

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, : CUTTACK.

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ORIGINAL APPLICATION NO: 59 OF 1989.

Date of decision : July 27, , 1990

N. Redden : Applicant

Versus

Union of India and others : Respondents

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For the Applicant : M/s Pradipta Mohanty,  
Pradyot Mohanty, Advocate.

For the Respondents : M/s Bijan Pal, O.M.Ghosh,  
Standing Counsel for the  
Railway Administration.

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C O R A M :

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

A N D

THE HON'BLE MR. 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 has sought for quashing the order of his removal passed by the D.R.M. on 10.1.1981 and the order by the appellate authority passed in 1988.

2. There are certain facts which though may not be said to be admitted yet are not seriously disputed and they may be set out at the beginning. There was a strike or a mass Casual Leave campaign by the running staff of the South Eastern Railways, particularly in Khurda Road, Division. This was in the early part of the January, 1981. The applicant who was in January, 1981 working as Shed-man at Puri, filed an application for leave on 8.1.1981 in support of which he annexed a Medical Certificate from a Private practitioner. He remained absent on 8th and continued to be absent from his duty for the next 3 or 4 days. In the meantime on 10.1.81, the D.R.M., Khurda Road Division passed an order of removal without an enquiry in exercise of his powers under Rule 14(ii) of the Railway Servants(Discipline and Appeal) Rules. It was observed by the said disciplinary authority that in the prevailing circumstances it was not possible to hold an enquiry. The main allegations said to have been against the applicant were instigations by him to others to abstain from work, threats to the Assistant Mechanical Engineer under whom he was working and also to the D.R.M. The other allegation was that the applicant remained absent from his Headquarters unauthorisedly. After the passing of the order of removal

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and affixation of removal notice in the notice Board at Khurda Road, the applicant approached the Calcutta High Court for relief. The Calcutta High Court by its judgment directed the applicant to prefer an appeal to the Departmental Appellate Authority and directed the appellate authority to dispose of the appeal to be filed within a specified period. Thereafter the appeal was filed and the appellate authority confirmed the order passed by the disciplinary authority. Being aggrieved by this order of the appellate authority, the applicant approached this Tribunal in O.A. No.35 of 1987. This Tribunal by its judgment in that O.A. found that it was necessary to have an enquiry as was done under the directions of the Supreme Court in the well-known cases of Tulsiram Patel and Satyavir Singh. This Tribunal remitted the case back to the appellate authority to cause an enquiry to be made or itself to hold the enquiry and then dispose of the appeal. Besides the applicant, some others also approached this Tribunal. After remand this Tribunal was approached to appoint a common appellate authority for all such appeals and the Additional General Manager, South Eastern Railway, Calcutta was appointed the common appellate authority.

3. An enquiry was made and the enquiry Officer was one Dy. C.O.P.S. The enquiry officer submitted a report to the appellate authority finding that the applicant availed of leave on 8.1.1981 without the same being sanctioned and

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thereafter remained absent on private medical certificate with a mala fide intention to bring disruption of the normal functioning of the Railway in Khurda Road which amounted to an illegal strike and that the applicant instigated other Railway Employees to join the illegal strike at Khurda Road during the period January, February, 1981. The case of the applicant is that as no charge-sheet was served on him, the enquiry from its inception was illegal, that he was not given reasonable opportunity of defending himself in as much as no copy of the imputations was served on him nor was he supplied with the names of the witnesses to be examined before he was called upon to file his defence statement and further that he was denied copies of some relevant documents. It is to be stated that the appeal against the order of removal has been rejected.

4. That case of the Railway Administration is, as is expected, that there was no denial of any reasonable opportunity and that during an enquiry at the stage of appeal, a fresh charge-sheet was not necessary and the allegations contained in the notice of removal from service was sufficient as charge-sheet and imputations. In short, it is the case of the Railway Administration that there <sup>was</sup> ~~are~~ no denial of any reasonable opportunity to the applicant to defend himself, and also that there are no deviation from the norms of natural justice. The other allegations contained in the counter need not be stated in detail at this stage, the other allegations would <sup>be</sup> referred to at their proper places as and

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when necessary to be so referred.

5. Undoubtedly, no fresh charge-sheet during the course of enquiry after remand by this Tribunal was prepared. The question that arises is whether a formal Memorandum of Charges was necessary to be prepared, ~~in this~~ regard.

In this regard Mr. B. Pal, learned standing Counsel for the Railway Administration has contended that in an enquiry at the appellate or revisional stage all the provisions beginning from Rule 9 to 13 of the Discipline and Appeal Rules need not be literally complied with. He has further urged that by a mere filing of the appeal the punishment is not wiped out and since the punishment remains the enquiry would be, though not a summary one, but not elaborate. We are unable to agree with this contention of Mr. Pal. Our reason is based on a reading of Rule 25 of the Discipline and Appeal Rules, particularly sub-clause(11) of Proviso(c) to Rule 25(1), what that clause mandates is that where an enquiry in the manner laid down in Rule 9 has not already been hold in the case, the authority itself shall hold such an enquiry or direct that such enquiry be held in accordance with provisions of Rule 9 and thereafter, on consideration of proceedings ~~of~~ such enquiry pass such orders as it may deem fit. We have underlined the portion to bring into sharp focus what is enjoined by this clause of proviso(c) of rule 25(1) of the Discipline and Appeal Rules. Rule 9 provides for almost all

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the details of Procedure for imposing a major penalty. Sub-rule (6) of Rule 9 enjoins the drawing up of the substance of the imputations of mis-conduct or misbehaviour into definite and distinct articles of charges, a statement of imputations of misconduct or misbehaviour in support of each article of charge which shall contain a statement of all relevant facts including any admission or confession made by the Railway Servant and a list of documents by which, and list of witnesses by whom, the articles of charges are proposed to be sustained. It is admitted that the Railway administration stated that the removal notice was to be taken as the statement of the articles of charges and of the imputations of misconduct/misbehaviour with all relevant facts. If in the removal notice all the necessary facts were mentioned, it would have been a mere formality to frame a fresh Charge-sheet, law looks not to the form but to the substance. Keeping this in view, it is now to be seen whether non-issue of fresh charge-sheet really mattered much. The relevant part of the removal notice may be quoted:

1. (i) On 8.1.1981, Sri N.Redden, Shedman, Puri spoke to Asstt. Mech. Engineer (Power) on 'Phone at 11.25 hrs. from Talcher although he was supposed to be on duty at Puri at that time. No leave had been sanctioned to him nor any permission had been granted to leave his Headquarters and, therefore, his absence from Puri was unauthorised.
- (ii) H gave a threat to A.M.E. (Power)/Khurda Road and asked him to convey Addl. Divisional Railway Manager, Khurda Road that unless suspension orders against the two carriage Khalasis of Talcher, namely, Sarvasri Chandra Sekhar Jena and Bokari Barick, were revoked by 15 hours, unconditionally, he would ensure that the illegal strike at Talcher also spread to the whole Division and Train movements completely paralysed.
- (iii) He hold a meeting at Talcher between 15 hours,
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and 16 hrs. on 8.1.1981 and instigated the railway employees to continue the illegal strike and stoppage of work unless the suspension order on Sarvasri Chandra Sekhar Jena and Bokaro Barick were unconditionally revoked by the Railway Administration.

(iv) He has also promised to the employees at Talcher that if the suspension order was not removed unconditionally by the Rly. Administration, he would ensure that there was complete stoppage of work and train movement in Khurda Road Division.

(v) He had been holding meetings at Khurda Road on 9.1.1981 and 10.1.1981 and has been instigating the Staff to report sick on a mass scale in sympathy with Talcher staff and to paralyse the train service on Khurda Road Division.

2. Thus, Sri N.Redden,Shedman,Puri left his headquarters unauthorisedly and incited the Railway employee of Talcher to resort to, and to continue the illegal strike and thus he became responsible for adversely affecting the working of the Railways and maintenance of essential services and supplied to the life of community, and thereby committed gross misconduct, rendering himself liable for removal from service.

6. We have quoted relevant part of the removal notice for proper appreciation of the contention of Mr. Pradipta Mohanty about the prejudice caused to the applicant by non-framing of fresh charge-sheet. On reading the removal notice quoted above it will be apparent that all the relevant facts that the Railway Administration wanted to prove had been stated in that notice and after the administration stated that removal notice was to be taken as the charge, we do not find much substance in the contention of Mr. Mohanty that a fresh charge-sheet ought to have been framed. Of course the only lacuna that was in the removal notice was the absence of the names of all the witnesses and the list of documents by which the charges were proposed to be sustained. To that extent it has to be said that the removal notice could not

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fulfil all the requirements of a Memorandum of the charges. If the applicant was made aware of the documents that the Department desired to prove and the names of the witnesses to be examined, in support of the charges before the enquiry actually commenced, the non-supply of the list of witnesses and the list of documents would be a mere irregularity not prejudicing the applicant in his defence. In this connection, reference may be made to Annexure-8 to the application from which it would be found that the applicant was supplied the copies of the documents and the list of witnesses that the administration wanted to prove or examine in support of the charges and by then the applicant had not submitted his written statement of defence, the written statement of defence was submitted by the applicant on 2.7.1988. Therefore, we would say that really no prejudice was caused to the applicant by not giving him the list of documents or list of the witnesses at the initial stage.

7. Mr. Pradipta Mohanty has taken us through the evidence recorded during the enquiry and has contended that findings of the enquiry officer and the disciplinary authority are based on no evidence. It is well-settled that this Tribunal's jurisdiction is limited and it can not act as if it were an appellate forum against the Departmental authorities. All that this Tribunal is permitted to do is to see if there is a complete absence of admissible evidence to support the findings. One of the findings of the enquiry officer was that the applicant instigated the Railway employees to join illegal strike during January, February, 1981

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at Khurda Road. It may now be examined whether there was any evidence worth the name in support of this finding. The first witness was one Mr. M. Rao he ~~has~~ stated that there was a mass strike by the running staff but the reasons for this he was not aware of. He was put a question about a letter written by him to the Emergency Officer, Khurda Road stating that the applicant with some others of the Loco running staff was objecting to one L.C. Santra's going to duty and compelled him to report sick, Mr. Rao (Annexure-6) replied that he wrote the letter as per the statement of the call boy which would mean that he himself had no knowledge about the actual facts. The next question that was put by the presenting officer to Mr. Rao related to the statement in writing by one R.C. Mohanty about the applicant asking the loco staff to go on strike and the witness was asked to identify the signature of R.C. Mohanty and another fitter and the witness answered that he could not recognise the signature. He was asked as to whether he knew anything about the holding of meeting at Khurda Road or Talcher by the applicant, the witnesses answered in negative. The evidence of this witness Mr. Rao could not support the finding of the enquiry officer under examination. The next witness was one Mr. G.J. Achari discussion of his evidence by the Enquiry Officer is to be found at page-84 of the brief. There the Inquiry Officer opined that the witnesses Mr. G.J. Achari was quite evasive and not consistent in his replies during the examination and cross-examination. He (Inquiry Officer) also stated that as was elicited by cross-examination by the

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applicant, the witness wrote a letter to the Assistant Mechanical Engineer on 11.1.1981, naming the applicant to be one of the persons who went to the Carriage Shed to obstruct Railway Employees from coming to work. The Enquiry Officer did not like to accept the statement of the witnesses that the names were told by the A.M.E. and he gave the reasons for the same which may not be said to be perverse, but that cannot lead to the conclusion that the witness's statement in the letter could be accepted as evidence. It has been rather settled that though the standard of proof in a Departmental Proceeding, is not that regorous as in a criminal case, yet hearsay evidence cannot be acted upon even in a Depa tmental proceeding. From the answer of Mr. Achari to put by the Defence counsel it can be easily found that he had not seen any of the persons named in his letter dated 11.1.1981 but he was told the names by one Mr. Rath who admittedly was not examined. Such being the case there was no acceptable evidence of the applicant instigating others to obstrain from work.

8. With regard to the findings of the enquiry officer about the absence of the applicant without grant of leave applied for by him, a reference may be made to the evidence adduced in the case and to the letters exchanged between the enquiry officer and the applicant with regard to production of document. The applicant asked for production

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of the original muster roll but ~~the~~ original muster roll was not produced on the ground of its non-availability. Therefore, there was no documentary evidence to show that the applicant was really absent from duty without leave. In this connection it would be pertinent to refer to the evidence of Mr. M. Rao, from page-4 of his deposition in the enquiry it would be found that the applicant took one day leave on 8.1.1981 but as leave was not granted, the absence was unauthorised. At page-7 he stated that he received an unfit medical certificate and thereafter, the applicant was marked PMC in the duty list and just thereafter the witnesses stated that as the applicant's leave was not granted he was marked absent in the duty list for a day or two but after receiving the PMC he was shown sick. This evidence would show that in fact there was no credible evidence worth the name on which a person would act, therefore, we would say that the finding regarding unauthorised absence is based on no evidence.

9. In the facts and circumstances of the case we would quash the order of removal being based on no evidence and direct re-instatement of the applicant from today and the service period to the date of the passing of the order of removal would be available to the applicant for all purposes, *except for pay.*

*B. N. S. S.*  
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VICE-CHAIRMAN

Central Admn. Tribunal  
Cuttack Bench, Cuttack.  
July 27, 1990/Saranghi.



*M. S. S. S.*  
..... 27-7-90  
MEMBER (JUDICIAL)