

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 398 OF 2003
Cuttack this the 17th day of December 2004

N.C. Jena ... Applicant(s)

- VERSUS -

Union of India & Ors. Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? 75
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? 72

17/12/04
(M.R. JOHANTY)
MEMBER (JUDICIAL)

Suba
(B.N. SOM)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 398 OF 2003
Cuttack this the 19th day of December 2004

CORAM:

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

Sri N.C. Jena, aged about 58 years,
Son of late Dhaneswar Jena, working for
gains as Assistant Guard under Sr. Divisional
Operations Manager, S.E. Rly., Khurda Road
at present residing at Railway Qr. No. 151 E,
Loco Colony, Khurda Road, PO-Jatni, Dist-Khurda

... Applicant

By the Advocates

Mr. A. Das

- VERSUS -

1. Union of India service through General Manager,
Rail Vihar, E.Co. Railway, Chandrasekharapur,
PIN 751 023
2. Member Staff, Railway Board, Rail Bhavan,
New Delhi
3. Divisional Railway Manager, E.Co. Railway,
Khurda Road, PO-Jatni, Dist-Khurda, PIN-752050

... Respondents

By the Advocates

Mr. R.C. Rath, S.C.

O R D E R

MR. B.N. SOM, VICE-CHAIRMAN: Applicant (Shri N.C. Jena)
presently working as Asst. Guard under Sr. Divisional
Operations Manager, S.E. Rly, Khurda Road, being aggrieved
by the order dated 27.10.2000 (Annexure-A/3) removing him
from service, issued by the Disciplinary Authority (in
short D.A.) and the order dated 18.7.2001 (Annexure-A/6)
issued by the Appellate Authority modifying the said
order of punishment to the extent of reversion to former
post of Assistant Guard in the scale of Rs. 3050-4590/-
with direction that such reversion should continue till

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his retirement and that the pay of the applicant should be fixed at minimum of Rs.3050/-. He has, therefore, prayed for the following reliefs:

- "i) To quash and set aside the charge-sheet including the imputation of misconduct placed at Annexure-A/1;
- ii) To quash and set aside the punishment notice dated 27.10.2000 including the speaking order placed at Annexure-A/3 and A/4;
- iii) To quash and set aside the appellate authority's order dated 18.7.2001 (Annexure-A/6)
- iv) To quash and set aside the Revisionary Authority's order (Annexure-A/12); and
- v) To restore the grade, scale of pay, post/service of the applicant as was on 11.1.2000 and accordingly to pay the difference of pay as would have been paid and actually has been paid".

2. The facts of the case in a nut shell are that while working as Guard of a Goods train on 11.1.2000, the said goods train met with an accident after its engine failed to haul the train in a rising gradient. A joint inquiry committee consisting of Sr.Divisional Operations Manager, Sr.Divisional Mechanical Engineer and Sr.Divisional Engineer(Central), Khurda Road enquired into the matter and found the driver of the multi diesel engine and the Guard (applicant) of the goods train responsible for the incident. In this background, the applicant was served with a charge-sheet under major penalty proceeding on 14.4.2000 containing two articles of charges. The report of the Enquiry Officer (in short E.O.) was submitted on 29.8.2000, in consideration of which and after giving an opportunity to the applicant to submit his representation on the findings/recommendations of the E.O., the D.A.

passed an order vide Annexure-3 removing the applicant from service. Being aggrieved, the applicant preferred appeal to the Sr.Divisional Operations Manager, who, after considering his appeal modified the order of removal of the applicant from service vide Annexure-6, as referred to earlier. Against this order, the applicant preferred a revision petition before the Divisional Railway Manager, Khurda Road, (Annexure-7), but before the revision petition could be disposed of, the applicant, moved this Tribunal in O.A.No.999/02. This Tribunal, vide order disposed of dated 18.11.2002 with direction to Divisional Railway Manager, Khurda Road to dispose of the revision petition of the applicant within a period of three months. The said direction of this Tribunal was complied with by the Respondents-Department in issuance of Annexure-A/12 dated 16.5.2003. It is against this order passed by the Revisionary Authority, rejecting his petition, the applicant has approached this Tribunal with the prayers referred to above.

3. The thrust of the application is that the punishment order, the appellate order modifying the punishment of removal from service as well as the revisioning order are not tenable in the eye of law as multiple punishments have been awarded for one and the same alleged offence. The order of penalty of removal from service, as modified by the appellate authority and also upheld by the revisionary authority reads as under :

- " i) The applicant has been reverted from the post of Guard in scale Rs.4500-7000/- to Assistant Guard in scale Rs.3050-4590/-



- ii) Basic pay of the applicant has been reduced to Rs.3050/- p.m. (at the bottom of the reverted post) which is lower pay than what was drawn before reduction in rank, i.e.5800/- p.m.
- iii) Promotion has been banned for ever".

4. The Respondents have failed to file any counter in this case inspite of repeated opportunities given for this purpose. On 15.10.2004, pleadings were treated to have been completed and the matter was listed on 9.12.2004 for final hearing.

5. We have heard Shri A.Dash, learned counsel for the applicant and Shri R.C.Rath, learned Standing Counsel appearing on behalf of the Respondents-Railways and perused the materials placed before us, including the case laws cited by the applicant.

6. In a matter of disciplinary proceeding, the Tribunal is concerned as to whether the applicant/delinquent official had been afforded reasonable opportunities to defend his case and/or the principles of natural justice had been complied ^{with} and whether the decision taken by the disciplinary authority was based on materials available on record and proper procedure of law/rules had been observed in each and every sphere of the proceeding till it culminated in passing of the order by the disciplinary authority. It is not for the Tribunal to sit in appeal over the discision of the disciplinary authority and/or the appellate authority or to reappreciate the evidence and come to a finding that a better order could have been passed. Thus, the Tribunal has got a very limited space to traverse in the matter of

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disciplinary proceeding. Keeping all those aspects in view, we are to decide the grievance of the applicant as raised herein.

The grievance of the applicant is that the appellate authority, while modifying the punishment order of removal from service passed by the D.A. has imposed multiferious punishments, which is not envisaged under the Railway Servants(Discipline & Appeal) Rules and therefore, the action of the appellate authority being derogatory to Rules tantamounts to colourable exercise of power and therefore, the order of the appellate authority is liable to be quashed/set aside. As stated in Para-3 above, the applicant has explained the various punishments awarded by the appellate authority, while modifying the order of the disciplinary authority removing him from service. Relying on the decision of the Madras Bench of this Tribunal in the case of R.Devadanam vs. UOI & ors. (1989(2)SLJ(CAT) 131), the learned counsel for the applicant submitted that the Tribunal has already held that the disciplinary authority is not empowered to bar promotion of the Government servant and that too indefinitely or for ever, as the present disciplinary authority/appellate authority has sought to do. Citing the said case law, he submitted that law does not permit the appellate authority to permanently reduce the rank of a delinquent from the higher grade to the substantive grade, as in this case, from Goods Guard to Asst.Goods Guard. It is his further submission that the appellate authority cannot fix a lower pay than what was being drawn by the Government servant before the reduction of his rank. In the instant case, the appellate authority

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has fixed his pay at Rs.3850/- of the lower grade, which is legally unsustainable. The Madras Bench of this Tribunal in R.Devadanam case(supra) held that the disciplinary authority cannot fix a lower pay than what was drawn by the Government servant before reduction in rank and if it was done, it amounted to double punishment.

7. We are in respectful agreement with the decision of the Madras Bench of this Tribunal in the above referred case. In recent past, this Bench in the case of Satyananda Nayak vs. Union of India & Ors. (O.A.No.1021/02 - disposed of on 6.12.2004) based on the decision of the Hon'ble Supreme Court in the case of Shiv Kumar Sharma vs. Haryana Electricity Board (Civil Appeal No.301/84) and the decision of C.A.T., Jabalpur Bench in O.A.No.84/87 (disposed of on 2.3.1988) came to the conclusion that the applicant Shri Satyananda Nayak had been awarded two types of punishments and in the circumstances, while quashing the punishment order dated 11.9.2001, remanded the case to the disciplinary authority to pass fresh order, which should be both speaking and reasoned one, after due consideration of the report of the I.O. and the written statement submitted by the applicant after receipt of the IO's report.

8. From the legal position as enunciated by the Hon'ble Supreme Court in the case of Shiv Kumar Sharma (supra) and the consistent view taken by the different Tribunals (as referred to above), we are of the view that neither the appellate authority nor the revisional authority had applied their mind appropriately in deciding the grievance of the applicant and under no circumstances, it

was open to the appellate authority to modify the order of the disciplinary authority by imposing multifarious punishment in derogation of the Rules prescribed under the Railway Servants (Discipline & Appeal) Rules. That being the facts of the case, we have no doubt that it is a fit case for our intervention and accordingly, we quash the order dated 18.7.2001 passed by the appellate authority vide Annexure-A/6 and the order of the Revisional Authority dated 16.5.2003 (Annexure-A/12) and remand the matter to the appellate authority to pass a proper order on the appeal filed by the applicant, which should be reasoned and speaking order, after due consideration of the factual and legal issues raised by the applicant .

It has been canvassed by the learned counsel for the applicant that the applicant is approaching his age of superannuation. In this view of the matter, we would direct that the Respondents/appellate authority to dispose of the appeal (as directed above) within a period of 60 (sixty) days from the date of receipt of this order.

9. Last but not the least, we would observe that as the order of removal from service has already been rescinded by the Respondents, we see no reason as to why the applicant should not be paid his salary as due and admissible from the date he was struck off in the rolls, in the interest of fairness and justice.

10. The O.A. is thus disposed of. No costs.

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

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(B.N. SOM)
VICE-CHAIRMAN