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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

**ORIGINAL APPLICATION NO.389 OF 2007**


Cuttack this the 18<sup>th</sup> day of May, 2010

Biswanath Behera ...Applicant  
-VERSUS-  
Union of India & Ors. Respondents

**FOR INSTRUCTIONS**

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

(C.R.MOHAPATRA)  
ADMINISTRATIVE MEMBER

  
(B.V.RAO)  
JUDICIAL MEMBER

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**ORIGINAL APPLICATION NO.389 OF 2007**

Cuttack this 18<sup>th</sup> day of May, 2010

CORAM:

HON'BLE SHRI B.V.RAO, JUDICIAL MEMBER  
AND  
HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

Biswanath Behera , aged about 48 years, S/o. late Sudhanidhi Behera, At- Badaichhapur  
Bachhera, PO-Jatani, P.S. Delanga, Dist-Puri

...Applicant

By the Advocates:M/s.Umaballav Mohapatra & Subhasis Mishra

-VERSUS-

1. Union of India represented through its General Manager, E.Co. Railways, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda
2. Senior Divisional Personal Officer, East Coast Railways, Khurda Road Division, PO-Jatni, Dist-Khurda,
3. Divisional Railway Manager (Oprns.), East Coast Railways, Khurda Road, PO-Jatni, Dist-Khurda
4. Asst.Operation Manager, East Coast Railways, Khurda Road, PO-Jatni, Dist-Khurda
6. Senior Divisional Railway Manager, East Coast Railways, Khurda Road,PO-Jatni Dist-Khurda

...Respondents

By the Advocates:Mr. D.K.Behera

**ORDER**

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

1. This is the third round of litigation by the applicant before this Tribunal in the present Original Application. Earlier, the applicant had approached this Tribunal in O.A.No.177/2006 challenging Annexure-A/10 dated 10.6.2005 dismissing him from service. On the date of admission that O.A., i.e., 8.3.2003, the applicant, by filing a Memo sought withdrawal of O.A. on the ground he would like to approach the Appellate
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Authority. This being the situation, the Tribunal allowed withdrawal and accordingly, disposed of O.A.No.177/06.

2. Again, the applicant moved this Tribunal in O.A.No.913/2006 challenging the said order of dismissal from service with further prayer to direct the Respondents to consider and dispose of pending appeal at Annexure-11. This O.A. was disposed of at the admission stage on 15.1.2007, with direction to Respondents to dispose of the appeal on merit and as per rules within a month from the date of receipt of the order.


3. The appeal preferred by the applicant having not been acceded to, which in other words, the Appellate Authority having confirmed the order passed by the Disciplinary Authority vide Annexure-A/13 dated 7.3.2007, this Original Application has been filed by the applicant with the following prayers.

- (i) The Hon'ble Tribunal be graciously pleased to quash the order of removal of the applicant from service passed by the disciplinary authority dated 10.06.2005 and the appellate order dated 07.03.2007 at Annexure-A/13.
- (ii) To direct the respondents to reinstate the applicant in service forthwith and extend all consequential service and financial benefits thereon within a stipulated period.
- (iii) The Hon'ble Tribunal may further be pleased to grant any other relief(s), order(s), direction(s) as deemed fit and proper.

4. The genesis of this Original Application is that the applicant is the adopted son of late Sudhanidhi Behera, who was a Class-IV railway employee and was removed from service in the year 1963. According to applicant, having been selected through a process of selection held on 24.7.1981, he was appointed as Substitute Cook-Mate by the Security Officer, RPF, South Eastern Railway, Khurda Road in which post, he joined on 27.7.1983. While the matter stood thus, on the false plea of impersonation, the applicant has been dismissed from service.



5. It is the case of the applicant that late Sudhanidhi Behera, Ex.Railway Employee had adopted the applicant as his son on 18.3.1974, from which date the applicant having left his natural father Mohan Das had been staying and taking care of the family of Sudhanidhi Behera, adopted mother Smt.Aparti @ Ainthia Behera and their five daughters. According to applicant, while Sudhanidhi was alive, he had made an application on 19.2.1979 for appointment of the applicant as Rakshak or Cook-Mate under the Railways. The Chief Security Officer, vide its letter No.4060 dated 7.3.1979, addressed to Sudhanidhi to advised him to contact Security Officer, Khurda Road. The Chief Security Officer forwarded a copy of the application to the Security Officer, Khurda Road with a direction to issue call memo to the candidate concerned, i.e., the present applicant as and when selection of Rakshyak is held in Khurda Road Division. According to applicant, after long lapse of years of adoption of the applicant by late Sudhanidhi, the adopted mother gave birth a son, who is named as Rankanidhi @ Dhvajamani Behera. However, the applicant was treated as elder son and Rankanidhi was treated as younger son of the family. It has been submitted that before the applicant could enter into service, Sudhanidhi had applied to Tahasildar, Pipili vide Misc. Case - 1881 for issuance of caste certificate and the Tahasildar, Pipili, after due enquiry through the local R.I. issued the caste Certificate bearing No.4593 dated 12.8.1981 in favour of the applicant, wherein it is recorded that the applicant is the son of Sudhanidhi (Annexure-A/6). In the year 1988, the applicant having appeared at the Matriculation Examination through Andhra University was issued with a certificate on 11.6.1988, wherein his father's name has been recorded as Sudhanidhi Behera. According to applicant, Rankanidhi @ Dhvajamani (2<sup>nd</sup> son) of Sudhanidhi being major made a false allegation before the Respondents stating that the applicant is not the adopted son of his father Sudhanidhi and that the applicant's name is Indramani Das, S/o. Mohan Das. On receipt of



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the allegation, the respondents called upon the applicant vide letter dated 29.3.2005 to show cause as to why he should not be dismissed from service on the ground that he had entered into service by impersonation. In reply to this, the applicant, vide letter dated 10.4.2008 (Annexure-A/2 to O.A.No.177/2006) denied the charges leveled against and stated therein to substantiate that he is the son of Sudhanidhi. In the above background, vide letter dated 27.4.2005(Annexure-A/3 O.A.No.177/06) the applicant was called upon for verification of records/documents by the Railway Authorities on 12.5.2005 at 10.30 hrs. in the chamber of Asst. Operns. Manager, Khurda Road. It reveals from Annexure-A/7 dated 16.5.2005 to O.A.No.177/2006 that the applicant submitted the following documents:

- a) Voter Identity Card(Original)
- b) Voter list (Xerox)
- c) Caste Certificate (Original) from Tahasildar
- d) Adoption Deed (in original)

6. While the matter stood thus, vide Annexure-A/10 dated 10.6.2005 to O.A.No.177/06 the applicant has been dismissed from service. In this connection the order of the Disciplinary Authority is extracted hereunder:

Sub: Impersonation of Sri Indramani Das as Sri Biswanath Behera, S/o.Late Sudhanidhi Behera

Ref: Show Cause Notice No.Con/AOM/BB/TP-MWQ/3.05 dated 29.3.2005

On investigation by Vigilance Branch it has been established that you are impersonating as Sri Biswanath Behera, S/o. late Sudhanidhi Behera and working illegally in the Railway, at present as TP/MWQ Rilway Station.

A show cause notice was issued vide NonCon/AOM/BB/TP-MWQ/3/05 dated 29.3.2005 advising you to show cause as to why you should not be dismissed from your service. In reply to the above, you have denied the charges leveled against you vide your application dtd. 10.4.2005 and you have stated that you have relevant papers to substantiate the above. Accordingly, you were asked to attend this office on 12.5.2005 vide this office letter dated 27.4.2005. The sitting was continued on 13.5.2005. You are also allowed to produce the documents by 11.00 hrs. on 16.5.2005 on your request,



but you have failed to substantiate that you are Shri Biswanath Behera, S/o. late Sudhanidhi Behera.

Under the circumstances explained above, I have gone through the Vigilance Report communicated to this office vide No.GM/V/E.CoR/Optg/Major/NG/DAR-057 dated 16.3.2005, your show cause reply dated 10.4.2005 and day to day proceedings of your personal hearing on 12.5.2005 and 13.5.2005; I have applied my mind and to meet the ends of justice I have taken decision that, you are hereby dismissed from the Railway Service with immediate effect”.

7. Against the above order of dismissal from service, the result of the appeal not being palatable, the present Original Application has been filed.
8. The grounds, inter alia, urged by the applicant in support of his contentions are that before imposing the punishment of dismissal from service, he has not been supplied with the copies of those documents relied upon by the Respondents, i.e., the complaint received by them from Rankanidhi @ Dhvajamani Behera (son) and Smt/Aintha @ Apariti Behera, wife of late Sudhanidhi as well as the vigilance investigation report and thereby, there has been gross violation of the principles of natural justice. According to applicant, there being no disciplinary proceedings imitated against him by adhering to the provisions as enshrined in Railway Servants (Discipline & Appeal) Rules, 1968, the punishment of dismissal from service cannot be awarded by the Disciplinary Authority, solely based on the vigilance investigation report and verification of some documents. Since for imposition of major punishment of dismissal from service, a full-fledged fact finding inquiry has to be conducted by providing adequate opportunity to the delinquent to have his say in the matter, the punishment so awarded without observing any such formality is bad in law and liable to be quashed.
8. The Respondents have filed their counter opposing the prayer of the applicant. They have submitted that the O.A. being devoid of merit is liable to be dismissed.

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9. We have heard the learned counsel for the parties and perused the materials on record.

10. From the pleadings of the parties, the sole point to be decided is whether without adhering to disciplinary proceedings under Railway Servants (Discipline & Appeal) Rules, 1968, a major penalty of dismissal from service could be awarded based on the investigation report of the vigilance and after carrying out verification of documents submitted in presence of the delinquent.

11. Admittedly, the matter has been initiated on a complaint received by the Respondent-Railways. It is also an admitted fact that the vigilance had taken up the matter of investigation in that behalf. It is also not in dispute that the copy of the investigation report by the vigilance has not been supplied to the applicant to have his say in the matter. Viewed from this angle, there has been sheer violation of the principles of natural justice inasmuch as the Respondent-Department ought to have supplied with copy of the report of the vigilance enabling the applicant to effectively to put up his defence, before the punishment of dismissal from service could be imposed on the applicant based on the said report.

12. Besides the above, if according to Respondents, the applicant has been able to get an appointment in the Railways by impersonating himself, they could have either proceeded against him criminally or through a departmental proceedings under Railway Servants (Discipline & Appeal) Rules, 1968, for the purpose of imposition of minor or major penalty, as the case may be. But the manner in which the applicant has been imposed with major penalty of dismissal from service is alien to service jurisprudence. The Respondents have also not vividly pointed out in their counter to the effect that other than the disciplinary measure under Railway Servants (Discipline & Appeal) Rules, they are within their rights to

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award punishment of dismissal from service on a delinquent solely based on the report of the vigilance. In the circumstances, we answer the point in issue in the negative.

13. For the reasons discussed above, we have no hesitation to hold that there has been sheer violation of the principles of natural justice while imposing punishment on the applicant. This apart the Respondents are not within their rights to award major punishment of dismissal from service without resorting to Railway Servant(Discipline & Appeal) Rules, 1968. Consequently, we quash the impugned order dated 10.6.2005 of the Disciplinary Authority (copy not enclosed to the O.A.) dismissing the applicant from service and the order dated 7.3.2007(A/13) passed by the Appellate Authority confirming the order of dismissal. The applicant be reinstated forthwith.

14. It is, however, made clear that nothing prevents the Respondents from proceeding against the applicant in accordance with the provisions of Railway Servants (Discipline & Appeal) Rules, 1968.

15. With the above observation and direction, this Original Application is allowed to the extent indicated above. No costs.

  
(C.R. MOHAPATRA)  
ADMINISTRATIVE MEMBER

  
(B.V. RAO)  
JUDICIAL MEMBER