CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK.

Original Application No.316 of 1989.

Date of decision : March 20,1990.

Bhramarbar Patra ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... M/s.M.M.Basu, D.Patnaik, Advocates.

For the respondents ... Mr.L.Mohapatra, Standing Counsel(Railways)

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) The applicant was first appointed as Electrical Khalasi under the South Eastern Railway at Khurda Road. Subsequently, the applicant was promoted as F.C.C.A.. While working as F.C.C.A., he was served on 26.3.1987 with a memorandum of charges, the substance of which was that

he committed serious misconduct unbecoming of a Railway servant, he abused the Divisional Electrical Engineer, S.E.Railway and Asst. Executive Engineer, S.E.Railway on 19.3.1987 and entered into the chambers of the Asst. Electrical Engineer, S.E.Railway, Khurda Road in a state of intoxication. After that a departmental enquiry was made and in that enquiry the Respondent No.3 finding the applicant guilty of the charges levelled against him (the applicant) imposed the punishment of reverting the applicant to the rank of T.T.E.Porter for a period of 5 years with effect from 1.12.1988. Against this order of punishment, he preferred an appeal to Respondent No.2. On 9.12.1988 Respondent No.2 issued a notice calling upon the applicant to show cause why the punishment imposed by Respondent No.3 should not be enhanced to one of removal from service. The applicant's grievance is that Respondent No.2 could not act under Rule 25 of the Railway Servants (Discipline & Appeal) Rules, 1968 and Respondent No.2 has prejudged the matter without hearing the applicant. Making these allegations, the applicant has prayed for quashing the notice issued by Respondent No.2 calling upon him to show cause against the proposed enhancement of punishment.

2. The respondents in their counter have alleged some facts which have not much bearing on the fate of this application and those facts need not be noticed here. Their case is that no doubt Respondent No.2 cannot enhance

the punishment under Rule 25 of the Railway Servants (Discipline & Appeal)Rules, but however as the appellate authority he has the jurisdiction to enhance the punishment ofcourse after giving the officer concerned a reasonable opportunity of being heard.

3. We have heard Mr.M.M.Basu, learned counsel for the applicant and Mr.L.Mohapatra, learned Standing Counsel for the Railway Administration. So far as the contentions of Mr.Basu that the notice at Annexure-1 is improper is concerned, we would say that nodoubt the notice could not have been issued under Rule 25 but however to us it appears that a wrong rule was quoted and nothing more. Rule 25 really deals with ~~representations to be preferred.~~ revisions. Under Rule 22 of the Railway Servants(Discipline & Appeal) Rules,1968 an appellate authority is to consider, besides other things, whether penalty imposed is adequate, inadequate or severe and pass orders confirming/enhancing/ reducing or setting aside the punishment. Under proviso (5) to Sub-rule(2) of the said Rule no order imposing enhanced penalty shall be made unless the appellant is 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. This proviso casts a duty on the appellate authority to inform the appellant of his intention to enhance the penalty imposed by the lower forum. So, the notice, copy of which is at Annexure-1 to the application , was

~~merely~~ really under Rule 22(2) of the Railway Servants(Discipline and Appeal)Rules,1968. It is settled by a series of decisions of high authority that mere wrong quotation of a rule will not invalidate the notice or that document. If the authority issueing the notice had the power to issue such a notice, the courts/Tribunals will lean in favour of finding the notice valid. We are , therefore, not impressed by the arguments of Mr.Basu that the notice at Annexure-1 can be declared to be invalid on the ground of wrong quotation of rule.

4. Mr.Basu has next contended that the procedure laid down in Rule 11 of the said Rules is to be followed while enhancing the penalty and he has drawn our attention to Clause(d) of Rule 11(1) which speaks of recording a finding on each imputation of misconduct or misbehaviour. He has contended that before recording findings the appellate authority cannot enhance the penalty already imposed. What proviso(5) to Rule 22(2) enjoins is a duty to afford an opportunity to the appellant to make a representation and that would be as far as practicable as is provided for in the procedure for imposing minor penalties. It would not mean that all that is provided for in Rule 11 is to be gone through while enhancing the penalty, this wouldbe elear from a reading Clause(d) of Rule 11(1) whichspeaks of holding of an enquiry, by the time the penalty is imposed, the enquiry must have been made. Therefore, there cannot be a second enquiry unless

ofcourse an enquiry was dispensed with. In the instant case, in notice, Annexure-1 the appellate authority, Respondent No.2, sent a copy of his speaking order which indicates grounds on which he (respondent No.2) was proposing to enhance the penalty to one of removal from service. Mr.Basu has reiterated that on reading the copy of the speaking order it would be manifest that the appellate authority had already taken a view that would amount to prejudging the appeal before hearing the appellant. Doubtless the language in which the speaking order has been written may lend some support to the argument as advanced by Mr.Basu but we are of the opinion that what has been stated in the speaking order really is a statement of tentative conclusions and not a final ofder. The applicant would have an opportunity to make representation, in writing or oral, before the appellate authority against the proposed enhancement of the penalty. At this stage we are not inclined to interfere. We would make it clear that the appellant i.e. the present applicant should be given a reasonable opportunity to have his say both in regard to penalty already imposed and the proposed enhancement of penalty. With this observation, this application is disposed of. No costs.

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Vice-Chairman

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Member(Judicial)