

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 373 of 1989

Date of Decision : 8th. May, 1991

Surendra Nath Mohapatra

Applicant

Versus

Union of India & others

Respondents

M/s. B. Nayak,
Advocate

For applicant

M/s. Ashok Mohanty &
L. Mahapatra, Learned
Counsel (Railway)

For respondents

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

A N D

HON'BLE N. SENGUPTA, MEMBER (JUDICIAL)

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1. Whether reporters of local news papers may be allowed to see the judgment ? Yes
2. To be referred to reporters or not ? *Yes.*
3. Whether Their Lordships wish to see the fair copy of the Judgment ? Yes.

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N. SENGUPTA, MEMBER (J), In this case the applicant has asked for

quashing an order of his reversion from the rank of Station Master to that of Asstt. Station Master in the South Eastern Railway. The case of the applicant is that he was working as the Station Master of Kendrapara Road Railway Station in March, 1984. In the railway, licensed porters are engaged to do some work connected with the carriage and receipt of goods and parcels. For the work done by such porters, they

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are paid, and the record of the work done by them is maintained. On 18.4.1984 one Purna Tarai, licensed, porter took the wages amounting to Rs.157.70 payable to another licensed porter, named Sona Biswal by affixing his thumb impression against the entry relating to Sona Biswal. Sona later came to know of the forgery committed by Purna and informed him(the applicant). He thereafter made some enquiries and asked Sona to make a written complaint which Sona did not. Purna Tarai, paid Rs.157.90 to him(the applicant) for being given to Sona but Sona refused to give an acknowledgement for the payment to be made by him(the applicant). The amount given by Purna remained with him for some days. He went to the Divisional Office at Khurdha Road and approached the Office Superintendent but the said Office Superintendent denied to do any thing as already a vigilance enquiry ~~had~~ started. Subsequently a disciplinary proceeding was started against him and a charge sheet served. He submitted his explanation; for the department, witnesses were examined but during the enquiry, he was not allowed to adduce evidence in defence by examining witness or filling documents. He(the applicant) for this denial of being given an opportunity made an application to the Divisional Superintendent, Khurdha Road(R4) who accepted the application and appointed Shri S.K.Das, an Enquiry Officer. The said S.K.Das did not conduct any inquiry but strangely informed that Respondent No. 4 passed an order on 24.12.1987 imposing the penalty of fixing his pay at lower stage in the scale of

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of pay of Rs.1500-2300 for a period of 3 years with effect from 1.1.88 (vide Annexure-A-6). Against this order of penalty he preferred an appeal on 18.1.1988 and the Divisional Railway Manager by his order dated 14.3.88 confirmed the order of the Disciplinary Authority. After the disposal of the appeal by him, the Chief Operating Superintendent on 22.8.1988 issued a notice calling upon him (applicant) to show cause as to why punishment imposed upon him should not be enhanced under Rule-25 of the Railway Servants (Discipline & Appeal) Rule-1968. He submitted a representation in response to that notice and on 2.1.1989, the Chief Operating Superintendent passed the impugned order of reducing him from the Grade of Station Master in the scale of pay of Rs.1400-2300/- per month to grade of Asstt. Station Master in the scale of pay of Rs.1200-2040/- but his pay was to be fixed at Rs.1470/- for a period of 3 years and the punishment would not operate to postpone his future increments on restoration. The applicant has challenged the orders passed by the Disciplinary Authority, the appellate authority and the Revising Authority, saying that the charges were not true, findings were based on no evidence, the authorities failed to jointly charge others responsible for the wrong payment, the Disciplinary Authority had not given him reasonable opportunity to defend himself, the Appellate Authority disposed of the appeal without applying his mind and the Revising Authority had not given sufficient opportunity to him for enhancing the punishment, and the order of the Revising Authority is bad as the final

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order was not passed within a period of six months from the date when the order of punishment revised was passed. The applicant has also taken a ground that he did not fail to perform any duty assigned to a Station Master as may be found from Annexure - A - 13.

2. The respondents in ~~reply to~~ their counter have averred that the applicant received a sum of Rs.157.94, the wages payable to Sona Biswal, a licensed porter. He endorsed in the register that he witnessed the payment to Sona. This Sona Biswal was really absent from 2.4.84 till 19.4.84, but he was marked present in the licensed porters' roster register on all the dates in April, 1984. An Enquiry Officer was appointed and on the basis of the report of the enquiry the disciplinary authority imposed the punishment vide Annexure-6, to the application. The applicant was instrumental in getting thumb impression of another licensed porter against the entry relating to Sona and in fact he misappropriated the wages of Sona amounting to Rs.157.94. Sona was on leave and he joined duties on 20.4.84 but as the applicant had not paid the wages to Sona, the vigilance case was started. There was no denial of any opportunity to the applicant to defend himself, in fact when the applicant on 15.7.86, the last date of enquiry, asked for time to file his defence statement, he was allowed 3 days' time but he did not submit any statement nor made any other prayer. On 8.12.86 the applicant prayed for a fresh enquiry, this application for fresh enquiry was sent to the Enquiry Officer for his consideration and the

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Enquiry Officer **did not** accept the request for a fresh enquiry as there was no reason to do so. The applicant at the relevant time was getting a pay of Rs.1600 in the scale of pay of Rs.1400-2300/-, his pay was reduced to Rs.1560/-..When the facts came to the notice of the Chief Operating Superintendent, South Eastern Railway, the authority next higher in rank to the Divisional Railway Manager, he felt the necessity to revise the order of punishment and accordingly served a notice under Rule-25 of the Railway Servants (Discipline & Appeal) Rule-1968. The applicant was given opportunity to make his representation and after considering his representation, the Chief Operating Superintendent passed the impugned order.

3. We have heard Mr. B.Naik, for the applicant and Mr. Ashok Mohanty for the Railway Administration. It has been contended by Mr. Naik that on the face of it, it was Purna Tarai who affixed his thumb impression against the amount payable to Sona Biswal, therefore, he should have been jointly charged with the applicant. We have doubts if a licensed porter is a railway servant within the meaning of railway servants (D&A) Rule-1968. However, assuming that a licensed porter is a railway servant, not charging Purna Tarai jointly with the applicant can not be a ground to set aside the punishment imposed on the applicant. Purna Tarai could not have been jointly charged with the applicant as the charges against the applicant were that he committed gross irregularity in receiving and retaining with him the wages payable to Sona Biswal. From the averments in the applicant's own statement itself it would be found that in fact the amount payable to

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Sona Biswal, remained for some time with the applicant, the question for consideration was whether such retention of the amount by the applicant constituted mis-conduct, Sona could not have been charged of such a fault of the applicant. The second charge against applicant was that he had not maintained the roster hours register ~~of licensed~~ of licensed porters properly, this was an allegation with regard to the acts or omission by the applicant with which Sona could not have any connection. Similarly the third articles of charge related entirely to maintenance of register which admittedly was no part of the duty of Sona or Purna. Therefore, this contention of Mr. Naik about not jointly charging others with the applicant is not tenable.

4. Mr. Naik has contended that the applicant was not allowed to prove documents or examine witness in his defence. The case of the respondent is that the applicant was never refused any opportunity to adduce evidence, either oral or documentary in his defence. The applicant has filed a copy of his petition before the Enquiry Officer on 21.2.87 asking to examine four persons and directing them to produce certain documents. None of the parties has filed either a copy of the enquiry report or copy of the relevant order sheets in the enquiry proceedings.

5. The Respondents in paragraph 10 & 11 of the reply in counter have stated that the last date of enquiry was 15.7.86 and by then the applicant had not submitted his defence statement nor made any application for examination of any witness in his defence and further that the report of enquiry

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was submitted on 7.11.86. After that the applicant made a prayer for a fresh enquiry and this was sent by the Disciplinary Authority to the Enquiry Officer for examination by him and the Enquiry Officer reported that there was no reason to consider the matter afresh. After receipt of the report of the Enquiry Officer about the propriety of a fresh enquiry, the Disciplinary Authority passed the order of punishment. After the applicant did not avail of the opportunity to adduce evidence in his defence at the appropriate time, he could not make a grievance that he was not afforded an opportunity to make out his defence. From the copy of the order of the Appellate Authority it would be found that the applicant examined himself and that examination must have been under Rule 9(20) of the Railway Servants (D&A) Rules, 1968. We are, therefore, not impressed by the contention of Mr. Naik that the applicant was not afforded reasonable opportunity to adduce evidence in his defence.

6. Learned Counsel for the applicant has urged that the order of the Revising Authority is not sustainable as it was passed beyond the period of six months from the date of the appellate order. In this connection it would be pertinent to refer to the Proviso to Rule-25 of the Discipline & Appeal Rules, the relevant part of the proviso reads thus:

" Provided further that no action under this rule; shall be initiated by (a) an appellate authority other than the President or (b) the Revising Authorities mentioned in item (v) of Sub-rule (1)-

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- (i) more than six months after the date of the order to be revised in cases where it is proposed to impose or enhance a penalty, or modify the order to the detriment of the Railway servant; or
- (ii) more than one year after the date of the order to be revised in cases where it is proposed to reduce or cancel penalty imposed or modify the order in favour of the Railway Servant.

We have underlined the word 'initiated' to bring into sharp focus that the limitation is for initiation and not for completion of the proceeding. For this reason we are unable to accept the contention of Mr. Naik that the order of the revising authority was passed in contravention of the limitation prescribed in Rule-25.

7. Mr. Naik has further urged that as the revising authority disagreed with at least one finding of the disciplinary and the appellate authorities, with regard to payment of the wages of Sona Biswal to the applicant, and as the applicant had made an application before the passing of the order by the disciplinary authority for examination of some witness and production of some documents, the case should be remitted back to the revising authority for reconsideration. We are not able to ~~accept~~ accede to this request of Mr. Naik because as we find the applicant in his explanation submitted to the charges did not dispute that he kept the amount of Rs.157.90 with him for some days and subsequently he paid the amount, therefore there was an admission of the applicant having retained the money payable to Sona Biswal and that was one of the charges leveled against him. It is not open to this Tribunal to

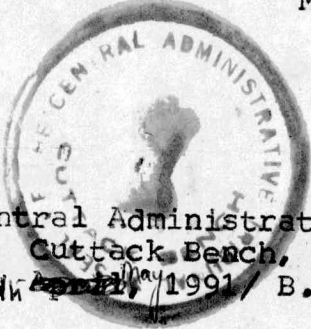
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interfere in the matter of punishment if the charges or any of them has been proved against the charged officer.

4. For the reasons stated above we are not able to grant the reliefs that the applicant has prayed for. But however, it does not debar the departmental authorities to consider whether in the circumstances of the case the punishment of reduction in rank would be proper. Accordingly the case is disposed of. No costs.

P. N. Mishra 8.5.91
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VICE CHAIRMAN

B. K. Sahoo
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MEMBER (JUDICIAL)


Central Administrative Tribunal
Cuttack Bench, Cuttack
18th April 1991 / B.K.Sahoo/