

8

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

Original Application No. 341 of 1989

Date of decision: 30th November, 1990

Bhramarbar Padhi
S/o Late Laxman Padhi
at present working as
Station Master, Dhanmandal
Railway Station, Dhanmandal,
District-Cuttack. Applicant

-Vs-

1. Union of India,
represented through
the General Manager,
S.E.Railway, Garden-Reach
Calcutta.

2. Divisional Railway-
Manager, S.E.Railway,
Khurda Road, Khurda.

3. Sr.Divisional Operating
Superintendent, S.E.Railway,
Khurda Road, Khurda. Respondents

For the Applicant.

M/s. J. Das, B.S. Tripathy
B.K. Sahoo, S. Mallick
P.K. Deo and K.P. Misra, Adv.

For the Respondents

Mr. Ashok Mohanty,
Sr. Standing Counsel
Railway Administration.

C O R A M :

THE HON'BLE MR. B.R. PATEL, VICE-CHAIRMAN
AND
THE HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed
to see the judgement ? Yes
2. To referred to the Reporters or not ? No.
3. Whether Their Lordships wish to see the fair
copy of the Judgement ? Yes.

-2-

:- J U D G E M E N T :-

N.SENG UPTA, MEMBER (J) The applicant who was working as an Asst. Station Master (A.SM) in the South Eastern Railways (S.E.R.) faced a disciplinary proceeding on charges of being in possession of assets disproportionate to the known sources of his income and for acquisition of movable and immovable properties without obtaining prior permission from the prescribed authorities under the Railway Services conduct Rules, 1966. The 2nd Enquiry Inspector Gardenreach was appointed Inquiry Officer. The Inquiry Officer (I.O) reported that the charge relating to disproportionate assets was not proved, however, the Other charge was proved (Annexure-10). The Disciplinary Authority agreeing with the report of the I.O. on 12.10.88 passed an order of reduction of one stage below from pay of Rs.1900/- to Rs.1850/- for a period of 3 years, but that was not to affect normal increments on restoration (Annexure-12). On 21.10.88 that order of punishment was modified by substituting Rs.1950/- in place of Rs.1900/- and Rs.1900/- in place of Rs.1850/- (Annexure-13). The applicant preferred an appeal which was rejected with the following observations.

"I am, therefore, convinced that Sri Padhy has more assets to his credit than could have been created out of his declared income.

As far as the other charge of not seeking administrative approval/permission before acquiring various assets, I feel that Sri Padhy did not take administrative permission within a reasonable time. However, there is no record to show for various other items he sought for administrative permission either

Manu Ect^h
30.11.90

-3-

before or within the reasonable time of acquiring the assets. I am, therefore, convinced that Sri Padhy is responsible for both the charges and see no mitigating circumstances to reduce the punishment."

The applicant has prayed for quashing of Annexures-12,13 & 17 alleging that he was not given adequate opportunity to put forth his case and that the findings of the I.O. were based on no evidence. The applicants case further is that he was not given any copy of the Inquiry Report before the Disciplinary Authority imposed the punishment, thus there was a violation of the mandate of reasonable hearing under Art.311 of the Constitution. He has also taken certain other legal pleas during the course of hearing which would be noticed below.

2. The Respondents in their counter have averred that the allegations of the applicant of not making available relevant documents or not allowing him access to certain documents are not true, in fact the applicant though noticed did not make any application within time. They have denied the applicant's assertion of having sought permission to purchase a flat.

3. We have heard Mr. B.S. Tripathy for the applicant and Mr. Ashok Mohanty, the learned Counsel for the Railway Administration and have carefully gone through the relevant documents. Mr. Tripathy for the applicant has challenged Annexure-17, the order of the appellate authority, firstly on the ground of it being really non-speaking and secondly it being in excess of his powers with regard to the

Mr. B.S. Tripathy

-4-

first charge of disproportionate assets. The second part of this argument of Mr. Tripathy carries some force in view of Rule-22(c) of the Railway Servant (Discipline and Appeal) Rules, 1968 which empowers the appellate authority ~~can~~ ^{to} pass orders confirming, enhancing reducing or setting aside penalty or may remit the case to the lower authority against whose order the appeal is preferred. As regards the other part of this contention of Mr. Tripathy, it may be stated that the appellate authority might have done better by elaborating his reasons a little more, we do not like to dilate more for what is being stated below.

4. Mr. Tripathy has ~~vent~~ ^{next} urged that the appellate authority went wrong in saying that he was convinced that the applicant was responsible for the charges. It is true that this Tribunal ^{but where that authority} is not to act as if it were a second appellate authority, transgresses its powers and bases its conclusions on mere surmises without assigning cogent reasons to differ from the findings of the disciplinary authority, the Tribunal cannot stay its hands. The appellate authority surmised that income from agricultural lands being uncertain and as there cannot be good crops for two consecutive years, the statement of the applicant about his income from the agricultural lands could not be accepted. The reasoning assigned really does not deserve an elaborate discussion to be rejected, it is really a surmise. The I.O. is not relying on the evidence adduced by the Department with regard to the income of the applicant referred to the fact of want of knowledge of the persons deposing regarding agricultural income and, as indicated

*Encr
Mar 30. 11. 90.*

-5-

above, reached the conclusion that the figures shown in the memo charges could not be accepted as correct, hence the first charge was not proved.

5. What really remains for consideration is whether there were materials to prove the 2nd charge. In the imputations it was mentioned that the applicant for the purchase of a flat from the Bhubaneswar Development Authority (B.D.A) made a total deposit of Rs. 66,425/- in ~~instalments~~ during the period from December, 1981 to November, 1984, out of the above total Rs. 1520/- were deposited for purchase of a flat in his (applicant's) wife's name and the rest for ^{the} one in his name. The other items relate~~s~~ to purchase of moveables worth Rs. 4650/-, Rs. 2153.28, Rs. 1719.66 and Rs. 1100/-. The Railway authorities alleged that these transactions were entered into without obtaining prior permission or without intimating to the competent higher authority. The case of the applicant is that he sought for permission for purchase of flat from B.D.A., but no intimation about the grant of permission was received by him, though he received some letters asking him to specify his and his wife's sources of income and that he produced during the enquiry some copies of documents available with him. That the applicant filed documents concerning permission for entering into transaction of purchases can be found from the statement of the I.O. at page 18 of the report (P-68 of the file), but the I.O. rejected those documents as not being reliable, non-availability of supporting documents in the office of the Railways. The applicant has produced some Xerox copies which contain signatures of some Rly officers, admittedly none of them was examined by the department ^{to} deny the receipt or forwarding ^{of} such letters of

*Not Enclosed
Sof*

the applicant. Therefore, it can be said that the rejection of the documents was improper and based on no evidence.

6. Under Rule 18 of the Railway Services (Conduct) Rules, 1966 only when a person enters into a transaction of purchase, sale etc of immovable property with a person having official dealings with the Rly. servant or is not a regular or reputed dealer, would a previous sanction of the prescribed authority ~~would~~ be required. The B.D.A. is a state Government Organization, hence it, if called a dealer, is a reputed dealer, therefore no previous ~~sanction~~ was necessary. As regards intimating the authorities of the acquisition of the movable and immovable properties, the applicant in his defence brief specifically stated that, he had in the property statement submitted in 1981 had given the list of acquisitions prior to 1981 and for the acquisitions after 1981, he had informed through proper channel, but the I.O., as already stated above, summarily rejected the plea without taking any evidence. Thus the findings of the Disciplinary authority as also of the appellate authority are vitiated.

7. In view of the what has been stated above the findings of the disciplinary authority and those of the appellate authority are set aside and Annexures-12, 13 and 17 to the application are quashed. There would be no order as to costs.

Mohapatra 30.11.90
.....
Vice-Chairman

Malash 30.11.90
.....
Member (Judicial)

Central Administrative Tribunal,
Cuttack Bench, Cuttack
30th November, 1990/Mohapatra

..

