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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.62 of 1989.

Date of decision : July 27 ,1990.

T.N.Panda, ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... M/s.Pradipta Mohanty
Pradyot Mohanty, Advocates.

For the respondents ... M/s.B.Pal,
O.N.Ghosh, Advocates.

C O R A M:

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

A N D

THE HONOURABLE 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 ? yes

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 who was a Driver under the Khurda Road Division of the South Eastern Railway was removed from service on 11.1.1981 by the Divisional Railway Manager (in short DRM), South Eastern Railway, Khurda Road purporting to exercise jurisdiction under Rule 14(ii) of the Railway Servants (Discipline & Appeal) Rules, 1968.

2. The applicant and others after the removal from service

moved the Calcutta High Court, that High Court directed the applicant before it to exhaust the remedy of departmental appeal and after the disposal of the appeal preferred by the applicant and others, they filed an original application questioning the order of the appellate authority. In that original application this Tribunal directed the holding of an enquiry at the appellate stage in accordance with the dictum of the Hon'bleSupreme Court in the cases of Tulsiram Patel and Satyavir Singh. After that enquiry was caused to be made by the Additional General Manager, South Eastern Railway, Garden Reach. The Deputy Chief Operating Superintendent was appointed as the Enquiring Officer. The enquiry officer(in short E.O.) gave his report to the appellate authority. The grounds for removal mentioned in the concerned notice with respect to the applicant were that he intimidated one R. Appal swamy at 1.45 p.m. of 11.1.1981 and prevented the said Appalswamy from joining the duty and he wilfully absented from duty without any valid medical sick certificate. The E.O. recorded the findings against the applicant on both counts and the appellate authority concurred with the findings of the E.O. and accordingly rejected the appeal.

3. The contentions which have been raised by Mr.Pradipta Mohanty,learned counsel for the applicant and Mr.B.Pal,learned Senior Standing Counsel for the Railway Administration,whom we have heard at length, would be noticed at their appropriate places. In the enquiry, the applicant's contentions werethat as no formal charge was framed, the enquiry could not proceed

and all the subsequent proceedings were void.Mr.Pal has contended that at the appellate stage a full fledged enquiry as underRule 9 could not and need not be made, all that is required to be done is to afford an opportunity to the delinquent officer to disprove the allegations on which he was punished. Mr.Pal has further contended that by the filing of the appeal the original order of punishment is not wiped out,therefore enquiry need not be strictly according to the procedure laid down under Rule 9 of the Railway Servants(Discipline and Appeal)Rules,1968(hereinafter to be referred to as the Rules). Having given our anxious consideration to this contention we are unable to countenance. The Hon'ble Supreme Court in the course of their judgment observed that under the Discipline & Appeal Rules there is no provision for making an enquiry or causing an enquiry to be made at the appellate stage though under Rule 25 of the said Rules, the revising authority may order an enquiry to be made in the manner laid down in Rule 9 if such an enquiry had not beenpreviouslymade, the appellate authority may order such an enquiry to bemade. Infact, this Tribunal directed the holding of an enquiry by the appellate authority in the manner laid down underRule 9. Rule 9 bears on the procedure for imposing major penalties. These rules are based on principles of natural justice, therefore, in our opinion, it will be impermissible to deviate, even at the appellate stage, during an enquiry, from the procedure laid down in that rule.

4. The idea of framing a charge is to give notice to the officer concerned as to what facts are going to be proved or

established by the Department against him. Therefore, if inthe removal notice all the relevant facts were mentioned, inour opinion, that would at best be only an irregularity and not illegality nor could it cause prejudice to the applicant. We would say that the removal notice, copy of which was made available tothe applicant before the commencement of the enquiry proper, was a substitute for a formal chargesheet, and no prejudice was caused. Mr.Mohanty, learned counsel for the applicant has contended that the allegation with regard to intimidation of R.Appalswamy was not supported by any admissible evidence. We are alive to the principle that this Tribunal's jurisdiction is limited to finding whether the conclusions arrived by the departmental authorities werebased on no evidence or principles of natural justice were not followed. It is now well settled that though the standards of proof in a criminal case may not be insisted upon in a disciplinary proceeding, yet the evidence adduced must be in a manner recognised by law. In the enquiry so far as the applicant was concerned two witnesses were examined of whom the second witness U.N.Panda spoke nothing about intimidation. So, the only witness whose evidence is relevant for the purpose is witness No.1, Mr.M.Manikyal Rao. Question No.4 tothis witness was that he forwarded a report submitted by R.Appalswamy to the effect that the applicant and some others threatened Appalswamy and his family members with assault and he was asked as to whether he had forwarded a report. In answer, the witness stated that Appalswamy submitted areport to the Officer-in-Charge, of Jatni Police-station and a copy of the report was handed over to him which was sent to the Divisional Railway Manager with a covering letter on 11.1.1981. From the evidence of this witness

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it would be found that he had no personal knowledge about any threat to have beengiven by the applicant. The report to the Police was not produced in the enquiry nor did anybody vouchsafe for the correctness of the document said to be a copy of the report to the Police, in such circumstance it cannot be said that the contents of the report said to havebeen made by Appalswamy were brought on record in a recognised mode. Apart from this, the applicant and some others who were being prosecuted on the report made by Appalswamy were acquitted and this acquittal had some effect on the question whether the disciplinary proceeding or enquiry could proceed further to decide this question of intimidation or assault.

5. With regard to the other charge i.e. the applicant did not file a valid medical certificate insupport of his application for sick leave, it may be stated that the E.O. while assessing the evidence observed that the applicant was living within a radius or 2.5 K.Ms. from the Railway Hospital, therefore, the certificate from a private medical practitioner filed by the applicant was not a valid certificate. About the distance of the residence of the applicant from the Hospital, no evidence was adduced. Therefore, this finding of the E.O. cannot but be said to be without any evidence. Therefore, the necessary corollary is that there is no evidence to support the finding that the applicant remained absent without a valid medical certificate.

6. Another important contention hasbeen raised by Mr.

Mohanty and that is that the applicant was not given, a copy of the enquiry report prior to the passing of the order by the appellate authority. Therefore, the impugned order of the appellate authority is unsustainable. On the other hand, Mr.Pal has argued that as the disciplinary authority acted under Rule 14(ii) of the Rules no question of supplying of enquiry report could arise and he has further contended that on reading Article 311 of the Constitution of India, it would be found that in certain cases the opportunity of hearing may not be available to the person punished, the idea of giving a copy of the enquiry report is to afford a reasonable opportunity of being heard and that opportunity cannot be asked for in cases where that is not available under the law. We do not deem it fit in the circumstances of the case to embank on a detailed examination of these rival contentions except expressing that an enquiry at the appellate or revisional stage cannot be ordered if the circumsta envisaged under rule 14(ii) of the Rules exists and if such circumstance ceases to exist, the right of reasonable opportunity may revive. In the circumstances of the case, we would quash the appellate order as being based on no evidence. The applican be reinstated in service within 15 days from thedate of receipt o a copy of this judgment provided he has not reached the age of superannuation but as in the meantime, quite a long period has elapsed and the applicant has himself rendered no service to the Railways the period from thedate of removal till reinstate would be treated as ' dies non'. No costs.

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Vice-Chairman

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Member(Judicial)

Central Admn.Tribunal,
Cuttack Bench,Cuttack.
July 27 ,1990/S.Sarangi.