

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

...

O.A. No. 620 of 2000  
Cuttack, this the 20<sup>th</sup> day of April, 2004.

Pranakrushna Panda.

...

Applicant.

-Versus-

Union of India & Ors.

...

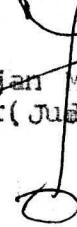
Respondents.

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

  
(B.N. Som)  
Vice-Chairman

  
(Manoranjan Mohanty)  
Member (Judicial)

  
20/04/04

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CENTRAL ADMINISTRATIVE TRIBUNAL  
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O.A.No.620 of 2000

Pranakrushna Panda. ... Applicant.

-Vrs.-

Union of India & Ors. ... Respondents.

For the Applicant : Mr. B.Baug, Counsel.

For Respondents : Mr. Ashok Mohanty, Counsel.

Date of decision: 20 /04/2004.

O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDL.):

Applicant P.K.Panda, while working as a PRT of Kendriya Vidyalaya was served with a Memorandum (of charges) dated 08/13-11-1995 asking him to submit his reply, if any, within a period of ten days. The said Memorandum/Article of charge reads as under:-

"That Shri P.K.Panda, while working as Primary Teacher in Kendriya Vidyalaya, Bondamunda, submitted a false LTC claim during May/June, 94 amounting to Rs.4296/- for his journey to Kanyakumari as well as journeys of other dependent members of his family which was stated to have been undertaken by them between 26.5.94 and 5.6.94 from Baliapal to Kanyakumari and back. The claim preferred by him on 27.6.1994 has proved to be false. Shri P.K.Nanda has thus committed misconduct under rule 3.1(iii) of the CCS(Conduct) Rules, 1964 as extended to the employees of the Sangathan".

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Thereafter, the Applicant furnished his written statement during November, 1995 and the competent authority appointed the Inquiring Officer; who after conducting the enquiry, submitted his report on 19-3-1999 by holding that the charge against the Applicant has been established. Thereafter, the Applicant submitted a representation directed against the findings of the Inquiring Officer. Then the Disciplinary Authority passed the order on 04.10.1999 imposing punishment of compulsory retirement. Appeal, preferred by the Applicant on 21-10-1999 having been rejected on 15-05-2000, he has filed the present Original Application under section -19 of the Administrative Tribunals Act, 1985 with the prayer to quash the order of punishment under Annexure-5 dated 04.10.1999 and order dated 15.05.2000 of the appellate authority under Annexure-7 and to direct the Respondents to reinstate the Applicant with full back wages.

2. Respondents by filing a counter have opposed the case of the Applicant made in the Original Application.
3. We have heard the learned counsel for both sides and perused the materials placed on record.
4. Learned counsel for the Applicant, though during his oral submission, pointed out and canvassed various points in support of his case but hammered on the point that since the Railway Authority (who had issued the letter denying the issuance of tickets) had not been examined during the enquiry, the entire proceedings is vitiated. He has clarified that since the letter is the very

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basis of the charge-sheet and the final order of punishment the author of the said letter ought to have been examined in the enquiry, in order to establish the charge levelled against the applicant and as the author of the letter/ Railway authority who had issued the letter had not been examined, the entire proceedings is vitiated. As to the non-supply of the ticket number correctly, the counsel for the Applicant stated that the Applicant had not availed the reservation journey from the point reflected in the letter.

5. In support of the stand of the Respondents, it was submitted by the learned counsel appearing for the Respondents that sufficient opportunity was given to the Applicant, during the enquiry to defend his case and nowhere during the enquiry, the applicant demanded that the authority/ author of the letter/railway should be called upon to be examined and that in absence of such a request, non-production of such a person in the enquiry cannot be a ground herein to benefit the Applicant. That apart, since the charge levelled against the Applicant has been proved beyond doubt, the question of interfering in the matter does not arise. Further it was canvassed by the learned counsel appearing for the Respondents that as per the disclosure of the Applicant of the ticket number in the claim application, reference was made to the Railway and since the Railway denied to have issued such a ticket, there was nothing more in the matter; except to hold that the bill submitted by the Applicant to be a false one. As such, the non-examination of the Railway authority is no way fatal to the enquiry.

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6. By drawing our attention to the decision of the Hon'ble Supreme Court in the case of BANWARI LAL v. STATE OF U.P. AND OTHERS (2000 Supreme Court Cases (L&S)85) it was submitted by the learned counsel for the Applicant that since the author of the Letter of the Railway is the vital person, nonexamination of the vital person during enquiry is fatal to the proceedings. The relevant portion of the decision is quoted herein below:-

"3. Before us the sole ground urged is as to the non-observance of the principles of natural justice in not examining the complainant, Sri Virender Singh, and the witness, Jagdish Ram. The Tribunal as well as the High Court have brushed aside the grievance made by the applicant that the nonexamination of those two persons has prejudiced his case. Examination of these two witnesses would have revealed as to whether the complaint made by Virender Singh was correct or not and to establish that he was the best person to speak to its veracity. So also, Jagdish Ram, who had accompanied the appellant to the hospital for medical examination, would have been an important witness to prove the state or the condition of the appellant. We do not think the Tribunal and the High Court was justified in thinking that non-examination of these two persons could not be material. In these circumstances, we are of the view that the High Court and the Tribunal erred in not attaching importance to this contention of the Appellant".

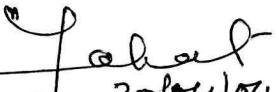
7. Having heard learned counsel for both sides and perused the materials placed on record and the decision relied upon by the applicant, there is no iota of doubt in our mind that the author of the letter/authority of the letter of the Railway being a vital and important person ought to have been examined and nonexamination of such a vital witness is fatal to the proceedings initiated against him. Had he been examined, then the allegation of the applicant with regard to non-booking of reservation from the place

mentioned in the letter etc. could have been brought to the light.

8. We, therefore, quash the order of punishment dated 4.10.1999 (Annexure-5) and the order of rejection of his appeal dated 15.5.2000 (Annexure-7) and remit back the matter to the disciplinary/enquiry authority to start a fresh enquiry (from the stage of examination of the witnesses) and come to a conclusion according to rules/law/record.

9. In the result, this case is allowed. No costs.

  
(B.N. Som)  
Vice-Chairman

  
20/04/04  
(Manoranjan Mohanty)  
Member (Judicial)