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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 798 OF 1995
Cuttack this the 29th day of August/2002

P.R.Reddy

...

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.

V. Subba

(MEMBER (ADMINISTRATIVE))

Y. Subba
29/08/2002
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.798 OF 1995
Cuttack this the 29th day of August/2002

CORAM:

THE HON'BLE MR. V.SRIKANTAN, MEMBER (ADMINISTRATIVE)
AND
THE HON'BLE MR.M.R.MOHANTY, MEMBER (JUDICIAL)

...

P.N.Reddy, aged about 55 years,
S/o. Late Parsuram Reddy, At-Chhatrapur
(Reddy Street) PO: Chhatrapur, Dist-Ganjam

...

By the Advocates

Applicant

M/s.G.C.Mohapatra
N.M.Mohanty
A.R.Mohapatra
A.K.Jena
Miss.B.L.Tripathy

-VERSUS-

1. Union of India represented by the General Manager,
S.E.Railway, Garden Reach, Calcutta-43
2. Senior Divisional Mechanical Engineer, S.E.Railway,
Khurda Road, PO-Khurda Road, Dist-Khurda
3. Divisional Railway Manager, S.E.Railway, Khurda Road,
PO KHURDA Road, Dist-Khurda

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By the Advocates

Respondents

Mr.Ashok Mohanty,
Sr.Standing Counsel
(Central)

O R D E R

MR.M.R.MOHANTY, MEMBER (JUDICIAL): Applicant, a Railway Engine Driver, having faced with an order of removal from service under Annexure-A/6 dated 10.1.1995, preferred an appeal dated 19.1.1995 under Annexure-A/7 and the same appeal having been dismissed under Annexure-A/8 dated 6/9.2.1995, he has preferred this Original Application under Section 19 of the Administrative Tribunals Act, 1985, seeking quashing of Annexure-A/6 dated 10.1.1995 and Annexure-A/8 dated 6/9.2.1995.

2. The Applicant faced with a disciplinary proceedings
- J

under Annexure-A/1 dated 10/12.1.1994, to which he submitted an explanation under Annexure-A/2 dated 18.1.1994. He also submitted a defence statement before the Inquiring Officer during the course of enquiry under Annexure-A/3 dated 3.8.1994. The Inquiring Officer submitted the enquiry report under Annexure-A/4 dated 12/23.8.1994. The Applicant was also supplied with a copy of the said enquiry report dated 6.8.1994 and an opportunity was given to him to offer his comments on the said enquiry report. Accordingly, the Applicant submitted a representation under Annexure-A/5 dated 27.9.1994. Finally under Annexure-A/6 dated 10.1.1995, penalty of removal from service was imposed on the Applicant; as against which he submitted a representation under Annexure-A/7 dated 19.1.1995. Ultimately, the appeal was dismissed under Annexure-A/8 dated 6/9.02.1995. Hence this Application.

3. Shri G.C.Mohapatra, the learned counsel for the Applicant had raised a point during hearing on 22.8.2002 that the Inquiring Officer having been appointed under Annexure-A/1 dated 10/12.1.1994 (the charge sheet), the entire disciplinary proceedings was vitiated. In reply to the same Shri Ashok Mohanty, the learned senior counsel for the Railways pointed out that the Applicant, as a Driver neglected in discharge of his duties, for which a train was derailed and in the said premises, a major departmental proceedings was initiated against him and that in the said premises, such a proceedings could not have been terminated without an inquiry. Law is well settled that appointment of Inquiring Officer in the charge-sheet

itself, prima facie, discloses a pre judge mind of the authorities. By keeping this in mind, we examined the case in hand. Despite the fact that the Inquiring Officer was appointed in the charge sheet itself (Annexure-A/1 dated 10/12.1.1994) the Applicant did not raise any objection at any point of time. He did not raise any objection about that in his first explanation submitted under Annexure-A/2 dated 28.1.1994. He also did not whisper anything about that in his defence statement submitted under Annexure-A/3 dated 3.8.1994. While submitting his representation (directed against the inquiry report) under Annexure-A/5 dated 27.9.1994, he also raised no grievance about the appointment of Inquiring Officer in the charge sheet itself. We have also looked to the appeal memo submitted by the Applicant under Annexure-A/9 dated 19.1.1995; wherein the Applicant also did not raise any grievance with regard to appointment of the Inquiring Officer in the charge sheet itself. In the said circumstances, the grounds taken by the Applicant (who participated in the enquiry without any objection) for the first time in the Original Application pertaining to appointment of Inquiring Officer in the charge sheet itself is not sustainable; because the Applicant has not pointed out (even in the O.A. itself) as to how he was prejudiced by the appointment of Inquiring Officer in the charge sheet. Law is well settled by the Hon'ble Supreme Court in the case of State Bank of India v. S.K. Sharma, reported in AIR 1996 SC 1669 that "violation of any and every procedural provision cannot be said to

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be automatically vitiated the enquiry held or orders passed". The Hon'ble Supreme Court in the said case observed that in each case it should be examined as to "whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively". The Hon'ble Supreme Court has proceeded further to say (in the said case) that "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 orders of punishment". The Hon'ble Supreme Court has proceeded to say that "if no prejudice is established to have resulted therefrom, it is obvious, no interference is called for". The relevant portion of the judgment of the Hon'ble Supreme Court in the SBI case (supra) reads as under:

" In the case of violation of a procedural provision, the position is this : procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. 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/employee 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".

4. The Advocate for the Applicant had pointed out at the hearing that the punishment imposed on the Applicant was disproportionate, and the Appellate Authority did not

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consider that aspect of the matter. In order to come to a conclusion in respect of this stand taken in favour of the Applicant, we examined the appellate order under Annexure-A/8 dated 6/9.2.1995. This appellate order is a cryptic one. Without any discussion, the Appellate Authority recorded a finding that "there is no ground for alteration of punishment". In the appeal memo one of the grounds was urged as follows :

"That I was working as a Driver in the Loco Shed, KUR for the last 5 years, but my total service was 34 years of long loyal service under your kind control to the entire satisfaction of my all superiors".

As it appears, the Appellate Authority did not look to the submission of the Applicant that he had rendered 34 years of service which was unblemish, excepting one which was the subject matter of the disciplinary proceedings. It is the submission of the Advocate for the Applicant that had the Appellate Authority given due consideration to the unblemish/career of more than 34 years, then instead of imposing the extreme punishment of "removal" from service, he should have converted it to compulsory retirement. To this, Shri Ashok Mohanty, the learned senior counsel for the Railways wanted to record his vehement objection. It is the case of Shri Mohanty that huge loss to the Railways being attributable to the Applicant, no pensionary benefits could have been allowed to the Applicant by granting him compulsory retirement from service.

5. Without giving any opinion on the submissions made by the rival parties, we hereby set aside the Appellate

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order dated 6/9.2.1995 under Annexure-A/8 (for the appellate order is a cryptic one, without any discussion and without any reasoning) and remit the matter to the appeal stage^{and,} as a consequence, the Divisional Railway Manager, S. E. Railway, Khurda Road, should give a fresh look to the appeal of the Applicant, by giving a special consideration to the aspect of the matter that the Applicant rendered more than 30 years of unblemish service to the railways and pass necessary orders within a period of 60 (sixty) days from the date of receipt of copies of this order.

with the aforesaid observations and directions, this Original Application is disposed of. No costs.

V. Srikanth
(V. SRIKANTAN)
MEMBER (ADMINISTRATIVE)

M. R. Mohanty
(M. R. MOHANTY)
MEMBER (JUDICIAL)

Bjy/