

6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

O.A.NO.374 OF 2001

Cuttack, this the 12th day of April, 2002

P.Appa Rao Reddy

....

Applicant

Vrs.


Union of India and 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? No.


(M.R. MOHANTY) 12/04/2002
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 374 OF 2001
Cuttack, this the 12th day of April, 2002

CORAM:

HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)

...

P.Appa Rao Reddy, aged about 60 years,
son of late P.Malaya, At: Loco Colony,
Block-A, 193/E, Khurda Road, PO-Jatni,
District-Khurda

Applicant

Advocates for applicant - M/s B.S.Tripathy
M.K.Rath

Vrs.

1. Union of India, represented through its
General Manager, South Eastern Railway,
Garden Reach, Calcutta-43.
2. Divisional Mechanical Engineer, South Eastern
Railway, At-Khurda Road, P.O-Jatni, Dist.Khurda.
3. Divisional Railway Manager, South Eastern Railway,
Khurda Road, P.O-Jatni, District-Khurda.
4. Chief Operation Manager, South Eastern Railway,
Garden Reach, Calcutta-43

....Respondents

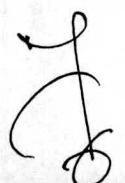
Advocates for respondents - Mr.C.R.Mishra,
Advocate for R 1 to 3
&
Mr.D.N.Mishra, SC(Railway)
for R-4.

...

ORDER
(ORAL)

M.R.MOHANTY, MEMBER(JUDICIAL)

The applicant, having faced removal from
service, after following due procedure in a regular
disciplinary proceeding, approached this Tribunal in



O.A.No.691 of 1997, which was disposed of on 4-1-2000, with the following observations;

".....the appellate authority may consider whether the ends of justice would not be met in this case if instead of removal from service, the punishment of compulsory retirement from the same date is imposed on the applicant. We express no view in the matter and we leave it entirely to the appellate authority who will take a view in the matter within a period of 120 (one hundred twenty) days from the date of receipt of copy of this order."

2. The matter having been remitted back, the Appellate Authority has disposed of the appeal de novo under Annexure-4, dated 5-9-2000. The relevant portion of the appellate order is extracted hereinbelow;

"I have gone through the case as per directive of the Hon'ble CAT/CTC in respect of OA No.691/97 as an appellate authority.

I do not find any new grounds in which to change the punishment already given to you. You have had regular punishment imposed on you for stoppage of increments, stoppage of pass/PTO, fine etc. which also does not make you eligible for mercy."

3. As it appears, before disposal of the appeal de novo, the Appellate Authority took into consideration several minor punishments previously imposed on the Applicant as given out under Annexure-R/1; which he could not have done without confronting the same to the Applicant well before dismissing the appeal. To come to this conclusion, I have been fortified by the Constitution Bench decision of the Apex Court in the case of STATE OF MYSORE VRS. K. MANCHE GONDA reported in AIR 1964 SC 506 wherein His Lordship's Justice SUBBA RAO, J. speaking for the Court observed as follows:

Under Art. 311(2) of the Constitution, as interpreted by this Court, a Government servant must have a reasonable opportunity not only to prove that he is not guilty of the charges levelled against him, but also to establish that the punishment proposed to be imposed is either not called for or excessive. The said opportunity is to be a reasonable opportunity and, therefore, it is necessary that the Government servant must be told of the grounds on which it is proposed to take such action; see the decision of this Court in the State of Assam v. Bimal Kumar Pandit, Civil Appeal No. 832 of 1962 D/-12.2.1963; (AIR 1963 SC 1612). If the grounds are not given in the notice, it would be well nigh impossible for him to predicate what is operating on the mind of the authority concerned in proposing a particular punishment; he would not be in a position to explain why he does not deserve any punishment at all or that the punishment proposed is excessive. If the proposed punishment was mainly based upon the previous record of a Government servant and that was not disclosed in the notice, it would mean that the main reason for the proposed punishment was withheld from the knowledge of the Government servant. It would be no answer to suggest that every Government servant must have had knowledge of the fact that his past record would necessarily be taken into consideration by the Government in inflicting punishment on him; nor would it be an adequate answer to say that he knew as a matter of fact that the earlier punishments were imposed on him or that he knew of his past record. This contention misses the real point, namely, that, what the Government servant is entitled to is not the knowledge of certain facts but the fact that those facts will be taken into consideration by the Government in inflicting punishment on him. It is not possible for him to know what period of his past record or what acts or omissions of his in a particular period would be considered. If that fact was brought to his notice, he might explain that he had no knowledge of the remarks of his superior officers, that he had adequate explanation to offer for the alleged remarks or that his conduct subsequent to the remarks had been exemplary or at any rate approved by the superior officers. Even if the authority concerned took into consideration only the facts for which he was punished, it would be open to him to put forward before the said authority many mitigating circumstances or some other explanation why those punishments were given to him or that subsequent to the punishments he had served to the satisfaction of the authorities concerned till the time of the present enquiry. He may have many other explanations. The point is not whether his explanation

would be acceptable, but whether he has been given an opportunity to give his explanation. We can not accept the doctrine of "presumptive knowledge" or that of "purposeless enquiry", as their acceptance will be subversive of the principle of "reasonable opportunity". We, therefore, hold that it is incumbent upon the authority to give the Government servant at the second stage reasonable opportunity to show cause against the proposed punishment and if the proposed punishment is also based on his previous punishments or his previous bad record, this should be included in the second notice so that he may be able to give an explanation.

Before we close, it would be necessary to make one point clear. It is suggested that the past record of a Government servant, if it is intended to be relied upon for imposing a punishment, should be made specific charge in the first stage of the enquiry itself and if it is not so done, it can not be relied upon after the enquiry is closed and the report is submitted to the authority entitled to impose the punishment. An enquiry against a Government servant is one continuous process, though for convenience it is done, in two stages. The report submitted by the Enquiry Officer is only recommendatory in nature and the final authority which scrutinizes it and imposes punishment is the authority empowered to impose the same. Whether a particular person has a reasonable opportunity or not depends, to some extent, upon the nature of the subject matter of the enquiry. But it is not necessary in this case to decide whether such previous record can be made the subject matter of charge at the first stage of the enquiry. But, nothing in law prevents the punishing authority from taking that fact into consideration during the second stage of the enquiry, for essentially it relates more to the domain of punishment rather than to that of guilt. But what is essential is that the Govt. servant shall be given a reasonable opportunity to know that fact and meet the same. "

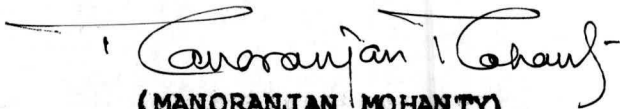
4. Mr. B. S. Tripathy, learned Counsel for the Applicant on the face of the above, submits that the appellate order has been passed in gross violation of the principles of natural justice; which I accept.

5. Since a Division Bench of this Tribunal, virtually, directed the Appellate Authority to impose a punishment (of compulsory retirement) in lieu of removal/dismissal from service and since the Appellate Authority has again dismissed the appeal

Y
J
O

virtually, without taking into consideration all aspects of the matter, as discussed above, the Applicant is given liberty to submit a Memorial to the General Manager, South Eastern Railway, for redressal of his grievances and, I am sure, the General Manager, South Eastern Railway, shall give due consideration to the grievances of the Applicant by keeping in mind the observations of the Division Bench, as extracted, in Paragraph-1 of this order. The Learned Counsel for the Applicant gives an undertaking on behalf of the Applicant to submit a Memorial within a period of 15(fifteen) days hence.

6. With the above observations, this Original Application is disposed of. No costs.


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

12/04/2002

KNM/CM.