

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.613 OF 1998
Cuttack this the 10th day of May, 2000

H.K. Nath

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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*

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
10.5.2000

G.N. Narasimham
(G.N. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 613 OF 1998
Cuttack this the 10th day of May, 2000

CORAM:

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

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H.K. Nath
aged about 57 years
S/o. Late Satrughan Nath
at present residing in
Railway Mr.No. E/4,
S.E.Railway Colony
PS: New Capital,
PO: Budheswari
Bhubaneswar
Dist: Khurda

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Applicant

By the Advocates

M/s. P.V. Ramdas
P.V.B.Rao

-VERSUS-

1. Union of India represented by the
General Manager,
South Eastern Railway
Garden Reach
Calcutta - 43
2. Divisional Railway Manager
S.E.Railway, Khurda Road
Dist: Khurda
3. Senior Divisional Engineer (Coordination)
South Eastern Railway,
Khurda Road
Dist: Khurda
4. Shri K.V.Ramana
Assistant Engineer (TM)
attached to the office of
senior EN (Co-ordination)
Khurda Road, Dist: Khurda

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Respondents

By the Advocates

M/s. D.N.Mishra
S.K.Panda

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O R D E R

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MR .G.NARASIMHAM, MEMBER (JUDICIAL) : Applicant, an Office Superintendent, Gr-II under the S.E.Railway has been awarded of reduction punishment/to the lower stage in the time-scale of pay for a period of three years with cumulative effect in a disciplinary proceeding by order dated 30.7.1998 (Annexure-3) passed by the disciplinary authority (Res.3). Out of the three charges framed against him on 21.11.1995 (Annexure-1), the Inquiring Officer dropped the Charge No.3 and held the other two charges proved. As against the order of the disciplinary authority the applicant preferred departmental appeal under Annexure-4 and thereafter this Original Application has been filed for quashing the impugned order of the disciplinary authority under Annexure-3.

Though the Original Application consisting of 24 ^{factual} typed pages excluding annexures contains various/materials and grounds, for disposal of this Original Application, it is sufficient for us to take note of the following relevant grounds urged by Shri P.V.Ramdas, the learned counsel for the applicant during hearing.

- (a) Charges 1 and 2 though relate to financial loss there is no finding of the Inquiring Officer or the disciplinary authority that in fact financial loss actually occurred
- (b) the findings of the Inquiring Officer are based on no evidence and it does not reveal that he had made assessment of oral/documentary evidence as ~~as~~ required under Rule-9(25)(c) of the Railway Servants (Discipline & Appeal) Rules, 1968;
- (c) Inquiring Officer relied on a document which does not find mention in the charge-memo and
- (d) the order of the disciplinary authority is cryptic and is not supported by any reason and this cryptic order in turn based on the report of the Inquiring Officer which is legally defective to the prejudice of the applicant as mentioned above.

2. The Department in their counter justify the correctness of the orders passed by the Inquiring Officer and the disciplinary authority and deny violation of any principles of natural justice.

3. During hearing Shri D.N.Mishra, learned Standing Counsel for the Respondents (Railways) challenged the maintainability of this Original Application on the ground that without waiting for six months after filing of the departmental appeal, the applicant could not have preferred this Original Application. Section 20(1) of the Administrative Tribunals Act, 1985, provides that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed all the remedies available to him under the relevant service rules as to the redressal of grievance. Sub-section 2 of that Section describes under what circumstance a person shall be deemed to have availed all the remedies available to him under the relevant service rules as to the redressal of grievance. Under (b) of this sub-rule relevant for the purpose of appeal it has been provided that in case of appeal, where no final order has been made by the person competent to pass such orders then a period of six months from the date on which the appeal was preferred had expired. In other words, Section 20(1) and Section 20(2) would imply that in ordinary circumstance a Tribunal shall not admit any application under Section 19 of the Act if the applicant had preferred departmental appeal and period of six months had not expired from the date of filing of appeal. But under Section 14 of the Act, this Tribunal has jurisdiction to entertain applications under Section 19 of the Administrative Tribunals Act. This being so, Section 20 of the Act does not override the inherent jurisdiction

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of the Tribunal vested under Section 14 of the Act. It comes to this that in some cases the Tribunal can entertain an application under Section 19 even if six months period from the date of filing of departmental appeal had not expired. It is true, in this particular case this period of six months had not expired from the date of preferring the departmental appeal. The reason as to why this application was preferred without waiting for six months period has been furnished in Para-4(39) of the Original Application to the effect that repeated reminders to the appellate authority requesting for expeditious disposal of the appeal went unheeded. This has not been denied in the counter. We are, therefore, not inclined to agree with the contentions raised by Shri Mishra with regard to maintainability of this Original Application on this ground.

4. The inquiry report at Annexure-2 consisting of two pages mentions the reason for findings. Point No.2 of the reasons is based on a note-sheet of the then Sr. S.R. (W) dated 24.2.1995 which does not find mention in the charge memo. This note sheet indicates that the applicant had committed such violation earlier also for which he was charged with disciplinary action. Hence Inquiring Officer concluded in this proceeding also he is responsible for such a negligence. Such a reasoning having been based on no evidence is perverse. However, the other reasonings However, not though cryptic cannot altogether be ignored. It is relevant for us to take a decision whether the report of the Inquiring Officer can be quashed. Because, report of the Inquiring Officer being in the nature of opinion based on certain materials unearthed during inquiry can by no stretch of

imagination to be final, in the sense that Inquiring Officer cannot under law, impose punishment. The object of appointment of an Enquiry Officer is that the disciplinary authority will derive help and assistance through the report of the Enquiry Officer and the evidence collected by him the inquiry in arriving at a just decision, after hearing the version of the delinquent on the report of the Enquiry Officer, should the findings of the Enquiry Officer are against the delinquent.

This being the position what is required for us ^{to determine} is whether the order of the disciplinary authority under Annexure- 3 dated 20.7.1998 can be sustained under law.

5. Shri P.V.Ramdas, learned counsel for the applicant, as earlier indicated, strenuously contended that the order of the disciplinary authority without any reasoning cannot be sustained under law, inasmuch as the applicant through such order was prevented from knowing on that grounds he was held guilty and had the disciplinary authority passed a reasoned order, the applicant could have adequate and sufficient opportunity to attack the order of the disciplinary authority on merits as well as on law before the appellate authority. In order to appreciate this contention we may as well quote the impugned order of the disciplinary authority vide Annexure-3 as hereunder :

" Shri B.K.Nath Designation OS Gr.II under ANE/BBS has submitted his explanation in response to this office memorandum No.Engg/Estab/D&A/B.K.Nath/ 13 dated 21.11.1995. The charge framed against you in connection with that you have abnormally delayed the cases put from your self.

After going through the entire D&A case file points raised thereof you are found guilty in Article No. 1 and 2 for not putting the files in time.

Hence, I have passed the following orders.

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"That, reduction to the lower stage in the time scale of pay for a period of 3(Three) years with cumulative effect".

1. Your next increment raising your pay from Rs. xx xx xx to Rs. xx xx xx shall be with-held for a period of xx xx xx months/year(s) with effect from the date _____ when it will otherwise be due to you.

The period of punishment _____ shall/shall not operate to postpone future increments on the expiry of the punishment.

2. Your _____ set-of privilege pass/PTO shall be withheld for the year _____.

You are to acknowledge receipt of this notice".

Thus it will be clear from this order that the same is not supported by any reasoning, specially in the absence of any finding that he was satisfied that the report of the Inquiring Officer is correct. Shri Ramdas, the learned counsel for the applicant in this connection places reliance on the decision of the Principal Bench in Dharambir vs.

Delhi Administration decided on 24.4.1998 in O.A.1352/92, ¹⁹⁹⁹ as reported in Swamy's News (June Part) under Sl.135 at Page 81. Relying on the Apex Court judgment in Mahavir Prasad vs. State of U.P. (AIR 1970 SC 1302), it was held that the reasons recorded by the disciplinary authority should be comprehensive enough to give a chance to the charged official to explain his case, if required in an appeal and that recording of reasons in respect of a decision by quasi judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy or reached on ground of policy or expediency. The necessity to record reason is all the more greater if the order is subject to appeal. By so holding, the order of the disciplinary authority without compliance of these requirements was quashed. The learned Standing Counsel for the Railways could not persuade us to take a

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contrary view. We also agree with this reasoning of the Principal Bench based on the decision of the Apex Court in Mahabir Prasad case (Supra)

The impugned order of the disciplinary authority being without any discussion of evidence, if any, on the record can also be categorised as perverse. In Kuldip Singh v. Commissioner of Police reported in 1999 SCC (L&S) 429, the Apex Court held that findings recorded in a domestic inquiry can be characterised as perverse if it is shown that such findings are not supported by any evidence on record or not based on evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence.

The impugned order is all the more perverse, because it had not dealt or discussed the points raised by the applicant, evidently after receipt of copy of the report of the Enquiry Officer.

6. In the counter filed by the Department it has been indicated that because of filing of this Original Application the appeal has not been disposed of. Even if the appeal has been disposed of in the meanwhile, the same stands abated under Section 19(4) of the A.T. Act, because after filing of counter, though the application was not formally admitted was finally heard.

7. In the result, we quash the impugned order dated 30.7.1998 under Annexure-3 passed by Respondent No.3. The Original Application is allowed, but no order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
B.K.SAHOO//

G.Narasimham
(G.NARASIMHAM)
MEMBER (JUDICIAL)