

6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.628 of 2005
Cuttack, this the 30th day of January, 2009

Trinath Prasad Patra Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

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

(
JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

(
C.R.MOHAPATRA)
MEMBER (ADMN.)

7

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No. 628 of 2005
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C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)

A N D

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Trinath Prasad Patra aged about 43 years, son of Narasingha Patra, At-Karana Street, Paralakhemundi, Dist. Gajapati working as Sr. Clerk, DOMS Office, East Coast Railway, Sambalpur.

.....Applicant

By the Advocate:M/s.S.Udgata,P.K.Nayak,P.Chuli, P.R.Bhuyan.

- Versus -

1. Union of India represented through General Manager, East Coast Railway, Chandrakharpur, Bhubaneswar, Dist. Khurda.
2. Divisional Railway Manager (P), East Coast Railway, Sambalpur Division, Sambalpur.
3. Addl. Divisional Railway Manager, East Coast Railway Sambalpur Division, Dist. Sambalpur.
4. Divisional Operations Manager, East Coast Railway, Sambalpur Division, Sambalpur.

....Respondents

By Advocate :Mr. T.Rath.

O R D E R

MR. C.R.MOHAPATRA, MEMBER (A):-

Applicant is a Senior Clerk of the East Coast Railway presently posted at Sambalpur. A set of charges under Rule 9 of the Railway Servants (DA) Rules, 1968 were framed and served on the Applicant which reads as under:

"Statement of articles of charge framed against Sri T.P.Patro, Head Clerk under Sr.DTM/Sambalpur.

Article-1.

That the said Sri T.P.Patro while functioning as Head Clerk during the period unauthorized absent from 9.9.99 to 15.8.99.

Article-2.

That during the aforesaid period and while functioning the aforesaid office, the said Sri T.P.Patro absent from 18.8.99 to till date.

Article-3

That during the said aforesaid period and while functioning in the aforesaid office the said Sri T.P.Patro.

Statement of imputations of misconduct or misbehaviour in support of the articles of charge framed against Sri T.P.Patro, Head Clerk/Optg, Sr. DTM office/Sambalupr.

Sri T.P.Patro working as Head Clerk/Operating in the office of Sr.DTM/Sambalpur unauthorisedly absented from duty from 9.8.99 to 15.9.99 except 16.8.99. On the same day he was suspended and the suspension was revoked on 18.8.99 (Forenoon) Sri T.P.Patro is absenting himself from 18.8.99 to till date. Due to his unauthorized absence, work of store section of Sr.DTM/Sambalpur's office is badly hampering which is turn is affecting vital supplies relating to safe train operation and important customer related items to station and as well as various other stations equipments and putting extra burden on the existing staff.

By the above act, he failed to maintain devotion to duty unbecoming of a Railway Servant. Thus he violated rule 3-1 (ii) & (iii) of Railway Service Conduct Rule-1966 and thereby rendered himself liable for D&A Acton 1968 as amended time to time.

List of documents by whom the articles of charge framed against Sri T.P.Patrao, Hd Clerk.

1. Xerox copy of muster roll and abstract of muster roll in two sheets.

List of witnesses by whom the articles of charge framed against Sri T.P.Patro Head Clerk.

1. Not required."

Thereafter, in absence of the attendance of the Applicant, the IO appointed for the purpose held the enquiry *ex parte* and submitted its report full text of which is extracted herein below:

9

1. Introduction:

I the undersigned is nominated as the Inquiry Officer vide Sr. DTM's O.O.No.Sr.DTM/SBP/D&A/Optg/TP/HC/2000 dated 31.10.2000 to probe in regard to the charges framed against Sri T.P.Patro, Head Clerk, Sr.DTM's Office, Sambalpur.

2. Charges to be inquired into:-

Article 1:- That the said Sri T.P.Patro, while functioning as Head Clerk during the period remained unauthorisedly absence from 9.8.99 to 15.8.99.

Article 2:- That during the aforesaid period and while functioning in the aforesaid office, the said Sri T.P. Patro, HC absent from 18.8.99 to till date.

3. Case of the prosecution:

Statement of imputation or misbehavior in support of the articles of charges framed against Sri T.P.Patro, HC/Optg, Sr. DTM's Office, Sambalpur.

Sri T.P. Patro working as Head Clerk/Optg in the office of Sr. DTM/SBP unauthorisedly absented from duty from 9.8.99 to 15.9.99 except 16.8.99 on the same day he was suspended and the suspension was revoked on 18.8.99 (fore noon) Sri T.P.Patro is absenting himself from 18.8.99 to till date. Due to his unauthorized absence, work of Store section of Sr.DTM/SBP's office is badly hampering which in turn is affecting vital supplies relating to safe train operation and important customer related items to station and as well as various other stations equipments and putting extra burden on the existing staff.

By the above act, he failed to maintain devotion to duty unbecoming of a Rly. Servant. Thus, he violated Rule 30-1(ii) & (iii) of Railway Service Conduct Rule-1966 and thereby rendered himself liable for D&A Action 1968 as amended time to time.

3.1 In support of the case a list of documents i.e. extract copy of muster roll of Sri T.P.Patro, Head Clerk for the period from 01.8.99 to 09.8.2000 is enclosed with the said charge sheet in Annexure-III.

3.2. To prove the charges, the witness of Shri H.Barla, OS (T)/Sr.DTM's office/SBP who prepared the Muster Roll of Sri T.P.Patra, HC, Sr.DTM's office/Sambalpur is enclosed with the said charge sheet.

4. Case of the defence :-

10

After receiving the charge sheet memorandum the C.O. had submitted a reply to the D&A on 23.10.2000 which is attached in the case file.

5. Analysis of the case :

After thorough study of the case file it is came to light that Shri T.P. Patro, Head Clerk, availed two CR on 05.8.99 and 06.8.99 two rest on 07.8.99, 08.8.99 and remained unauthorisedly absent from 09.8.99 to 15.8.99. No application was submitted by him for granting leave of the said absent period, which was substantiated by P.W No.1 answer to Q.No.2 further head quarter leaving permission was also not sanctioned by the competent authority. Same was also confirmed by P.W.No.1 answer to Q.No.6. He left the head quarter during suspension period without permission.

6. Ex parte Decision:-

The C.O. Shri T.P. Patro had been informed through registered post with AD vide the following letter Nos. to attend the D&A inquiry.

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The acknowledgement copies of the CO is received by CDTI/Staff/SBP, which are attached with the file but the CO did not attend the D&A inquiry on one plea or other plea or other plea and on flimsy ground for instance, supply of pay slips, unpaid salary bills, waiting for DRM/SBP decision and self illness described in his appeal dated 27.9.2001 and again about his service teeth pain in his appeal dated 15.9.2001. On last occasion also not attended the inquiry on the plea of subsistence allowances copies not supplied and waiting for the consideration and decision of DRM/SBP, Sr.DTM/SBP against his appeal dated 29.8.2001 and 07.5.2001 respectively.

The charges framed against the CO i.e. he remained unauthorisedly absent from 09.8.99 to 15.8.99 and again he remained unauthorisedly absent from 18.8.99 till date is proved after verification of relevant records and P.W.No.1 answer to Q.No.2 and answer to Q.No.6 (At.P-'A').

So far supply of pay slips from August, 1999 to August, 2000 and Xerox copies of unpaid salary bills as desired by the CO in his appeal dated 27.9.2001 (at F-'B') proves about his unauthorized absent, for which he could not collect pay slips and salary.

On the basis of available relevant documents, as well as witness of P.W.No.1, I found that Shri

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- 5 -

T.P.Patro, Head Clerk working under Sr.DTM's office/Sambalpur is guilty and his non attendance in the enquiry though he has been given 5 opportunities to attend the same made me to conclude with *ex parte* decision against him.

On submission of the defence by the Applicant to the report of the *ex parte* enquiry, the disciplinary authority vide order dated 26th July, 2002 (Annexure-13) imposed the following punishment:

"However, considering his family condition and to give him another chance to reform himself and simultaneously to discourage other staff committing such mistakes I have taken a lenient view and ordered punishment of reduction to just lower time scale of pay and post of Sr.Clerk for a period of four years at a basic pay of Rs.4500/- without cumulative effect. After completion of punishment he will regain his original post and seniority as before imposition of punishment with normal fixation of pay like his counter parts as if no punishment imposed.

It is also ordered that Shri Patro should join duty immediately within 7 days of receipt of this punishment notice, failing which it will be thought that he has no interest to join duty and further recourse will be made to remove him from Railway service since a post cannot be kept vacant for more than three years of his unauthorized absence from duty."

2. The aforesaid order of punishment imposed by the Disciplinary Authority was ultimately upheld by the Appellate Authority vide order under Annexure-19 dated 11.11.2004. Thereafter, the Applicant resumed his duty w.e.f. 16.11.2004. By filing the present OA he challenges the aforesaid order of punishment imposed by the Disciplinary Authority under Annexure-13 dated 26.07.2002 as also the order under Annexure-19 dated 11.11.2004.

3. Respondents by filing counter have opposed the contentions raised in this OA. By explaining the situation, it has been averred by the Respondents in their counter that absolutely there has been no injustice caused in the decision making process of the matter so as to enable this Tribunal to interfere in the matter. Accordingly, they have prayed for dismissal of this OA.

4. We have heard rival submissions of the parties and perused the materials placed on record.

5. The main contention of the Learned Counsel for the Applicant during argument that the report submitted by the IO and consequent thereto the order of the disciplinary authority as well as appellate authority are not sustainable for the same having been passed in gross violation of the statutory rules in regard to conducting the enquiry even in absence of the delinquent. It has further been pointed out that the IO based his findings on the basis of materials collected behind the back as those documents were neither the listed documents nor copies of which had ever been supplied to the Applicant and that the IO examined the witness not cited in the charge memo. There was no satisfactory answer given by the other side during the course of argument. In this connection we have examined the Rules, 1968. It provides as under:

"Rule 9(12):The Inquiring Authority shall, if the Railway servant fails to appear within the specified time or refuses or omits to appear, require the 'Presenting Officer' if any, to produce the evidence by which he proposes to prove the articles of charge and shall adjourn the case to later date not exceeding thirty days, after recording an order that the Railway servant may for the

purpose of preparing his defence give a notice within ten days, of the Inquiring Authority may allow for the discovery production of any documents which are in possession of Railway Administration but not mentioned in the list referred to in Sub-rule (6).

Rule 9(20): The evidence on behalf of the Railway servant shall then be produced. The Railway servant may examine himself, in his own behalf, if he so prefers. The witnesses produced by the Railway servant shall then be examined by or on behalf of him and shall be cross-examined by or on behalf of the presenting Officer, if any. The Railway servant shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, the leave of the Inquiring Authority. The Inquiring Authority may also put such questions to witnesses as it thinks fit.

Rule 9(21): The Inquiring Authority may, after the Railway servant closes his case and shall, if the Railway servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Railway servant to explain any circumstances appearing in the evidence against him.

6. From the records and the report of the IO it reveals that when the IO took all care to follow the stipulated rules till the stage of examining the witnesses of the prosecution, the IO had clearly forgotten the requirement of complying with the provisions of Rules 9(12), 9(20) and 9(21) of the Rules. Rule 9(12) mandates that in case of non-appearance of the delinquent official, the IO shall give time to Presenting Officer to produce his evidence and after recording an order that the Railway servant may for the purpose of preparing his defense give a notice within ten days, of the order or within such further time not exceeding ten days as the Inquiring Authority may allow for the discovery or production of any documents which are in possession of Railway Administration but mentioned in the list

referred to in Sub-Rule (6). Vide RB's No. E (D&A) 90-RG 6-34 dated 18.04.1990, the Inquiring Authority should record the reasons why he is proceeding ex parte and what steps he had taken to ask the accused official to take part in the enquiry and avail of all the opportunities available under the provisions of rule 9 of the Railway Servant (Discipline and Appeal) Rules. In such a case the details of what has transpired in his absence, including depositions should be furnished to the accused officer. During the course of enquiry the accused is free to put in appearance and participate in the inquiry. The above instruction clearly states that the IO shall furnish to the delinquent official the details of what has transpired in his absence, including depositions. This is in conformity with the provisions of Rule 9(12). Failure to comply with this would amount to serious error, as held in the case of Ministry of Finance v S.B.Ramesh, 1998 (2) SLJ 67 (SC)=(1998)3 SCC 227. Non-supply of documents relied on by the IO would make the proceedings vitiated as held by the Hon'ble Apex Court in the case of State of UP v Shatrughan Lal and Another, (1998) 6 SCC 651.

7. Non-adherence to the provisions of Rule 9(12) of the Railway servants (Discipline and Appeal) Rules has been held to have vitiated the ex parte enquiry in the cases of Moti Singh v Union of India, (1987) 2 ATC 334 (Jab.);Hari Prasad Billore v Union of India, 1989(2) SLJ 292(CAT-Jabalpur).

8. In view of the above, we have no hesitation to hold that the report of the IO under Annexure-11 is vitiated by non-adherence of the rules cited above. Hence the same is not sustainable and as a consequence the order of disciplinary authority under Annexure-13 which is based on such inquiry report and the order of Appellate Authority under Annexure-19 must go. It is so ordered and the matter is remitted back to the Disciplinary Authority to cause de novo enquiry from the stage of submission of the reply to the memorandum of charge by the Applicant.

9. In the result, this OA stands allowed in terms of the observations and directions made above. There shall be no order as to costs.

Thankappan
(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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(C.R. MOHAPATRA)
MEMBER (ADMN.)