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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.54 of 1990.

Date of decision: April 11, 1990.

Lakshmi Narayan Pani ... Applicant.

Versus

Union of India and others ... 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. B. R. PATEL, VICE-CHAIRMAN

A N D

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

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.

JUDGMENT

N. SENGUPTA, MEMBER (J) The applicant has prayed for quashing of the order of his removal from service, copy of which is at Annexure-5 and to declare the proceeding in a disciplinary enquiry as null and void.

2. Some allegations about a previous litigation made in the application now under consideration need be noticed

here. The applicant was a Ticket Collector serving under the South Eastern Railway in Khurda Road Division. A disciplinary proceeding was initiated by the Divisional Commercial Superintendent, South Eastern Railway, Khurda Road. The applicant questioned the competence of the Divisional Commercial Superintendent to start the disciplinary proceeding against him, in a writ petition filed before the High Court of Calcutta ~~High Court~~. That writ petition ^{the} after/coming into force of the Administrative Tribunals Act, 1985, stood transferred to the Calcutta Bench of this Tribunal and was registered as T.A.356 of 1987. The Calcutta Bench disposed of that application on 22.6.1988 passing an order that the removal from service passed by the Divisional Commercial Superintendent was invalid and was quashed and the said Bench directed to reinstate the applicant within six weeks from the date of delivery of the judgment. That Bench also directed that the Respondents i.e. the Railway Administration, if they so liked, could proceed against the applicant departmentally after holding an enquiry in accordance with the procedure laid down under the Railway Servants (Discipline & Appeal) Rules. After that he was reinstated but on 6.9.1988 a charge-sheet was framed against him and it was received on 10.10.1988. After service of the charges, the applicant applied for time to show cause against the charges levelled against him but no order on that prayer of his was passed. The Disciplinary authority passed order for holding an

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enquiry and appointed an Enquiring Officer on 27.10.1988 (copy at Annexure-2 to the application). The enquiring officer posted the case to 29.11.1988 for hearing.

He (applicant) appeared but the case had to be adjourned on account of non-supply of some documents to him (the applicant). Subsequently, the enquiring officer posted the case to some other dates such as 24.1.1989, 25.1.1989, 14.2.1989, and 15.2.1989 xxx, 20.6.1989 and 21.6.1989.

But he could not take part in the proceeding as he was sick. He informed the Enquiring Officer telegraphically of his sickness but the Enquiring Officer did not adjourn the case for hearing and thus proceeded ex-parte. After that disciplinary authority passed an order of removal and this is impugned in the present application. The case of the applicant, in a nut-shell, is that he was not given proper and adequate opportunity to defend himself and there was violations of principles of natural justice. Therefore, the order of removal is bad and is liable to be quashed.

3. The respondents in their reply have stated that there was an enquiry by the Central Bureau of Investigation and the C.B.I. gave the report whereafter the charges were framed on 6.9.1988 against the applicant. They do not dispute the prayer of the applicant for 10 days time to show cause against the charges. It is their case that even after expiry of the time that the applicant prayed for he declined to submit his explanation and as such on

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27.10.1988 the enquiring officer was appointed.

The applicant was informed of the various dates to which the disciplinary proceeding was posted for hearing and it was he who avoided to take part in the proceeding. Therefore, he cannot make a grievance that he was not afforded opportunity to defend himself. They have given some details when the applicant remained absent on the dates the disciplinary proceeding was held. It is needless to state in this judgment, all that may be indicated is that the applicant deliberately remained absent and avoided the enquiry.

4. We have heard Mr. Ganeswar Rath, learned counsel for the applicant and Mr. Ashok Mohanty, learned Standing Counsel for the Railway Administration. During the course of hearing it appears that before the disciplinary authority passed the order of removal the applicant had not been supplied a copy of the enquiry report. It has now been laid down by various Benches of this Tribunal that even though a second show cause notice might have been made unnecessary after the amendment of Article 311(2) yet the requirement of giving reasonable opportunity before passing the order of dismissal, removal or reduction in rank is still there. In view of the provisions of Article 311(2), the Full Bench further observed that unless a copy of the enquiry report is supplied to the charged officer to make his submissions before the disciplinary authority it would amount to denial of reasonable opportunity to the charged officer of being heard. In view of this decision

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and the fact that the applicant was not given a copy of enquiry report, the impugned order as passed by the disciplinary authority is to be quashed.

5. It has been urged by Mr. Ganeswar Rath that as the applicant was sick when the departmental proceeding proceeded *ex parte*, direction should be given to the respondents to allow him to examine, crossexamine the witnesses and adduce evidence on his own behalf. Though, there is provision entitling this Tribunal to take evidence and enter into the factual aspects of the case, ordinarily the Tribunal does not do so unless the circumstances are so compelling. The materials that are now on record are not sufficient to show whether the applicant had a genuine cause for not to be able to attend the enquiry on the dates when the enquiry proceeded in his absence. Therefore, we would say that the disciplinary authority and the enquiring officer should give an opportunity to the applicant to place before them the facts in support of his allegation about circumstances under which he was not able to attend the enquiry on the dates it proceeded *ex parte* against him and consider such facts. No document of which copy was not supplied to the applicant should be utilised against him. The matter is remanded back ^{for fresh disposal} from the state just prior to the submission of the enquiry report and after considering the materials that the applicant would produce in support of his allegation regarding his inability to be present on the date

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the enquiry proceeded in his absence.

6. Subject to the observations made above, the application is disposed of accordingly. No costs.

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Vice-Chairman

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Member (Judicial)

A circular stamp with a decorative border. The text "THE CENTRAL ADMINISTRATIVE SERVICE" is written in a circular path along the top and right sides. The text "CUTTACK BRANCH" is written in a circular path along the bottom and left sides. In the center is a small illustration of a seated figure, possibly a deity or a symbolic figure, holding a staff or object. Below the illustration, the number "1490" is stamped.

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