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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO: 439 OF 1988.

Date of decision: May 8<sup>th</sup>, 1991

S.Narasingha Rao

.... Applicant

-Versus-

Union of India and others

.... Respondents

For the applicant

.... M/s. G.C. Mohapatra,  
J.M. Patnaik,  
Advocate.

For the Respondents

.... M/s. B.Pal, O.N.Ghosh,  
Senior Standing  
Counsel (Railway Admn.)

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C O R A M S:

THE HONOURABLE MR. B.R.PATEL, VICE CHAIRMAN

A ND

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

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1. Whether reporters of local papers may be permitted to see the Judgment? Yes.
2. To be referred to the reporters or not? No
3. Whether Their Lordship's wish to see the fair copy of the judgment? Yes.

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JUDGMENT

**B.R.PATEL, VICE CHAIRMAN:** The applicant had earlier approached the Hon'ble High Court of Orissa in O.J.C. No.2253 of 1984 seeking relief against the penalty of removal from service imposed on him as a result of a disciplinary enquiry. That case came on transferred to this Bench of the Central Administrative Tribunal under Section 29 of the Administrative Tribunals Act, 1985 and was registered as T.A. No. 374 of 1986. The judgment in that case was delivered on December, 16, 1987. We found in that case that no appeal had been preferred against the order of removal to the Appellate Authority and therefore directed that the petitioner should file an appeal before the appellate authority against the order of removal and the appellate authority was directed to dispose of the appeal in the light of the observations made by the Hon'ble Supreme Court in the case of Satyavir Singh and another Vrs. Union of India and others reported in AIR 1986 SC 555 within three months from the date of filing of the appeal. In pursuance of the aforesaid direction the applicant preferred an appeal before the Divisional Railway Manager (DRM for short) South Eastern Railway, Khurda Road on 11.1.1988 and followed it up by a petition on 12.2.1988 with a prayer to reinstate the applicant

*B.R.Patel*

in service. The Divisional Railway Manager, Khurda Road vide his order dated 24th March, 1988 appointed the Senior Divisional Engineer, Khurda Road as enquiry Officer to enquire into the charges framed against the applicant. For this purpose he enclosed to the order a Memorandum containing the statement of charges imputations, a list of documents and a list of witnesses. The single article of charge 1. at Annexure-1 to the Memorandum dated 23.4.1988, is that on 19.6.1984 at about 15.35 hrs. the applicant entered the Divisional Office meeting Room, in a drunken state ~~to~~ ~~he~~ assault with the then Divisional Railway Manager, Khurda Road. The applicant submitted his defence statement (Annexure-8) and the enquiry officer conducted the enquiry and submitted his report holding the charge as proved. The Divisional Railway Manager, Khurda Road, accepted the findings of the enquiry officer and by his order dated 20.9.88 upheld the penalty of removal from service earlier imposed on him on 29.6.1984.

2. The Respondents have maintained in their counter affidavit that as the applicant has been afforded reasonable opportunity to defend himself and the enquiry has been conducted according to the rules the order of penalty imposed on the applicant should not be interfered with.

3. We have heard Mr. G.C. Mohapatra the learned Counsel for the applicant and Mr. B. Pal the

*Praveen*

learned Senior Standing Counsel (Central) for the Respondents and perused the relevant papers. Mr. Mohapatra has contended that the charge has not been proved against the applicant as is revealed in the course of the enquiry. He has further stated that except prosecution witnesses Nos. 6 and 7 who were officers no other witnesses had uttered a single word against the applicant. There were seven witnesses examined from the prosecution side and four including the applicant for the defence. He has submitted that though the Tribunal may not reappraise the evidence on record of the domestic enquiry ~~xxx~~ it has definitely jurisdiction to interfere with the finding if the finding is perverse or is not reasonable and according to him the finding of the enquiry officer is perverse. Mr. Mohapatra has further contended that the applicant had been prosecuted in a court for a criminal offence in G.R. Case No. 1161 of 1984 and on the very same TR No. 77 of 1986 charge no disciplinary proceeding can be instituted against him, particularly when there is no evidence from the side of the prosecution that the applicant had committed the alleged offence. Only two witnesses were examined on behalf of the prosecution namely the Medical Officer (PW-I) and ~~xxx~~ ASI of Police who had registered the case and investigated it (PW-II). There was no eye witness examined in that case. The Magistrate has observed that in the absence of any other positive evidence, he did not hold the

accused guilty of any offence as alleged and acquitted him and ordered that the case should be entered as one of ~~the~~ mistake of fact. As the case has ended because of nonavailability of direct or positive evidence, we hold that institution of a disciplinary proceeding to enquire into the same charges and enquire into ~~it~~ with proper evidence would not be irregular or illegal. The Hon'ble Supreme Court have held that there is no legal bar against proceeding with a disciplinary proceeding when a criminal case is pending against the delinquent officer. Mr. Mohapatra has further contended that no copy of the enquiry report had been supplied to the applicant before the penalty of removal from service was confirmed by the DRM. While going through the order of the DRM dated 27.9.1988, we have found that a copy of the enquiry report has been sent to the applicant alongwith the order upholding the penalty of removal from service. This clearly shows that a copy of the enquiry report had not been sent to the applicant to enable ~~him~~ to make his representation against it, before passing the order of penalty. This omission on the part of the DRM has violated the principle of natural justice as has been held by the Hon'ble Supreme Court in the case of Mohd. Ramzan Vs. Union of India reported in 1990 (3) Judgments today 456 and the Full Bench judgments of the Central Administrative Tribunals in the case of Prem Nath K. Sharma Vs. Union of India reported in 1988 (3) SLJ 449. We would therefore quash the penalty

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of removal from service and direct that the Divisional Railway Manager, Khurda Road should give a copy of the enquiry report to the applicant affording him an opportunity to make representation, if any, against the finding of the enquiry officer and consider the representation so made before passing appropriate orders. This does not however mean that the D.R.M. Khurda Road is compelled to proceed with the disciplinary proceeding from the stage indicated above. He is free to drop the proceedings. It is his discretion to proceed further with the proceedings or not to so proceed. If he decides to proceed with the enquiry from the stage indicated above, we would direct that the proceedings should be finalised within two months from the date of receipt of a copy of this judgment since the applicant is under proceedings from June 1984. We have refrained from expressing any opinion on the plea of Mr. Mohapatra on some of the points raised lest it should prejudice the interest of the applicant before the Divisional Railway Manager, Khurda Road. The applicant is free to make his submission before the Divisional Railway Manager on various points which were urged before us on his behalf.

4. This case is accordingly disposed of.

No costs.

MEMBER (JUDICAT.)



..... *Brundt 8.5.91* .....