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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 721 OF 1993
Cuttack, this the 3rd day of May 2001

Rama Chandra Hati .... Applicant

Vrs.

Union of India and others .... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes.

2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
3.5.2001

Central Administrative Tribunal,
Cuttack Bench, Cuttack.

ORIGINAL APPLICATION NO. 721 OF 1993

Cuttack, this the 3rd day of May 2001

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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Rama Chandra Hati, aged about 51 years, s/o late Bauribandhu Hati, Vill-Gadakelupada, P.O-Motari, P.S-Delang, Dist.Puri at present serving as Shunter, Office of the General Manager, S.E.Railway, Garden Reach, Calcutta-43

.....Applicant

Advocates for applicant - M/s G.C.Mohapatra
B.L.Tripathy

-versus-

1. Union of India, represented by the General Manager, S.E.Railway, Garden Reach, Calcutta-43.

2. Divisional Mechanical Engineer, S.E.Railway, Khurda Road, P.O-Khurda Road, District-Khurda.

3. Divisional Railway Manager, S.E.Railways, Khurda Road, PO-Khurda Road, District-Khurda.

4. Chief Operating Manager, S.E.Railways, Garden Reach, Calcutta-43

..... Respondents

Advocate for respondents - Mr.R.Ch.Rath.

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O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application the petitioner has prayed for quasing the order dated 24.12.1991 (Annexure-A/6) imposing the punishment of reduction from the post of

Shunter in the scale of Rs.1200-2040/- on pay of Rs.1500/- with effect from 27.12.1991 for a period of three years with cumulative effect. He has also prayed for quashing the order dated 4.2.1992 of the appellate authority at Annexure-A/8 rejecting his appeal, and the order of the revisional authority at Annexure-A/10 rejecting his revision.

2. According to the applicant, when on 23.11.1990 he was working as a Driver in MD/ICCL Special Up Goods Train, eight out of twentythree wagons derailed at Hindol Station due to soil and line condition. Proceedings were thereafter drawn up against him. The charges are at Annexure-A/1. It is stated that along with the issuing of chargesheet on 27.5.1991, by another order on the same day an inquiring officer was appointed even without getting the explanation of the applicant. In his letter dated 5.6.1991 at Annexure-A/2 the applicant asked for copies of the fact finding report and the track reading report at least three days before the departmental enquiry. He submitted his explanation on 5.6.1991 denying the charge. The inquiring officer in course of his enquiry recorded the statements of Bhagirathi Behera, LM'B', Sri S.Ramakrishna Rao, DDA, and Sri K.N.Chhotray, Guard and also the applicant. The evidence of prosecution witnesses did not go to prove the charge. The statements of these witnesses are at Annexure-A/4. The applicant pointed out to the inquiring officer that copies of the documents asked for have not been given to him. The inquiring officer submitted his report holding the applicant guilty of the charge. On getting the enquiry report, which is

at enclosure to Annexure-A/1, the applicant filed a representation questioning the findings of the inquiring officer, but the disciplinary authority passed the impugned order of punishment in an erroneous manner without properly considering the materials on record. The applicant's appeal (Annexure-A/7) before the Divisional Railway Manager was rejected by a mechanical order which is at Annexure-A/8. His revision was also rejected in the impugned order at Annexure-A/10. The applicant has stated that the impugned orders at Annexures A/6, A/8 and A/10 are arbitrary and have been passed without proper application of mind. The findings of the inquiring officer as well as the disciplinary authority and the appellate and revisional authorities are perverse, being ~~xxxxxxxx~~ opposed to the evidence on record. There is also no ground to hold on the basis of evidence on record that the applicant is guilty of the charge. On the above grounds the applicant has come up in this petition with the prayer referred to earlier.

3. Respondents in their counter have opposed the prayer of the applicant. They have stated that the two documents asked for by the applicant were not in the list of documents enclosed to the chargesheet and these have also not been relied upon during enquiry. As such they have stated that by non-supply of these documents the applicant has not been prejudiced. They have further stated that the enquiry was conducted following the departmental rules strictly and all opportunity was given to the applicant in course of the enquiry. They have further stated that on the basis of materials on record, the charge has been

rightly held proved by the inquiring officer and the disciplinary authority. It is further stated that the disciplinary authority has taken all facts into consideration and imposed the punishment which is just in the circumstances of the case. The appellate authority and the revisional authority have applied their mind to the facts of the case and have passed speaking orders.

4. We have heard Shri G.C.Mohapatra, the learned counsel for the petitioner and Shri R.Ch.Rath, the learned Panel Counsel (Railways) for the respondents and have perused the records. The learned counsel for the petitioner has filed copies of the decision of the Tribunal in OA No.597 of 1992, Md.Shafiulla Khan v. Union of India and others, disposed of on 23.6.1994, and the orders of the Hon'ble High Court of Orissa in two cases which will be referred to later in this order.

5. The first point made by the learned counsel for the petitioner is that the disciplinary authority has appointed the Inquiring Officer along with issuing of chargesheet. The chargesheet has been issued in Memo dated 27.5.1991 and the order appointing the inquiring officer has also been issued on the same day by another order. It has been submitted that under the rules, only after receipt of the written statement of defence, a view has to be taken by the disciplinary authority whether enquiry has to be conducted, and in this case the disciplinary authority has prejudged the matter by appointing the inquiring officer along with issuing of chargesheet and because of this the entire proceeding has been

vitiated. The respondents in their counter have admitted that the inquiring officer was nominated simultaneously in order to avoid delay, but the inquiring officer started the enquiry only on 31.7.1991 after receipt of the explanation of the applicant. The relevant provision is sub-rule (9)(a)(i) of Rule 9 of the Railway Servants (Discipline & Appeal)Rules,1968 (hereinafter referred to as "Discipline & Appeal Rules"), wherein it has been provided that on receipt of the written statement of defence, the disciplinary authority shall consider the same and decide whether the inquiry should be proceeded with under this rule. In support of his contention, the learned counsel for the petitioner has relied on a decision of the Tribunal in Md.Shafiulla Khan's case(supra). It is not necessary to go into facts of that case. In that case, the Tribunal have noted that in a plethora of judicial pronouncements by the Hon'ble Supreme Court, High Courts and Central Administrative Tribunal, it has been held that disciplinary authority on receiving the explanation from the delinquent officer must come to a conclusion that there are grounds to further ~~xxxxxx~~ probe into the matter and then only the disciplinary authority can direct an enquiry to be conducted against the delinquent officer and thereafter appoint an inquiring officer and a presenting officer. In view of this, it was held in the case before them that the disciplinary authority had a closed mind and on that ground the order of punishment was quashed. The law on this point has undergone substantial change in view of the decision of the Hon'ble Supreme Court

in the case of State Bank of Patiala v. S.K.Sharma, AIR 1996 SC 1669. In that case the Hon'ble Supreme Court have held that an order passed imposing punishment on an employee consequent upon departmental enquiry in violation of rules, regulations and statutory provisions governing such employee, should not be set aside automatically. The Court or the Tribunal should enquire whether the provision violated is of a substantive nature or whether it is procedural in character. It has been further held that a substantive provision has normally to be complied with and the theory of substantial compliance or the test of prejudice would not be applicable in such a case. In the case of violation of a procedural provision, the Hon'ble Supreme Court noted that the procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference

is called for. The Hon'ble Supreme Court also noted that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. In such cases prejudice is self-evident and no proof of prejudice as such need be called for. In the present case before us even though the inquiring officer was appointed simultaneously with the issuing of chargesheet, the enquiry was initiated only after receipt of the explanation of the applicant. The applicant has stated that he submitted his explanation on 5.6.1991 and the respondents have stated that the inquiring officer initiated the enquiry only on 31.7.1991. In view of this, it cannot be said that by simultaneously appointing the inquiring officer, any prejudice has been caused to the applicant. In view of this, it cannot be held that on this ground the enquiry has been vitiated.

6. The second ground urged by the learned counsel for the petitioner is that the two documents, as referred to earlier, asked for by the applicant were not supplied to him. The respondents have pointed out that these two documents were not relied upon in course of the enquiry nor were they included in the list of documents which was given to the applicant along with the chargesheet. As these documents have not been relied upon by the Department, it cannot be said that non-supply of these documents has resulted in any prejudice to the applicant. The applicant has also not made any averment as to how because of non-supply of these two documents, he has been prejudiced. This contention is, therefore, held

to be without any merit and is rejected.

7. The third contention of the learned counsel for the petitioner is that the findings of the inquiring officer and the disciplinary authority are against the weight of evidence on record. For considering this submission, it is necessary to refer to the charge and the explanation of the applicant and the evidence of the witnesses and the findings of the inquiring officer. Before doing that it is necessary to note that the position of law is well settled that the Tribunal cannot reappraise the evidence and come to a finding different from the finding arrived at by the inquiring officer and the disciplinary authority. The Tribunal can only examine if the finding is based on no evidence or is patently perverse. This submission of the learned counsel for the petitioner is being examined in the context of the above well settled position of law.

8. The charge against the applicant was that while he was functioning as Driver, Goods Train on 23.11.1990 and driving MD/ICCL Special Up Goods Train he failed to observe speed restriction of 15 KMPH on 8½ turn over at point no.13(W) at Hindol Station while entering the second loop line and thus violated Rule No.SR 4-10-02. This resulted in derailment of 8 box wagons. It is necessary to note that on our direction the departmental authorities have produced the ~~f~~ proceedings file and we have gone through the same. The explanation of the applicant ~~xx~~ is at Annexure-A/3 and from this it is seen that he took the stand that while passing the turning point the speed of the train was only 10 KMPH as against the permissible 15KMPH. He has

also stated that timing of the train also proves that he was not overspeeding. He has stated that his train left MRDL at 14.58 hours and reached the derailment point at 15 25 hours against the allotted time of 22 minutes. In course of the enquiry Bhagirathi Behera, Line Man was examined and in reply to a specific question he has stated that when the train passed his Cabin, the speed was 15 KMPH. He has also stated that the applicant was not running at excess speed and the train was admitted at normal speed of 15 KMPH. Witness no.2 S.Ramakrishna Rao, DDA, in his cross-examination has stated that the speed of the train was 8 to 10 KMPH while entering R/3. In his examination-in-chief he has stated that while approaching the outer signal the speed was 25 KMPH, but the speed was reduced to 8 to 10 KMPH while entering R/3. Witness no.3 K.N.Chhotray, Guard has stated that the speed of the train while entering the yard was less than 15 KMPH. In cross-examination he has also stated that while entering Hindol Road Yard the speed of the train was less than 15 KMPH. The applicant in his statement has stated that the speed at home and entering loop was 10 KMPH as per the speedometer. In view of the above statements of prosecution witnesses which havebeen enclosed by the applicant to his OA it has been submitted by the learned counsel for the petitioner that the finding of the inquiring officer that the petitioner was overspeeding and because of that derailment occurred is based on no evidence. From the enquiry report,

we find that the inquiring officer has taken note of the above evidence given by the prosecution witnesses, but he has disbelieved them. The inquiring officer has noted that the running time between MRDL to Hindol Road is 23 minutes. The time allowance for 15 KMPH and 45 KMPH, caution and short stopping allowance at the yard comes to 9 minutes. Thus, the total time taken should have been 23 + 9 = 32 minutes. But the applicant has taken 27 minutes and from this he has come to the conclusion that the applicant was obviously overspeeding while passing the point. He has also disbelieved the evidence of the witnesses as they could not ascertain the speed of the train while in motion and the speedometer chart was not available. From this we find that the inquiring officer has come to the finding that the applicant was overspeeding on the basis of the running time upto derailment point given by the applicant himself as 27 minutes while the actual time taken according to the permissible limit giving allowance for slowing down and stoppages should have been 32 minutes. In view of the above, it cannot be held that the finding of the inquiring officer is based on no evidence. This contention is, therefore, rejected.

9. The last contention of the learned counsel for the petitioner is that the appellate authority has rejected the appeal mechanically. From the order of the appellate authority at Annexure-A/8 we find that he has noted that he has applied his mind and found that the applicant was overspeeding the train. In view of this, it cannot be said that the appellate authority has mechanically rejected the appeal.

10. The learned counsel for the petitioner has cited two decisions of the Hon'ble High Court. In OJC No. 3186 of 1985 (Guru Charan Patra v. District Transport Manager (Admn.), decided on 20.2.1991, the Hon'ble High Court quashed the finding of overspeeding by a motor vehicle driver on the ground that there was evidence during the enquiry that damage was caused to the vehicle because it dashed against a bullock-cart which suddenly came before the vehicle. The Hon'ble Court noted that there was no evidence to the contrary. In the instant case the inquiring officer has given cogent reasons in support of his finding and therefore, the above decision in Guru Charan Patra's case (supra) does not go to support the case of the applicant. In the case of Gobind Chandra Sahu v. District Transport Manager (Admn.), OJC No.1567 of 1987, decided on 27.3.1992, the petitioner before the Hon'ble High Court was a driver in Orissa State Road Transport Corporation Ltd. In a departmental proceeding he was found guilty and was visited with the punishment of recovery of certain amount from his salary. The Hon'ble High Court noted that the amount ordered to be recovered was allegedly the amount which the Corporation had to spend for repair of the vehicle. Their Lordships noted that there was nothing on record that the amount ordered to be recovered is the actual amount which hasbeen spent by the Corporation in repairing the vehicle. It was also noted that the appellate authority had not applied his mind. On the above grounds, the order of punishment of recovery was quashed. The facts of that case are totally different from the present case before us.

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11. In view of our discussion above, we hold that the applicant is not entitled to the relief claimed by him in the Original Application which is accordingly rejected. No costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN
3.5.2001

CAT/CB/3-5-2001/AN/PS