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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK

ORIGINAL APPLICATION NO: 350 OF 1989

Date of decision : April, 19, 1991

K.N.B. Rao

: Applicant

Versus

Union of India and others

: Respondents

For the applicant : M/s. P.V.Ramdas, B.K.Panda,
Advocates.

For the Respondents : Mr. B.Pal, Senior Standing
Counsel (Railway Admn.)

C O R A M:

THE HONOURABLE MR. B.R.PATEL, VICE CHAIRMAN

A N D

THE HONOURABLE MR. N.SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be permitted 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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JUDGMENT

B.R.PATEL, VICE CHAIRMAN: The applicant who is a Head clerk in the Personnel Branch of the Divisional Personnel Officer's Office(D.P.O), at Khurda Road of the South Eastern Railway has approached this Tribunal to quash the disciplinary proceeding instituted against him, vide Annexure-1 and 1 series and/or issue a direction to the Respondents to afford ^{him} reasonable opportunity to defend his case.

2. On 19-9-1986 a Departmental Proceeding commenced under Rule-9 of the Railway servants (the rules) for short) (Discipline and Appeal) Rules, 1968 for imposition of a major penalty on three articles of charges all related to issue of Railway passes to unauthorised persons vide Annexure-1 and 1 series. The petitioner in his written statement of defence denied the charges. The applicant has filed this application as, according to him the disciplinary proceeding suffered from several infirmities in Law like denial of reasonable opportunity to him, non-supply of some of the documents including the copy of the preliminary enquiry report which he required to defend his case, initiation of the disciplinary proceeding by the Divisional Personnel Officer(DPO) who is not the disciplinary authority and undue delay in finalising

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the proceeding.

3. The Respondents in their counter affidavit have maintained that the disciplinary authority had completed the process of enquiry and passed final orders on 9-8-1989 imposing on the applicant the penalty of removal from service. In view of this, they have averred, the application has become infructuous and should be disposed of as such.

4. We have heard Mr. P.V.Ramdas the learned Counsel for the Applicant and Mr. B.Pal the learned Senior Standing Counsel (Railway Administration) for the Respondents and perused the relevant documents. Mr. Ramdas the learned Counsel for the applicant has very strenuously urged that the disciplinary proceeding has been vitiated because of the infirmities referred to above. He placed particular emphasis on the fact that the DPO has initiated proceedings under his order dated 19-9-1986 as Annexure-1 would so. According to him DPO is not the disciplinary authority and as such the proceeding was void ab initio. He has further averred that on the relevant date namely 13-7-1984 there was a large crowd seeking passes and in order to help the clerks the applicant took upon himself the function of preparing the passes to be issued though it was not his legitimate function. As some of the vital documents have been withheld the applicant has been prejudiced in conducting his defence. They copy of the preliminary report which has

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led to the disciplinary proceeding has been withheld and he is not in a position to prepare his defence. In this connection he has drawn our attention to the letter of the Divisional Personnel Officer dated 18.11.1986 vide Annexure - A/2 particularly to the following portion: "the investigation report wanted by you is considered a classified document and cannot be supplied to you. However, you have the opportunity to cross examine the witness connected with the investigation". Thereafter he has led us to Annexure-3, to the list of witnesses by whom the articles of charge were sought to be proved. We have noticed that this list does not contain the name of the witness. It simply mentioned 'Nil' which goes to show that the authorities did not like to examine any witness and as such it is somewhat strange that they have informed the applicant in Annexure-A/2 that he had every opportunity to cross-examine the witness on the preliminary inquiry.

On the other hand Mr. Pal has contended that issue of railway passes to unauthorised persons is a serious offence on the part of a Railway employee and by including in such act the applicant has made his intention to defraud the railway administration abundantly clear. According to Mr. Pal the applicant has admitted in his written statement that the passes were written by him (this is with reference to paragraph-4(5) of the application), order for the passes in question have not been entered in the pass Register and no application for issue of such passes are

available and no entry was made in the Dak Book for delivery. All this according to Mr.Pal, clearly proves the charges. He has further averred that all the documents wherever reasonable and practicable had been supplied to the applicant and the applicant was also allowed to inspect the other documents to defend himself. The applicant has ~~in~~ utilised the documents and defended himself. Moreover the applicant has taken the assistance of one Shri Y.Suryanarayana as his defence Counsel in the said enquiry. Tough in the list of witnesses no name has been mentioned, Mr.Pal has explained, the names of persons who gave statement during the preliminary investigation have been supplied to the applicant and it was left to him to cross examine them. Mr.Pal has further averred that had he any intention to cross-examine them he would have asked the enquiry officer for their production, as he has not done so he cannot make any grievance out of it at this stage when the proceeding has been concluded. Mr. Pal has further contended that though the DPO is not the Disciplinary Authority for the purpose of imposing the penalty he can institute the disciplinary proceeding. The divisional Personnel Officer who is a junior Administrative Officer being empowered under Schedule-2 to the Railway Servants (Discipline and Appeal) Rules to impose a penalty of reduction to a lower scale in the time scale via-a-vis

the applicant which is a major penalty under Rule-6(v) of the Rules and as such he could institute the disciplinary proceeding against the applicant under Rule 8(2) of the Rules read with provisions of Clause-3 of Sub-rule-I of Rule-2 Mr.Ramdas has submitted that the order of penalty passed is not relevant for the grant of relief sought by the applicant. As the proceeding has been vitiated by the framing of charge and institution of the proceeding by the Divisional Personnel Officer who is not competent in the matter, the proceeding should be quashed which would quash the final order automatically. Mr.Pal has very vehemently controverted the plea of Mr.Ramdas and has submitted that as the order of penalty passed has not been challenged in the application specifically no order can be passed in the present application quashing the panalty. According to him the order of penalty passed by the disciplinary authority and the enquiry conducted by the enquiry officer are an integrated whole and can be separated.

5. ~~We are gratified to inform~~
The applicant has moved the Tribunal to quash the proceeding vide Annexures-1 and 1 series and to direct the Respondents to afford reasonable

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opportunity to him in the light of the submissions made in the application. We have noticed in the Contempt Petition (Civil) No.52 of 1989 which was considered alongwith this case that an office order was issued by the office of the Divisional Railway Manager, Khurda Road on 15-11-1989 that an attempt had been made to serve the removal notice dated 17-8-1989 on the applicant Shri K.N.B.Rao , Head Clerk under suspension on 15.11.1989 in person when he attended that office but he refused to accept the removal notice. In this office order the D.R.M. has ordered that the removal notice is deemed to have come into effect with effect from 15-11-1989 (AN) and accordingly the applicant stands "removed from service with effect from 15-11-1989". In annexure-R/1 to the counter in this case the Respondents have mentioned that the enquiry officer completed the enquiry on 17-7-1987 and submitted his report on 21-8-1987. The entire D&A cases was put up before the Divisional Railway Manager-Disciplinary Authority-on 8-8-1989 who after going through the entire record and the findings etc. and after proper application of his mind, passed a reasoned order on 9-8-1989 indicating the applicant's removal from service as a measure of penalty. The Punishment notice was signed by him on 17-8-1989 which has the immediate effect". On perusal of Annexure-R/1 dated 8th September, 1989 filed by the advocate for the Respondents and Annexure-5 of the

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Contempt Petition(Civil) 52 of 1989 we have no doubt that the disciplinary proceeding has been finalised and the question of quashing the proceeding and affording reasonable opportunity to the applicant does not arise. We have however, noticed that the removal notice had not in fact been served on the applicant whatever may be the reason when he filed this application on 29-8-1989 and as such we hold that he has still his right to appeal against the order passed by the disciplinary authority. He should prefer his appeal against the order of the disciplinary authority within one month from the date of receipt of a copy of this judgment. We would like to make it clear that the period from 28-8-1989 when he filed the application before the Tribunal till the receipt of a copy of this judgment by the applicant will not count towards limitation under Rule-20 of the rules. In other words this period should be excluded from the period prescribed for filing the appeal. The applicant is given the liberty to approach the Tribunal again if he is aggrieved with the order passed by the appellate authority.

6. We have refrained from giving our views on the rival contentions of the parties at the bar lest it should prejudice the case of the applicant before the appellate authority.

7. This case is accordingly disposed of. No costs.

M. S. S.
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MEMBER (JUDICIAL)

Pr. dated 19.1.91
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VICE CHAIRMAN

