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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 365/2001
Cuttack, this the 16th day of Sept., 2003.

Bharat.

....

Applicant.

-VIS.-

Union of India & ors.

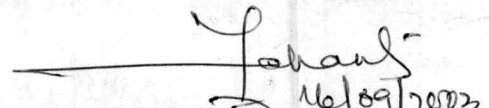
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Respondents.

FOR INSTRUCTIONS

1. whether it be referred to the reporters or not? *Yes*
2. whether it be circulated to all the Benches of the Tribunal or not? *Yes*


(B.N. SOM)
VICE-CHAIRMAN


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION No. 365 of 2001
Cuttack, this the 16th day of Sept., 2003

C O R A M:

THE HONOURABLE MR. B.N. SOM, VICE-CHAIRMAN
A N D
THE HON'BLE MR. MANORANJAN MOHANTY, MEMBER (JUDL.).

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BHARAT,
S/o. Udia,
Aged about 55 years,
working for gain as Gate Keeper in
the office of Section Engineer (Permanent way),
Barang, S. E. Railway at present residing at
Arugul Po Arugul, PS: Jatni, District: Khurda.

... Applicant.

By legal practitioner: Mr. Achintya Das, Advocate.

- Versus -

1. Union of India represented by the General Manager,
South Eastern Railway, Garden Reach, Kolkata-43.
2. The Divisional Railway Manager, S. E. Railway,
Khurda Road, Po: Jatni, District: Khurda.
3. Sr. Divisional Engineer (Co-Ord.) Khurda Road,
Po: Jatni, Dist: Khurda.
4. Assistant Engineer, S. E. Railway, Bhubaneswar.

.... Respondents.

By legal practitioner : ~~Mrs.~~ D.N. Misra, S.K. Panda, S. Swain,
Standing Counsel.

O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL):-

Applicant named BHARAT, while working as
Gate Keeper of Baranga of Khurda Road Railways Division
(under the South Eastern Railways now East Coast Railways)
was issued with a set of major penalty charges (under Annexure-
A/3 dated 18.7.2000) alleging gross dereliction of duty.

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However, after conclusion of the said proceedings, the Applicant was issued with the order of punishment (under Annexure-A/5 dated 26.02.2001), by withholding his pay at Rs. 3,860/- for a period of three years. The Applicant did not challenge the said order of punishment under Annexure-A/5 by preferring any appeal. While the punishment was still in force, the Applicant was issued with a notice (by the Senior Divisional Engineer (Co-ed.) South Eastern Railway, Khurda Road i.e. Respondent No. 3) under Annexure-A/6 dated 08.05.2001 for enhancing the order of punishment, wherein he was asked to submit a reply within a period of ten days. Applicant has also submitted his reply under Annexure-A/7 dated 19.05.2001. At this stage by an order dated 25.07.2001 (under Annexure-A/8), the punishment (under Annexure-A/5 dated 26.02.2001) was cancelled by the Disciplinary Authority and the Applicant was issued with the order of punishment of dismissal from service under Annexure-A/9 dated 26.07.2001. In the said premises, this original Application has been filed under section 19 of the Administrative Tribunals Act, 1985.

2. The Respondents have filed a written counter to the submissions made by the Applicant in his original Application.

3. We have heard Mr. A. Das, learned Counsel appearing for the Applicant and Mr. D.N. Mishra, Learned Standing Counsel appearing for the Respondents/Railways and perused the records.

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4. It is the submission of the learned Counsel for the Applicant that the show-cause notice issued by the Senior Divisional Engineer(Co-ordination) dated 08.05.2001 is bereft of any reasons and he had no jurisdiction and competence to issue such a notice for enhancement of punishment; he not being the Reviewing Authority; nor the Authority empowered to do so under Rule-25 of the disciplinary and Appeal Rules. It is argued by him that basing on such show-cause notice the order of punishment of dismissal (which has been passed under Annexure-A/9 dated 26.07.2001) is not sustainable in the eye of law, especially when the order by which the punishment of dismissal has been imposed (Annexure-A/9 dated 26.07.2001) is also bereft of any reason. It is further argued by him that no reason, whatsoever, has been given either in the show cause notice or in the order of punishment and as such, according to the law, the same are not sustainable. The Respondents in their counter (at para-16) have submitted that the Respondent No.3 who has issued the show-cause notice is the Reviewing Authority of the Applicant and, as such, there was nothing wrong in issuing the show cause notice. As regards the order of punishment it has been submitted in the counter that since the reviewing authority has passed the order, after perusing all materials, and the same having been communicated by the Assistant Engineer/Disciplinary Authority, there was nothing wrong in it. As regards the non-speaking order, as has been submitted by the learned counsel for the Applicant, it was submitted by the Respondents that since the

earlier order of punishment was not commensurate with the nature of misconduct, it was decided by the competent authority/reviewing authority to review the order of punishment and, accordingly, the earlier order of punishment was cancelled and the Applicant was imposed with the order of punishment of dismissal.

5. We have looked into the Rule-25 of the Discipline and Appeal Rules as also the notice of show-cause under Annexure-A/6 dated 08.05.2001 and the order of punishment under Annexure-A/9 dated 26.07.2001. Nothing has been placed on record to show as to how the Senior Divisional Engineer (co-ordination) is/was the Revisional Authority of the Applicant. On a bare reading of the show-cause notice, it is crystal clear that no reason has been given as to why the Senior Divisional Engineer (Co-ordination) did not agree with the findings of the Disciplinary Authority. No reason has also been supplied of dismissal to show as to why the higher punishment was imposed on the Applicant. It has also not been disclosed as to how/why the punishment, as was imposed on the Applicant (by the disciplinary Authority) was not commensurate with the nature of misconduct. Further, on perusal of the order of punishment (under Annexure-A/9 dated 26.07.2001) it revealed that the order of punishment was communicated to the Applicant in a printed form without discussing the reasons. It also does not disclose that the representation which was made by the Applicant (under Annexure-A/7 dated 19.05.2001) was at all taken into consideration. We are

aghaast to note here that when the Applicant was inflicted with the severe order of punishment of dismissal, no reason was given. In the counter filed by the Respondents, no attempt has been made to disclose the reasons that weighed in the mind of the so-called Revisional/competent authority to enhance the punishment. No opportunity of personal hearing was also given to the Applicant before passing the order of punishment. The order of punishment was only passed with the following words:-

"You are hereby dismissed from the service with effect from 26.07.2001. The order has sanction of competent Authority".

We are fortified by the decision of the Hon'ble Apex Court in the case of RAM CHANDER VRS. UNION OF INDIA (reported in AIR 1986 SC 1173) wherein it was observed as under:-

"xx xx xx. Such being the legal position, it is of utmost importance after the Forty-second Amendment as interpreted by the majority in Tulsiram Patel's case that the Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fair-play and justice also require that such a personal hearing should be given".

The Hon'ble Supreme Court of India have propounded the above

principles, after taking into consideration Rule 22(2);
which reads as under:-

"22(2). In the case of an appeal against an order imposing any of the penalties specified in Rule-6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider -

- (a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the constitution of India or in the failure of justice;
 - (b) whether the findings of the disciplinary authority were warranted by the evidence on the record; and
 - (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe and pass orders;
 - (i) confirming, enhancing, reducing or setting aside the penalty;
- OR
- (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deemed fit in the circumstances of the case".

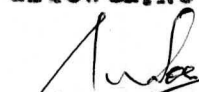
6. To say the least, the order of punishment is just a mechanical reproduction of the Rule-25 of the Railway Servant rules without any attempt on the part of the Authority either to marshall the evidence on record with a view to decide whether the findings arrived at by the disciplinary authority could be sustained or not. There is also no indication in the show cause as also ^{in the} order of punishment that the authority applied its mind as to whether the act of misconduct with which the applicant was charged together with the attendant circumstances and the past record of the

were such that he should have been visited with the extreme penalty of removal from service for a single lapse in the span of many years of service. Dismissal or removal from service is a matter of grave concern to a Civil servant who after such long period of service, may not deserve such a harsh punishment. The Railway Board have also issued various circulars with regard to passing of speaking order in such cases as is present one and though reliance was placed on such circulars by the learned Counsel for the Applicant, we are not inclined to go into those circulars on the face of the above well settled law of the Hon'ble Supreme Court.

7. Since we have already taken a view that the punishment order is not sustainable, we are not inclined to deal with regard to the other points urged by the Learned Counsel for the Applicant in his Original Application as also during the oral submission.

8. Since the show cause notice under Annexure-A/6 dated 08.05.2001 and the order of punishment under Annexure-A/9 dated 26.07.2001 are bereft of any reason the same are hereby quashed being not sustainable.

9. In the result, this Original Application is allowed. No costs.


(B.N. SOM)
VICE-CHAIRMAN


16/09/2003
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)