

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK.

Original Application No.108 of 1989.

Date of decision : August 9,1989.

Sri R.J.Rao, son of late R.Ramaswamy,
Ex-Diesel Driver Assistant of LOCO Shed,
Bhadrak S.E.Railways,Bhadrak, Dist-Balasore,
At -Chena Agraram,Chhatrapur, Dist.Ganjam.

... Applicant.

Versus

1. Union of India, represented by the
Secretary, Ministry of Railways, New Delhi.
2. Divisional Railway Manager,
South Eastern Railway,Khurda Road,
Dist-Puri.
3. Divisional Mechanical Engineer,
Khurda Road, S.E.Railway, Dist.Puri.
4. Sri Sanjaya Gupta,
Inquiry Officer-cum-Asst. Mechanical
Engineer II, South Eastern Railway,
Khurda Road, Dist-Puri.

.... Respondents.

For the applicant ... M/s.Deepak Misra,
R.N.Naik,
Anil Deo,
B.S.Tripathy, Advocates.

For the respondents ... M/s.D.N.Misra,
S.C.Samantray,
P.K.Mohanty, Advocates.

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)

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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 ? *Yes*
 3. Whether Their Lordships wish to see the fair copy
of the judgment ? Yes.
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J U D G M E N T

N. SENGUPTA, MEMBER (J) In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant seeks the reliefs of quashing the orders in Annexures-1 to 3 and reinstatement with full back wages.

2. The facts, stated in brief, are that the applicant was working as Diesel Driver Assistant (DDA) under the South Eastern Railway, Khurda Road. While so working, a departmental proceeding under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter to be referred to as the Rules) was started. In that proceeding, penalty of reversion to the next lower grade/post of Fireman Gr. II for a period of three years with effect from 16.3.1988 was imposed. The applicant preferred an appeal to Respondent No. 2, i.e. the Divisional Railway Manager, South Eastern Railway, Khurda Road. Respondent No. 2 on a perusal of the records came to the conclusion that the punishment inflicted on the applicant was inadequate and it required enhancement. Holding thus, the Respondent No. 2 enhanced the punishment to compulsory retirement. The grievance of the applicant is that Respondent No. 2 acted illegally and without complying with the principles of natural justice inasmuch as he (the applicant) was not given any notice of such enhancement.

3. In the counter, it has been averred that under the Rules, the appellate authority has power to enhance a penalty imposed by the Disciplinary authority and that no notice for such enhancement is necessary.

4. We have heard Mr. Deepak Misra, learned counsel for

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the applicant and Mr.D.N.Misra, learned Standing Counsel for the Railway Administration. Mr.D.N.Misra, has contended that in view of the provisions of Rule 22 of the Rules, no notice was necessary and in this connection, he has invited our attention to Rule 22 of the Rules. Mr.D.N.Misra has really invited our attention to sub-rule (2) (iii) of Rule 22 of the Rules and has contended that the provisions make it abundantly clear that really no notice for enhancing the punishment is necessary. Before going to examine the correctness of this submission of Mr.D.N.Misra, it is to be stated ^{that} ^{is doubtful} even assuming that the Rules so enjoined, we are afraid whether this rule could be allowed to stand as it would then offend the principles of natural justice. It is the cardinal principle that no person should be given a punishment without being heard and enhancement of punishment really amounts to a fresh punishment and without noticing and hearing the person concerned, it will be unjust and improper to enhance the punishment. In the present circumstances, we are not required to rely on that principle, as in our opinion, the rule itself enjoins giving of a notice before enhancing punishment to one of a major penalties prescribed under Rule 6 of the Rules. For proper understanding and appreciation, it would be better to quote the ~~two~~ ^{two} provisos to Sub-rule (2) (c) of Rule 22 of the Rules.

" (ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of Rule 6 and an inquiry under Rule 9 has not already been held in the case, the appellate authority shall, subject to

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the provisions of Rule 14, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 9 and thereafter, on a consideration of the proceedings of such inquiry and make such orders as it may deem fit;

(iii) if the enhanced penalty which the appellate authority proposes to impose, is one of the penalties specified in clauses (v) to (ix) of Rule 6 and an inquiry under Rule 9 has already been held in the case, the appellate authority shall, make such orders as it may deem fit; and

(iv) subject to the provisions of Rule 14, the appellate authority shall-

(a) where the enhanced penalty which the appellate authority proposes to impose, is the one specified in clause (iv) of Rule 6 and falls within the scope of the provisions contained in sub-rule (2) of Rule 11; and

(b) where an inquiry in the manner laid down in Rule 9, has not already been held in the case, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 9 and thereafter, on a consideration of the proceedings of such inquiry, pass such orders as it may deem fit; and

(v) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of Rule 11, of making a representation against such enhanced penalty.

(3) In an appeal against any other order specified in Rule 18, the appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable. "

On a reading of proviso (v) which has been quoted above, it would be abundantly clear that before an order imposing enhanced penalty is made, the appellant must be given a reasonable opportunity as far as may be, in accordance with the provisions of Rule 11 of making a representation against such enhanced penalty. Admittedly no such opportunity was given. Therefore, we are unable to sustain the order imposing

*See Encl 6
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the enhanced penalty of compulsory retirement vide Annexure-3. The order as per Annexure-3 is hereby quashed. As a result of this order, the applicant should be deemed to have been working in the post of Fireman Gr.II as ordered by the Disciplinary authority with effect from 10.3.1988 and his emoluments should accordingly be paid from that date.

5. This application stands allowed leaving the parties to bear their own costs.

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Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

I agree.



[Signature]
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.....
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
August, 9, 1989/Saranggi.