chauhan
 8/5/93

(34)



Jan 21/5

SEALED IN MY PRESENCE

4/5
21/5/93