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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 227 of 2000

Cuttack, this the 28th day of Jan' ,2005

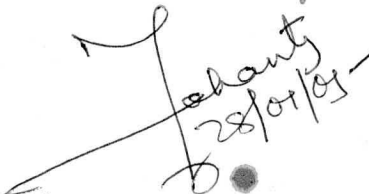
Manoj Kumar Swain Applicant

Vs

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? 72
2. Whether it be circulated to all the Benches of the
Central Administrative Tribunal or not ? 75


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SAHA)
VICE-CHAIRMAN

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CORAM :

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI M.R.MCHANTY, MEMBER (J)

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Manoj Kumar Swain, aged about 40 years, Son of Late Paramananda Swain, At/P.O. Barahipur, P.S. Mahanga, Dist. Cuttack at present working as Junior Parcel Clerk, Cuttack Parcel Office, S.E.Rly, Cuttack.

..... Applicant

By the Advocates

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M/s. D.R.Pattnayak, D.N.Patt-
nayak, M.K.Khundi, N.S.Panda,
A.K.Routray, S.K.Das, A.B.Chau-
dhary, S.R.Mohapatra.

Vs

1. Union of India, represented by General Manager, South Eastern Railway, Garden Reach, Calcutta.
2. Senior Divisional Commercial Manager, S.E.Rly, At/P.O. Jatni, Dist. Khurda.
3. Divisional Railway Manager, S.E.Rly, Khurda Road, At/ P.O./Dist. Khurda.

..... Respondents

By the Advocate

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Mr. R.C.Rath.

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ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

This O.A. has been filed by Manoj Kumar Swain assailing the order dated 7.6.98 passed by Divisional Commercial Manager (Annexure-4). He has prayed for a direction to be issued to the Respondents quashing the charges framed against him and to quash the order at Annexure-6 dated 6.1.99, calling upon him to make a representation/submission with reference to their letter dated 5.1.99 within 15 days from the date of receipt of that letter.

2. Shorn of details, the case is that Sr. Divisional Commercial Manager had passed an order enhancing the punishment awarded to the applicant by the Disciplinary Authority (DA in short) in contravention of Rule 25 of Railway Servants (D&A) Rules, 1968. The applicant's case is that although he had asked for certain documents by his application dated 12.3.97 (Annexure-3) but no decision was communicated to him in that regard. Secondly, that before imposing punishment on him he was not supplied a copy of the enquiry report and that was a serious abridgement of the principles of natural justice in view of the decision of the Apex Court in the Ramazan Khan case. Thirdly, that he had filed an appeal on 1.9.98 for setting aside the punishment order but that appeal has not been disposed of. Finally, he has submitted that the Sr. Divisional Commercial Manager by his orders dated 5.1.99 and 6.1.99 (Annexure-5&6) as revisional

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authority issued direction for reopening of the enquiry, as he was of the view that the punishment of stoppage of increment for three years with cumulative effect imposed by D.C.M., Khurda, was not commensurate with the gravity of offence committed by him and that such a direction given was illegal, arbitrary and a product of complete non application of mind. His plea is, as per Rule 25 of Railway Servants (Discipline & Appeal) Rule, 1968 no action could have been initiated by the revisional authority after efflux of six months from the date of pursuance of the order by revisional authority. It is on this ground he has prayed for as stated above.

3. The Respondents have opposed the O.A. on the ground that it is not maintainable in law since the applicant had not exhausted the departmental remedies available before approaching this Tribunal. On the facts of the case, they have stated that the case was reviewed by the Additional Divisional Railway Manager (ADRM in short), Khurda under Rule 25 of the Railway Servants (D&A) Rules, 1968 and had set aside the order of punishment passed by the D.A. and issued order to the Sr. DCM (DA in this case) to reopen the case at the stage of enquiry proceeding and take fresh decision. In pursuance to that Sr. DCM vide his order dated 6.1.99 gave an opportunity to the applicant to make any representation/ submission within 15 days from the date of receipt of that order and thereafter by his order dated 22.7.99 enhanced

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the quantum of punishment by reducing the applicant's pay by two stages in the existing scale of pay for a period of three years with cumulative effect. It is the plea of the Respondents that applicant had not filed any appeal against the aforesaid order of Sr. DCM but directly approached this Tribunal challenging the disciplinary proceeding. They have also submitted that the Tribunal being not sitting on appeal does not have power to reassess the evidence and that the present application is not entertainable and liable to be dismissed.

4. We have heard the Ld. Counsel for both the parties and have perused the records placed before us.

5. At the outside we would like to make it clear that we are acutely conscious of the role of function of Court/Tribunal dealing with matter concerning disciplinary proceeding.

"In the matter of disciplinary proceeding, the Tribunal is concerned as to whether the applicant/delinquent official had been afforded reasonable opportunities to defend his case and/or the principles of natural justice had been complied with and whether the decision taken by the disciplinary authority was based on materials available on record and proper procedure of law/rules had been observed in each and every sphere of the proceeding till it culminated in passing of the order by the disciplinary authority. It is not for the Tribunal to sit in appeal over the decision of the disciplinary authority and/or the appellate authority or to


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reappreciate the evidence and come to a finding that a better order could have been passed. Thus, the Tribunal has got a very limited space to traverse in the matter of disciplinary proceeding."

(In B.C.Chaturvedi case, 1996 SCC(L&S) 80)

6. The applicant in this case has asked for judicial intervention on two grounds. Firstly, that under Rule 25 of Railway Servants(D&A) Rules,1968, the revisionary authority was functus officio after six months of passing the punishment order by disciplinary authority. The Id. Standing Counsel for the Respondents have submitted before us that the revisionary authority had taken a decision to review the punishment order dated 7.6.98 within the prescribed period of six months. The decision to review the punishment was taken on 4.12.98 which was communicated to the applicant on 5.1.99(Annexure-5). On the other hand, the Id. Counsel for the applicant have argued that in terms of Rule 25 even the revision order is to be passed within six months of the passing of the punishment order; in this case this would mean that the revisional order should have been passed by 5.2.99, whereas the order of the revisionary authority was passed only on 22.7.99. To settle the controversy it would be profitable to quote the provisions of Rule 25 which is as follows :

"that no action under this rule shall be initiated by (a) an appellate authority other than the President, or (b) the reviewing authorities mentioned in terms of sub-rule(1) (emphasis



supplied)-

- (i) more than six months after the date of the order to be reviewed in cases where it is proposed to impose or enhance a penalty or modify the order to the detriment of the railway servant; or
- (ii) more than one year after the date of the order to be reviewed in case where it is proposed to reduce or cancel the penalty imposed or modify the order in favour of the railway servant."

A careful reading of the various conditions set under Rule 25 reveals that for revision of an order passed by the disciplinary authority, two important conditions are to be observed-firstly, that action to revise the order has to be taken within six months, and, secondly, before passing the revision order an opportunity has to be given to the charged official by informing him the intention of the revisionary authority to enhance the quantum of punishment and such quantum of punishment is also to be disclosed in the notice. In this case, the notice issued to the applicant by the order dated 6.1.99 (Annexure-6) only discloses the decision of the revisionary authority to vary the order of the disciplinary authority but no where does it disclose whether by the revision, the punishment is going to be reduced or to be enhanced, and, if so, what would be the quantum of enhancement. The rule provision is very clear that the charged official has to be in the first instance informed about the exact quantum of enhancement in punishment so that he can effectively defend his case. In this case, there is no doubt

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that this provision of Rule 25 was not complied with at all and on this ground alone the O.A. succeeds. On the other hand, we would also like to observe that as per proviso to Rule 25, the revisionary authority has to take the decision to revise the order of the disciplinary authority within six months of the passing of the disciplinary order and it is not that the actual order revising the order by modifying or enhancing shall have to be done within a period of six months. To this extent, the plea taken by the applicant that revisionary authority was functio officio after six months of passing of punishment order by the disciplinary authority does not hold good. But that does not deny him the relief he has sought for in this O.A.

7. As the authority concerned did not disclose to him that the quantum of punishment was being enhanced, we agree with the applicant's submission that they had acted in contravention to the provision of Rule 25, as a result of which the revision order dated 22.7.99 passed by the said authority must be set aside. We order accordingly.

8. After setting aside the order dated 22.7.99, we remand the matter back to the revisionary authority to comply with the proviso to Rule 25, Railway Servants (D & A) Rules 1968 in the first instance and then pass appropriate order as deem fit and necessary.

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9. With the above observation, the O.A. is disposed
of. No costs.


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N.SOM)
VICE-CHAIRMAN

RK/SD