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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.348 of 1989.

Date of decision: February 1, 1990.

Trinath Panda, son of late Raghunath
Panda, aged about 40 years, working as
T.T.E. Grade 'A' South Eastern Railway,
Puri. ...

Applicant.

Versus

1. Union of India, represented by General Manager, South Eastern Railway, Garden Reach, Calcutta-43.
2. Divisional Commercial Superintendent, South Eastern Railway, Khurda Road.

... Respondents.

For the applicant ... M/s. Ganeswar Rath,
P.K. Mohapatra,
A.K. Patnaik, Advocates.

For the respondents ... Mr. Ashok Mohanty,
Standing Counsel (Railways)

C O R A M:

THE HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

A N D

THE HON'BLE MISS USHA SAVARA, MEMBER (ADMINISTRATIVE)

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.

JUDGMENT

N.SENGUPTA, MEMBER (J) In this application under section 19 of the Administrative Tribunals Act, 1985, the prayer made is for quashing the order of punishment passed by the Divisional Commercial Superintendent, South Eastern Railway, Khurda Road, (Annexure-4) on 16.8.1989.

2. Briefly put, the facts are that on 25.10.1988 a notice of charge for major penalty was issued to the applicant alleging that he was in possession of assets disproportionate to the known source of his income and that he could not satisfactorily account for the assets valued at Rs.1,01,242.64 Paise. On receipt of the charge, the applicant filed his written statement denying the allegations contained in the notice of charge. After that an enquiring officer was appointed and he enquired into the allegations made against the applicant. The Enquiring officer recorded the finding that the charges were not proved but, however, the Disciplinary authority disagreed with the findings of the Enquiring officer and imposed the punishment of reversion to the post of a Ticket Collector from the Grade of T.T.E. Grade A which he was holding at the time of initiation of the proceeding. The grievance of the applicant is that he was not given a chance to be heard by the disciplinary authority and thus, there was a violation of the principles of natural justice.

3. The respondents in their reply have contended that the disciplinary authority had a liberty to differ from

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the Enquiring officer and after recording his reasonings for such differing, he imposed the punishment. Here it may be stated that prior to the filing of this application, there was another original application numbered as O.A.1 of 1989 in which this Tribunal directed conducting of a fresh enquiry. The previous application was against the punishment inflicted on the applicant and there the question was with regard to the procedure adopted by the enquiring officer. The applicant has alleged that the disciplinary authority kept the previous order of punishment in view and that was the motive for his differing from the conclusion of the enquiring officer. The respondents have taken another plea that the applicant ought to have exhausted the remedy of appeal as provided under Rule 18 of the Railway Servants (Discipline and Appeal) Rules before coming to this Tribunal and as such, the application is hit by the provisions of Section 20 of the Administrative Tribunals Act, 1985.

4. We have heard Mr. Ganeswar Rath, learned counsel for the applicant and Mr. Ashok Mohanty, learned Standing Counsel for the Railway Administration at length and perused the documents annexed to the application (there is no annexure to the counter). Before us no argument was advanced with regard to any defect in the framing of the charge, the entire argument of Mr. Rath is confined only to two questions namely, the report of the Enquiring officer being an elaborate one where all the items of evidence adduced in the disciplinary proceeding were taken notice of, there

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was hardly any scope or justification for the disciplinary authority to differ; and secondly without giving the applicant an opportunity to be heard before ~~and~~ order of dissent is passed, the norms of natural justice were violated. So far as the first contention is concerned we do not feel any necessity to enter into ^a the critical examination of the same, mainly for the reasons that this Tribunal is not an appellate forum nor a revising one so as to make an appraisal of an order passed in a departmental proceeding though we must hasten to add that the powers of the Tribunal ^{to do} ~~to the extent~~ to examine whether the order was a result of a perverse reasoning or was based on evidence irrelevant and inadmissible or on no evidence. Mr. Mohanty, learned Standing Counsel for the Railway Administration has urged that according to the Railway Servants (Discipline & Appeal) Rules all that the disciplinary authority is required to do in case of dissent is to record his reasonings in writing and the Rules do not enjoin a hearing of the charged officer after submission of the enquiry report before the note of dissent is written. Learned counsel for the Railway Administration has drawn our attention to sub-rule (3) of Rule 10 of the Railway Servants (Discipline & Appeal) Rules and on that has based the contention just mentioned above. To appreciate this contention of learned Standing Counsel for the Railway Administration it would be necessary to refer to sub-rule (5) of the said Rule 10 which provides;

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" If the disciplinary authority, having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of the opinion that any of the penalties specified in clauses(v) to (ix) of rule 6 should be imposed on the Railway servant, it shall make an order imposing such penalty and it shall not be necessary to give the Railway servant any opportunity of making representation on the penalty proposed to be imposed :"

We have underlined the portion to supply emphasis to our conclusion that what the Rules have really provided for is not dispensing with an opportunity ^{to} ~~that~~ the applicant to be heard before the adverse order is passed against him. But what sub-rule(5) has provided for is based on an amendment to Article 311 of the Constitution of India by 42nd Amendment. Historically speaking since the Thirteenth Century A.D. it has been the consistent view that no person could be condemned without being heard. Here is a case where the enquiring officer exonerated the applicant of the charges and if the disciplinary authority thought that such exoneration was improper, it is the elementary requirement that the said authority should have heard the applicant. In this connection it would also be pertinent to refer to a Full Bench decision of this Tribunal in the case of Premnath K. Sharma v. Union of India and others reported at page 245 of the Compilation of Full Bench judgments of the Tribunal where the Full Bench opined that if no copy of the enquiry report is given to the charged officer before the disciplinary authority imposes the penalty, the punishment is to be quashed. That Bench in that judgment stated what is the meaning of hearing. In view of these facts and circumstan-

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ces we have no difficulty in quashing the order of punishment. However, as we have indicated earlier, the function of this Tribunal is not that of an appellate or revisional authority, its function is to find the propriety of an action. The facts of Premnath K. Sharma's case were almost similar to those of the one now we are considering. There also the enquiring officer exonerated the applicant before that Tribunal of the charges and the disciplinary authority declined to accept the findings of the enquiring officer. As we have held, no adverse order could be passed without hearing a person affected, only that part of the proceeding which starts from that point i.e. after the submission of enquiring officer's report is declared invalid and the result would be that the disciplinary authority should give the applicant an opportunity to be heard, and may dispose of the proceeding in accordance with Rules. No costs.

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b. Narasimha
Member (Administrative)

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N. Narasimha
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Member (Judicial)

