

14

CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH: CUTTACK.

Original Application No.366 OF 2004
Cuttack, this the 28th day of December, 2005.

CH. ASHUTOSH MISHRA.

APPLICANT

Versus

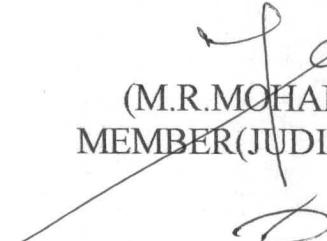
UNION OF INDIA & Ors.

RESPONDENTS

FOR INSTRUCTIONS

- u. Whether it be referred to the reporters or not?
- 2. Whether it be circulated to all the Benches of CAT or not?


(B.N. SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH: CUTTACK.

**Original Application No.366 OF 2004
Cuttack, this the 28th day of December,2005.**

CORAM:

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

Ch. Asuthosh Mishra, aged about 36 yearsw,
S/o.Radhanath Choudhury,
Booking Clerk, now working in
Commercial Control under Divisional
Commercial Mnager, Sambalpur
East Coast Railway, Smbalpur
At/Po/Dist.SAMBALPUR.

..... **APPLICANT.**

For the Applicant : M/s. P.K.Kar,D.K.Rath, Advocates.

VERSUS

1. Divisional Railway Manager,
East Coast Railways, Sambalpur,
At/Po/Dist.-Sambalpur.
2. Divisional Commercial Manager,
East Coast Railway, Sambalpur, At/Po/Dist. Sambalpur.
3. Divisional Personnel Officer,
East Coast Railway, Sambalpur.
At/Po/Dist. Sambalpur.
4. Union of India represented through the
General Manager, East Coast Railway,
Bhubaneswar, Dist. Khurda.

..... **RESPONDENTS.**

For the Respondents: Mr. C.R.Mishra, Counsel for Railways.

ORDER

MR. M.R.MOHANTY, MEMBER(JUDICIAL):-

Applicant Ch. Ashutosh Mishra, while working as THE Senior Booking Clerk at Sambalpur Road Booking Office under the East Coast Railway, was charge sheeted (under Rule 11 of Railway Servants (Discipline & Appeal) Rules, 1968, in short Rules of 1968) vide Annexure A/3 dated 12.5.2000; because of temporary misappropriation of cash amounting to Rs.12,000/- for 15 days i.e., from 9.4.2000 to 24.4.2000. He submitted his explanation under Annexure R/1 dated 2.6.2000. It is the case of the Applicant that enquiry was conducted without providing opportunity to him and punishment (of stoppage of increment for a period of 24 months N.C.E.) was imposed on him vide Annexure R/2 dated 21.6.2000. He did not prefer any appeal against the said order of punishment. During currency of the punishment, the Applicant (under Annexure A/4 dated 28.3.2001) was intimated that the reviewing authority had asked for initiation of Major Penalty proceeding against him and, accordingly, the minor penalty charge sheet and punishment order dated 21.6.2000 were withdrawn treating the same as cancelled. It is in this background, the disciplinary authority issued a charge sheet to the applicant under Rule 9 of the Rules of 1968 on 02.04.2001/09.05.2001. The Applicant submitted his explanation to the said charge-sheet on 24.8.2001. An enquiry was conducted by the Inquiry



Officer, who submitted his report under Annexure-A/6 dated 3.11.2003. On receipt of the enquiry report, the Applicant submitted his explanation under Annexure-7 dated 9.3.2004. It is at this stage the Applicant has approached this Tribunal challenging the legality and validity of initiation of major penalty proceedings, seeking the following relief :

“To quash Annexure No. 4 to 6 to the Original Application.

To direct the Respondent to dispose of the Annexure-7 pending before the Respondent or pass any appropriate order/s relief/s as think deem fit and proper.”

2. While directing notices to be issued to the Respondents, vide order dated 17.6.2004, this Tribunal, as an interim measure, passed the following order:-

“No final orders in the disciplinary proceedings that was started against the applicant under Annexure-5 dated 2/9.4/5.2001 (in which comments on the inquiry report were called for from the applicant under Annexure-6 dated 26.2.2004; to which reply was furnished under Annexure – 7 dated 9.3.2004) be passed without the leave of this Tribunal”.

3. It is the case of the Applicant that the punishment (imposed on him, as a consequence of minor the penalty proceedings) having spent its force, no further proceedings (or for that matter the major penalty proceedings) on the self allegations should not have been initiated. It has been pleaded that there should not have been de novo inquiry by a new

Inquiry Officer other than the inquiry officer who conducted the inquiry in the minor penalty proceedings. That apart, de novo inquiry, conducted by the new I.O., was not only in violation of the D.A. Rules but the same having been done at the behest of the C.V.O., was an out-come of non application of independent/judicious mind. It has also been argued by the Applicant that the reviewing authority without, applying his independent mind and without giving him an opportunity to have his say (in the matter of cancellation and/or withdrawal of the earlier punishment order) had unilaterally issued the charge sheet under major penalty proceedings. It is also the case of the Applicant that the revisional authority has no right to revise the order after expiry of one year under Rule 25 of D.A. Rules. It has been submitted by the applicant that the role of Central Vigilance Organisation is advisory in nature, but in the instant case, the major penalty proceedings has been initiated on the extraneous consideration/at the instance of the CVO. With these submissions, the Applicant has sought for the relief as aforementioned.

4. The Respondents have filed their counter opposing the prayer of the Applicant, to which rejoinder has also been filed. The Respondents have also produced the relevant file dealing with the major penalty proceedings against the Applicant in compliance with the direction of the Tribunal. We have heard the learned counsel of both the sides and perused the materials placed before us during hearing.

J

The point that emerges for our consideration is as to whether the Reviewing Authority is justified in his action and has acted within the scope and ambit of the Rules laid down in this regard. In order to bring the matter to the touch stone of judicial scrutiny, it would be proper for us to deal with the matter relating to scope of review by the Reviewing Authority. In this connection, it would be profitable to quote Rule 25 A of the Railway Servants (D&A) Rules, 1968, as under:

"REVIEW: The president may at any time, either on his own motion or otherwise, review any order passed under these rules when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case has come or has been brought to his notice".

6. We have gone through the counter and the proceedings file produced by the Respondent-Railways. Nowhere did we find any mention by the reviewing authority as to what had prompted him to review the matter for initiating a major penalty proceedings against the Applicant. The Respondents have also not made any specific averment about availability of any material/evidence/document having the effect of changing the nature of the case, which could not be produced or was not available at the time of passing the order under review and that, such material/evidence/document came to their notice on a later date compelling the Review Authority to review the matter. What we find from the counter is that the Applicant did not prefer any appeal against the order imposing minor punishment dated

Y
S

21.6.2000. Later, the case was referred to the Divisional Railway Manager, of Sambalpur Division (by the Chief Vigilance Officer (T), Garden Reach, Kolkata vide his letter dated 27.10/3.11.2000) virtually, for reopening of the case in exercise of the power for review. Thus, it is clear that the Reviewing Authority was swayed away by the report of CVO (as would be evident from the letter of CVO dated 27.10.2000) and, therefore, the review of the matter has been taken up by the Reviewing Authority without application of mind/under extraneous pressure. Since the Reviewing Authority has failed to act within the scope and ambit of Rule 25 A of the Rules of 1968 (as quoted above), the action taken by that authority (in the matter of review) is, therefore, not sustainable. This being the situation, we are not dealing with the other aspect (re: legal infirmity or otherwise in conducting inquiry) of the matter.

7. For the foregoing reason we are of the opinion that the entire process of review as undertaken by the Reviewing Authority is vitiated and, accordingly, we have no hesitation to allow this O.A. and, accordingly, the O.A. is allowed. Annexures-4 to 6 as prayed for by the Applicant are hereby quashed. As a consequence, however, the original punishment (as imposed in the minor penalty proceedings) shall remain in force. Parties to bear their own costs.



(B.N. SOM)

VICE-CHAIRMAN



(M.R. MOHANTY)

MEMBER(JUDICIAL)