

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 658 OF 1996
Cuttack, this the 26th day of September, 2001

Sri A.K.Khosla

Applicant

Vrs.

General Manager, S.E.Railway 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.

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(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som,
(SOMNATH SOM)
VICE-CHAIRMAN
26.7.2001

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ORIGINAL APPLICATION NO. 658 Of 1996
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CORAM;

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

.....

Sri A.K.Khosla, aged about 48 years, son of late Albas
Khosla, at present working as Head Clerk, P.W.I.Office,
South Eastern Railway, Koraput-764 021, Orissa
.....
Applicant

Advocates for applicant - M/s C.A.Rao
S.K.Behera
P.K.Sahoo

Vrs.

1. General Manager, South Eastern Railway, Garden Reach, Calcutta-43, West Bengal.
2. Senior Divisional Personnel Officer, S.E.Railway, Waltair, Dist.Visakhapatnam, Andhra Pradesh.
3. D.R.M.S.E., Railway, Waltair, Andhra Pradesh.
4. Chief Engineer, S.E.Railway, Garden Reach, Calcutta-43, West Bengal.
5. Senior D.E.N.(Northern), S.E.Railway, Waltair, Dist.Visakhapatnam, Andhra Pradesh

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Respondents

Advocate for respondents - Mr.D.N.Mishra
S.C.(Railways)

O R D E R

S. Jom, SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the petitioner has prayed for
quashing the enhanced punishment order at Annexure-7 and for
a direction to the respondents to give all consequential
service and financial benefits.

2. The applicant's case is that he joined as Clerk in the Railways and had all along been working in the establishment matters. On 3.11.1993 he was posted as Store Clerk under Inspector of Works, Rayagada. He has stated that by the time he joined the post, his predecessor had already retired from service and a Junior Clerk was discharging the duties of Store Clerk. The applicant has stated that after joining he was not fully acquainted with the maintenance of store records. While the applicant was on leave from 6.12.1993 to 11.12.1993 and again from 23.12.1993 to 2.1.1994, on 29.12.1993 a stock verification was done and some irregularities were found in the store records pertaining to 15.10.1993 and for the period from 23.12.1993 to 29.12.1993. The applicant has stated that during both these periods he was not in charge. On 15.10.1993 he had not joined and during the later period from 23.12.1993 to 29.12.1993 he was on sanctioned leave. After stock verification, disciplinary proceedings were initiated against him in which there were three charges. The first charge was that while he was functioning as Store Clerk from November 1993 to January 1994 he had failed to record the transactions of cement in the ledger. The second charge was that because of his failure to keep store account properly, 220 bags of cement were found in excess. The third charge was that while functioning as Senior Clerk he failed to record the transactions of cement for special works in the DMTR. The charge is at Annexure-1. The inquiring officer in his report (Annexure-3) held that the applicant was not guilty of the charge of non-posting of the transaction of cement received back from M/s Radha Construction on 15.10.1993 as by that time he had not joined

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this unit. The inquiring officer also held that the applicant is not responsible for keeping the so called 150 bays of cement of Shri D.N.Behera, Contractor, from 23.12.1993 to 29.12.1993 when he was on sanctioned leave. The inquiring officer held that the applicant is responsible only for non-posting of cement ledger and the same cannot be considered as intentional as he had joined the post of Store Clerk only in November 1993. The inquiring officer held that some time is required to understand the works of IOW Stores and maintenance of records. The disciplinary authority, after considering the enquiry report, ordered that as the applicant had joined his post a few days ago, his lapse is viewed leniently and as a measure of penalty it was ordered that one set of his privilege passes for the year 1995 should be withheld. This order of the disciplinary authority is dated 26.6.1995 and is at Annexure-4. The Divisional Railway Manager in his order dated 14.8.1995 exercising power under Rule 25(iv)(v) of the Railway Servants (Discipline & Appeal) Rules, 1968, called for the disciplinary proceedings file and held that the penalty imposed is not adequate. He issued showcause notice on 14.8.1995 (Annexure-5) to the applicant proposing to enhance the penalty to withholding of annual increment for twentyfour months with cumulative effect. The petitioner filed a representation (Annexure-6) against the proposed enhancement of penalty. The disciplinary authority in his order dated 9.10.1995 (Annexure-7) imposed the punishment of withholding of increment for twentyfour months with cumulative effect. The applicant filed a review petition on 27.5.1996 (Annexure-8) to the Chief Engineer, South Eastern Railway, against the enhanced penalty. The applicant has

stated that till the date of filing of the original application on 3.9.1996, his review petition had not been disposed of by the Chief Engineer(respondent no.4).

3. Respondents have filed counter opposing the prayer of the applicant. No rejoinder has been filed. It is not necessary to go into all the averments made by the respondents in their counter except to note that the respondents have taken the stand that the O.A. is premature as the applicant has filed the review petition on 27.5.1996 and has approached the Tribunal on 3.9.1996, and the review petition is still pending.

4. We have heard Sri C.A.Rao, the learned counsel for the petitioner and Shri D.N.Mishra, the learned Standing Counsel (Railways) for the respondents. At our instance, the learned Standing Counsel (Railways) has produced the proceedings file and we have perused the same. The learned counsel for the petitioner has relied on the following decisions:

- (i) Sri Panchanan Gouda v. State of Orissa and others, OJC Nos.1814 to 1816 of 1990, decided on 16.12.1992, by the Hon'ble High Court of Orissa;
- (ii) M/s Meridian Steels v. Commissioner of Commercial Taxes, 1997(II) OLR 348;
- (iii) Satyabadi Barik v. Union of India, OANo.60 of 1991 decided by this Bench on 4.10.1994;
- (iv) K.I.Shephard and others v. Union of India and others, AIR 1988 SC 686;
- (v) H.L.Trehan and others v. Union of India and others, AIR 1989 SC 568;

(vi)

K.S.Sastry v. The A.P.Small Scale Industrial Development Corporation Ltd. 1995(4) SLR 476, decided by the Hon'ble High Court of Andhras Pradesh.

We have perused these decisions.

5. Before proceeding further, it has to be noted that the applicant has not challenged the order of the disciplinary authority. He has only challenged the enhanced punishment order issued by the Divisional Railway Manager in his order dated 9.10.1995 (Annexure-7). The grounds on which this order has been challenged by the learned counsel for the petitioner are discussed below.

6. The first point urged by the learned counsel for the petitioner is that in response to the showcause notice for enhancement of punishment, the applicant in his explanation dated 28.8.1995 at Annexure-6 had sought for a personal hearing which was not granted to him. Relying on the decisions of the Hon'ble Supreme Court in H.L.Trehan's case (supra) and K.I.Shephard's case (supra) and the decision of the Hon'ble High Court of Orissa in M/s Meridian Steels's case (supra), it has been urged by the learned counsel for the petitioner that by denying personal hearing sought for by the applicant, rules of natural justice have been violated and reasonable opportunity has not been afforded to the applicant. We are unable to accept the above contention because under proviso (a) to Rule 25 of the Railway Servants (Discipline & Appeal) Rules,1968, it is laid down that no order imposing or enhancing any penalty shall be made by any revising authority unless the Railway servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed. The

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Rule, therefore, speaks only of making a representation and in this case the applicant has made a written representation. The proviso does not specifically require the revisional authority to give personal hearing and as the applicant has submitted an elaborate representation against the enhancement after getting the showcause notice, we hold that by not granting him a personal hearing, principles of natural justice have not been violated. This contention is accordingly rejected.

7. The second ground urged by the learned counsel for the petitioner is that the revisional authority has not passed a speaking order. We are also unable to accept the above contention because in the order of punishment enclosed by the applicant himself at Annexure-7 it is mentioned that a speaking order is enclosed. On a reference to the proceedings file we find that along with the order enhancing the punishment, the Divisional Railway Manager has passed a speaking order and therefore, this contention cannot be accepted.

8. The last contention of the learned counsel for the petitioner is that as he had already undergone the punishment imposed by the disciplinary authority, he could not have been imposed a second punishment as that had resulted in double jeopardy. *in Satyabadi Barik's case (supra)* this Bench of the Tribunal have held that while imposition of one penalty in a disciplinary proceeding is the rule, imposition of two statutory penalties is only an exception to be resorted to in rare and deserving cases, and the circumstances under which such a course is resorted to must be clear from the order of the disciplinary authority or the appellate

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authority, as the case may be. In K.S.Sastry's case (supra) the applicant was imposed with penalty on conclusion of disciplinary proceedings and he suffered the punishment. Subsequently, a second punishment was imposed on him and this was held as not permissible by the Hon'ble High Court of Andhra Pradesh in the above decision. The question of enhancing the penalty in a case where the Railway servant has already undergone the original penalty has been subject-matter of Railway Board's instructions dated 29.2.1956 and 12.12.1972, the gist of which has been printed under paragraph (9) at pages 277 and 278 of the Bahri's Compilation of Servants (Discipline & Appeals) Rules, 1968 (Fourth Edition 1991). In these circulars a point has been raised as to whether in case where a penalty is awarded and enforced and thereafter it is proposed to impose a higher penalty, it will be in order to do so if the higher penalty is of a nature that does not amount to just enhancement of the previous penalty but amounts to an additional penalty. It is stated as an example that where an employee may have been punished with the stoppage of passes for three months and may have already undergone the punishment, whether the competent authority may yet impose a higher penalty, say removal from service. It has been laid down that Rule 25 vests full discretion on the revisional authority to review a case and pass final orders upholding, reducing or enhancing the original penalty. The enhancement of the penalty need not necessarily be a prolongation of the same penalty but can be a fresh penalty higher than the original one and there is no objection to infliction of such additional penalty. Having said thus, the Railway Board has indicated that in cases where the employees has already

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undergone the original penalty in whole or in part, this fact should be taken into account by the reviewing/appellate authority when deciding upon the higher penalty so that unintended hardship is not caused to the employee.

- Alternatively, the feasibility of cancelling the original penalty while imposing the higher penalty may be considered.

In this case the original penalty was withholding of one set of privilege passes for one year. The applicant has averred and the respondents have not denied that he had already undergone the original punishment and thereafter the enhanced penalty has been imposed. From the proceedings file it is clear that the revisional authority has not taken note of the fact that the applicant had already undergone the original punishment imposed by the disciplinary authority. As the Railway Board's instructions are statutory in nature, the failure of the revisional authority to take note of the original punishment has rendered the later imposition of the enhanced penalty violative of the above instructions of the Railway Board. In view of this, we quash the enhanced penalty imposed by the Divisional Railway Manager. The financial benefit which will be due to the applicant as a result of quashing of the enhanced penalty order(Annexure-7) should be paid to the applicant within a period of 120 days from the date of receipt of copy of this order.

9. In the result, therefore, the Original Application is allowed. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

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(SOMNATH SOM)

26/9/2011
VICE-CHAIRMAN

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