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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO:11 OF 1989.

Date of decision : 9th November, 1990.

M.P.Mohapatra : Applicant

Versus

Union of India and others : Respondents.

For the applicant . M/s J.Das, B.S.Tripathy,
B.K.Sahoo, K.P.Misra,
S.K.Purohit, Advocate

For the Respondents . Mr. Ashok Mohanty, Standing
Counsel (Railway Administration

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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 (JUDICIAL)

The applicant was working as Headmaster in the Mixed High School, Khurda Road . While holding that post a Disciplinary Proceeding was ordered to be started against him by the General Manager, S.E. Railway. The said General Manager, S.E. Railway appointed the Enquiry Officer and also the presenting officer. There were seven articles of charges. The enquiry officer in her report dated 29.11.1985 found that all the seven articles of charge were proved. After receipt of the report of the enquiry officer the General Manager by his order dated 18.6.1986 vide Annexure-4 to the application, passed an order compulsorily retiring the applicant from service. Against this order of compulsory retirement the applicant preferred an appeal to the Railway Board vide Annexure-6 to the application. In the Memorandum of appeal the applicant made some allegations against the manner in which the enquiry was made and conducted by the enquiry officer and also he questioned the propriety of the order of compulsory retirement passed by the General Manager, South Eastern Railway. The Railway Board on receipt of the Memorandum of appeal came to the conclusion that the findings of the enquiry officer could be accepted but however, the General Manager had no authority to

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pass an order of compulsory retirement, ~~that~~ there being no delegation of the power to impose that punishment to the General Manager. The Railway Board while setting aside the order of compulsory retirement passed the impugned order of removal from service. The case of the applicant further is that ^{- before -} the filing of the present application and after filing of the appeal to the Railway Board, he had challenged the order of compulsory retirement passed by the General Manager by filing an application in this Tribunal numbered as O.A. No.196 of 1987. That the application was filed as the appeal to the Railway Board had not been disposed of within six months from the date of ~~the~~ presenting the same. During the pendency of that O.A. No. 196 of 1987, the impugned order was passed by the Railway Board.

2. The Railway Administration in its counter has raised various contentions challenging the prayer of the applicant but substantially the case of the Railway Administration is that as the applicant was found guilty, after enquiry, of misappropriation and other like delinquencies, he had to be removed from service to safeguard the interests of the Administration and also ^{of} all those connected with the School. They have also ~~refuted~~ the allegations made by the application against the enquiry officer.

3. We have heard Mr. K.P. Misra learned Counsel for the applicant and Mr. Ashok Mohanty learned

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Standing Counsel (Railway Administration) for the Respondents and perused the relevant documents. Mr. Misra has urged that the order of the General Manager compulsorily retiring him from service was bad in as much as no copy of the enquiry report was supplied to the applicant. We do not find it necessary to discuss this contention of Mr. Misra because, whatever be the reason the order of the General Manager is no longer existing and has been set aside.

5. It has next been contended by Mr. Misra that the Railway Board to whom the appeal was made had not noticed him to appear before them or make submission in support of the grounds mentioned by him in the Memorandum of his appeal. It is true that nowhere in the Rules relating to appeals in Disciplinary proceedings is there an express mention of an opportunity of personal hearing being given but such a right is really inherent in the right of appeal. An appeal is to be distinguished from a representation, a representation may be made either orally or in writing but unless a person is allowed to have his full say in the matter of a challenge against an order, the right of appeal will become illusory. Here another contention of Mr. Misra may be noticed and that is, as the punishment awarded by the General Manager was enhanced from compulsory retirement to removal from service, a personal hearing was imperative under the Railway Servants Discipline and Appeal Rules, 1968. We are unable to counterance this argument of Mr. Misra for

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the simple reason that the Railway Board was of the opinion that the General Manager had no jurisdiction to pass an order of compulsory retirement. The law is that if something from its very inception is illegal and void, it does not ~~z~~ legally exist. Enhancement can only be made of a punishment which legally exists. Therefore, the order passed by the Railway Board is not an enhancement of the punishment awarded by the General Manager.

6. Reverting back to the question whether the order passed by the Railway Board without affording the applicant an opportunity of being heard can be sustained, we would say that the answer is definitely in the negative. Mr. Misra has also raised many other points such as jurisdiction of the General Manager to initiate a Disciplinary Proceeding and frame charges against the applicant whose appointing authority was Railway Board and not he (General Manager) and also about the conduct of the enquiry officer who was entrusted to enquire into the charges levelled against the applicant. Mr. Misra's contention is that the appointing authority alone is empowered to draw up charges and initiate a Disciplinary proceeding and not an authority subordinate to it. For what we are going ^{to} direct, we would ~~refrain~~ [^] from expressing any opinion on these contentions of Mr. Misra except making mention of a decision of Supreme Court in the case of Steel Authority of India Vs. Presiding Officer, labour Court reported in AIR 1980 SC 2054 where the question whether there can be a delegation by the Government of

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certain powers relating to Disciplinary Proceeding came up for consideration.

7. In view of the discussions made above, we would quash the impugned order of removal passed by the Railway Board and remit the case back to it. Before the Railway Board the applicant would be at liberty to raise the contentions relating to illegalities in the conduct of the enquiry, the legality of the framing of charges by the General Manager and about the adequacy or otherwise of the evidence in support of the charges levelled against him (the applicant). The application succeeds to the extent stated above, but we would not pass any order as to costs.

Prabhu
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VICE-CHAIRMAN



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MEMBER (JUDICIAL)