

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK**

ORIGINAL APPLICATION NO.104 OF 2001
Cuttack this the 03rd day of August, 2001

N.V.K.Kutty ... Applicant(s)

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Applicant(s)

-VERSUS-

Union of India & Others ... Respondent(s)

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? 45.
2. Whether it be circulated to all the Benches of the ND Central Administrative Tribunal or not ?

SOMNATH SOM
VICE-CHAIRMAN
3.8200

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(G.NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.104 OF 2001
Cuttack this the 03rd day of August, 2001

CORAM:

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

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Sri N.V.K.Kutty, aged about 49 years,
S/o. Late N.A.Velayudhan - at present
working as S.E.P. Way/TRT/KUR, S.E.Railway
Khurda Road, PO-Jatni, Dist - Khurda

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Applicant

By the Advocates

M/s.P.V.Ramdas
P.V.Balakrishna

-VERSUS-

1. Union of India represented by the General Manager,
South Eastern Railway, Garden Reach, Calcutta-43
2. Divisional Railway Manager, South Eastern Railway,
Khurda Road, At/PO-Jatni, Dist - Khurda
3. Sr.Divisional Engineer(Central), South Eastern Railway,
Khurda Road, At/PO-Jatni, Dist - Khurda
4. Divisional Engineer(Central) South Eastern Railway,
Khurda Road, At/PO-Jatni, Dist-Khurda

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Respondents

By the Advocates

M/s. D.N.Mishra
S.K.Panda
S. Swain

O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL) : Applicant, who as S.E.
(P.Way) of S.E.Railway, Khurda Road Division faced disciplinary
proceedings initiated in charge memo dated 25.9.1998 (Annexure-1)
issued by Sr.Divisional Engineer(Central) (Res.3), challenges
the order of penalty dated 30.1.2001 vide Annexure-9 passed by
Divisional Engineer(Central) (Respondent No.4), as Disciplinary
Authority by reverting the applicant to the next lower grade,
i.e., J.E.(P.Way) Gr.I (lowest pay scale) with cumulative
effect.

The charge is that he had not inspected and supervised

the maintainence of the track to standard parameters, defective layout as part of points and crossings in coming on transition portion of the curve and abrupt variation in version on circular portion of curve just ahead of the turnout leading to derailment of MD/NJP-7 at Km.435/0-1 between DNKL-JRZ at 15.10 hrs., on 4.6.1998 and this indicated his gross negligence and non-devotion to his duties and as such was liable for disciplinary action under Railway Servants (Conduct Rules) No.3(1)(11) and sub-rule No.2(1). The applicant having denied the charges an enquiring officer was appointed. During the pendency of the enquiry the applicant approached this Tribunal in Original Application No.180/99 for quashing the disciplinary proceedings or alternatively for issue of direction to the respondents to supply material documents and witnesses as required by him for proper adjudication of the matter before the Inquiring Officer. In that application, he had also prayed for change of the Disciplinary Authority as well as the Inquiring Officer. During pendency of that O.A. enquiry was concluded and copy of enquiry report was supplied to the applicant on 30.4.1999. Considering this fact that O.A. was disposed of on 19.6.2000, with a direction to the applicant to file a representation on the enquiry report within 15 days and that the respondents should not reject that representation on the ground of delay, but consider the same in accordance with rules and pass final orders in the disciplinary proceedings. It was also made clear that in case final result in the disciplinary proceedings would go against the applicant then he would be free to agitate the matter before this Bench in regard to non supply of documents, non

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summoning of certain witnesses, his bias against the Inquiring Officer and the Disciplinary Authority and so on.

Thereafter the applicant submitted representation dated 7.7.2000 vide Annexure-8 addressed to Respondent No.3 as against the enquiry report under Annexure-7, and ultimately under Annexure-9 the impugned order of penalty was passed. The applicant preferred the departmental appeal under Annexure-10 and then approached this Tribunal through this Original Application. These facts are not in controversy.

2. The grievance of the applicant is that though the Disciplinary Authority, who issued the charge-sheet was Senior Divisional Engineer(Central) (Res.3), yet the matter was dealt by the Divisional Engineer(Central) (Res.4), who imposed the impugned order of penalty. Respondent No.4, viz. Divisional Engineer(Central) is a subordinate authority to Senior Divisional Engineer(Central) (Res.3), who as Disciplinary Authority issued the charge-sheet. The applicant was not afforded reasonable opportunity inasmuch as he was not allowed to examine the documents and further more witnesses relied on by him were not summoned. The findings of the Inquiring Officer are based on no evidence and the impugned order of penalty is not an exhaustive order inasmuch as the points raised by the applicant as against the report of the Inquiring Officer were not at all considered. Even the penalty awarded is unduly harshed.

3. The Department in their counter take the stand that no illegality or irregularity had been committed in conducting the disciplinary proceedings ^{so also} ~~as~~ the principles of natural justice were not violated and that the penalty awarded is justified. The counter of the Department did not clarify as

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to why Respondent No.4, i.e. Divisional Engineer (Central), the authority, inferior to Respondent No.3, i.e., Senior Divisional Engineer (Central), who actually issued the charge sheet as Disciplinary Authority, had passed the impugned order of penalty.

4. No rejoinder has been filed by the applicant.

5. We have heard Shri P.V.Ramdas, the learned counsel for the applicant and Shri D.N.Mishra, the learned Standing Counsel appearing for the Respondents.

6. Shri Ramdas, the learned counsel for the applicant made the following submissions:-

- a) The principles of natural justice have been grossly violated inasmuch as some documents wanted by the applicant were not supplied and witnesses relied on by him were not summoned;
- b) The findings of the Inquiring Officer as also Respondent No.4 as Disciplinary Authority are based on no evidence and are biased;
- c) Though the applicant submitted representation against the report of the Inquiring Officer raising several points, legal as well as factual, the same were not at all considered while passing the impugned order of punishment under Annexure-9 and that by no stretch of imagination Annexure-9 can be called as a speaking order;
- d) Even Respondent No.4 disobeyed the direction of this Bench issued in the Original Application No.180/99 for considering the representation made by the applicant as against the report of the Inquiring Officer;
- e) Even otherwise the penalty awarded is unduly harsh and excessive; and
- f) even the facts mentioned in the charge sheet at best would amount to negligence of duties on the part of the applicant and negligence as such would not amount to misconduct

7. After hearing the submissions of learned counsels of both sides and perusing the record, we feel that this

Original Application can be disposed of only by considering two out of the aforesaid six points, raised by the learned counsel for the applicants. These two points are - the penalty awarded is unduly harshed and excessive and the impugned order of penalty under Annexure-9 is a non-speaking order inasmuch as representation of the applicant as against the report of the Inquiring Officer was not at all dealt and considered.

7. The applicant is aged about 49 years and having 11 more years of service. He was reduced, the next lower grade in the lowest pay scale and that too with cumulative effect. There is also no mention as to the conditions of restoration to the grade/post and his seniority and pay on such restoration to that grade/post. Annexure-R/3 to the counter of the Department itself contains the guidelines issued by the Department prescribing punishment to be awarded in case of accident cases on the employees of Civil Engineering Department, wherein it has been indicated that in case of derailment of Goods train on the mid-line, which appears to be the case before us, the minimum punishment to be imposed on Supervising staff is reduction to a lower stage in time-scale of pay for a period of three years with effect of postponing future increments on expiry of such period. Hence, it cannot be said that there is no force in the contentions advanced by Shri Ramdas that the penalty awarded is unduly harshed and excessive.

8. There is no dispute that as per the direction of this Bench in O.A.180/99, the applicant submitted representation dated 7.7.2000 under Annexure-8 as against the report of the Inquiring Officer. The impugned order of penalty was passed

on 30.1.2001 under Annexure-9. Annexure-R/A is a letter addressed to the applicant by Respondent No.4 on 30.1.2001, intimating that punishment was imposed on him after going through his defence statement. But the fact remains Annexure-9, which is supposed to be the speaking order imposing penalty does not at all contain a single sentence that the applicant's representation was duly considered and dealt. This order under Annexure-9 consists of seven paragraphs. The 1st/paragraphs three reveal description with regard to charge. The next two paragraphs deal with a cryptic discussion of evidence adduced by P.W. 1 and P.W. 2. The 6th paragraph deals with the conclusion arrived at by the Disciplinary Authority (Res.4). The last and 7th paragraph deals with the penalty awarded.

Thus it is a typical, final order passed in a disciplinary proceedings without dealing and/or considering the representation made by the delinquent as against the report of the Inquiring Officer. Annexure-8, the representation of the applicant is a typed one and consists of six pages, containing various points, legal as well as factual, urged by the applicant. Yet, without whispering a word about this representation the impugned order under Annexure-9 was passed.

Q. Law has been well settled by the Apex Court through various judicial pronouncements now and then that a delinquent in a disciplinary proceedings is entitled to be supplied with a copy of the enquiry report to enable him to submit representation against the report of the Inquiring Officer, by pointing out defects, legal as well as factual, if any, and that the Disciplinary Authority would duly consider the same and take appropriate decision in course of passing the

final order. Even this Bench in O.A.180/99, issued direction to the respondents to consider the representation of the applicant against the report of the Inquiring Officer and pass final orders on the disciplinary proceedings.

As already discussed, the impugned order of penalty did not at all consider the representation made by the applicant and thereby nullified the very object for which such a facility for submitting such a representation has been ensured by the Apex Court. While interpreting the provision under Rule-22 (2) of the Railway Servants (Disciplinary & Appeal) Rules, 1968, the Apex Court in Ramchander vs. Union of India reported in A.T.R. 1986(2) SC 252 observed that the word "consider" would mean an objective consideration after due application of mind, which implies giving of reasons for its decision. Even the Railway Board in its Circular No. R.B.'s No.E(D&A) 56 R.G.-6-14 dated 20.12.1955 as published at Page.187 of Railway Servants (Discipline & Appeal) Rules, 1968 of Bahri Bros (1991 Edn.) reads as under:

"The Disciplinary authority imposing the penalty must apply its mind to the facts, circumstances and record 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)

Thus it is clear that the impugned order under

Annexure-9 besides being contrary to the rulings of the Apex

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Court is also violative of the aforesaid instruction of the Railway Board and as such it cannot be sustained under law.

For the reasons discussed above, the impugned order dated 30.1.2001 under Annexure-9 and the letter dated 31.1.2001 addressed to the applicant under Annexure-9/A are hereby quashed. The applicant is deemed to be continuing in the grade of S.E.(P.Way).

In the result, Original Application is allowed, but without any order as to costs.

Somnath S. M.
(SOMNATH S. M.)
VICE-CHAIRMAN
3.8.2001

3.8.2001
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//