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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

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ORIGINAL APPLICATION NO. 337 OF 1996

Cuttack, this the 20th day of April, 2001

Sri M.S.Rao

...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

20.4.2001

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 337 OF 1996
Cuttack, this the 20th day of April, 2001

CORAM:

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

Sri M.S.Rao, aged about 59 years, son of Sri M.Srinivas Rao, Retd. Departmental Store Keeper Grade-I), assistant Controller of Stores (Con.), South Eastern Railway, Rayagada of Door No.9-57-Appannapalem, P.O-Vepagunta, Visakhapatnam, Andhra Pradesh-Pin-53 0029

..... Applicant

Advocate for applicant - M/s R.K.Patnaik
M.B.K.Rao

Vrs.

1. Union of India, represented through Chairman, Railway Board, Railway Bhawan, New Delhi.
2. General Manager, South Eastern Railway, Calcutta-43.
3. Deputy Controller of Stores (Const.), South Eastern Railway, Chandrasekharpur, Bhubaneswar, District-Khurda.
4. Controller of Stores (Construction), South Eastern Railway, Chandrasekharpur, Bhubaneswar, District-Khurda.
4. Chief Administrative Officer (Construction & Survey), South Eastern Railway, Chandrasekharpur, Bhubaneswar, District-Khurda... Respondents

Advocates for respondents - M/s D.N.Misra
S.K.Panda

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application the petitioner has prayed for quashing the punishment order dated 8.4.1991 (Annexure-2) and for a direction to treat the period of suspension from 8.4.1991 to 7.4.1992 as duty with consequential financial and service benefits. He has also asked for pay fixation to be made accordingly in terms of the then existing scale to which he was lawfully entitled.

4. The respondents have filed counter opposing the prayers of the applicant. No rejoinder has been filed. We have heard Shri R.K.Patnaik, the learned counsel for the petitioner and Shri D.N.Mishra, the learned Standing Counsel (Railways) for the respondents and have perused the records.

3. Before considering the pleadings of the parties, it has to be noted that in the order of punishment at Annexure-2 the applicant was reduced from the post of Depot Store Keeper, Grade-I (hereinafter referred to as "DSK, Grade-I") in the scale of Rs.2000-3200/- (Pay Rs.2600/-) to the post of DSK Grade-II in the scale of Rs.1600-2660/- on a pay of Rs.2360/-. The appellate authority in his order dated 11.7.1991 (Annexure-4) after considering the appeal of the petitioner, ordered to fix the pay of the petitioner in the lower scale of DSK Grade-II, i.e., Rs.1600-2660/- at Rs.2600/- which he was drawing prior to his suspension in the scale of Rs.2000-3200/-. It was directed that he would be in that grade for a period of one year from the date of penalty from 8.4.1991 and after a review at the end of one year it would be decided whether he can be restored to his normal position. It was noted that this has been ordered because the applicant had earlier been given penalty for recovery of loss of material in his custody in a different case as is seen from his service record. It further appears from the order dated 2.7.1992 (Annexure-5) that the petitioner represented on 23.6.1992 and in consideration of his representation the appellate authority in the above order restored the petitioner to the status of DSK Grade-I with effect from 8.4.1992, i.e., on expiry of one year penalty period and it was ordered that the penalty shall not have

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cumulative effect and his pay shall be fixed as per extant rules and arrears, if any, shall be paid to him.

4. The admitted position is that while the applicant was working as DSK Grade-I at Rayagada, a major penalty proceeding was initiated against him. the charges were enquired into and the enquiry report is at Annexure-1. After considering the enquiry report and the representation of the applicant against the findings of the inquiring officer, the punishment order at Annexure-2 was passed and in consideration of his appeal, the appellate order at Annexure-4 was issued. Law is well settled that in a disciplinary proceeding the Tribunal does not act as an appellate authority and cannot re-evaluate the evidence and substitute its findings in place of findings arrived at by the disciplinary authority or the appellate authority. The Tribunal can interfere only if there is violation of principles of natural justice or if reasonable opportunity has not been given to the delinquent officer or the findings are based on no evidence and are patently perverse. The submissions made by the applicant have to be considered in the context of the above settled position of law.

5. In his petition, the applicant has not urged any ground that he has been denied reasonable opportunity or principles of natural justice have been violated. He has only stated that during the period he was overburdened with additional work and no mala fide on his part for default in duty has been proved. He has also stated that the punishment imposed is disproportionate to the gravity of the mistake committed by him.

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6. From the enquiry report we find that there were two charges against him. The first one is that during the period of his incumbency as DSK Grade-I, Rayagada, from 4.11.1988 to 19.4.1989, he had issued material worth Rs.1,08,901/- against Issue Notes dated 20.1.1989 and 19.4.1989 on fake requisitions said to have been issued by I.O.W.(C), Sikarpai. The second charge is that while working as DSK Grade-I he failed to exercise proper scrutiny of requisitions by entertaining fake requisitions dated 2.11.1988, 27.12.1988 and 8.3.1989 resulting in issue of Railway materials costing Rs.58,375/-. We have gone through the enquiry report and we find that the inquiring officer has considered the plea of the applicant that when he joined as DSK Grade-I specimen signatures of the requisitioning authorities were not handed over to him and that he was overloaded with work. The inquiring officer while holding that the applicant was overburdened and could not be expected to give full attention to all the details of work, had not accepted the applicant's stand with regard to non-supply of specimen signatures of the requisitioning authorities. It has also been held that the applicant being stock holder of Ward No.III was fully responsible for issuing of material from Ward No.III. After going through the report of the inquiring officer it cannot be held that his findings are based on no evidence or are patently perverse. In view of the above, we do not find any ground for quashing the order of punishment at Annexure-2, as prayed for by the applicant, which in any case has been modified by the appellate authority in his order at Annexure-4.

7. The second prayer of the applicant is for treating the period of suspension as duty. We find that in this case the major penalty proceeding was initiated against the applicant and at the conclusion of the enquiry major penalty of reduction in rank from DSK Grade-I to DSK Grade-II was imposed and therefore, under the rules the period of suspension has been rightly treated to be as such. We find no infirmity in this and this prayer is accordingly rejected.

8. The third prayer of the applicant is for re-fixation of his pay and for allowing him arrears. We note that the punishment was imposed on him on 8.4.1991 for a period of one year. The appellate authority in his order dated 2.7.1992 at Annexure-5 had specifically directed that his pay shall be fixed as per extant rules and arrears, if any, paid to him. In course of hearing, it was submitted by Shri R.K. Patnaik, the learned counsel for the petitioner that pay fixation has not been made even though the applicant has retired long ago and arrears have also not been paid to him. The respondents have pointed out in the counter that against the order of the appellate authority the applicant has filed a revision petition. But in his representation dated 23.6.1992 at Annexure-R/1 he had prayed that the revision petition may be treated as withdrawn. In this representation the applicant has stated that on expiry of the punishment period he was entitled to be restored back to his original grade and pay with increments as the punishment was without cumulative effect. There is no averment in the counter if this representation dated 23.6.1992 has been disposed of. In view of this,

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with regard to re-fixation of pay and payment of arrears, as prayed for by the applicant, we direct the Controller of Stores (Construction), S.E.Railway, Visakhapatnam, to whom the representation has been addressed, to dispose of this representation dated 23.6.1992, if the same is still pending with him, within a period of sixty days from the date of receipt of copy of this order which should be sent to him as he has not been impleaded as a respondent in this OA.

9. In the result, the Original Application is disposed of in terms of the above observation and direction. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
20.4.2001
VICE-CHAIRMAN

20th April, 2001/AN/PS