

5

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 764 OF 1994

Cuttack this the 5th day of April, 1999

K.S.Mony

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to 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
5/4/99

6

6

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 764 OF 1994
Cuttack this the 5th day of April, 1999

CORAM:

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

...

Sri K.S.Mony, aged about 49 years,
Son of K.S.Shivaankar Nair,
of Village: Athigannor,
P.O:Aralummoodu, P.S.Noyyattinkara,
Dist: Trivendrum, at present working as
Parcel Clerk, Railway Administration,
Cuttack, residing at C/o.M.Basantha Kumari
Staff Nurse, Unmarried Qr. No.1
S.C.B.Medical College Campus,
Cuttack

...

Applicant

By the Advocates : M/s.D.R.Pattnaik
S.K.Mallick
R.N.Nayak
K.C.Pradhan
M.K.Khuntia

-Versus-

- S. Som.*
1. Union of India represented by its
General Manager, S.E.Rly.,
Garden Reach, Calcutta
 2. Sr.Divisional Commercial Manager,
S.E.Rly., Khurda Road,
At/Po: Jatni, Dist: Khurda
 3. Assistant Commercial Manager,
S.E.Rly., Khurda Road,
At/Po:Jatni, Dist: Khurda
 4. Addl.Divisional Railway Manager,
S.E.Rly., Khurda Road,
At/Po: Jatni Dist: Khurda

...

Respondents

By the Advocates : Mr.R.C.Rath,
Addl.Standing Counsel
(Railway Administration)

...

ORDER

MR.SOMNATH SOM, VICE-CHAIRMAN: In this application under Section 19 of the Administrative Tribunals, Act, 1985, the applicant has prayed for quashing the order of punishment dated 24.8.1992 at Annexure-3 and the order of enhanced punishment dated 15.2.1994 at Annexure-6. There is also a prayer for direction to respondents to allow the applicant service benefits with 12 per cent interest.

2. The facts of this case, according to petitioner are that the applicant after retirement from Army was appointed by Railway Administration as Junior Parcel Clerk and posted at Cuttack Railway Station. While he was working as such, charge-sheet dated 29.7.1992 at Annexure-1 was served on him in which it was mentioned that he failed to ascertain availability of space in the SLRS before hand either from Bhubaneswar or Khurda and allowed loading of the consignment partly in the rear SLR and rest in the front SLR which resulted delay in delivery of the consignments and subsequent public complaint. In this charge he was asked to submit his explanation within 10 days from the receipt of explanation. It is important to note that this proceeding was started under Rule-11 of Railway Servants(Discipline & Appeal) Rule, 1965, i.e. to say that this was a minor penalty proceeding. The applicant submitted his explanation on 19.8.1992 which was received by the Clerk on 20.8.1992. But without considering the explanation punishment was imposed in order dated 24.8.1992 withholding his increment raising his pay from Rs.1075 to Rs.1100/- without cumulative effect. It is further stated

J Som.

by the applicant that after nine months of this order Addl.Divisional Railway Manager(Res.4) by exercising his powers under Rule-25 enhanced the punishment in order dated 15.2.1994 withholding increments for 24 months with non-cumulative effect. In the context of the above facts, the petitioner has come up in this Original Application with the prayers referred to earlier.

3. Respondents in their counter have stated that the applicant while working and supervising loading and unloading of Train No.8477 on 4.2.1992 at Cuttack failed to ascertain the availability of space in the SIRs beforehand either from Bhubaneswar or from Khurda and allowed loading of the consignment partly in the rear SLR and the rest in front of SLR which resulted delay in delivery of the consignment and the subsequent public complaint. For this charges were issued against the applicant which was received by him on 10.8.1992. The applicant furnished his explanation and accordingly the punishment order was issued on 24.8.1992. The applicant did not file any appeal. It is further stated that the order of punishment was communicated to the Railway Board and the Member, Traffic of the Railway Board commented that the punishment was too lenient. Thereafter the case was reviewed and the competent authority enhanced the punishment after personal hearing and the decision was communicated to the applicant. On the above grounds the respondents have opposed the prayer of the applicant.

4. Heard Shri D.R.Pattnaik, learned counsel for the applicant and Shri R.C.Rath, learned Addl.Standing Counsel appearing on behalf of the respondents and have

perused the records. We note that in the charge itself ~~it~~ there has been no mention of Number of Train and date of loading even though the alleged lapse is specifically with regard to applicant's negligence in the matter of loading of parcel in a particular Train on a particular day. This has been pointed out by the petitioner in his explanation dated 19.2.1992. In the punishment order, however, it has been mentioned that the loading was in Train No.8477 on 4.2.1992. As the specific No. of Train and the date of loading were not reflected in the charge, the disciplinary authority could not have taken note of this in the order of punishment passed by him. Secondly, it is found that the applicant submitted his explanation on 19.8.1992 and it has been averred that the explanation was received by the Clerk on 20.8.1992. In the charge the applicant had been asked to submit his explanation within 10 days and in the counter it has been submitted by the respondents that the charge-sheet was received by the applicant on 10.8.1992. Thereafter the applicant, according to him, filed explanation dated 19.8.1992 which was received by the Clerk on 20.8.1992. Thus the explanation submitted by the applicant was within the time stipulated by the departmental authorities. The fact of receipt of explanation already filed by the applicant has not been specifically denied by the respondents in their counter and therefore, we hold that the applicant submitted his explanation within the time fixed in the charge-sheet. Notwithstanding this, it is noted that in the impugned order of punishment dated 24.8.1992, it is mentioned that no explanation has been received from the

J. Som.

applicant and the ~~impugned~~ order of punishment has been imposed on the applicant. As we have held that the explanation submitted by the applicant was received by the respondents within stipulated time, the disciplinary authority was bound to consider the explanation submitted to him and as he has not considered the explanation, the impugned order of punishment cannot be ~~substituted~~ ^{subm.} As regards the order of enhanced punishment under Rule 25 of Railway Servants (Discipline & Appeal) Rule, 1968, it is seen that 2nd proviso to Clause-C of ~~Sub-Rule~~ ^{Sub-Rule} 25, no order under this Rule shall be initiated/reviewed more than six months after the date of order to be revised, in cases where it is proposed to impose enhanced punishment or modify the order to the detriment of the railway servant. In this case order of the disciplinary authority dated 24.8.1992 and the notice to the applicant for showing cause against enhancement of punishment was dated 18.5.1993 vide Annexure-4 to the applicant, i.e. beyond a period of six months which is in violation of the above proviso.

In consideration of the above, we quash the order of the disciplinary authority at Annexure-3 and the order of the appellate authority at Annexure-6. The applicant would be entitled to financial and other service benefits accordingly, but under the circumstances the prayer for grant of interest on the financial benefit is not acceded to.

The Original Application is allowed as above, but without any order as to costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)
B.K. SAHOO

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN