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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 28 OF 1989

Date of decision :- April 9, 1990.

H.A. Naidu ... Applicant

Versus.

Union of India and others ... Respondents

For the Applicant : M/s. B.A.Mohanty, Akhil
Mohapatra, P.C.Rout,
R.S.Roy and H.N.Mall,
Advocates.

For the Respondents: Mr. Ashok Mohanty
Standing Counsel (Railways)

CORAM :

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

A N D

THE HON'BLE 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 ? *No*
 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 in this case was proceeded against in a disciplinary proceeding on the allegation of having demanded illegal gratification for giving a Sleeper Berth to a passenger in the 38 Down Madras-Howrah Janata Express on 16.12.1985. One of the passengers

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travelling in that train made an allegation consequent upon which an enquiry was made and searches of his box and his person were also made. During a search it was found that he was in possession of more cash than the sum total of the amount that he declared as his personal cash and the amount that he had shown to have received towards realisation of railway dues in the running train. In the disciplinary proceeding, an Enquiry Officer was appointed who after recording evidence came to the conclusion that the allegation of demand of illegal gratification was not true, but however, the fact that the applicant was in possession of more cash than he could account for was proved. After submission of the enquiry report the disciplinary authority, i.e. the respondent No.3 accepted the enquiry report and passed the impugned punishment of reduction in rank from T.T.E. in grade Rs.1200-2040/- to the post of Ticket Collector in the initial grade of Rs.950-1500/- at \angle pay of Rs.950/- for a period of three years and this reduction in the pay was to postpone future increments. Thereafter, he preferred an appeal to the respondent No.2 who by his order dated 25.10.38 rejected the appeal. On these allegations, the applicant has prayed for quashing the order of punishment of the disciplinary authority and the rejection of appeal by the appellate authority.

2. For what is going to be stated below, it is unnecessary to set out in detail all that has been alleged in the counter filed by the respondents. Suffice

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it to say that the Railway Administration has maintained that the Enquiry Officer gave all reasonable opportunities to the applicant and the disciplinary and the appellate authorities after applying their minds to the facts of the case passed the orders of punishment and rejection of the appeal. Accordingly the applicant is not entitled to any relief.

3. We have heard Mr. B.A. Mohanty for the applicant and Mr. Ashok Mohanty for the respondents. On behalf of the applicant two grounds have been urged, namely, that the finding that was reached by the Enquiry Officer is one based on no evidence and the second is as the applicant was not given a copy of the enquiry report before the disciplinary authority imposing the punishment, the impugned order of punishment is vulnerable. So far as the first ground of attack is concerned, the learned counsel for the applicant has tried to show that by a pure mathematical process the finding of the Enquiry Officer is unsustainable, but we do not like to accept it, there being no basis at all.

4. So far as the second ground of attack is concerned, it is bound to prevail in view of the Full Bench decision of this Tribunal in the case of Prem Nath K. Sharma v. Union of India and others reported in 1988 (6) A.T.C. 904. Admittedly no copy of the enquiry report was supplied to the applicant before the disciplinary authority imposed the punishment. Therefore, by applying the principles decided by the Full Bench of this Tribunal in that case where a number of authorities were referred to

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we would say that the order of the disciplinary authority cannot be allowed to stand. Since the appellate order is based on the order of the disciplinary authority and as the order of the disciplinary authority is invalid, the necessary corollary would be that the appellate order has also to be set aside. As such the orders of the disciplinary and the appellate authorities vide Annexures-4 and 6 are quashed. The case is remitted back to the disciplinary authority to start the proceeding from the stage just after the submission of the enquiry report i.e. the disciplinary authority should give a hearing to the applicant as in the meantime the applicant has received a copy of the enquiry report. The disciplinary proceeding should be disposed of within three months from the date of receipt of a copy of this judgment.

5. The application is accordingly disposed of.
No costs.

.....*R. M. M.* 9.4.90

VICE- CHAIRMAN.

.....*H. S. E. P. L.* 9.4.90

MEMBER (JUDICIAL)

