

3

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH

O.A.NO. 198 OF 2005

Cuttack this the 10th day of September 2009

Purusottam Nayak

.....

Applicant

Vrs.

Union of India and others

.....

Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not?
- 2) Whether it be sent to the P.B., CAT, or not?


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER

4

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH

O.A.NO. 198 OF 2005

Cuttack this the 10th day of September 2009

CORAM:

HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
AND

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

.....

Purusottam Nayak, aged about 46 years, son of late Haribandhu Nayak, Ex-Guard, now Commercial Clerk under Station Manager, Rajgangpur, under Sr.Divisional Commercial Manager, Chakradharpur, at present residing at Qr.No. RE 10/1, R.E.Colony, Rajgangpur, Dist. Sundergarh

..... Applicant

Advocate for the applicant - Mr.Achintya Das

Vrs.

- 1) Union of India, represented through General Manager, S.E.Railway, Garden Reach, Kolkata, PIN 700043
- 2) Chief Operations Manager, S.E.Railway, Garden Reach, Kolkata 43, PIN 700043
- 3) Additional Divisional Railway Manager, S.E.Railway, Chakradharpur, Jharkhand.
- 4) Addl.Divisional Operations Manager, S.E.Railway, Chakradharpur, Jharkhand.
- 5) Divisional Operations Manager (Control), S.E.Railway, Chakradharpur, Jharkhand. Respondents

Advocate for the Respondents - Mr.P.C.Panda

.....


(A)

ORDERSHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

Aggrieved by the initiation of the disciplinary proceedings, vide Annexure A/1, and the orders passed by the Disciplinary Authority (D.A.), the Appellate Authority (A.A.), and the Revising Authority (R.A.) vide Annexures A/3, A/5 and A/7 respectively, the applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985.

2. The brief facts leading to filing of the Original Application are as follows:

While the applicant was working as Goods Guard under the control of Senior Divisional Operating Manager, S.E.Railway, Chakradharpur Division, he was charge-sheeted alleging the misconduct under Rule 3(i), (I), (II) and (III) of the Railway Servants (Conduct) Rules, 1966. As per the charge-sheet it was alleged that due to the wrong decision taken by the applicant and his non-cooperation with the Driver, a Goods Train was caused to part with and stalled at KM 394/12g for the first time, KM 295/12g for the second time, and KM 394/1g for the third time and the Section GX-BJMD was blocked from 22 15 hours to 04 10 hours on 4.10.2000. On the above charge, a disciplinary proceeding was initiated, and after conducting an enquiry under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968, the DA found the applicant guilty of the charge and imposed on the applicant the punishment of dismissal from service as per Annexure A/3



6

3

order dated 01/12.5.2003. Against the punishment awarded by the D.A., the applicant had filed an appeal before the A.A., namely, the Additional Divisional Railway Manager, Chakradharpur Division, S.E.Railway, on 24.10.2003 in compliance with the order dated 10.6.2003 passed by this Tribunal in OA No. 354 of 2003. As the appeal was not disposed of in time, the applicant filed M.A.Nos. 651 of 2003 in the said disposed of O.A.No. 354 of 2003 praying to stay the dismissal order and the Railways filed MA No. 369 of 2004 praying for further two months' time to dispose of the appeal dated 24.10.2003. This Tribunal by order dated 25.5.2004 directed the A.A. to consider the applicant's appeal and dispose of the same by a speaking order. Thereafter the A.A., as per the order dated 14.6.2004 (Annexure A/5) considered the applicant's appeal and reduced the punishment of dismissal from service to that of reversion from the post of Goods Guard in the pay scale of Rs.4500-7000/- to the lower post of Commercial Clerk in the pay scale of Rs.3200-4900/-, with further orders that his basic pay would be fixed at Rs.3455/- in the pay scale of Rs.3200-4900/-, that his seniority in that grade would be fixed at the bottom from the date of joining the post of Commercial Clerk, that he would earn his increment and promotion depending on performance, and that the intervening period, i.e., from the date of dismissal from service till the date of joining the service would be treated as 'dies non'. Being aggrieved by the order passed by the A.A., the applicant filed revision petition before the



R.A. who by his order dated 7.2.2005 (Annexure A/7) confirmed the appellate order. Hence the applicant filed the present O.A. for quashing AnnexureA/1 the disciplinary proceedings, Annexure A/3 order passed by the D.A., Annexure A/5 order passed by the A.A., and Annexure A/7 order passed by the R.A. and for a direction to the Respondents to reinstate him in service as Goods Guard with full back wages and all other consequential benefits.

3. Shri Achintya Das, the learned counsel for the applicant and Shri P.C.Panda, the learned Panel Counsel (Railways) appearing for the Respondents were heard. This Tribunal also perused the records produced along with the O.A.

4. Shri Achintya Das, the learned counsel for the applicant, challenges the orders passed by the A.A. as well as the R.A. on the following amongst other grounds:

Firstly, the learned counsel for the applicant contended that the charge sheet served on the applicant (AnnexureA/1) was defective as it did not contain the proper charge. Secondly, the learned counsel contended that the Enquiry Officer went beyond his power to alter the charge while conducting the enquiry. The Enquiry Officer, as per the enquiry report (Annexure A/2) firstly stated brief history of the case and he himself framed a charge under GR 6.04.02 and also substituted Annexure A/1 by adding the charge under GR 6.04.02. This, according to the learned counsel for the

AB

8

5

applicant, is without jurisdiction and the Enquiry Officer has no power to add any charge and that too, without any prior notice to the applicant. Thirdly, the learned counsel for the applicant submitted that the Enquiry Officer has not given sufficient opportunity to the applicant for submitting his defence and has also not supplied the materials on which he relies for proving the charge against the applicant. Lastly, the learned counsel for the applicant submits that all these grounds were urged before the A.A. as well as R.A. However, they have not properly considered the grounds urged by the applicant. Though the A.A. reduced the punishment of dismissal from service awarded by D.A. to that of reversion from the post of Goods Guard to Commercial Clerk, the A.A. has not properly appreciated the grounds urged by the applicant in the Memo of Appeal.

5. In answering the contentions raised by the learned counsel for the applicant, the learned counsel appearing for the Respondents, Shri P.C.Panda, relying on the counter, submitted that Annexure A/1 charge was a self-speaking one and by serving Annexure A/1 charge the applicant was made to understand the misconduct alleged against him. That apart, according to the learned counsel for the Respondents, the statement of imputation accompanying the charge memo clearly states the nature of misconduct committed by the applicant. The learned counsel further submitted that even if the Enquiry Officer explained Annexure A/1 charge while conducting the enquiry and taking evidence, that by itself could not be



9

considered as a reason for causing any prejudice to the applicant as the applicant was fully aware of the misconduct alleged against him in Annexure A/1. According to the learned counsel for the Respondents, the contention that the applicant has not been given sufficient opportunity to defend the charge is not correct. Annexure A/2 enquiry report itself shows that the Enquiry Officer had given sufficient opportunity to the applicant and waited for the reply and cooperation of the applicant, but the applicant himself absented himself from the enquiry. Though the applicant appeared sometimes, he actually abandoned the enquiry and did not cooperate with the Enquiry Officer. Hence, the Enquiry Officer was justified in drawing up the enquiry report ex parte and holding the charge against the applicant proved, the enquiry report was submitted to the D.A. With regard to the contention that Annexure A/1 charge did not contain the actual misconduct alleged to have been committed by the applicant, the learned counsel for the Respondents submitted that being a Goods Guard it is expected of the applicant to discharge the duties entrusted to him under GR and SR and there being any deviation, liability has to be fixed on the applicant. If so, the statement of imputations submitted along with the charge memo would show the nature of misconduct alleged against the applicant and nothing beyond that. In the above circumstances, the learned counsel for the Respondents further submitted that the findings entered by the Enquiry Officer are not vitiated as the enquiry has been conducted fully in accordance with the rules

00

10

7

followed and the procedure adopted in departmental enquiry and after complying with the principles of natural justice. Apart from that, the applicant though had appeared five times before the Enquiry Officer, yet he did not give any statement of his own defence as he has urged in the Appeal Memo or before this Tribunal. In this context, the learned counsel for the Respondents submits that the enquiry report Annexure A/2 clearly shows the nature of misconduct alleged against the applicant and that both the A.A. and R.A. have considered all the contentions raised by the applicant in the Appeal Memo and the Revision Petition and have confirmed the findings entered by the Enquiry Officer. The A.A. after considering all aspects of the matter has reduced the punishment. In the above circumstances, according to the Respondents, the O.A. is devoid of any merits and liable to be dismissed.

6. In the light of the respective rival contentions raised by the learned counsel on either side and on the grounds urged in the Appeal Memo, the question to be decided by the Tribunal is whether the applicant is entitled for any relief claimed in the O.A. or not.

7. Before answering the question raised before this Tribunal, it is only advantageous to see Annexure A/1 charge memo issued against the applicant. As per Annexure A/1 charge it is stated as follows:

“Article I

That the said Shri P.Nayak, Gd/DPS has committed serious misconduct in that on 4.10.2K-ME/N-BKSC-4 stalled at Km 394/12g 1st time, 2nd time at Km 295/12g and 3rd time at Km 394/12g due to no tension. The train was backed two times. After checking by the LI it



was found that the train got parted. The section GX-BJMD blocked from 22 15 hrs to 4.10 hrs due to wrong decision taken by Shri P.Nayak, Gd/DPS and his non-cooperation."

It is also worthwhile to quote the statement of imputation of misconduct against the applicant as in Annexure II to the charge memo Annexure A/1 as under:

"Article (I): On 4.10.2K ME/H-BKSC left GX at 22.20 hrs and stalled at Km 394/12g 1st time, 2nd time at Km 295/12g and 3rd time at Km 394/12g due to no tension. The train stalled for two times. On checking by the LI Shri Sankaran it was found that the train got parted and wagon no. SC68913 nuckle broken, 38th from the engine. The driver Shri A.Singhand Asst. E/Dr. Shri I.D.Sharma informed the guard regarding the condition of the knuckle and he was advised to allow the 1st portion to BJMD with LV No. with memo. Shri Nayak did not agree to allow that portion and thus detained the train intentionally besides blocking the section for about 5 hrs. As per the advice of guard, the driver sent A/Dr. along with guard to GI Station to give message to SCR/CKP for B/Engine with C&W staff at 00.00 hrs. The LI and TXR who were traveling in the engine replaced the knuckle and coupled two parts at 1.30 hrs. As per GR No.6.04.02 the guard should clear the load in two parts which he has not complied. The driver and LI went to GX stations and the LI asked SCR for B/Engine and informed TLC. The B/Engine arrived at 3.40 hrs. The section blocked from 22.15 hrs to 4.10 hrs of 5.10.2K due to wrong decision taken by the guard and non-cooperation with the staff at site. Shri Nayak totally failed to take initiative to clear the section quickly. He has failed to observe GR 6.04.02 causing blockade of the section for 5 hrs 55 mts.

Thus he has committed serious misconduct and violated rule 3(i)(I)(II) and (III) of R.S. Conduct rule 1966."

With the above imputation, Annexure A/1 charge memo has been issued to the applicant. As per the above charge memo it is stated that the applicant committed a serious misconduct under rule 3(i)(I)(II) and (III) of R.S.(Conduct) Rules 1966. As per the above charge, the Enquiry Officer has to take evidence against the applicant for proving the above charge. From



12

9

the enquiry report it appears that the enquiry has been conducted ex parte and the reason stated by the Enquiry Officer is that though the applicant was given sufficient opportunity to defend his case, he did not turn up and hence the enquiry proceeded. The Enquiry Officer found that out of 12 sittings fixed for enquiry, the applicant had attended only 5 sittings and on 2 sittings the applicant himself had expressed his inability to defend him without the help of a defence counsel. Admittedly, there is no evidence to show that request for such defence counsel has been made or has been allowed by the Enquiry Officer. However, Annexure A/2 report shows that a date was fixed for filing the defence statement by the applicant, but he did not attend on that day and hence, the enquiry was concluded by perusing the documents. It is also clear from Annexure A/2 that the copies of documents asked for by the applicant, were not considered by the Enquiry Officer. We are, therefore, of the view that the contention of the learned counsel that the applicant was not given a proper charge for enquiry being conducted by the Enquiry Officer against him appears to be reasonable. If the charge was not proper, there was no need for the Enquiry Officer to explain the charge as shown in Annexure A/2 report. Even if the Enquiry Officer wants to give an explanation to the charge memo Annexure A/1, he should have given sufficient opportunity to the applicant to defend the same. In the above circumstances, we are of the view that the disciplinary authority has failed to issue proper charge against



13

the applicant and on this ground alone the order of the A.A. confirmed by the R.A. has to be quashed.

8. With regard to the second ground urged by the learned counsel that the applicant has not been given sufficient opportunity to defend his case even based on Annexure A/1 charge, it is to be noted that though as per Annexure A/2 it is stated by the Enquiry Officer that there were 12 sittings in which the applicant appeared 5 times yet it is not clear as to whether the applicant was given an opportunity of being heard. It is not clear from the recording made in Annexure A/2 enquiry report as to what all those documents the applicant had asked for, which having been found relevant were supplied to him and as to whether the applicant had been deprived of reasonable opportunity. Hence we are of the view that the ex parte enquiry report submitted by the Enquiry Officer is not an enquiry report in the eye of law.

9. With regard to the third contention of the learned counsel for the applicant that the A.A. as well as the R.A. have not considered the grounds urged in the Appeal Memo and the Revision petition, we have noted that though the A.A. has reduced the punishment as imposed by the D.A., yet the A.A. has not taken into account the irregularities committed by the E.O. in conducting the enquiry into a charge which has been improperly framed against the applicant. The R.A. has also not considered this aspect. In the above circumstances, we are of the view that the orders now challenged



14


11

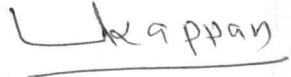
before this Tribunal are liable to be quashed. However, as the statement of imputation of misconduct given to the applicant along with the charge memo discloses a serious misconduct against the applicant, that by itself is not quite enough to uphold the findings entered by the Enquiry Officer for the observations made in the preceding paragraphs.

10. In the above circumstances and for the reasons contained in this order, we quash and set aside Annexures A/3, A/5 and A/7 orders. However, the allegations levelled against the applicant being serious, it is left to the Respondents to proceed against him as per rules after he being issued with a proper and fresh charge memo.

11. In the result, the O.A. is allowed to the extent indicated above.

No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER