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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.331 OF 2007

Cuttack this 18th day of May, 2010

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Arjuna Charan Jena...Applicant

-VERSUS-

Union of India & Others...Respondents

...

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to the C.A.T., Principal Bench or not ?

(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER


(B.V.RAO)
JUDICIAL MEMBER

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ORIGINAL APPLICATION NO.331 OF 2007

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CORAM:

HON'BLE SHRI B.V.RAO, JUDICIAL MEMBER

AND

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

Arjuna Charan Jena, aged about 59 years, S/o. late Bairagi Charan Jena, permanent resident of Vill-Shyamsundarpur, PO-Srimantapur, PS-Simulia, Dist-Balasore – at present working as Senior Goods Clerk, East Coast Railway, Cuttack Railway Quarter No.M/SC/2©, Near Railway Station, PO-College Square, District-Cuttack

...Applicant

By the Advocates:M/s.D.R.Pattanaik, N.S.Panda, N.Biswal, A.K.Routray & L.K.Pattanayak

-VERSUS-

1. Union of India represented through its General Manager, E.Co. Railways, Rail Vihar, Chandrasekharpur, At/PO-Chandrasekharpur, Bhubaneswar, Dist-Khurda
2. Divisional Railway Manager, East Coast Railways, At- Khurda Road, PO-Jatni, Dist-Khurda,
3. Senior Divisional Commercial Manager, East Coast Railways, Khurda Road, PO-Jatni, Dist-Khurda
4. Divisional Commercial Manager, East Coast Railways, Khurda Road, PO-Jatni, Dist-Khurda
5. Senior Divisional Personnel Officer, East Coast Railways, At-Khurda Road, Dist-Khurda

...Respondents

By the Advocates:Miss S.L.Pattnaik

ORDER

HON'BLE SHRI B.V.RAO, JUDICIAL MEMBER:

1. Applicant, at present working as Senior Goods Clerk under the East Coast Railways has filed this Original Application assailing the impugned order of punishment and the order rejecting his appeal vide Annexures-A/9 and A/14 dated 30.11.2006 and 19.4.2007,



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respectively, in consequence of disciplinary proceedings against him. In the circumstances, he has sought for the following relief:

- (i) To quash the entire disciplinary proceeding.
- (ii) To quash the order of punishment under Annexure-9
- (iii) To quash the order of rejection under Annexure-14
- (iv) To direct the Respondent No.5 to return the amount illegally recovered from the salary of the applicant
- (v) To pass such other order/orders as deemed fit and proper
- (vi) To allow the Original Application.

2, The brief background of filing this Original Application is that the applicant, while working as Senior Goods Clerk being posted at Cuttack was served with Memorandum of charge dated 11.9.2002 (Annexure-1) on the following allegations.

ARTICLE-I

Shri A.C.Jena has manipulated the removal timings of rice consignment from a rake of 40 BCN received ex UMB/ROP and unloaded at CTC at 11.00 hours on 24.4.2000. He had shown the consignment removed on the same day, i.e., 24.4.2000 under Gate Pass Nos.472950, 472951 and 472952 wilfully causing loss of Railway revenue due to non-realization of wharfate charges even though the consignment was physically removed on 24.4.2000, 25.4.2000 and 26.4.2000.

ARTICLE-II

He has also manipulated the removal timings of salt consignment from a rake of 30 BOXC received ex NAC and unloaded at CTC at 15.00 hours on 12.3.2000. He had shown the consignment as removed on the same day, i.e., 12.3.2000 under Gate Pass Nos.472654, 472655 and 472656 willfully causing loss of Railway revenue due to non-realization of due wharfate charges, even though the consignment was physically removed on 14.3.2000.

Thus, Shri A.C.Jena, Sr.Goods clerk, Cuttack by the above act of omission and commission has shown lack of integrity, devotion to duty and acted in a manner unbefitting of a Railway Servant and thus contravened provisions of Rule No.3.1(i), (ii) & (iii) of Railway Services (Conduct) Rules, 1966.

3. The applicant having denied the charges, an inquiry into the matter was conducted whereafter, the Inquiry Officer submitted its report holding that the charges leveled against the applicant had been proved and substantiated. On being asked, the applicant submitted

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his written statement of defence in response to the inquiry report. The Disciplinary Authority, in consideration of the report of the Inquiry Officer and the written statement of defence submitted by the applicant along with relevant documents, vide Annexure-A/9 dated 30.11.2006 imposed the punishment of reduction of pay by two stages in the scale of Rs.4000-6000/-(RSRP) for a period of two years with Cumulative Effect with direction to prefer appeal, if any, within a period of 45 days. It is to be noted that the applicant has not annexed to Annexure-9 dated 30.11.2006 the speaking order passed by the Disciplinary Authority. Appeal preferred by the applicant against the order of punishment having not yielded any fruitful result, which in other words, the punishment having been upheld by the Appellate Authority, the applicant has moved this Tribunal in the present Original Application with the prayers as referred to above.

The applicant in support of his contentions has urged the following grounds.

- (i) While imposing major penalty the constitutional mandates are to be followed. According to applicant, in the absence of personal hearing the punishment is vitiated which has caused a great prejudice.
- (ii) Being a Senior Goods Clerk, Senior Divisional Commercial Manager is the Disciplinary Authority. But in the instant case the punishment has been awarded by the Divisional Commercial Manager who is having no power, authority and jurisdiction.
- (iii) Before awarding punishment, a 2nd show cause notice should have been issued along with opportunity of personal hearing. There being neither 2nd show cause notice issued nor personal hearing taken place, the punishment so awarded is discriminatory.
- (iv) The order of the Appellate Authority is an outcome of total non-application of mind inasmuch it does not contain any cogent reason dealing with each and every aspect of the grievance raised by the applicant in the appeal.
- (v) There being no provision for preferring further appeal to A.D.R.M. against the order of the appellate authority, the observation made by the appellate authority to file further appeal within 45 days is without jurisdiction.
- (vi) The direction of the Appellate Authority for effecting recovery from the salary of the applicant during pendency of appeal is bad, illegal and arbitrary.



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- (vii) The prosecution witness having not been examined and cross-examined, the report of the Inquiry Officer is vitiated.

4. The Respondent-Railways have submitted their counter opposing the prayer of the applicant. It has been submitted that there has been no violation of the principles of natural justice during the course of disciplinary proceedings against the applicant. The charged official has been afforded reasonable opportunity to defend his case and he attended the enquiry proceedings along with defence counsel. The allegations against the applicant having been established on the basis of documents adduced during the course of inquiry, it cannot be said that the Inquiry Officer had any oblique intention and/or the disciplinary proceedings so conducted is vitiated. With regard to applicant's plea for personal hearing, it has been submitted that the no such request had been made by the applicant in his defence statement and according to them, it is not obligatory to offer a personal hearing under Railway Servants (D&A) Rules, 1968 before imposition of penalty by the Disciplinary Authority. They have, therefore, submitted that the plea of the applicant in that behalf as also the plea of 2nd show cause notice is not sustainable in so far as Railway Servants(D&A) Rules, 1968, as amended from time to time are concerned. It has been submitted that as per Schedule-II of Railway Servants (D&A) Rules, 1968, the Divisional Commercial Manager (DCM) is competent to impose major penalty upon the applicant and therefore, the punishment so awarded is not without jurisdiction, power and authority. There being no infirmity in the order of the Disciplinary Authority, the Appellate Authority confirmed the punishment. The petition dated 25.5.2007 filed by the applicant to the A.D.R.M. has also been rejected vide Annexure-R/2 dated 29.8.2007.

5. With these submissions, the Respondents have prayed for dismissal of the O.A. being devoid of merit.

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6. We have heard the learned counsel for the parties and perused the materials on record. Having regard to the pleadings of the parties, the sole point to be considered is whether the report of the Inquiry Officer holds good in the absence of prosecution witness being examined and cross-examined. In this connection, we had gone through the inquiry report. Paragraph-5 of the Inquiry Report reads as under:

Analysis of evidence:

“In order to prove the charges, the Prosecution has brought out S/Shri Mahavir Prasad, II/Vig. Railway Board and Shri as the prosecution witnesses. In spite of several notice for appearance, the prosecution witness did not turn up for the enquiry for examination and cross-examination. Keeping in view of their non-appearance and having finalization of the proceedings been delayed and it has been decided during the enquiry that the proceedings be finalized ex-parte and based on the documents indicated in the annexure-III to the charges of memorandum which have been taken on record during the enquiry, the present proceedings are drawn out”

7. During the midst of hearing, the learned counsel for the applicant brought to our notice an order dated 10.9.2009 passed by this Tribunal in O.A.No.120/2008 and submitted that in similar event under similar circumstances, this Tribunal having quashed the impugned order of punishment along with the order of the Appellate Authority upholding the punishment, there should ^{not} be a departure from the precedent so set. We have gone through the above order of this Tribunal and we are at one with the learned counsel for the applicant that the sequence of events of the instant case is quite one and the same as that of the O.A.120/2008 (supra). In other words, it is to be noted that there being contributory negligence, the proceedings against the applicant therein had arisen out of same set of charge in similar circumstances, the dates and events being one and the same. This Tribunal having recorded the findings of the Inquiry Officer, as quoted above, at Page-16 of the order dated 10.9.2009(O.A.NO.120/2008) held as under:


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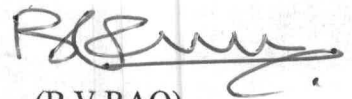
"This would show that the conclusions arrived at by the Inquiry Officer are not based on any evidence. If any conclusion is based without any evidence, it has no standing in the eye of law. As per the principles laid down by the Hon'ble Apex Court in the judgment reported in AIR 1986 SC 995(E.S.Venkataramiah and Sabyasachi Mukharji) the inquiry based on a vague charge is not acceptable and therefore, the inquiry itself is vitiated.

This Tribunal further held that -

"the findings arrived at by the Inquiry Officer are based on no evidence and for that matter the inquiry report being vitiated, it could not be said that the decision making process is flawless or not fraught with any infirmity. Consequently, the orders passed by the Disciplinary Authority is not tenable in the eye of law and in effect the order passed by the appellate authority is also not sustainable".

8. Since we are of the view that the facts and circumstances of this case are quite akin to that of O.A.No.120/2008 (supra), in our considered view, it would be unreasonable if we make a departure from the view already taken by this Tribunal.
9. Having regard to the facts and circumstances of the case and relying on the decision of this Tribunal in O.A.No.120/2008, we quash the impugned orders of the Disciplinary Authority, Appellate Authority and Revisional Authority vide Annexures-A/9 dated 30.11.2006, A/14 dated 19.4.2007 and R/2 dated 29.8.2007 respectively. Ordered accordingly.
10. In the result, this Original Application is allowed to the extent indicated above. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(B.V. RAO)
JUDICIAL MEMBER