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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 424 OF 2006
CUTTACK, THIS THE 11th DAY OF September, 2009

S.G.Gouse.....Applicant

Vrs.

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 Central Administrative Tribunal or not ?

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

(K.THANKAPPAN)
MEMBER (JUDL.)

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CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 424 OF 2006
CUTTACK, THIS THE 11th DAY OF September, 2009

CORAM :

HON'BLE MR. JUSTICE K.THANKAPPAN, MEMBER(J)
HON'BLE MR. C.R.MOHAPATRA, MEMBER(A)

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Sri S.G.Gouse, aged about 42 years, son of Late S.K.Ismail, Deputy Station Superintendent, E.Co.Railway, mahasamund, under Divisional Operations Manager, Sambalpur at present residing at Railway Quarter No. MT 40/2, Mahasamund, PO & Dist. Mahasamund, Pin 493445.

...Applicant

By the Advocates – Mr. Achintya Das.

-Versus-

1. Union of India service through General Manager, E.Co.Railway, Chandrasekharpur, Bhubaneswar, PIN 751030.
2. Additional Divisional Railway Manager, E.Co.Railway, Sambalpur, PO Khetrajpur, Dist. Sasmbalpur.
3. Divisional Operations Manager, E.Co. Railways, Sambalpur, PO Khetrajpur, Dist. Sambalpur.
4. Sri L.D.Behera, Assistant Operations Manager-cum-Inquiry Officer, Sambalur, PO Khetrajpur, Dist. Sambalpur.

...Respondents

By the Advocates - Mr. P.C.Panda (For R-1 to 3)

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ORDER

Shri Justice K. Thankappan, Member (J):-

We have heard Mr. Achintya Das, Ld. Counsel for the applicant and Mr. P.C.Panda, Ld. Counsel for the Respondents.

2. The applicant has filed this O.A. challenging the punishment order dated 12.12.2005 and the appellate order dated 24.02.2006.

3. The brief facts of the case relating to the O.A. are as follows:

While working as Station Master at Mahasamund, on 15.06.2004 the applicant failed to inform East Cabin CLM whether BCN/NRG would stop at the station for any work/crossing/precedence, etc., and thus committed misconduct punishable under the Railway Servants (D&A) Rules, 1968. A charge memo dated 14.02.2005 was served on the applicant, in which three specific charges were levelled against him. After serving the above memo of charge on the applicant, a defence statement was called for from the applicant, and after receipt of the statement of defence, an inquiry was conducted, and as per the inquiry report dated 29.01.2005, out of three charges, the

first charge was found partially proved. On receipt of such inquiry report, the Disciplinary Authority (Respondent No.3) found that the finding entered by the Inquiry Officer regarding the first charge as partially proved is not correct. He found the first charge as proved against the applicant and imposed upon him the punishment of withholding of the next annual increment of pay, as and when next due, with non-cumulative effect for a period of four years and with further stipulation that on completion of the punishment period, the applicant shall regain his seniority. Against the order passed by the Disciplinary Authority, the applicant filed an appeal before the Appellate Authority and in turn the Appellate Authority dismissed the appeal confirming the order passed by the Disciplinary Authority. Hence, the applicant challenges these two orders before this Tribunal.

4. The O.A. has been admitted by this Tribunal and notice has been ordered to the Respondents. In pursuance to the notice, a counter/reply statement has been filed for and on behalf of the Respondents, in which the Respondents have justified the impugned orders and contended that this Tribunal may not interfere with the orders passed by the authorities and the O.A. may be dismissed.

5. We have heard Ld. Counsel appearing for the either side and perused all the records and relevant rules of the Railways pertaining to the charges levelled against the applicant.

6. Mr. Achintya Das, Ld. Counsel appearing for the applicant has assailed the orders under challenge on the following grounds.

Firstly, the Ld. Counsel for the applicant submitted that Annexure-A/1 charge itself is vague and it is not clear under what provision of the rules, the applicant has committed the alleged misconduct. The Ld. Counsel, in this context, took this Tribunal to the relevant rules and submitted that S.R. 3.38.01(ii) has not been violated by the applicant. Actually, the original Rule is S.R. 3.38.01(b)(ii), and hence the charge itself is wrong. Further, the Ld. Counsel took this Tribunal to the finding entered by Inquiry Officer regarding this rule and submitted that though the Inquiry Officer has corrected the rule from S.R.3.38.01(ii) to S.R.3.38.01(b)(ii), yet on the above charge, the applicant cannot be found guilty.

The second contention of the Ld. Counsel for the applicant is that even though there were three charges in

Annexure-A/1 charge memo levelled against the applicant, the Inquiry Officer, after a detailed inquiry, has stated that charge under Articles II and III are not proved against the applicant at all and charge under Article I is partially proved. In this context, the question now raised before us by the Ld. Counsel is whether any charge framed against an employee can be found partially proved. According to the Ld. Counsel, even as per the Evidence Act, a fact can be proved or disproved, or it cannot be proved, and there shall not be any fact partially proved. If so, the finding now entered, according to the Ld. Counsel for the applicant, is irregular and unsustainable in the eye of law and so the benefit of doubt on this aspect shall be given to the applicant

The third limb of contention of the Ld. Counsel for the applicant is that even though the Inquiry Officer has found that the first charge has been partially proved against the applicant, the Disciplinary Authority was not satisfied with the finding entered by the Inquiry Officer and the applicant was proceeded against and punished without even issuing a notice, as contemplated under the rule, to the applicant seeking his explanation for the disciplinary authority disagreeing with the finding entered by the Inquiry

Officer. Ld. Counsel submits that this type of finding or order made by the Disciplinary Authority is non est in law in the light of the judgment of the Supreme Court reported in AIR 1994 SC 1074, M.D.,ECIL Ltd. vs. B.Karunakar. According to the Ld. Counsel for the applicant, it is mandatory on the part of the Disciplinary Authority to give notice to an employee if such authority is not agreeing with the finding entered by the Inquiry Officer. The next limb of argument of the Ld. Counsel for the applicant is that even if the first charge itself is taken into account, there is no evidence to conclude that the applicant has committed any violation of rule 3.38.01(b)(ii) as all the witnesses questioned by the Inquiry Officer have stated that they were not aware whether the particular train had stopped at the station or not. However, they have admitted before the Inquiry Officer that the train had stopped. In this context, it is submitted by the Ld. Counsel for the applicant that the confession statement alleged to have been given by the applicant has been taken as a basis for finding the applicant guilty of the first charge even partially. With regard to this, Ld. Counsel submitted that in the written statement and in the defence statement, the applicant took a contention that

even though he had given a statement that he was not aware as to whether he had given any intimation to the particular Cabin Officer on the particular date, one thing he had admitted was that he knew that the train had stopped, but that could be taken only as an explanation and it cannot be taken as a confession as per Section 24 of the Evidence Act. Confession can be both types namely exculpatory and inculpatory. Even if any statement was given by the applicant that he was not aware or he was not remembering whether he had given intimation to the Cabin Officer or not that could be only an exculpatory statement. If a person confirms any fact it can be taken only inculpatory and not exculpatory at all. If so, the Ld. Counsel for the applicant submitted that whatever confession alleged to have been made by the applicant cannot be considered as a basis for finding him guilty of charge. Lastly, the Ld. Counsel appearing for the applicant relies on the judgments of the Supreme Court and the High Court to substantiate his contention regarding the charge as partially proved and the vagueness of the charge. The Counsel relies on the judgment of the Supreme Court reported in AIR 1964 SC 364, Union of India vs H.C.Goel.

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7. In reply to the above contentions of the Ld. Counsel for the applicant, Ld. Counsel appearing for the Respondents, relying on the counter affidavit, submitted that even though the Inquiry Officer has not found all the three charges proved against the applicant, charge No. 1 is found proved. The Ld. Counsel submits that the term used by the Inquiry Officer as 'partially proved' may be a mistake and there is evidence to show that the applicant has violated S.R. 3.38.01(b)(ii). Further, the Ld. Counsel submits that the wrong quoting of a provision is not a ground to hold that the entire proceeding has been vitiated. Ld. Counsel also submitted that even though the Inquiry Officer has not stated that charge No. 1 is proved against the applicant, the Disciplinary Authority has considered the case and even though the Disciplinary Authority is not agreeing entirely with the finding entered by the Inquiry Officer, he found that the applicant has violated S.R. 3.38.01(b)(ii) and held the first charge proved against the applicant, and hence the Disciplinary Authority is justified in passing the impugned order of punishment. In this context, Ld. Counsel Mr. Panda invited the attention of this Tribunal to the statements of the witnesses recorded by the Inquiry Officer, which, according

to him, would show that the applicant has not informed the stopping of the train at the particular station on the particular day at the particular moment. Ld. Counsel submitted that even though the train had stopped, that by itself did not absolve the applicant of his liability to intimate the Cabin Officer that the train was coming. Hence according to the Ld. Counsel, finding entered and the order passed by the Disciplinary Authority are justifiable and this Tribunal should not interfere with the order.

8. On anxious consideration of the contentions, the sole question to be decided in this case is whether the impugned order is sustainable in law or not ? Admittedly, the applicant was the Station Master on the particular day and the particular time and he is bound by S.R. 3.38.01(b)(ii). But the misquoting of the rule in the charge shall not be taken as a ground to reject the entire charge. However, the Inquiry Officer himself has corrected the charge. But the question is whether the applicant has violated the said rule even on the finding entered by the Disciplinary Authority or not ? In this context, the Ld. Counsel for the applicant contended before us that the charge framed against the employee can be considered as

either proved, or disproved, or not proved, and there cannot be any fact "partially proved" as per the provisions of the Evidence Act. We can understand if a fact is rejected in part or wholly. The charge levelled against the applicant is that he has not intimated the Cabin Officer to stop the train. One fact is admitted before us by both sides that the train has stopped at the particular station at the particular moment, whether on intimation or not. However, the question is whether charge now levelled against the applicant has been proved or not. There is no evidence before the Inquiry Officer that the applicant has not intimated the Cabin Officer regarding the stopping of the train. But at the same time, the Inquiry Officer relied on the so called confession statement alleged to have been made by the applicant that he is not remembering whether he has intimated the Cabin Officer or not. However, the applicant has stated that the train had stopped.

9. In the above circumstances, we have to consider the defence statement given by the applicant to the show cause notice and where he had definitely stated that he was not remembering anything about the intimation passed on to the Cabin Officer by him. However, he admitted that the

train had stopped. If so, it is relevant to consider whether the confession alone could be considered as a basis for finding the applicant guilty of the charge. In this context, again we have to consider the so called confession in true sense, and legally it cannot be considered as confession under the provisions of Section 24 of the Evidence Act because the applicant had not admitted that he had not given any intimation to the Cabin Officer. In that circumstances, we hold that the confession alleged to have been made could not be a basis for finding him guilty of the charge.

10. With regard to the second limb of argument, the Inquiry Officer has only stated that charge No.1 is partially proved. We have considered this question in the light of the arguments of the Ld. Counsel. There cannot be any such finding regarding a fact, which can be found partially proved by the Inquiry Officer. The Inquiry Officer should have come to a conclusion whether the fact is proved, or disproved, or not proved, against a delinquent employee. The Inquiry Officer cannot hold a fact to be partially proved. On these principles, we find that the finding entered by the Inquiry Officer is not sustainable in law. It has been well settled that a finding entered partly on evidence and partly

on surmises and conjectures stands vitiated, and that mere suspicion cannot be allowed to take the place of proof.

11. With regard to the third limb of the argument of the Ld. Counsel for the applicant that if the Disciplinary Authority disagrees with the finding entered by the Inquiry Officer, as per the principle laid down by the Apex Court in various judgments including that reported in 1969 SLR 657 (SC), Narayan Mishra vs. State of Orissa, it is the primary duty of the Disciplinary Authority to give a further notice to the applicant inviting his explanation in the matter. In the case in hand, there is no material to show that the applicant was given any further chance for explaining the charge levelled against him. Even though this ground was taken before the Appellate Authority, the Appellate Authority kept silent on this aspect. On this ground, the O.A. can be allowed and the impugned order can be set aside.

12. In consideration of all the above, we have no hesitation to set aside the orders impugned in the O.A. Accordingly, we hereby set aside Annexure-A/6 and A/8.

13. In the result, the O.A. stands allowed. No costs.

MEMBER(A) MEMBER(J)

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