

6

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 665 OF 1999
Cuttack, this the 13th day of February, 2001

Basudev Sahu

....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
13.2.2001

7

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 665 OF 1999
CUTTACK, this the 13th day of February, 2001

CORAM:

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

.....
Basudev Sahu, aged about 45 years, son of late Ari Sahu,
At/PO-Sarbodaya Nagar (Tala Garia) Dist. Puri-2
..... Applicant

Advocates for applicant-M/sG.A.R.Dora
J.K.Lenka
S.P.Mishra

Vrs.

1. Union of India, represented through its General Manager,
S.E.Railway, Garden Reach, Calcutta-43.
2. Additional Divisional Railway Manager, S.E.Railway,
At-Khurda Road, P.O-Jatni, District-Khurda.
3. Sr.Divisional Commercial Manager, S.E.Railway, At-Khurda
Road, P.O-Jatni, District-Khurda.

..... Respondents

Advocate for respondents-Mr.R.Ch.Rath

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

J Som .
In this application the petitioner has prayed for
setting aside the order dated 24.7.1999 removing him from
service and has also asked for consequential benefits. He has
also prayed for a declaration that the punishment imposed on
him in the order at Annexure-8 is grossly disproportionate.

2. The respondents have filed counter opposing
the prayers of the applicant. No rejoinder has been filed. We
have heard Shri G.A.R.Dora, the learned counsel for
thepetitioner and Shri R.Ch.Rath, the learned Railway

Advocate for the respondents and have also perused the record.

3. For the purpose of considering this petition, it is not necessary to go into too many facts of this case. It is only necessary to note that admittedly while the applicant was working as Senior Booking Clerk in Puri Railway Station, departmental proceedings were initiated against him in memo dated 12.12.1995 at Annexure-1 with the allegation that while he was working at the Booking Counter on 21.12.1994 he committed grave misconduct inasmuch as he demanded and collected extra money as illegal gratification to issue two tickets. In the statement of imputations it was mentioned that as against Rs.184/-, the actual value of the tickets, he collected Rs.240/!. It is also necessary to note that these tickets were purchased by one Somnath Gour, Watcher in Railway Vigilance Office at Garden Reach and after the collection of money and purchase of tickets, the applicant's Counter was raided and the tainted money in currency notes was recovered from him. The inquiring officer in his report held that the allegation of demand of illegal gratification could not be proved against the applicant. He has noted that even the decoy witness as also the other prosecution witnesses did not speak of demand of illegal gratification by the applicant. The inquiring officer held that the first component of the charge that the applicant demanded illegal gratification is not established and further held that the second component of the charge that the applicant collected extra money of Rs.56/- from the decoy as illegal gratification is established. It is also the admitted position that the disciplinary authority in his order of punishment dated 5.6.1998 (Annexure-4) recorded that he

V. Som.

agreed with the finding of the inquiring officer. He had, however, further stated that as the applicant has been found guilty of the charge that he had "demanded" and accepted illegal gratification of Rs.56/-, the charge of collecting extra money has been established. He, therefore, decided to impose the punishment of reversion of the applicant to the post of Junior Booking Clerk in the pay scale of Rs.3050-4900/- at the basic pay of Rs.3200/- for one year without cumulative effective. It is necessary to note that the disciplinary authority was the Divisional Commercial Manager, Khurda Road. The appellate authority, i.e., the Senior Divisional Commercial Manager, Khurda Road, issued notice dated 5.1.1999 to the applicant stating that the punishment has been reviewed by the Additional Divisional Railway Manager who is the revisional authority under Rule 25 of the Railway Servants (Discipline & Appeal) Rules, 1968 on his own motion and he has passed the order setting aside the punishment imposed by the disciplinary authority and has ordered for reopening of the case by Senior Divisional Commercial Manager from the stage of enquiry findings and for taking fresh decision in the matter. In the letter dated 6.1.1999 (Annexure-6) the Senior Divisional Commercial Manager issued notice to the applicant requiring him to make a representation in respect of the report of the inquiring officer in addition to what he had submitted earlier within fifteen days after which further decision would be taken even in the absence of any representation from the applicant. The applicant in his representation dated 20.2.1999 pointed out that under Rule 25 of Railway Servants (Discipline & Appeal) Rules, 1968, proceedings to enhance the penalty cannot be initiated after six months from the date of the order

S. Som

sought to be revised and therefore, prayed for dropping the proceedings for enhancement of penalty. After considering his explanation, the appellate authority in his order dated 24.7.1999 (Annexure-8) removed the applicant from service with immediate effect. The applicant's grievance firstly is that the proceedings for enhancing the punishment were initiated beyond the period of six months envisaged under the Rule. His second grievance is that the punishment of removal from service is grossly disproportionate.

4. The respondents have taken the stand that the petition is not maintainable because against the order of punishment of removal from service passed by the appellate authority, he has not filed a revision before the revisional authority. They have also taken the stand that the applicant has been punished several times in the past for his misconduct and acceptance of illegal gratifications. They have referred to four such punishment orders and have mentioned that these will indicate that the applicant was punished for his misconduct in the past and the punishment of removal from service of a dishonest employee is just and proper and not disproportionate.

5. We have considered the rival stands of the parties in the pleadings and the submissions of their learned counsel carefully. The first point to note is that the appellate authority in his order dated 5.1.199 at Annexure-5 has specifically mentioned that the penalty imposed on the applicant by the disciplinary authority has been reviewed by the Additional Railway Divisional Manager, Khurda Road, as revisional authority under Rule 25 of Railway Servants (Discipline & Appeal) Rules, 1968. It is not necessary to refer to all the provisions in Rule 25. The relevant provision of

J Som

the Rule is quoted below:

"Provided further that no action under this rule, shall be initiated by (a) an appellate authority other than the President or (b) the revising authorities mentioned in item (v) of sub-rule (1)-

(i) more than six months after the date of the order to be revised in cases where it is proposed to impose or enhance a penalty, or modify the order to the detriment of the Railway servant; or "

From the above it is clear that the action to initiate proceedings for enhancement of penalty can be initiated only within a period of six months from the date of the order. In the instant case, the punishment order was issued on 5.6.1998 and the notice at Annexure-5 has been issued on 5.1.1999 which is clearly beyond the period of six months envisaged under the proviso quoted above. On a perusal of Annexure-5 it is clear that even though it has not been specifically mentioned in this order that the notice is being given for enhancing the punishment, it is mentioned clearly that the punishment of reversion to the rank of Junior Booking Clerk for a period of one year is not commensurate with the offence committed by the applicant. From this it is clear that this notice dated 5.1.1999 (Annexure-5) was in effect a notice for enhancing the punishment imposed by the disciplinary authority and the applicant has been asked to submit representation. In view of this, it is clear that initiation of proceedings for enhancing the punishment beyond the period of six months is not in accordance with rules. The ultimate order of punishment of removal from service issued on 24.7.1999 (Annexure-8) is also, therefore, not sustainable. In view of this, we quash the punishment order at Annexure-8. This will result in the applicant being visited with the punishment imposed by the disciplinary authority. We direct that the punishment imposed by the

disciplinary authority may be worked out with immediate effect.

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

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
13.2.2001

February 13, 2001/AN/PS