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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.783 of 2005
Cuttack, this the 17th day of February, 2009

Bhagirathi 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.)

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CUTTACK BENCH: CUTTACK

O.A.No.783 of 2005

Cuttack, this the 17th day of February, 2009

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)

Shri Bhagirathi, aged about 45 years, Son of Basudev Ray, Ex-Khalasi Helper, WE(Works)/JB, At/PO/PS-Jeypore Town, District-Koraput.

.....Applicant

By Advocate: M/s.GopinathMishra, T.K.Mishra, B.K.Raj,
S.C.Sahoo

- Versus -

1. Union of India represented through General Manager, East Coast Railway, Waltair Division, Waltair (AP).
2. Divisional Engineer, East Coast Railway, K.K.Line, JDB Section, Visakhapatnam.
3. Assistant Divisional Engineer, East Coast Railway, Office of Assistant Divisional Engineer, Jagadapur.
4. Deputy Personnel Officer, East Coast Railway, Waltair Division, Waltair (AP).
5. Appellate Authority & Sr.DEN (Co.Ord.) WAT, East Coast Railway, Office of the Sr.DEN (Co.Ord.)/WAT, Visakhapatnam.

....Respondents

By Advocate :Mr.R.C.Rath.

O R D E R

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

Facts in nut shell, according to the Applicant are that while he was working as Khalasi Helper under the Respondents he was called upon to show cause to the Memorandum of charges under Annexure-A/1 dated 04.06.2004 framed under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. Thereafter, the matter was enquired into by the IO appointed by the Disciplinary Authority.

2. It is the specific case of the Applicant in the pleadings as also during hearing that the IO concluded the inquiry without

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following due procedure of rules, holding the charges proved. He proceeded with the enquiry even without supplying the listed documents and without calling for the listed witnesses for examination and cross examination. The Disciplinary Authority accepted the report of the enquiry and imposed the order of punishment of removal even without making it available to the applicant to have his say as provided under the Rules. He has preferred appeal against such order of punishment but the Appellate Authority without considering the entirety of the matter and without giving any personal hearing to the applicant as provided under the Rules, rejected the appeal of the Applicant. Being aggrieved by the said order under Annexure-A/3 dated 18.02.2005 of the Disciplinary Authority inflicting the punishment of removal from service and the order under Annexure-A/5 dated 04.07.2005 of the Appellate Authority rejecting his appeal, he has preferred this OA seeking to quash the impugned order under Annexure-A/3 and A/5 being illegal, arbitrary, contrary to Rules and in violation of the principles of natural justice. He has also sought direction to the Respondents to reinstate him in service with all consequential service and financial benefits.

3. The stand of the Respondents both in the counter as also during hearing is that after submission of the reply to the memorandum of charges by the applicant the matter was duly enquired into and the IO submitted its report holding the charges proved. Copy of the report of the IO was duly served on the applicant who in turn submitted his reply. After considering the report of the IO

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vis-à-vis the other connected records and the reply of the applicant the applicant was inflicted with the order of punishment of removal. The Appellate Authority, on consideration of all the points raised by the applicant in his appeal vis-à-vis the other materials such as IO report and the order of DA, with due application of mind rejected the appeal of the Applicant. It has further been averred by the Respondents that the Applicant has approached this Tribunal without exhausting all the remedies available under the service rules. Documents sought by the applicant were supplied to him. The witness was also cross examined by the Applicant during enquiry. Further in 'paragraph 9' of the counter it has been averred by the Respondents that copy of the report of IO was sent to the applicant his permanent address on 17.01.2005 which came back with the postal endorsement 'addressee is not available'. They have stated that as admitted by the applicant though copy of the report of the IO was served on him by the I.O he did not like to prefer any reply to the said report. In regard to payment of Subsistence Allowance during the period of suspension it has been contended by the Respondents that as the applicant failed to submit non-engagement certificate during the period of his suspension as required under the rules SA could not be paid to him. However, on submission of such certificate on 27.7.2004 he was paid the SA from July, 2004 onwards regularly. Further in paragraph 16 of the counter it has been stated that from the report of the IO it would be evident that although the IO directed the applicant to collect the document neither the applicant nor his defence assistant collected the same. Thereafter the documents were sent to the applicant by post by

the IO vide letter dated 07.12.2004. Accordingly, the Respondents have stated that as the rules on the subject were vigorously followed and principles of natural justice was fully complied with by way of giving all opportunities to the applicant to defend his case, this Original Application is liable to be dismissed.

4. By filing rejoinder, the Applicant rebutted some of the contentions raised in the counter. It has been stated by him that no opportunity was allowed to the applicant to cross examine the witness and examine the documents to prepare his defence. By relying on Rule 9(15) and (16) of RS(DA) Rules, 1968 it has been pointed out by the applicant that on receipt of his request under Annexure-A/7 the same ought to have been forwarded to the appropriate authority for production of the records but the IO did not pay any heed on the said request of applicant. It has been reiterated by the applicant that neither the applicant was allowed opportunity to cross examine the witness examined on behalf of prosecution nor was he given any opportunity to cite witness on his behalf as required under rule 9(20) of Rules, 1968. Further case of the Applicant is that before imposing the order of punishment it was obligatory on the part of the DA to consult with the Commission as required under Rule 10(5) of Rules, 1968 and as such the order imposing the punishment of removal on the applicant being contrary to Rule 12 of the Rules, 1968 the same is liable to be quashed.

5. Heard the parties. After giving in-depth consideration to various arguments advanced by the parties, we have perused the materials vis-à-vis the decisions relied on by the Applicant during the

hearing. Before proceeding to the merit of the matter, we may record that it is a well recognized principle that judicial review is not an appeal from a decision but a review of the manner in which the decision is made and that power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of law. The Tribunal can interfere in the disciplinary proceedings or in the matter of punishment imposed on a delinquent if there has been gross violation of the rules while conducting the enquiry or adequate opportunity has not been given to the applicant during enquiry to defend his case or the authority who has imposed the punishment is not competent to do so. On such a case the Hon'ble Apex Court judgment on interference in disciplinary proceedings is reported in (2008) 2 SCC (L&S) 365 (**Government of India and Another v George Philip**). Keeping the ratio of the above decision of the Apex Court, it is now to be examined whether this case is coming within the ingredients of the ratio fixed by the Hon'ble Apex Court so as to interfere in the order of punishment of removal imposed on the applicant and appeal preferred against which was rejected by the Appellate Authority.

6. On perusal of the charge sheet it is seen that the Respondents intended to substantiate the charges levelled against the applicant through four documents and three witness. They are as under:

Annexure-III

- 1) Muster sheets maintained by SE/W/JDB;
- 2) Complaint letter dt.24.1.2004 of Sri C.Satyamurthy, JE-II/W/JDB;
- 3) Complaint letter Dt.21.1.2004 of Sri M.K.Chandrasekhar, Ty.EBS Gr.III of SE/W/JDB;
- 4) Joint appel letter Dt.22.1.04 of SE/W/JDB's staff.

Annexure-IV

1. Shri K.Nageswara Rao, Jr. Clerk of SE/W/JDB.
2. Shri S.Eswara Rao, Jr. Clerk of SE/W/JDB
3. Sri Ramchandra, Trelly man of SE/W/JDB.

But on perusal of the enquiry report it is seen that as many as 8 witnesses were examined during the enquiry by the IO but no reliance was placed on any of the documents cited in the charge sheet.

7. As per the RB's No.E (D&A) 83 RG-6-14 dated 29.03.85 (NRS No.8702) a list of documents by which the articles of charges are proposed to be sustained should be enclosed with the charge sheet as Annexure-III. The inspection of documents specified in this list which are relied upon against the railway servant cannot be refused by the administration. It has further been clarified in the aforesaid letter that in order to avoid the delay, Photostat or typed copies of all he relied upon documents should be furnished along with the charge sheet. This shall not however affect the right of the charged employee to inspect the originals of the listed documents, if he so desires. But we find that there has been no compliance of the aforesaid Railway Board instructions. It has been stated by the Respondents that the IO sent the documents by post. But no evidence has been produced by the Respondents that the letter or the documents have been received by

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the Applicant in absence of which it cannot be said that there has been substantial compliance of the natural justice.

As per RB's No.E (D&A) 86-RG 6-42 dated 9-5-86 (NR Sl. No.8997), the IO may after the completion of production of evidence on behalf of the disciplinary authority as also the delinquent employee hear the presenting officer, if any, and the delinquent railway servant or permit them to file written briefs of their respective case if they so desire. The IO should discuss the evidence produced during the inquiry in the written brief and point out the flaws and infirmities in the evidence produced in support of the charges. He should also point out the contradictions and improbabilities in the evidence of various witnesses to prove their unreliability. But from the report of the IO it is not evident whether any such opportunity was given by the IO after the completion of the enquiry to the Applicant. As such it cannot be said that there has been sufficient compliance of natural justice in the instant case.

In regard to witness cited in the charge sheet and examined during enquiry, on perusal of the memorandum of charges vis-à-vis the inquiry report, it is evident that the IO examined more than the witnesses cited in the memorandum but it is not revealed whether the applicant was given opportunity of cross examination. It is trite law that not allowing the opportunity of cross examination of the witnesses vitiates the enquiry. Further on perusal of the report of the IO it is revealed that the witness cited by the applicant was not called on the ground that such request was not made by the applicant

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in advance and maximum number of witness have been booked to outstation duty. Besides above, S/Shri C. Satyamurthy and M.K. Chandrasekhar though vital and material witnesses they were not cited as witness in the charge memo whereas they were examined during enquiry. Besides the rulings of the Courts are that the findings of the IO should not be too short and should contain discussion as to how he came to his conclusion. In this connection reliance is placed on the decision of the Hon'ble Apex Court in the case of Anil Kumar v Presiding Officer, 1985 SCC (L&S) 815 in which it has been observed by Their Lordships as under:

"The Enquiry officer did not apply his mind to see evidence. Save setting out the names of the witnesses he did not discuss the evidence. He merely recorded his *ipse dixit* that the charges re true. He did not assign a single reason why the evidence produced by the appellant did not appeal to him or was not considered credit worthy. He did not peep into his mind as to why the evidence produced by the management appealed to him in preference to the evidence produced by the appellant. Annexure- enquiry report in a quasi-judicial enquiry must show the reasons for the conclusions. It cannot be *ipse dixit* of an Enquiry Officer. It has to be speaking order in the sense that the conclusion is supported by reason. "

By observing so, it has been held by their Lordships that "this is no enquiry report at all. There could not have been a more gross case of non-application." We find, in the instant case the report of the IO is too short and did not contain discussion as to how he came to his conclusion. Hence, the same is not sustainable in the eyes of law.

That-apart, taking into consideration the law propounded by the Apex Court in the case of Managing Director, ECIL v



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B.Karunakar, SLJ 1993 (3) SC 193 it was specifically directed by the Railway Board vide RB's No.E(D&A) 76 RG 6-28 of 3.7.76 (NR SN 6567) that before imposition of punishment a copy of the enquiry report must be supplied to the charged officer by the disciplinary authority. But as noted above, there has been no substantial compliance of the law propounded by Apex Court and rule issued on the subject. As such, by no stretch of imagination it can be said that based on such report of the IO imposition of punishment of removal on the applicant is sustainable in the touch stone of judicial scrutiny.

Similarly appeal preferred by the Applicant was rejected by the Appellate authority vide order under Annexure-A/5. The order of rejection speaks as under:

"I have gone through the case file, speaking order of the Disciplinary Authority and appeal given by Charged Official, Shri Bhagirathi. The Charged Official has doubt about the competent authority for suspension and finalization of SF-5 in the instant case is irrelevant and issue concerned can be separately raised for examination.

After going through the enquiry report and deposition of witness I came to conclusion that charged official did not bring out any fresh fact or irregularity in conducting the enquiry. Therefore, I agree with disciplinary authority that the charges levelled against Shri Bhagirathi is proved.

Considering the gravity of the charge the punishment imposed by disciplinary authority of Removal from Service is fair and just in the instant case."

Under sub rule (3) of Rule 22 of the Railway Service (Discipline & Appeal) Rules, 1968 the appellate authority is to consider all the circumstances of the case and thereafter it can make such order as it may deem just and equitable. It is well settled

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principle of law that while passing an order the appellate authority should make its own findings that the charge/charges levelled against the concerned Government servant have been established and that it agreed with the findings of the disciplinary authority. In a case where the appellate authority had not made any findings of its own to the effect that the charge or charges levelled against the employees had been established, the order of the Appellate Authority is not sustainable. This is also the views expressed by the Tribunal in the case of Ram Lagan v Union of India and others, ATC 1990 (12) 247. But in the instant the order of the appellate authority does not contain any such discussion thereby rendering the same unsustainable.

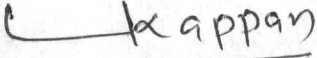
8. From the discussions made above, the inevitable conclusion is that that has been no substantial compliance of the Rules as also principles of natural justice in the instant case. Hence, the report of the enquiry officer placed through Annexure-A/2 is hereby quashed. Necessarily all other orders such as order of punishment under Annexure-A/3 and order of Appellate Authority under Annexure-A/5 are also quashed. The matter is remitted back to the Disciplinary Authority to start de novo proceedings from the stage of submission of the reply of the applicant to the memorandum of charge and complete the proceedings within a period of 90 days from the date of receipt of copy of this order. By the quashing of the order of punishment, the position of the applicant would be as he was before imposition of the order of punishment of removal and the




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relevant period shall be decided by the competent authority as per Rules/Law.

9. In the result, with the aforesaid observations and directions, this OA stands allowed. There shall be no order as to costs.


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


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

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