

(11) 11
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO: 107 OF 1989

Date of decision: April, 19, 1991

Shri Nageswar Tiwary : Applicant

Versus

Union of India and others : Respondents

For the applicant : M/s. J.K. Misra and
N.C. Misra,
Advocates.

For the Respondents : Mr. Ashok Mohanty,
Sr. Standing Counsel

C O R A M:

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

A N D

THE HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the fair copy of 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

B.R.PATEL, VICE CHAIRMAN: Earlier the applicant who was an Assistant Station Master, Bamra in the district of Sambalpur under the South Eastern Railway was proceeded against for unauthorised absence from duty and penalty of removal from service was imposed on him. He had moved the Central Administrative Tribunal, Cuttack Bench (the Tribunal) in Original Application No. 89 of 1986. The Tribunal after having heard the parties vide their judgment dated 30.11.1987 quashed the penalty and remitted the case for a fresh enquiry along with a timetable for expeditious disposal of the proceeding. According to the aforesaid orders of the Tribunal, the applicant appeared before the Respondent No.4 on 18th December, 1987. On 19.1.1988, he submitted his reply vide Annexure-5 in which he requested the authorities to exonerate him of the charges. Enquiry was entrusted to the Assistant Operating Superintendent Chakradharpur, South Eastern Railway who has been impleaded as Respondent No.6. There was only one article of charge which runs as follows: "That the said Shri N.Tiwari while functioning as ASM/BMB committed serious misconduct, in that he has been unauthorisedly absenting from duty from 26.11.1982". The enquiry officer submitted his report dated 24.5.1988 holding the applicant guilty of unauthorised absence from duty with effect from 26.11.1982 Vide Annexure-7. The Disciplinary

R.P.M.

Authority i.e. Divisional Operating Superintendent, South Eastern Railway, Chakradharpur, Respondent No.4 accepted the findings of the enquiry officer and imposed the punishment of removal from service as order a disciplinary measure vide dated 30.5.1988 (Annexure-8). The applicant appealed to the Senior Divisional Operating Superintendent, South Eastern Railway, Chakradharpur, who is the Appellate Authority, against the order passed by the Disciplinary Authority. The appellate authority rejected the appeal and allowed the punishment to stand vide order dated 12.8.1988 (Annexure-9series). The applicant has moved the Tribunal for orders quashing the enquiry report dated 24.5.1988 (Annexure-7) and the order of removal Vide-Annexure-8) and to allow the application with costs.

2. We have heard Mr. J.K.Misra, the learned Counsel for the applicant and Mr. Ashok Mohanty, the learned Senior Standing Counsel (Railway Administration) for the Respondents and gone through the relevant records, including the written reply of the Respondents. Mr. Misra has urged that the applicant duly asked for the copies of the relevant documents vide his letter addressed to the D.O.S., South Eastern Railway, Chakradharpur dated 4.4.1985 (Annexure-1) only document at Sl. 1 and e were supplied to him but not the documents item Nos. f to c. The Disciplinary Authority also did not assign any reason for non supply of these documents despite the

direction of the Tribunal in Original Application No. 89 of 1986. He had duly supplied to the Department the Medical Certificate obtained from Dr. S.V. Prasad and Dr. R.C. Prasad and also furnished the Photo copies of 19.1.1988. Mr. Mishra has further urged ~~xxed~~ that the enquiry officer started the enquiry ~~withothe~~ examination of the applicant and not with any Departmental witnesses. This, has according to Mr. Misra, seriously jeopardised the interest of the applicant. As the Deparrment has marked his Attendance as sick in the register, his absence cannot be treated as unauthorised. Mr. Misra has further contended that the enquiry was continued at Jharsguda instead of Chakradharpur and this ~~prejudiced~~ the applicant. According to Mr. Misra the only witness examined on behalf of the Department was Respondent No.5 who could not say under whose direction the applicant was marked absent from 26.5.1984 to 3.9.1985. The Respondent 5 has further stated in his evidence that there are no documents or materials with the Railway Administration to make the entry in the Muster Roll that the applicant was to be treated as absent from duty with effect from 26.5.1984 to 3.9.1985. According to Mr. Misra Respondent No.5 has further stated that the applicant continued to remain sick and resumed work and finally after 7 to 8 months when he did not resume duty he reported the matter to Respondent No.3. According to Mr. Misra there were no material with the Department to mark the applicant absent from 26.5.84 to 3.9.85.

(15)

(14)

The examination of the applicant before any other witness on behalf of Department is bad in law and has vitiated the proceedings and offended the normal rule of law. Mr. Misra has further contended that the enquiry has been conducted in a perfunctory manner and without any conformity with law and that the Respondent No. 5 the sole witness of the Department had malafide intention to harass the applicant which is evident from his statement and conduct. Mr. Misra has further averred that the applicant has been declared fit with effect from 18.9.1985 and he has reported to join his duty. In short, according to Mr. Misra the applicant is entitled to be reinstated with back salaries, wages, promotions and/or any other benefits. He has also cited the judgment in Central Railway Vs. Raghbir Saran reported in 1983 (II) LLJ, Page-26 and urged that the Department should not only lead evidence first but to prove it affirmatively that the employee is guilty of the charge framed. Asking Respondent to appear first and examination of his witness was putting the burden on Respondent to prove the negative that he was not absent in an authorised manner. Another judgment cited by Mr. Misra was the one in the case of M. K. Keshava, Village Accountant Vs. The Deputy Commissioner, Kodagu Madikari and others reported in 1984 (2) SLR, Page-278 (para-8). In this case the order of dismissal has been set aside. This judgment makes it clear that presentation officer in no circumstances

can be a witness against the delinquent official Mr. Misra has finally urged that the orders passed by the disciplinary authority imposing the penalty and the order of Appellate Authority rejecting the appeal are not reasoned orders and should, as such be quashed. Mr. Ashok Mohanty on the other hand has maintained that due opportunity has been afforded to the applicant as directed by the Tribunal in their judgment in the previous case and that examination of the applicant before the Departmental witness in no way prejudiced the applicant. The de novo enquiry has been conducted with due regard to the rules and procedure. According to Mr. Mohanty the applicant filed a medical certificate only on 20.3.1985 for the first time for the purpose of asking for adjournment before the enquiry officer. According to him at no point of time the applicant reported himself to be examined by the Railway doctor as per rules and obtained any certificate from him. The plea of the applicant that it was for the Railway Administration to come to him with Railway doctor to examine him is, according to Mr. Mohapatra, utterly and wholly unacceptable. This is not permitted by any rule. Mr. Mohanty has also said that all the relevant documents on the basis of which the charge was framed were duly supplied to the applicant. The consistent stand of the Railway authorities is that the applicant has not submitted any application or medical certificate prior to 20.3. 1985 and the Respondents not being in possession or aware of any other documents

could not have made available the same to the applicant.

In short, according to Mr. Mohanty the applicant neither applied for leave nor gave any sick certificate and remained absent from duty without any intimation. We refrain giving our decision on the various points raised by the parties to the case because while going through the documents particularly the order of the Disciplinary Authority dated 30.5.1988 (Annexure-8), we have noticed that a copy of the enquiry report was enclosed with the order of imposing the penalty which clearly shows that copy of the enquiry report had not been supplied to the applicant before the disciplinary authority imposed ^{on} him the penalty of removal from service. This has prevented the applicant from making ~~these~~ representation against the enquiry report and as such the principle of natural justice has been violated as has been held by the Full Bench of the Tribunal in their judgment in the case of Premnath K. Sharma Vs. Union of India and others reported in 1988 (3) SLJ 449 and the Judgment of Hon'ble Supreme Court in the case of Mohd. Ramzan Vs. Union of India and others reported in 1990 (3) Judgments today 456. We would therefore quash the order of the disciplinary authority imposing the penalty of removal from service i.e. Annexure-8 and also the order of appellate authority dated 12.8.1988 rejecting the appeal as at Annexure-9 series and remit the case to the disciplinary authority to supply a copy of the enquiry report and give an opportunity to the applicant to

make his representation if any, which he should

consider before passing appropriate order, if he wants to proceed with the enquiry from that stage. It is upto him to proceed with the enquiry or not. We have refrained from giving our decision on the various averments made by the parties to the case lest it should prejudice the case of the applicant before the disciplinary authority who may consider the case afresh from the stage of supply of a copy of the enquiry report. As the Disciplinary proceeding has taken already long time resulting in two cases before the Tribunal we would direct that the matter should be finalised as early as possible at any rate within two months from the date of receipt of a copy of the judgment. This case is accordingly disposed of. No costs.

K. Mohanty
19.4.91
MEMBER (JUDICIAL)

B. Mohanty
19.4.91
VICE CHAIRMAN



Central Administrative Tribunal,
Cuttack Bench: K. Mohanty.