

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 619 OF 1999
Cuttack this the 19th day of October/2000

Arun Kumar Swain

...

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

19.10.2000
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 619 OF 1999
Cuttack this the 19th day of October/2000

CORAM:

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

...

Sri Arun Kumar Swain,
aged about 30 years,
S/o. Sri Alekh Chandra Swain
J.E.-II/P.WAY,
South Eastern Railway
At/PO - Dhenkanal
Dist - Dhenkanal

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, South Eastern Railway, Khurda Road, P I N - 752 050
3. Senior Divisional Engineer (C)
South Eastern Railway, Khurda Road
P I N - 752 050

...

Respondents

By the Advocates

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

O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL): Applicant, a Junior Engineer (P.WAY) Gr.II under South Eastern Railway challenges the order dated 4.6.1999 (Annexure-6) passed by the disciplinary authority (Respondent No.3) reducing the applicant's pay from Rs.5450/- to Rs.5000/- for a period of one year with cumulative effect. According to him, he preferred departmental appeal under Annexure-7. But as it was not disposed of, this Original Application has been filed.

2. Applicant has been charge-sheeted on 25.9.1998 (Annexure-1 series) for a major penalty on the ground that he

had failed to maintain the tract upto the standard parameters as a result of which there was a derailment of running train between Dhenkanal and Joranda Road Station-yard on 4.6.1998 at about 3.00 P.M. The applicant denied the charge in his written statement. The enquiring authority in his report under Annexure-3 held the charge proved. On receiving a copy of the inquiry report the applicant submitted a detailed representation under Annexure-5 to the disciplinary authority, who thereafter passed the impugned order under Annexure-6.

3. The case of the applicant is that the findings of the enquiring authority are based on no evidence. The enquiring authority had not followed the procedure enshrined under Rule-9 of the Railway Servants (Disciplinary & Appeal) Rules, 1968. The impugned order of the disciplinary authority not being a speaking order cannot be sustained under law. Moreover, the disciplinary authority was also one of the members, who conducted joint preliminary inquiry on the basis of which report the applicant has been charge-sheeted, and as such the very initiation of the disciplinary proceeding is vitiated on the ground of malice. Further the penalty imposed is harsh.

4. The stand of the Department in their counter is that there is no procedural error in conducting the enquiry. The finding of the enquiring authority is based on evidence. The disciplinary authority after going through the submissions made by the applicant on the inquiry report and findings of the Enquiring Officer passed the impugned order. In spite of communication of the penalty order no departmental appeal as averred in the Original Application has been received by the Department and as such this Application is not maintainable.

5. No rejoinder has been filed by the applicant.

6. The Original Application was admitted on 16.12.1999. By order dated 7.2.2000 the operation of the impugned order under Annexure-6 had been stayed till fining of counter by the other side. This order of stay has been allowed to continue by subsequent orders.

7. We have heard Shri P.V.Ramdas, the learned counsel for the applicant and Shri D.N.Mishra, the learned Standing Counsel appearing for the Railway Administration. Also perused the records.

8. The main point urged by Shri Ramdas is that the impugned order of penalty under Annexure-6 needs to be quashed on the ground that it is not a speaking order. As we feel this Application can be disposed of by considering this point as well as point of maintainability as urged by the Department, we are not inclined to consider the other points of submissions made by the applicant.

9. The relevant portions of the impugned order vide Annexure-6 addressed to the applicant are as under :-

" After going through your representation the competent authority passes the following order.

'Reduction to a lower stage (three stages below i.e. Rs.5000/- from the present scale of Rs.5450/-) for a period of one year with cumulative effect from the date his next increment falls due' "

It is not the case of the Department that a separate speaking order has been passed by the disciplinary authority. This order by no stretch of imagination can be called a speaking order. Speaking order is an order which should indicate sufficient reasonings for holding a delinquent employee guilty of the

charges for imposing a particular penalty.

Law is well settled by the Apex Court as early as November, 1990 in Ramzan Khan's case reported in AIR 1991 SC 471 that a copy of the enquiry report shall have to be supplied to the delinquent employee to enable him to make proper representation to the disciplinary authority before such authority arrives at its own finding in regard to guilt or otherwise of the employee and the punishment, if any, to be awarded to him. In other words, a disciplinary authority before passing the final order has to duly consider such representation, if any, made by the delinquent employee and then pass the order meeting the points raised in such representation. Thus this opportunity given to a delinquent employee is not an empty formality. In Ramachander v. Union of India reported in A.T.R. 1986(2)SC 252 the Apex Court had occasion to interpret the expression 'consider' occurring in Rule-22(2) of the Railway Servants (Discipline & Appeal) Rules, 1968. This Rule-22 deals with consideration of departmental appeal by the appellate authority. Referring to their earlier decisions in R.P. Bhatt v. Union of India reported in AIR 1986 SC 143, it was held that duty to give reasons is an incident of judicial process. The word consider implies due application of mind. Authority discharging quasi judicial functions in accordance with natural justice must give reasons for its decision. This apart as early as in the year 1970, the Apex Court in Mahavir Prasad v. State of Uttar Pradesh reported in AIR 1970 SC 1302 held that the recording of reasons in respect of a decision by a quasi judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim and fancy, or reached on ground of policy or

expediency. The necessity to record reasons is all the more greater if the order is subject to appeal. This Bench also took the same view in Original Application No. 756/94 disposed of on 7.8.2000.

Even if this Disciplinary Authority is not aware of judicial pronouncements on this point now and then, he cannot afford to ignore the Railway Board's Circular No.R.B.'s No.E (D&A) 56 R.G. 6-14 dated 20.12.1955 throwing guidelines on this point. The relevant portion of this Circular stands published at Page-187 of Railway Servants (Disciplinary & Appeal) Rules, 1968, Bahri Brothers (4th Edn.) reads as under :-

"Speaking orders - The disciplinary authority imposing the penalty must apply its mind to the facts, circumstances and record of the case and then record its findings on each imputation of misconduct or misbehaviour. The disciplinary authority should give brief reasons for its findings to show that it has applied its mind to the case. The reasons recorded by the disciplinary authority shall be of great help to the delinquent Railway servant in preferring his appeal. The disciplinary authority, must not pass non-speaking and cryptic orders, because the orders of imposition of penalty being appealable must be speaking orders. When the explanation of the delinquent has not been considered satisfactory, the competent authority must invariably record reasons for rejecting the explanation. Sketchy and cryptic orders have been held by the court of law to be non-speaking and as such illegal".

Thus it is clear that the Disciplinary Authority is not expected to pass a mechanical order without giving any reason.

Viewing from the legal position and Circular considered above, the impugned order is nothing but a mechanical order passed by the Disciplinary Authority without any application of mind to the case and the exhaustive submissions made by the applicant in his representation under Annexure-5

consisting of 10 typed sheets. This being the position it cannot be sustained under law.

10. But as earlier stated, the Department in their counter challenged the maintainability of this Application on the ground that no departmental appeal, as averred in the Original Application under Annexure-7 has ever been received by them. This Annexure-7 reveals that it was submitted on 26.7.1999. Since the Respondents in their counter specifically denied this fact and since this specific denial has not been refuted by the applicant through any rejoinder, it is not safe for us to place full reliance on this part of averment made in the Original Application that this appeal under Annexure-7 had indeed been filed. Viewed from this angle, this Original Application is not maintainable. However, we would like to give a chance to the applicant to prefer departmental appeal on or before 1.12.2000, in which case, the authority to whom the appeal is presented shall endorse a receipt in token of having received the appeal and the appeal, under such circumstance shall not be dismissed on the ground of limitation and the Appellate Authority shall dispose of the same expeditiously. The impugned order under Annexure-6 will remain inoperative till the disposal of the appeal as directed above.

11. With the above direction Original Application is disposed of leaving the parties to bear their own costs.

12. Registry to handover copies of this order to the parties forthwith.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
19.10.2000

19.10.2000
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//