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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 532 OF 2000.
cuttack, this the 8th day of November, 2002.

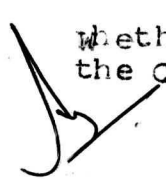
Ganapati sikka. Applicant.

Vrs.

Union of India & Others. Respondents.

FOR INSTRUCTIONS

1. whether it be referred to the reporters or not? ~~Yes~~ No.
2. whether it be circulated to all the Benches of the Central Administrative Tribunal or not? ~~Yes~~ No.


(A.S.KHAN)
MEMBER (JUDICIAL)


(B.N.SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH; CUTTACK.

ORIGINAL APPLICATION NO. 532 OF 2000
cuttack, this the 8th day of November, 2002.

C O R A M;

THE HONOURABLE MR. B.N.SOM, VICE-CHAIRMAN
AND
THE HONOURABLE MR. A.S.KHAN, MEMBER (JUDICIAL).

....

Ganapati Sikka, Aged about 54 years,
S/o. Dipa Sikka, presently working
as Keyman, Gang No.9, S. E. Railway,
Sambalpur, Dist; Sambalpur. APPLICANT.

By legal practitioner : M/s. K.C.Kanungo,
R.N. Singh,
S. Behera,
Advocate.

: Versus :

1. Union of India represented through
its General Manager, S. E. Railway,
Garden Reach, Calcutta- 43.
2. Divisional Railway Manager,
S. E. Railway, Sambalpur Division,
AT/PO/DIST; Sambalpur.
3. Divisional Engineer,
S. E. Railway,
Sambalpur Division,
Sambalpur.
4. Assistant Engineer (AEN),
S. E. Railway, Sambalpur Division,
Sambalpur.

.... RESPONDENTS.

By legal practitioner: Mr. P.K. Mishra,
Addl. Standing Counsel (Railways).

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O R D E R

MR. B.N. SOM, VICE-CHAIRMAN :-

In this Original Application, under section 19 of the Administrative Tribunals Act, 1985, the Applicant, Shri Ganapati Sikka, has challenged the punishment imposed on him in a disciplinary proceedings in Annexure-4 on the ground that it is illegal, arbitrary and mala fide.

2. The fact leading to filing of this Original Application is that when the Applicant was working as Keyman, Gang No.9 in the Office of the Permanent Way Inspector, Sambalpur, ^{he} was issued with a minor penalty charge-sheet on 2-12-1998 vide Memorandum No. AEN/SER/SBP (Annexure-2) on the following charges:

Ganapati Sikka was instructed on 28-11-1998 by AEN/SBP to tighten all loose bolts between KM 563/3-8. It is cross checked on 2-12-1998 and found that 33 bolts are loose.

The Applicant submitted a representation in response to the charge-sheet at Annexure-2 on 10-12-1998 denying the allegation and praying for exoneration from the charges. The Respondent No.4 after considering his representation inflicted on him the penalty of stoppage of annual increment for two years with non-cumulative effect. The Applicant against the order of punishment dated 26-5-1999 at Annexure-4 has sought intervention of this Tribunal on the ground that it is illegal, arbitrary and there is no application of mind in issuing the charge-

sheet. The appeal preferred by the Applicant on 09-07-1999 was pending undisposed till the date of filing of this Original Application on 15-11-2000. It has also been alleged by the Applicant that he was not afforded reasonable opportunity to submit his case before the Disciplinary Authority.

3. The Respondents in their counter, while not denying the imposition of the penalty of stoppage of annual increment for two years without cumulative effect, denied the allegation of the applicant of non-application of mind and stated that Respondent No.4 had duly considered the explanation offered by the Applicant before passing the impugned order of punishment. In their averments, the Respondents have further stated that the Applicant, at no point of time, had worked sincerely and satisfactorily and stated that the Applicant was earlier in the year 1988 charge-sheeted for unauthorised absence.

4. The matter was heard finally on 07-11-2002 when Shri K.C.Kanungo, learned Counsel for the Applicant brought out several procedural short-comings on the part of the disciplinary Authority in serving the charge-sheet on the Applicant as also ⁱⁿ imposing the statutory penalty on him. Referring to Annexure-1, which is a copy of the charge-sheet for imposition of minor penalty, he pointed out that the charge-sheet was not framed in the format prescribed for this purpose in the Railway Servant

(Discipline and Appeal) Rules, 1968. In that though the standard form No. II was used, no memorandum of charges or the statement of Article of charges was enclosed; nor the statement of imputation of misconduct was attached. The charge-sheet was a mere bald statement incorporated in the bottom portion of the standard form No. II. Similarly, the punishment order was issued by the competent authority on 26-5-1999 was a typed order in a pre-printed form merely stating that the disciplinary Authority has decided that the Applicant was "responsible in the above case and have passed the following orders:- Annual increment/stopped for two years with non-cumulative effect". Such an order was not only a non-speaking order it was in gross violation of the procedure for imposition of penalty as prescribed by the Railway Board in its OM No. E(D&A) 56 RG 6-14 dated 20-12-1955. In the said Memorandum the following procedure has been prescribed;

*IMPOSITION OF PENALTY - The disciplinary authority shall then take into consideration the written statement of defence, if any, submitted by the delinquent railway servant and also the record of the inquiry, if any, held in terms of the foregoing para, and shall determine the particular minor penalty, if any, that should be imposed on the delinquent Railway Servant. If the penalty determined by such authority is the one which it cannot impose on the railway concerned in accordance with the Schedule of powers, it shall pass on the papers for orders of such authority which is competent to do so. (RB's NO. E(D&A) 61 RG 6-62 dated 6.2.65). It should, however, be noted that the authority passing the papers to higher authority for orders should not express its views which may influence or prejudice the mind of the higher disciplinary authority.

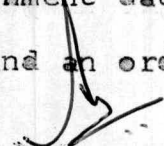
SPEAKING ORDERS- The disciplinary authority imposing the penalty must apply its mind to the facts, circumstances and records of the case and then record its findings on each imputation of misconduct or misbehaviour. The disciplinary authority should give brief reasons for its findings to show that it 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*.

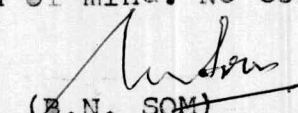
(emphasis supplied)

5. Shri P.K. Mishra, learned Additional Standing Counsel appearing for the Respondents/Railways also could not ~~throw~~ any light as to why the Disciplinary had used the pre-printed stationary for passing an order on disciplinary matter imposing a statutory penalty.
6. Having regard to the above facts and circumstances of the case, we are constrained to say that this is a case of clear non-application of mind and therefore, the impugned order dated 26-5-1999 (Annexure-4) deserves to be quashed/set-aside. Not only that, we are surprised to see that the allegation brought out in the charge-sheet against the Applicant is a very grave in nature, in that he left 33 bolts loose in the track, which he was supposed to maintain and if the allegation was true, it deserved to be enquired into in greater depth and more serious

action was called for. In whichever way we look at it, we cannot escape from the conclusion that the management had not applied its mind either in controlling its staff or was casual in treating its employees and assessing their performances on job. We are more concerned that an old institution like Railways are using pre-printed stationary in the matter of passing statutory orders in a routine manner. We are also surprised to see that the Railway Board's order laying down the procedure for imposition of penalty and highlighting the importance of speaking orders in imposing the statutory penalties are not taken seriously by the Officers at the field level. These are matters of great concern; not only for keeping up of the efficiency of the Railway Management but also for ensuring safety and security to the passengers. We trust the authorities concerned will look into these aspects of the matter seriously and take remedial action as deemed necessary.

7. In view of the discussions made above, this Original Application succeeds and we quash the order of punishment dated 26.5.1999 at Annexure-4 being a non-speaking one and an order passed without application of mind. No costs.


(A.S. KHAN)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

KNM/QM.