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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH:CUTTACK**

ORIGINAL APPLICATION NO.303 OF 2007

Cuttack this the 11th Day of August, 2009

CORAM:

THE HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
AND
THE HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

Purna Chandra Sethy, aged about 51 years, Son of late Nitia Sethy, Keyman, under S.E.(P.Way), E.C.Railway, Cuttack – permanent resident of village Kamagarh, PO-Antia, P.S. Dharmasala, Dist-Jajpur

... Applicant

By the Advocates: M/s.N.R.Routray & S.Misra

-VERSUS-

1. Union of India represented through the General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda
2. Divisional Railway Manager, East Coast Rly., Khurda Road Divn., PO/PS-Jatni, Dist-Khurda
3. Senior Divisional Financial Manager, East Coast Railway, Khurda Ropad Divn., PO/PS-Jatni, Dist-Khurda
4. Senior Divisional Engineer (Coordination), East Coast Railway, Khurda Road Divn., PO/PS-Jatni, Dist-Khurda
5. Asst.Engineer (P.Way), East Coast Railway, At/PO-Station Bazar, Town/Dist-Cuttack ... Respondents

By the Advocates:Mr.M.K.Das

O R D E R
ORAL

JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:

In this Original Application, the applicant, working as Keyman under the Railways has prayed for the following relief:

- a) To quash the impugned order dated 12.2.2008 under Annexure-A/6.
- b) To direct the Respondents to pay the arrear salary from 13.6.2006 to 20.1.2007, i.e., the date of reinstatement.

2. The brief facts leading to filing of this Original Application is that the applicant, while working as Keyman under the Respondent No.5 had been

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issued with a Memorandum of Charges dated 4.4.2006 by Respondent No.4 in contemplation of initiation of disciplinary proceedings against him. However, on an inquiry conducted, the applicant was held guilty of the charges and ultimately, he was awarded with the punishment of dismissal from service as per the order dated 20.6.2006 (Annexure-A/1) series issued by the Disciplinary Authority. Against the order of punishment the applicant preferred an appeal dated 28.6.2008 and just one month thereafter, he moved this Tribunal in O.A.No.553/08, which was disposed of by this Tribunal at the stage of admission, as per order dated 2.8.2006 directing Respondent No.3 therein to dispose of the appeal within two months from the date of communication of the order. It has been submitted that after disposal of the aforesaid Original Application, the applicant preferred a representation praying therein for reinstatement in service and release of salary from 13.6.2006 up to the date of reinstatement. Be that as it may, in compliance of the Tribunal's order, the Appellate Authority, viz., Additional Divisional Railway Manager, as per order dated 19.1.2007 (Annexure-A/3) set aside the punishment of dismissal and directed the applicant's reinstatement in service without any arrear salary. The applicant, after his reinstatement in service, preferred representation to the Respondent-Authorities for payment of arrear salary, i.e., the salary for the period from dismissal till his reinstatement and the result in disposing of the said representation having not been palatable (Annexure-A/6), the applicant has filed this O.A. with the prayers referred to above.



3. In pursuance of notice issued by this Tribunal, the Respondent-Railways have filed their counter opposing the prayer of the applicant to which the applicant has also filed a rejoinder.

4. We have heard Shri N.R.Routray, learned counsel for the applicant and Shri M.K.Das, learned counsel appearing on behalf of the Respondent-Railways and perused the materials on record.

5. The question to be determined in this O.A. is whether the applicant is entitled to back wages from the date of dismissal till the date of his reinstatement in service. In this context, it is proper to quote hereunder the relevant portions of the order passed by the Appellate Authority in the appeal preferred by the applicant against the order of punishment of dismissal.

“... The punishment notice issued by the Disciplinary Authority suffers from the following infirmities:

- a) Non-submission of explanation by C.O. cannot be the ground to dispense with the enquiry as per D&A Rules.
- b) The C.O. had asked for Xerox copies of certain documents vide his letter dated 11.4.2006 addressed to Sr.DEN (Co)/KUR, which was neither supplied nor denied by the D.A.
- c) The punishment of dismissal from service vide punishment notice dated 20.6.2006 is not maintainable as per the D&A rules.

Thus, I am of the opinion that reasonable opportunity had not been given to the C.O. and further that due procedure as laid down in R.S. (D&A) Rules had not been followed before imposing the punishment.

In view of the above position, I hereby set aside the punishment notice of 20.6.06 with immediate effect. The D.A. (in this case Sr.DEN/Co/KUR) is hereby directed to open the case from the stage of inquiry by appointing appropriate inquiry officer. Reasonable opportunity should be given to the C.O. to defend himself during the enquiry. The D.A. should then take action as per D&D rules after the enquiry as deemed proper”.

6. The learned counsel for the applicant, in support of his contention placed reliance on Rule 2044 RII (F.R.54) Rule 1343 RII 1987 ed(1) regarding Pay and Allowances for the intervening period when removal or dismissal is set aside by the Department. He further submitted that that the authority which



had set aside the order of dismissal ought to have considered and decided his representation for payment of back wages and certainly not the Disciplinary Authority notwithstanding the fact that such representation had been wrongly addressed to the Disciplinary Authority and in the circumstances, the impugned order refusing back wages for the period in question having been issued by the Disciplinary Authority, who was not at all competent to deal with the matter, is liable to be struck down.

7. In order to set the matter at rest, the reliance placed by the applicant on Rule 2044 RII (supra) is quoted under:

“Rule 2044 RII (F.R.54) Rule 1343 RII 1987 ed.(1) When a Railway servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review or would have been so reinstated but for his retirement on superannuation while under suspension preceding the dismissal, removal or compulsory retirement the authority competent to order reinstatement shall consider and make a specific order.

- a) regarding the pay and allowances to be paid to the Railway servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and
- b) whether or not the said period shall be treated as a period spent on duty.

In the above background, it is pertinent to quote hereunder, Rule 2 of the above Rules, which reads as under:

“2. Where the authority competent to order reinstatement is of the opinion that the Railway servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Railway servant shall, subject to the provision of sub/rule (6), be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be”.

A bare perusal of the speaking order issued by the Appellate Authority in harmony with Rule 2 as quoted above, we are unable to hold that the applicant has been fully exonerated of the charges. As indicated in the speaking order of



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the Appellate Authority, the Disciplinary Authority has been directed to open the case from the stage of enquiry by appointing appropriate inquiry officer. As regards the competency of the Disciplinary Authority in dealing with and rejecting the prayer of the applicant for payment of back wages, it is to be noted that the entire gamut of the order impugned herein is based on the speaking order passed by the Appellate Authority. As held above, since in the opinion of the Appellate Authority it was not a complete exoneration of the applicant or for that matter the further trial or inquiry has been directed to commence from a particular stage, it is not expected ^{that} of the applicant should be allowed back wages from the period he was dismissed till his reinstatement in service.

In this view of the matter, we hold that the O.A. as laid is devoid of merit.

8. Last but not the least, it is to be noted that the Appellate Authority as per order dated 17.10.2006(Annexure-A/6) reinstated the applicant in service with direction to the Disciplinary Authority to reopen the matter from the stage of inquiry by appointing appropriate inquiry officer. In the counter filed on 25th March, 2008 we do not find the Respondent-Railways to have whispered anywhere regarding the progress of disciplinary inquiry nor any instructions received in the Court during hearing of this O.A. although in the meantime, more than two and half years have elapsed. Be that as it may, the time between the dismissal and reinstatement cannot be allowed to be in a state of impasse on the ground of pendency of disciplinary inquiry against the applicant nor can the Respondent-Railways be allowed to sit over the matter at their whims and fancies. In this view of the matter, the Respondent-Railways are directed to conclude the inquiry and pass a final order thereon as expeditiously as possible, at any rate, within a period of 60(sixty) days from

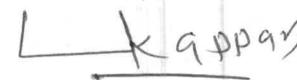
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the date of receipt of this order; failing which the entire proceedings shall be deemed to have been quashed beyond the stipulated period making the applicant entitled to back wages for the period in question.

9. With the above direction, this Original Application is dismissed. No costs.


(C.R. MOHAPATRA) ✓
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER