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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 43 OF 2001
Cuttack this the 5th day of April, 2004

Surendra Nayak ... Applicant(s)

-VERSUS-

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

FOR INSTRUCTIONS

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


(B.N. SGM)
VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER (JUDICIAL)

CE NTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 43 OF 2001
Cuttack this the 5th day of April, 2004

CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R.MOHANTY, MEMBER (JUDICIAL)

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Surendra Nayak, Son of Narasingh Nayak
Chowkidar, in the office of I.O.W.
Headquarters, Khurda
Address for services - Prafulla Kumar
Kar, Advocate, Orissa High Court, Cuttack

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Applicant

By the Advocates

M/s.P.K.Kar
D.K.Rath

- VERSUS -

1. Senior Divisional Engineer, S.E.Railway,
Khurda Road, Khurda
2. The Divisional Railway Manager, S.E.Railway,
Khurda Road, Dist-Khurda
3. Asst.Engineer, Headquarter, S.E.Railway,
Khurda Road, Dist-Khurda

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Respondents

By the Advocates

Mrs.R.Sikdar
Mr. A.Sikdar
Mr. S.Dutta

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O R D E R

MR.M.R.MOHANTY, MEMBER (JUDICIAL): Applicant, Surendra
Nayak, having faced removal from service (vide order under
Annexure-9 dated 8.3.2000 issued by the Asst.Engineer (Hq.)/
KUR) preferred an appeal (under Annexure-10) addressed to
the Divisional Railway Manager, S.E.Railway, stationed at
Khurda Road. During pendency of the said appeal, this
Original Application (under Section 19 of the Administrative
Tribunals Act, 1985) has been filed by the applicant. Non-
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supply of inquiry report to the applicant, before passing of the punitive order of removal from service, has been taken as a ground in the O.A.

2. It has been disclosed by the Respondents (AE/HQ/KUR) in their counter that while serving the removal order (under Annexure-9 dated 8.3.2000) on the Applicant, a copy of the inquiry report was supplied to him.

3. In course of hearing, Mr.P.K.Kar, the learned counsel for the applicant contested the said stand of the Respondents and pointed out that in Para-6 of the appeal memo (Annexure-10) that was filed after receipt of order of removal under Annexure-9 dated 8.3.2000) the applicant had set out the following :-

* That before issuing the letter dated 8.3.2000 removing me from my service no opportunity was given and even though the inquiry report was also not handedover to me, before passing the final order by the appointing authority".

The aforesaid statement of the applicant, as made in his appeal memo under Annexure-10, goes to support the stand of the applicant to the effect that inquiry report was really not supplied to him before imposing the punishment of removal from service under Annexure-9.

4. Furnishing a copy of the inquiry report before imposing the punishment is mandated by the rules of natural justice. Non-furnishing of the inquiry report would amount to violation of the rules of natural justice and that would make the final order bad for all purposes. The purpose of supply of inquiry report is not merely to show cause against the proposed punishment, but also to make aware of factors

which may influence the mind of the disciplinary authority to take a just and proper decision. The object of supplying copy is of two fold, viz., (a) to persuade the disciplinary authority to agree that the delinquent is innocent of the charges and (b) if the charges are held to be proved, then the punishment should be proportionate. In that background, even if under the rules, second opportunity to show cause against the proposed punishment has not been provided. Yet the right of the delinquent officer to justify his innocence before the disciplinary authority is a part of natural justice; of which he cannot be deprived.

5. As it appears, in the present case, the disciplinary authority did not supply the inquiry report to the applicant, apparently, for the reason that the rules did not prescribe supply of copy of inquiry report before imposition of penalty and, as it appears from the stand of the Respondents,-the disciplinary authority, the supply of the copy of inquiry report along with the order of penalty was sufficient. But such a view is indefensible.

6. The views taken herein by us has been fortified by the judgments of the Orissa High Court rendered in the case of Rangashar Nayak vs. Fertilizer Corporation of India Ltd. & Ors reported in 74(1992) CLT 856 by Hon'ble Mr. Justice Arijit Pasayat sitting in the Division Bench. Non-supply of inquiry report, before imposition of punishment, vitiates the entire proceedings and this position of law has been well settled by the judgment of the Apex Court in the case of Ramzan Khan vs. Union of India & Ors. reported in 1991 AIR 1991 SC 473.

6. Mrs. R. Sikdar, the learned counsel appearing on behalf of the Respondents-Railways pointed out that the applicant rushed to the Tribunal prematurely, before disposal of his appeal addressed to the Divisional Railway Manager stationed at Khurda Road. It is also the case of the Respondents-Railways that Divisional Railway Manager stationed at Khurda Road, not being the appellate authority of the applicant, the appeal filed by the applicant has not received due attention. The applicant being a low paid employee/Chowkidar it was incumbent on the part of the Divisional Railway Manager either to send back the appeal to the applicant with necessary instructions (to him) to approach the appropriate authority or to redirect the appeal of the applicant to the Divisional Engineer (HQ), Khurda Road for its disposal. In the case of Ranganath Mishra vs. State of Orissa reported in 42(1976) CLT 319, the Hon'ble High Court of Orissa, while dealing with the ~~case~~ (of similar nature) took the following view :-

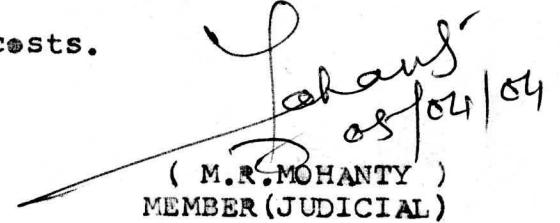
"...Although the management did not file the application seeking approval of termination before the D.P.I. (Schools) yet it was filed before the Inspector in time. In dealing with the Managing Committee of a High School, one should not encourage too-much of technicalities of law to operate. The Inspector owed a duty, particularly when a limitation of thirty days was prescribed by the statute, to either return the application to the management saying he was not the competent authority or to forward the same to the D.P.I. (Schools) who was the competent authority".

7. In the above premises, the impugned order of removal vide Annexure-9 dated 8.3.2000 is quashed with direction to the disciplinary authority to give an opportunity to the applicant to put-up a representation (directed against the J)

inquiry report which should be supplied to the applicant by the Respondents) and on consideration of the said representation, the disciplinary authority should pass necessary final orders under intimation to the applicant.

8. With these observation and direction, this Original Application is disposed of. No costs.


(B.N. SGM)
VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER (JUDICIAL)

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