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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 484 OF 2000.
cuttack, this the 18th day of Jan., 2002.

BIRENDRA TRIPATHY.

....

APPLICANT.

VERSUS


UNION OF INDIA & 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? Yes.


(SOMNATH SOM)
VICE-CHAIRMAN


(NITYANANDA PRUSTY)
MEMBER (JUDICIAL).

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.484 OF 2000
cuttack, this the 1st day of Jan. , 2002

C O R A M:

THE HONOURABLE MR.SOMNATH SOM, VICE-CHAIRMAN
A N D

THE HONOURABLE MR.NITYANANDA PRUSTY, MEMBER(J) .

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BIRENDRA TRIPATHY,
Aged about 52 years,
S/o.Late Ratnakar Tripathy,
Driver, LOCO, Bhadrak,
Khurda Division, S.E.Railway,
Khurda Road, At present Qr.No.153/3,
Railway New Colony, Charampa,
At/Pe: Charampa, Dist.Bhadrak,
PIN- 756 101.

.... Applicant.

By legal practitioner: M/s.P.V.Ramdas,
P.V.Balakrishna,
Advocates.

- V e r s u s -

1. Union of India represented by General Manager, S.E.Railway, Garden Reach, Calcutta-43.
2. Divisional Railway Manager, S.E.Railway, Khurda Road, Jatni.
3. Sr.Divisional Mechanical Engineer, S.E.Railway, Khurda Road, Jatni.
4. Sr.Divisional personnel Officer, S.E.Railway, Khurda Road, Jatni.
5. Divisional Mechanical Engineer, S.E.Railway, Khurda Road, Jatni.

.... Respondents.

By legal practitioner: Mr.Ashok Mohanty,
Sr.Counsel(Rlys.) .

....

O R D E R

MR. NITYANANDA PRUSTY, MEMBER (JUDICIAL):

The applicant who was working as a LOCO Driver in the South Eastern Railway, at Bhadrak has preferred this present Original Application, under section 19 of the Administrative Tribunals Act, 1985 challenging the disciplinary proceedings initiated against him under Rule-9 of the Railway Servant (Discipline & Appeal) Rules 1968 with a further prayer for quashing the said Departmental proceedings initiated against him vide Annexure-7.


2. The fact, as has been stated by the Applicant in his pleadings, is that while he was working as LOCO Driver, South Eastern Railway at Bhadrak, a proceedings under Rule 14(1) of Railway Servant (Discipline & Appeal) Rules, 1968 was initiated against him and a penalty of removal from service was ultimately imposed on him. The Appellate Authority up-held the said order of punishment. Thereafter, the applicant submitted a Memorial/Revision to the General Manager, South Eastern Railway, Garden Reach, Calcutta on 21-5-1999 at Annexure-5. The Revisional Authority, after going through the revision petition submitted by the Applicant (at Annexure-5) has been pleased to set aside the order of punishment of removal from service imposed on the Applicant with the following directions:

"The procedure prescribed as per Establishment Serial 72/76 has not been followed due to which proper opportunity has not been given to the delinquent staff. This is against the principles of natural justice. Therefore, punishment imposed by the disciplinary authority and upheld by the Appellate authority is hereby cancelled and Shri B. Tripathy, reinstated in service.


However, the disciplinary authority is free to initiate the case de-vono from the stage of show cause notice. (emphasis supplied)

In the context of the above order the relevant rules under Rule 5(3) of R.S.(D.A.) Rules, 1968 which reads that -

Where a penalty of dismissal, ^{mo}removal or compulsory retirement from service imposed upon a railway servant under suspension, is set aside in appeal or on revision or review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders".



A copy of the order of the Revisional Authority ^{nk} Communicated vide letter dated 25.5.2000 is annexed as Annexure-R/4 to the counter. On receipt of the above said order, the Railway Authorities have reinstated the applicant and initiated the present proceedings, which is seen at Annexure-7 to the O.A. as per the direction of the revisional authority. The applicant has preferred this Original Application before this Tribunal challenging the above said Memo of charges under Annexure-7 on the ground that the Applicant having been found guilty under Rule 14(1) of the Rules read with Sec.172 of the Railway Act, 1989 and the order of punishment imposed in the said proceedings having been set aside by the Revisional Authority, it is not open to the authorities to initiate the present proceedings on the self same charges under Rule-9 of the R.S.(D&A) Rules. Further it has been contended by the Learned



Counsel for the Applicant that the Department can not fill-up the lacuna and embark upon a second proceeding on the same charge. Hence the present notice under Rule 9 (at Annexure-7) is bad in law.

3. Departmental Respondents have filed their counter challenging the allegations made by the Applicant in his pleadings inter alia stating therein that no illegality has been committed by the Authorities in issuing the present charge, at Annexure-7 since the same has been done, as per the direction of the General Manager, South Eastern Railway/ the Revisional Authority vide his order passed on the Revisional petition setting aside the order of removal from service of the applicant on the ground that the prescribed procedure, as per the Railway Establishment Sl. No. 72/76 has not been followed due to which, proper opportunity has not been given to the delinquent staff and the same is against the principles of natural justice. Further the Revisional Authority while setting aside the order of the Disciplinary Authority ^{of} ~~and~~ also the Appellate Authority has categorically observed that the Disciplinary Authority is free to initiate the case ~~denovo~~ from the stage of show cause notice. Annexure-7 ^{was issued} ~~was~~ on the basis of the order passed by the Revisional Authority and as such no illegality has been committed by the Authorities in issuing the ^{Charge sheet} ~~order~~. On the above grounds, the Respondents have opposed the prayer of the Applicant referred to above.

4. We have heard Shri P.V. Ramdas, Learned Counsel for the Applicant and Shri Ashok Mohanty, Learned Senior Counsel appearing for the respondents and have also perused the records.

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5. Learned Counsel for the applicant has filed note of submissions and during the course of hearing, mainly relied upon the decision of the Hon'ble High Court of Orissa in the case of SANGRAM KESHARI MISHRA- VRS.- STATE OF ORISSA & OTHERS reported in 92 (2001) C.L.T. 196 and the decision of the Central Administrative Tribunal, Mumbai Bench, Mumbai dated 21-4-1997 in Original Application No.2/98 in the case of UTTAM SONAJI - Vrs. - UNION OF INDIA AND OTHERS. He has also relied on the decision of the Apex Court in the case of TULSIRAM PATEL VRS. UNION OF INDIA AND OTHERS reported in AIR 1985 SC 1416. Since during the course of hearing, learned Counsel for the Applicant did not place much reliance on the decision of the Apex Court in the case of Tulsiram patel (supra), it is needless for us to go into the details of this decision. But, however, it is to be noted that the facts of the present case are totally different than the issue decided by the Apex Court in the said case.

In the case of Sangram Keshari Mishra (supra), the Hon'ble High Court of Orissa, have been pleased to observe that—Their Lordships would have quashed the charges since the same was on the basis of perfunctory, incomplete and defective audit reports and as such the framing of charge in the departmental proceedings was illegal and prejudicial to the delinquent. But in the instant case, the departmental proceedings were initiated against the delinquent official on the ground that he had committed gross misconduct on 26-11-1998 at 16.30 hours by entering into the Control Room at Khurda Road in an intoxicated state, created nuisance

M. S. S.

and misbehaved with the control office staff for which he was convicted and sentenced by the Railway Magistrate, Khurda Road seen at Annexure-R/3 .As such, the present case can not be equated with that of the case of Sangram Keshari Mishra (supra) . So far as the case of the Mumbai Bench of the Tribunal in the case of Uttam Sonaji (supra) is concerned, the Tribunal have held that the second charge-sheet on identical charges is not sustainable when the first charge-sheet was dropped unconditionally. But in the instant case, the Revisional Authority while setting aside of the order of the Disciplinary Authority as well as of the Appellate Authority on the ground of not giving proper opportunity to the delinquent official for defending his case, has permitted the Disciplinary Authority to initiate the case de novo from the stage of show-cause notice. As such, the ratio decided in that case is also not applicable to the present case at hand. After getting the order of the Revisional Authority, the Disciplinary authority in this case had issued the present charge-sheet seen at Annexure-R/7 on the basis of the order of the Revisional Authority for the purpose of giving an opportunity to the delinquent official (applicant) to submit his explanation to the charges within the time stipulated therein and as such for affording proper opportunity to defend himself.

6. In view of the facts and circumstances stated above, the present chargesheet having been served on the applicant asking him to submit his show cause/explanation before the Disciplinary authority for the purpose of giving reasonable opportunity to defend himself in the disciplinary proceedings in compliance of the order of the Revisional Authority permitting the disciplinary authority to initiate the case de novo from the

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stage of show cause notice while setting aside of the earlier order of punishment, the present charge sheet can not be termed as a second notice on the self same charges and also can not said to have been issued by the Department to fillup the lacuna.

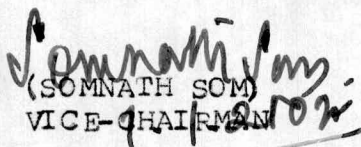
7. Learned counsel for the applicant has also relied upon the circular issued by the D.O.P&T, dated 11-11-1985. We have gone through the circular of the D.O.P&T dated 11-11-1985. From the circular it is evident that all that has been clarified in the circular that in the case of like nature, principle of natural justice should be afforded to the Govt. servant. Here in this instant case since opportunity was not given to the Applicant, the Revisional Authority quashed the order of punishment and remitted the matter for de novo enquiry, if so desired by the Disciplinary Authority. Accordingly, the Disciplinary Authority issued the charges vide Annexure-7 to the O.A. giving an opportunity to the Applicant to defend himself and file show cause to the charges. As such, at this stage, the circular relied upon by the learned counsel for the applicant dated 11-11-1985 has no bearing to the facts and circumstances of the case in view of the fact that the charge-sheet under Annexure-7 has been issued for the purpose of following the principle of natural justice and for affording the delinquent official reasonable opportunity for defending himself during the disciplinary proceedings in compliance of the above circular and as per the order of the Revisional Authority.

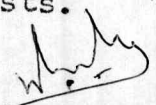
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3. In view of the facts and circumstances stated above, we are of the considered opinion that the present application is completely premature one and the Memo of charges under Annexure-7 which has been issued under the nomenclature of Rule-9 of the Railway Servant(D&A) Rules to proceed against the applicant under section 172 of the Railway Act, 1939 and under section/Rule- 14(1) of the Railway Servant(D&A) Rules, 1968 for the purpose of taking a decision/view in the matter after affording all reasonable opportunities to the applicant to defend his case is in no way unjust, irregular or illegal on the face of it. Mere giving the nomenclature of Rule-9 of the Railway Servant(D&A) Rules to proceed against the applicant under section 172 of the Railway Act, 1939 and under section/rule 14(1) of the Railway Servant(D&A) Rules, 1968 can not be a ground for quashing the Memorandum of charge issued under Annexure-7. However, the points of objections raised by the applicant in his notes of argument submitted during the course of hearing of this case can be raised by him at a proper stage before the authorities.

9. In view of the discussions made above, the O.A. is not maintainable and the same is rejected. No costs.


(SOMNATH SOM)
VICE-CHAIRMAN


(NITYANANDA PRUSTY)
MEMBER(JUDICIAL)

KNM/CM.

