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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.


Original Application No.559 of 2006  
Cuttack, this the 31<sup>st</sup> day of July, 2009

Pratap Chandra Das .... 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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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

O.A.No.559 of 2006

Cuttack, this the 31<sup>st</sup> day of July, 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)

.....

Pratap Chandra Das, aged about 34 years, son of Sarangadhar Das, a permanent resident of Kantapal, PO. Kantapal, PS. Kamakhyanagar, Dist. Dhenkanal, at present working as Senior Trackman, under Section Engineer(PW), Balasore, At/Po/Dist. Balasore.

.....Applicant

Advocate for Applicant: M/s.Aswini Kumar Mishra, J.Sengupta,  
D.K.Panda, G.Sinha, A.Mishra.

-Vs-

1. Union of India represented through the General Manager South Eastern Railway, Garden Reach, Kolkatta-43.
2. Divisional Engineer (South), South Eastern Railway, Khargapur Division, At/Po. Kharagpur, Kolkatta, West Bengal.
3. Sr. Divisional Engineer (CO), South Eastern Railways, Kharagpur.

....Respondents

Advocate for Respondents: M/s.S.K.Ojha,A.K.Sahoo

O R D E R

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

Alleging omission and commission, departmental proceedings under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 was initiated against the Applicant while he was holding the post of Senior Trackman under Section Engineer (P.W), Balasore. As a result of the disciplinary proceedings, the Applicant vide order under Annexure-A/13 dated 17-03-2006 was imposed with the punishment of "REMOVAL" from service. Applicant preferred appeal and the said appeal having been rejected under Annexure-A/17, the Applicant approached this Tribunal in the present OA seeking to quash the orders under Annexure-A/13 & A/17 and direct

the Respondents to reinstate him in service with all consequential service and financial benefits retrospectively.

2. By filing counter, the Respondents opposed the prayer of the Applicant. According to them, the proceedings were conducted in accordance with rules, the Applicant was provided with adequate opportunity to prove his innocence and there is no miscarriage of justice in the decision making process of passing the order under Annexures-A/13 and A/17. Hence there is hardly any scope for this Tribunal to interfere in it. Therefore, they have prayed for dismissal of this OA. In spite of receipt of copy of the counter long ago and in spite of adequate opportunity, for the reasons best known no rejoinder has been filed by the Applicant.

3. Heard rival submission of respective parties and perused the materials placed on record. We do not feel it necessary to record all the arguments advanced by the parties as decision can be taken in the matter by perusing the materials placed on record by the parties especial when the factual aspects to be recorded herein have not been disputed by Respondents. On perusal of the records, it is noticed that under Annexure-A/1 the applicant was called upon to submit his reply to the proposed disciplinary proceedings initiated against him under Rule 9 of the Railway (Discipline and Appeal) Rules, 1968 on the allegations levelled therein. On receipt of this, he made a representation under Annexure-A/2 dated 29.03.2001 requesting for supply of the list of documents and witnesses which was lacking in the charge sheet before submission of his reply. Thereafter, under Annexure-A/3 dated 20.06.2003, the date of enquiry was fixed on 30.06.2003 directing the Applicant to be present with his defence

counsel, if any. It is seen that after correspondence in regard to supply of document etc. ultimately enquiry was held and the IO submitted its report. As is further seen from the record, on receipt of the said report of the IO, the DA under Annexure-A/9 dated 06.01.2005 issued a show cause notice of proposed punishment. The order reads as under:

“SHOW CAUSE

Sri Pratap Chandra Das, S/O. S.D.Das, Designation, Sr. Trackman is informed that the officer of enquiry appointed to inquire into the charges framed against him as submitted his report. Based on the said report and the documents available on the file, the disciplinary authority has proposed to impose any of the punishment mentioned in clause {(V) to (IX)} of Rule 6 of the Railway Servants Discipline and Appeal Rules, 1968 as amended from time to time.

Sri P.C.Das is hereby given an opportunity to make such representation as he would like to do so which will be considered by the undersigned, if any, should be made in written and submitted so as to reach the undersigned not later than 10(ten) days from the date of receipt of this Memorandum.

Sri P.C.Das should acknowledge the receipt of this Memorandum.”

4. It further reveals that on receipt of the aforesaid letter, the Applicant vide Annexure-A/10 dated 18.01.2006 sought copy of the enquiry report so as to file his reply to proposed punishment notice. However, on receipt of the representation of applicant, the DA vide letter under Annexure-A/11 dated 23.2.2006 served the copy of the report of the IO along with an order styling as “Speaking Order”. On perusal of the report of the IO it is noticed that the IO without making any discussions of the statements, if any recorded during enquiry, details of documents exhibited by whom or even the statement of the Applicant submitted its report with the following conclusion & suggestion:



“Conclusion:

It is not possible to have a conclusion regarding the genuineness of the certificate and to prove the allegation against the party, because the CO expressed that the written statements collected by Shri P.S.Rao from the Hd.Masters of Jhateswar High School, Mundamal & Panchayat High School, Kantapal are false and malicious. Sri P.S.Rao also did not verify the records of the Schools. The reasons of the affidavit changing their sure names of Shri Beheras to Das made by Sri S.D.Das just before his retirement and by Shri P.C.Das after 8 yrs of service though they both entered the service in the surname of Das creates a question mark.

Suggestions:-

It is suggested to have a fresh detailed verification by another Inspector of the Personal branch from the Jhateswar High School, Mundamal & Panchayat High School, Kantapal, regarding the genuineness of the certificate produced by the charged official at the time of his appointment. The proper identity of the staff and genuineness of the Election Commission's Photo identity card submitted by the complaint is also to be verified from the Local authorities of village Kantapal, Dist. Dhenaknal.

The report is submitted for further disposal please.”

The speaking order attached along with the IO report speaks as under:

“Sri Pratap Chandra Das, S/o. Sarangadhar Ddas, now working under SE (P>Way)/BLS as Trackman is alleged to have submitted false School Certificate to secure the job/appointment in Railways. The allegation was initially received by the Vigilance Branch from one Sri Prafulla Kr.Behera of Village Kantapal, Dhenkanal, Orissa and the said case was referred to the Division for further necessary action. The departmental enquiry was set up and EO has submitted the findings wherein he has concluded that “it is not possible to have a conclusion regarding the genuineness of the certificate and to prove the allegation against the party because the CO expressed that the written statements collected by the Rly officials from the Headmaster of Jhateswar High School, Mundamal and the Panchayat High School, Kantapal are false and malicious.

**The undersigned being the disciplinary authority disagrees with the findings on the basis of records available (i.e. the Certificate collected by Rly. Authority) is sufficient on the purpose.** The School Certificate issued by the Headmaster, Jhateswari High

School on which basis the employment obtained, disowning the same cannot be treated as false and malicious and allegation disproved. (Emphasis supplied)

I am, therefore satisfied that Sri Pratap Chandra Das has submitted false certificate with mala fide intension and have decided to impose the penalty of REMOVAL FROM SERVICE. He may be advised to hand over the Railway property in his custody. He may also be advised to vacate the Rly. Quarter under occupation, if any, within one month from the date of this order. If he fails to do so he will deem to be occupying Railway Quarter unlawfully and dealt with under Rules for unlawful occupation.

Annexure- appeal against this order lies with the Appellate Authority within 45 days."

Thereafter Applicant submitted his reply under ANnexus-A/12 on receipt of which the Applicant was imposed with the punishment of removal from service vide order under Annexure-A/13 dated 17.03.2006. Thereafter applicant approached this Tribunal in OA No. 275/2006 praying to quash the order of punishment and till a decision is taken the order of punishment of removal should be stayed. As the Applicant approached this Tribunal without availing of the opportunity of preferring the appeal, this Tribunal in its order 23.3.2006 disposed of the matter with the following observations/directions:

"5. Having heard the Ld. Counsel for both the parties, this OA is hereby disposed of at the admission stage by granting the Applicant liberty to prefer an appeal immediately within a period of 7 days from now. Liberty is also hereby granted to the Applicant to make a prayer before the appellate authority to stay the removal order dated 17.03.2006 till disposal of the appeal the appellate authority having the power to pass interim order should expeditiously consider the interim prayer of the applicant to be made in the appeal at an early date.

6. Pending disposal of the appeal to be preferred by the Applicant in the aforesaid premises, Respondents should do well in allowing the applicant to continue in service, notwithstanding the removal order dated 17.03.2006; until the appellate authority gives consideration to the interim prayer to be made in the appeal."

Pursuant to the above order, as is evident from record, the applicant preferred appeal under Annexure-A/15 on consideration of which the Appellate Authority under Annexure-A/17 dated 11.07.2006 while rejecting the appeal of the applicant passed the following orders:

"I have carefully examined the D&A case and your appeal dated 29.03.2006 against the removal from service imposed by the Disciplinary Authority (DEN/South/KDP) vide Punishment Notice No.W/Misc./3/2A/D&A/CL-IV/PCD dated 17.03.2006. You have submitted forged school certificate to secure the Job. I am of the opinion that the punishment imposed by the Disciplinary Authority is justified.

I, therefore, upheld the punishment of Removal from service imposed by Disciplinary Authority."

5. As per the provisions the report of the IO must be elaborative/exhaustive containing details of the charges framed against a Railway Servant, details of documents relied on in the enquiry and how it relates to the charge, details of the statements of the witnesses examined and cross examined during enquiry and lastly the conclusion proving or disproving the charge(s) under enquiry. No authority is vested with the IO to give his suggestion as has been done in the present case. The report of the IO is also cryptic and lacking in details of the materials and statements etc. As such, the report submitted by the IO and enclosed to this OA as Annexure-A/11 being not in accordance with the rules/procedure cannot be countenance in law.

Sub rule 2(a) of Rule 10 of the Railway Servants Discipline and Appeal Rules clearly provides as under:

"[2] The disciplinary authority:-

- (a) Shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the

disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority, its findings on further examination of witnesses, if any, held under sub rule (1)(a) together with its own tentative reasons for disagreement, if any, with findings of the inquiring authority on any article of charge to the Railway Servant, who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Railway Servant."

Strict compliance of the above principles have also been reiterated by the Railway Board in letter No.E(D&A)/87/RG-6/151 dated 10.11.1989. In a related cse, the supply of the enquiry report came up for consideration before the Hon'ble Apex Court in the case of **ECIL v K.Karunakar**, JT 1993 (6) page-1 following the decision of the Hon'ble Apex Court in the afore-mentioned decision, the Railway Board in letter No.E (D&A) 87 RG 6-151 dated 04.04.1996 (RBE No.33/96) issued the following instructions:-

"..where the enquiry has been held in accordance with the provisions of Rule 9 of the Railway Servants (Disciplinary and Appeal) Rules, 1968, the Disciplinary Authority before making a final order in the case, shall forward a copy of the report of the Inquiry held by the Disciplinary Authority or where the Disciplinary Authority is not an Inquiring Authority a copy of the report of the Inquiring Authority to the charged officer, who shall be required to submit, if he so desires, written representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether the report is favourable or not to the charged officer. Thus, a copy of the Inquiry Report is to be sent to the charged official irrespective of whether the inquiry is conducted by the disciplinary Authority himself or by a nominated Inquiring Authority."

6. It is trite Law that the Disciplinary authority is bound to give and communicate to the delinquent the reasons as to why he disagreed with the views expressed by the Inquiry Officer. But in the instant case no such reason of disagreement has been supplied to the



applicant prior to imposition of punishment. As such it is a clear case of violation of principles of natural justice. This is fortified by the decision of the Hon'ble Apex Court in the cases of **Yoginath D. Bagde v State of Maharashtra and another**, AIR 1999 SC 3734, **SBI and others v Arvind K. Shukla**, AIR 2001 SC 2398 and **Bal Kishan v Union of India and others**, 1987 (3) SLR 876.

7. As discussed above, the order of DA as also Appellate Authority are cryptic and bear no reason. Failure to give reason amounts to denial of natural justice. The Hon'ble Apex Court time and again deprecated action of the employer especially in the matter of disciplinary proceedings for not assigning any reason before imposition of penalty. It would suffice to rely on the Hon'ble Apex Court in the above context reported in AIR 1970 SC 1302 (**Mahavir Prasad v State of UP**), and 2003 (4) SCC 364 (**Chairman and Managing Director, United Commercial Bank and others v P.C. Kakkar**). As such, by applying the principles set out above, we are bound to hold that neither the order under Annexure-A/13 nor the order under Annexure-A/17 are sustainable in the touch stone of judicial scrutiny.

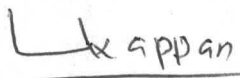
8. In the instant case, it is seen that none of the principles has been observed inasmuch as on receipt of the report of the IO the DA instead of the report of the IO, furnished the proposed notice of punishment; thereafter on the request of the applicant he was supplied with the report of the IO along with the dissent note disagreement with the report of the IO that too without elaborating on the points of disagreement; and Disciplinary as well as Appellate Authority passed the orders impugned without assigning any reason.


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9. In view of the above infirmities, the enquiry report under Annexure-A/11, order of disciplinary authority under Annexure-A/13 and order of the Appellate Authority under Annexure-A/17 are hereby quashed. But as a consequence, instead of ordering reinstatement of the Applicant by adhering to the ratio of the decision of the Hon'ble Apex Court in the case of **Union of India v Y.S.Sadhu, Ex-Inspector, (2009) 1 SCC (L&S) 126** this Original Application is disposed of with the following directions:

- (i) The enquiry shall be conducted afresh by nominating another IO. The Applicant shall be allowed full opportunity for his defence as per Rules/Law. The IO should be directed to complete the enquiry and submit the report within a period of 120 days of nomination and the Applicant is directed to cooperate with the enquiry and should not seek any adjournment without sufficient and valid reason;
- (ii) On receipt of the report, the DA shall proceed in the matter in accordance with Rules and pass orders within a period of 45 days of receipt of the report and the reply of the Applicant, if any, to the report of the IO;
- (iii) During the relevant period i.e. from the date of this order till passing of the final order in the proceedings by the DA in the manner directed above, the status of the applicant would be treated

as under **deemed suspension** entitling him to the suspension allowance as per rules;

- (iv) The period from the date of removal till the date of order shall be decided by the DA after the conclusion of the proceedings, as per rules.

  
(JUSTICE K. THANKAPPAN)  
MEMBER (JUDICIAL)

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

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