



FORM No. - 4

See Rule (12)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

ORDER SHEET

642

of 2004

Applicant (s) Purnendu Sekhar Pati Respondent (s) Union of India
Advocate for Applicant (s) Mr. Achintya Das Advocate for Respondent(s).....

NOTES OF THE REGISTRY

OA 642/09 ORDERS OF THE TRIBUNAL

On 28.8.04
 copies of order
~~Notice~~ alongwith
 copies of OA sum
 to all resp'ts.

J.S.P.M.
 8.10.04

communication under Annexure-A/5 dated 29.9.2004. It is the case of the Applicant that Shri N. Sahoo (who has been appointed as the Inquiring Officer, under Annexure-A/4 dated 28.9.2004) was also a Member of the fact finding Committee; report of which became the subject matter of the major penalty chargesheet and, therefore, said N. Sahoo ought not to have been appointed as the Inquiring Officer. That apart, it is also the case of the Applicant that by appointing Inquiring Officer before submission of written statement of defence, shows the bias/predetermined attitude of the Disciplinary Authority/Authorities/Respondents. It is also the case of the Applicant that although a copy of his written statement of defence/objection to the appointment of Shri N. Sahoo as Inquiring Officer (under Annexure-A/5 dated 29.9.2004) was communicated to Shri N. Sahoo, Inquiring Officer, he (Shri N. Sahoo) has issued a notice to the Applicant under Annexure-A/6 dated 1.10.2004 by fixing the enquiry to 12.10.2004. By stating so, the Applicant has alleged element of bias against the Inquiring Officer. By his representation under Annexure-A/7 dated 4.10.2004, the Applicant has, virtually, objected to the appointment of Shri N. Sahoo as the Inquiring Officer on the ground of bias; as he (Shri N. Sahoo) was one of the officers who conducted the fact finding enquiry. Despite the repeated objections of the Applicant, since Authorities/Respondents are proceeding with

the disciplinary proceedings/enquiry (which has been fixed to 12-10-2004), the Applicant has approached this Tribunal in the present Original Application under section 19 of the Administrative Tribunals Act, 1985. A copy of this Original Application has already been served on Mr. R. C. Rath, learned Standing Counsel for the Railways/Respondents, who has also been him,
served.

When the Applicant has pointedly raised grievances against the appointment of Inquiring Officer, it is for the Disciplinary Authority to give due consideration to the same; especially when the Applicant has made out a prima facie case of bias against the I.O.. Law is also well settled that he, who was associated with the fact finding enquiry, should not be appointed as a judge to adjudicate the allegation. On the face of of these principles of natural justice, the objection raised by the learned Standing Counsel for the Railways (pertaining to the prematurity of the case) is hereby over-ruled.

In the aforesaid premises, without entering into the rival claims any further, the Respondents/Disciplinary Authority are/is hereby called upon to examine the objections raised by the Applicant in his written statement of defence (submitted under Annexure-A/5 dated 29.9.2004) and in his representation under Annexure-A/7 dated 04.10.2004) pertaining the prayer for change

NOTES OF THE REGISTRY

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of the Inquiring Officer; and until a decision is taken by the competent Authorities pertaining to the objections in question of the Applicant (as raised under Annexure-A/5 dated 29.9.2004 and Annexure-A/7 dated 4.10.2004), the enquiry Officer (Res. No. 5) should do well in adjourning the enquiry, which has been fixed to 12.10.2004.

With the aforesaid observations and directions, (in which the Disciplinary Authority has been asked to consider the objection of the Applicant pertaining to appointment of Shri N. Sahoo as I.O.), this Original Application is disposed-of with further direction to the Respondent No. 5 (Shri N. Sahoo, Assistant Works Manager (Production), Carriage Repair Workshop, E. Co. Railway, Mancheswar, Bhubaneswar) not to proceed with the enquiry without obtaining further instruction from the Disciplinary Authority of the Applicant.

Send copies of this order to the Respondents, alongwith copies of the O.A., and free copies of this order be given to Mr. Achintya Das, learned Counsel appearing for the Applicant and Mr. R. C. Rath, Learned Standing Counsel for the Railways/Respondents.

Copies of order issued to counsel for both sides.

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11/10/04


MEMBER (Judicial)