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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.830 of 2006
Cuttack, this the 29th day of January, 2010

Nagendra Prasad 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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O.A.No.830 of 2006
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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)

Nagendra Prasad aged about 41 years, son of Late Narayan Prasad, At/Po.Kalyani Nagar, Dist. Cuttack, Ex-Station Superintendent/DMNJ, W.A.T Division.

.....Applicant

Legal practitioner :M/s.Dhuliram Pattanayak, N.S.Panda, N.Biswal, S.K.Rath, D.N.Pattnaik, Counsel.

- Versus -

1. Union of India represented by its General Manger, East Coast Railway, Chandrasekharpur, At/Po.Bhubaneswar, Dist. Khurda.
2. Union of India represented by its Chief Operating Manager, East Coast Railway, Bhubaneswar, Dist. Khurda.
3. Additional Divisional Railway Manager, East Coast Railway, Waltair.
4. Senior Divisional Operating Manager, East Coast Railway, Waltair.

....Respondents

Legal Practitioner :Mr. O.N.Ghosh, Counsel.

O R D E R

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

While working as Station Superintendent in Waltair Division of East Coast Railway, Applicant was issued with a charge sheet under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 vide Annexure-A/1 dated 29.09.2003. The matter was enquired into and finally, the Disciplinary Authority imposed the punishment of 'dismissal' from service on the applicant vide order under Annexure-4 dated 3.5.2004. The Appellate Authority upheld the order of the Disciplinary Authority under Annexure-4 dated 03.05.2004 vide order under Annexure-5 dated 19.10.2004. Then, the Applicant sought intervention of the Revisional Authority i.e. General Manager, East Coast Railway under Annexure-6 dated 18.11.2004. The Revisional Authority vide

order under Annexure-7 dated 26.09.2005 though upheld the order of the Disciplinary Authority as well as Appellate Authority, by exercising the power conferred on him, modified the order of punishment of 'dismissal' on humanitarian ground to that of "reduction to the post of ASM in scale Rs.4500-7000/- (RSRP) until Shri N.Prasad is found fit by the competent authority to be restored to the higher post from which he was reduced and will have the effect of postponing future increments of pay and affect his seniority in the higher post on his restoration to the higher post." Thereafter, by filing the present Original Application u/s.19 of the A.T. Act, 1985 the Applicant seeks the following reliefs:

- “(i) To quash the entire departmental proceeding initiated against the applicant vide No.WTA/3/18/2003 dated 29.9.2003;
- (ii) To quash the enquiry report under Annexure-2;
- (iii) To quash the order dated 8.5.2004 passed by the Respondent No.4;
- (iv) To quash the order dated 29.10.2004 passed by the Respondent No.3;
- (v) To quash the order dated 26.09.2005 under Annexure-7 series;
- (vi) To direct the Respondents to grant all financial and consequential benefits flowing from the quarter of dismissal order;
- (vii) To pass such other order/orders as deemed fit and proper.”

2. Respondents contested the matter by a detailed counter thereby trying to justify the initiation of the disciplinary proceedings, orders of the Disciplinary Appellate as well as Revisional Authority. No rejoinder has been filed by the Applicant.

3. Heard Learned Counsel for both sides and perused the materials placed on record. It is seen from the record that the points raised by the Applicant in this Original Application in support of his prayer more or less were the stand taken by him in his Revision Petition and the Revisional Authority after considering all the points ultimately upheld the orders of the

Disciplinary as well as Appellate Authority but modified the order of dismissal to that of the punishment quoted above. Now in effect it is to be examined whether the order of the punishment imposed by the Revisional Authority is in accordance with Rules and law. For this purpose, it is worthwhile to quote the various punishments provided in the Rules:

“6. PENALTIES –

The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Railway servant, namely –

Minor Penalties

- (i) Censure;
- (ii) Withholding of his promotion for a specified period;
- (iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government or Railway Administration by negligence or breach of orders;
- (iv) (a) Withholding of the Privilege Passes or Privilege Ticket Orders or both;
- (v) (b) Reduction to a lower stage in the time-scale of pay for a period not exceeding three years, without cumulative effect and not adversely affecting his pension;
- (vi) Withholding of increments of pay for a specified period with further directions as to whether on the expiry of such period this will or will not have the effect of postponing the future increments of his pay.

Major Penalties

- (v) Save as otherwise provided for in clause (iii)(b) reduction to the lower stage I the time scale of pay for a specified period, without further directions as to whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay.
- (vi) Reduction to a lower time scale of pay, grade, post or service, with or without further directions regarding conditions of restoration to the grade or post or service from which the Railway servant was reduced and his seniority and pay on such restoration to that grade, post or service;
- (vii) Compulsory retirement;
- (viii) Removal from service which shall not be a disqualification for future employment under the Government or Railway Administration;

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(ix) Dismissal from service which shall ordinarily be a disqualification for future employment under the Government or Railway Administration.

Provided that in case of persons found guilty of any act or omission which resulted or would have, ordinarily, resulted in collisions of Railway trains, one of the penalties specified in clauses (viii) and (ix) shall ordinarily be imposed and in cases of passing Railway signals at danger, one of the penalties specified in clause (v) to (ix) shall, ordinarily, be imposed and where such penalty is not imposed, the reasons therefore shall be recorded in writing."

4. The scope of judicial review in matters relating to disciplinary action against an employee has been well settled by a catena of decision of the Hon'ble Apex Court. It would suffice to refer to one such decisions reported in (2008) 2 SCC (L&S) 365 (Government of India and Another v George Philip). In paragraph 11 of the said decision, the Apex Court unequivocally précised the law that that the Tribunal or the High Court exercising jurisdiction are not hearing an appeal against the decision of the Disciplinary Authority imposing punishment upon the delinquent employee. The Jurisdiction exercise by the Tribunal or the High Court is a limited one and while exercising the power of judicial review, they cannot set aside the punishment altogether or impose some other penalty unless they find that there has been a substantial non compliance with the rules of procedure or a gross violation of rules of natural justice which has caused prejudice to the employee and has resulted in miscarriage of justice or the punishment is shockingly disproportionate to the gravity of the charge.

5. On examination of the matter, we see no substance in any of the points raised by the Applicants more so, when after taking note of all the points the Disciplinary Authority imposed the order of punishment which was subsequently confirmed by the Appellate authority and though later on also received due consideration of the Revisional Authority in a well reasoned order. But the Revisional Authority interfered and modified the order of punishment on humanitarian ground from dismissal to that of "**reduction to**

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the post of ASM in scale Rs.4500-7000/- (RSRP) until Shri N.Prasad is found fit by the competent authority to be restored to the higher post from which he was reduced and will have the effect of postponing future increments of pay and affect his seniority in the higher post on his restoration to the higher post". We find no justification especially there being no injustice in the decision making process of the matter to quash the entire disciplinary proceedings as prayed by him. It appears, the Revisional Authority has imposed the punishment available under clause (vi) of the major penalties in place of the order of punishment of dismissal. Clause (vi) provides the punishment '*reduction to a lower time scale of pay, grade, post or service, with or without further directions regarding conditions of restoration to the grade or post or service from which the Railway servant was reduced and his seniority and pay on such restoration to that grade, post or service*' whereas the punishment imposed on the applicant reads "**reduction to the post of ASM in scale Rs.4500-7000/- (RSRP) until Shri N.Prasad is found fit by the competent authority to be restored to the higher post from which he was reduced and will have the effect of postponing future increments of pay and affect his seniority in the higher post on his restoration to the higher post.**" On going through the provisions quoted in clause (vi) vis-à-vis the order of punishment imposed by the Revisional Authority we do not see that the punishment is in consonance with the provisions of the rules; inasmuch as reduction to the post of ASM in scale Rs.4500-7000/- (RSRP) '**until**' Shri N.Prasad is found fit by the competent authority is vague. The conditions of restoration have to be specific. It can, therefore safely be held that the order of punishment is vague and as if it has been imposed for indefinite period. No employee cannot be allowed to suffer indefinitely or kept in dark regarding his career progress. As such, according to us, this needs

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reconsideration by the Revisional Authority. For the discussions made above, we remand the matter back to the Revisional Authority for giving a fresh looking to the matter and passing appropriate orders within a period of 90(ninety) days from the date of receipt of this order.

6. In the result, this OA stands allowed to the extent indicated above. No costs.

Thankappan
(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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