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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.478 OF 2007

Cuttack this the 8th day of October, 2013

CORAM

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

HON'BLE SHRI R.C.MISRA, MEMBER(A)

...

Sri Laxmikanta Giri
Aged about 38 years
Son of late Krutibas Giri
Village/PO-Mabara
Via-Jamsuli
PS-Singla
District-Balasore
Loco Pilot (Goods) Gr.II,
In the office of the Chief Crew Controller
East Coast Railway
Khurda Road, Jatni,
District-Khurda

...Applicant

By the Advocate(s)-M/s.B.Dash
J.Dash

-VERSUS-

Union of India represented through

1. The General Manager
East Coast Railway
Rail Vihar
Chandrasekharapur
Bhubaneswar
District-Khurda
2. The Addl.Divisional Railway Manager
East Coast Railway
Khurda Road, Jatni
District-Khurda
3. The Senior Divisional Mechanical Engineer
East Coast Railway
Khurda Road, Jatni
Dist-Khurda

...Respondents

By the Advocate(s)-M/s.T.Rath, P.C.Panda

P. C. Panda

ORDER**HON'BLE SHRI R.C.MISRA, MEMBER(A):**

Applicant in the present Original Application has approached this Tribunal seeking relief that the impugned order dated 19.11.2007 passed by Respondent No.3 may be quashed and the Respondents may be directed to allow him to function as Loco Pilot (Goods), Gr.II observing that he was never reverted to the post of Loco Pilot(Shunter), Gr.I with effect from 1.9.2007.

2. Facts of the case in brief are that the applicant was served with a charge sheet which contained the list of documents and list of witnesses basing on which charges were framed. But relying on another document, the impugned order of imposition of penalty has been given in contravention of the rules and the principles of natural justice. Challenging the order of penalty the applicant came before this Tribunal in O.A.No.276/2007 and this Tribunal dismissed the said O.A. with an observation that this was not maintainable on the ground that six months' time had not elapsed from the date of filing of the appeal against the order of punishment. Against the said order of the Tribunal which was passed on 31.8.2007, the applicant approached the Hon'ble High Court of Orissa in W.P.(C) No.10976/2007. The Hon'ble High Court of Orissa vide order dated 20.9.2007, while directing notice to the Opposite Parties in the Writ Petition, in the Misc.Case No.10216/2007 (arising out of the said Writ Petition), as an interim measure, also directed that in case the impugned order dated 30.7.2007 passed by the Senior Divisional Mechanical Engineer, East Coast Railway, Khurda Road (Disciplinary Authority) has not been given effect to so far, the same shall not be enforced till

disposal of the Writ Petition. The Hon'ble High Court further directed the matter to be listed ^{on 2} ~~week~~ commencing 26.11.2007 for final disposal at the admission stage. The applicant placed the orders of the Honb'ble High Court of Orissa before the Respondent No.3 with a prayer that the orders of punishment in the disciplinary case should not be enforced. This representation was disposed of by the Respondent No.3 vide his letter dated 19.11.2007(Annexure-A/6), which is extracted hereunder.

"Sub: Disposal of application dated
22/24.09.2007:

On 24.09.2007, you had submitted the subject application enclosing order dated 20.09.2007 passed by the Honourable High Court of Orissa in Misc.Case No.10216 of 2007 to Sr.DME/KUR requesting not to effect the punishment order till the disposal of your case. The order of the Hon'ble High Court has been examined. It is to inform you that the punishment order dated 20.07.2007 acknowledged by you on 08.08.2007 had been implemented w.e.f. 1.09.2007 by reverting you from the post of LP(Goods)Gr.II to the post of LP(Shunter),Gr.I i.e., much before the order of the Honourable High Court is passed.

The undersigned went through your application and the order dated 20.09.2007 of the Honourable High Court of Orissa. The Honourable High Court in clear terms has observed that if the order dated 30.07.2007 passed by Sr.DME/KUR(DA) has not been given effect to so far, the same shall not be enforced till disposal of the writ petition. As the same reversion order is already effected much before the Honourable High Court's order, there seems no further review in your status.

In view of the aforesaid facts, there is no reason that the punishment order already enforced w.e.f. 1.09.2007

shall not be enforced as per your request. This disposes of your above application. Besides, you are released from this office on date to report ^{to} Chief CC/KUR immediately".

3. The applicant has been aggrieved by the order dated 19.11.2007 passed by Respondent No.3. He has claimed that he was on leave on 24.9.2007 and on 25.9.2007; he submitted commuted leave application for the period from 21.8.2007 to 24.8.2007, which was sanctioned by the Divisional Mechanical Engineer. The DME accepted the applicant as LP(Goods) on 28.9.2007 and also sanctioned two days commuted leave on 3.8.2007 and 4.8.2007 recognizing the applicant as Loco Pilot (Goods). The Sr.DME on 5.10.2007 sanctioned commutation of sick leave of the applicant from 31.8.2007 to 24.9.2007 recognizing ^{him} as Loco Pilot (Goods). On subsequent occasion also the Respondents have acknowledged him as Loco Pilot (Goods) and therefore, it was very clear that the order of reversion was never given effect to since time and again the letters of the Respondents have been addressed to the applicant terming him as Loco Pilot (Goods), thereby substantiating the fact that the applicant was never reverted. The applicant in the present O.A. has contended that the order of the Respondents dated 19.11.2007 is nothing but colourable exercise of powers just to frustrate the orders passed by the Hon'ble High Court giving rise to a fresh cause of action. Therefore, the applicant has made a prayer that this order dated 19.11.2007 should be quashed by the Tribunal.

4. In the counter-reply filed by the Respondent-Railways, it has been pleaded that this O.A. is not maintainable under Section 19 of the A.T.Act, 1985. They have argued that the order impugned herein

was passed in consequence to an interim order passed in W.P.(C) No.10976/2007, which is pending before the Hon'ble High Court of Orissa for adjudication. Hence, the cause of action for alleged violation of the interim order of the Hon'ble High Court will arise before the Hon'ble High Court only and not before the Tribunal. The Respondents have further mentioned in the counter affidavit that the disciplinary proceedings were drawn up against the applicant and inquiry was conducted into the charges in keeping with the procedures as laid down in the rules. The Disciplinary Authority, after considering the findings in the inquiry report and other factors imposed punishment of reversion on the applicant to the post of Loco Pilot (Shunter), Gr.I for a period of six months, without cumulative effect with effect from 1.09.2007. Being aggrieved by the order of punishment, the applicant preferred an appeal to the Appellate Authority on 8.8.2007 which was under consideration. Before waiting for the disposal of the appeal petition, the applicant filed O.A.No.276/2007 before this Tribunal for quashing the punishment order. The Tribunal, after going through the contentions of the applicant observed that without exhausting the alternative remedy of appeal the applicant had approached the Tribunal and therefore, the O.A. was barred under Section 20 of the A.T.Act, 1985. It was further observed by the Tribunal that the applicant has not made out any exceptional circumstances where the Tribunal should entertain the O.A. before the alternative of appeal is exhausted by him. Thereafter, the applicant filed Writ Petition No.10976/2007 before the Hon'ble High Court of Orissa challenging the orders passed by this Tribunal. The Hon'ble High Court of Orissa, after hearing the matter passed the

Following orders in the Misc. Case, which was filed for obtaining the interim direction:

“Since we have already fixed the final disposal of the writ application itself on 26.11.2007 it is provided that in case the impugned order dated 30.07.2007 passed by the Senior Divisional Mechanical Engineer, ECoRailway/Khurda Road (Disciplinary Authority) has not been given effect to so far, the same shall not be enforced till disposal of the Writ Petition.”

5. Subsequently, when the applicant placed the orders of the Hon'ble High Court before the Respondents pleading that the order of reversion should not be given effect to, the Respondents disposed of his representation mentioning that the order of punishment was already effected much before the Hon'ble High Court's order and therefore the status of the applicant cannot be further reviewed. According to the Respondents, while the Writ Petition No. 10976/2007 filed by the applicant is *sub judice* before the Hon'ble High Court of Orissa, the applicant has again approached the Tribunal challenging the order of the Respondents dated 19.11.2007, which is not maintainable as per law. In the counter-affidavit, the Respondents have also given further details regarding the disciplinary proceedings against the Applicant and the procedure that has been followed by them.



6. Having heard the Learned Counsel for both sides, we have perused the records. The main grievance of the Applicant is that the Railway Authorities have not complied with the interim orders of the Hon'ble High Court of Orissa whereas the Respondents have taken a stand that the order of reversion in respect of the Applicant was given effect to much before the orders of the Hon'ble High Court of Orissa was received by them.

7. We find from the records that this OA was filed on 22nd November, 2007 and thereafter came up for consideration on the question of admission and grant of ad interim order on 23.11.2007 when after considering the rival submissions of the parties this Tribunal issuing notice to the Respondents to file their counter-reply, by way of ad interim measure directed as under:

"2. The Applicant has been working as Loco Pilot (Goods) Grade II in the East Coast Railways. On certain alleged misconduct, he was proceeded against and the Disciplinary Authority vide order dated 30.7.07 (Annexure-A/1) imposed a penalty of reversion to the post of Loco Pilot (Shunter) Gr.I for a period of 6 (six) months without cumulative effect w.e.f. 01.09.07. Appeal against the same was preferred vide Annexure-A/2 dated 08.08.07. That immediately OA 276/07 was filed, the same was dismissed vide Annexure-A/3 dated 31.08.07, being premature. Against the above order of the Tribunal a Writ Petition was filed before the Hon'ble High Court and the following interim order was passed vide Annexure-A/4:



“impugned order dated 30-07-2007 passed by the Sr. Divisional Mechanical Engineer, E.Co.Railway, Khurda Road (Disciplinary Authority) has not been given effect to so far, the same shall not be enforced till disposal of the writ petition.”

3. By virtue of the above order, the Respondents were under obligation not to enforce the penalty till the disposal of the writ petition. The writ petition has not so far been disposed of but the authorities have effected the penalty order vide Annexure-A/6. The reason given in Annexure-A/6 is as under:

“As the same reversion order is already effected much before the Honourable High Court’s order there seems no further review....”

The above reason is thoroughly illogical. The department seems to have been under the mistaken impression that penalty order is effective from 01.09.07 and High Court order is 20.09.07 and thus, before Hon’ble High Court’s order, the penalty has been effected. If these were so, High Court would not have granted the interim order. The applicant was on leave at the material point of time; he was not asked to perform the duties in the lower post, his pay on the date of High Court’s order was not in the scale attached to Loco Pilot (Shunter) Gr.I; his designation throughout has been written as only Loco Pilot (Goods) Gr.II even as on dated 13.11.07 vide Annexure-A/11; as such it is declared that no reversion has taken place, nor can it take place that as there is restrained order from the High Court. If the department revert the applicant that will amount to a clear disregard of the order of the High Court which may Court contempt against the authorities.

4. The respondents are, therefore, directed to ensure that the applicant designation and pay and allowances are as per Loco Pilot (Goods) Gr.II and nothing else.”

8. On the strength of the above order as well as the order of the Hon’ble High Court of Orissa, the applicant by making application dated

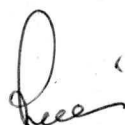
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23.11.2007 has prayed for restoration of his position but as it appears from the counter the Respondent No. 3 i.e Senior Divisional Mechanical Engineer, ECoRly, KUR in letter dated 18.12.2007 (Annexure-R/5), informed the applicant as under:

“As per the reversion order issued vide this office notice dated 30.07.2007 as a measure of penalty imposed on you under D&A Rules for the reason of derailment of wagons at Marshaling yard/KUR due to over speeding for which you have been primarily responsible by a duly constituted committee and you have been continuing in the reverted post of Loco Pilot (Shunter) Gr.I w.e.f. 1.9.2007 for a period of 6 months with n on-cumulative effect and accordingly in the event of your being found fit after your sickness you may join your duty as loco pilot (Shunter)-I under Chief Crew Controller/Khurda Road immediately pending final decision of the Hon'ble Court”.”

9. The applicant has not brought the said order dated 18.12.2007 within the purview of consideration/challenge in this OA by way of amendment or otherwise. Be that as it may, the main order of punishment dated 30.7.2007 was challenged by the applicant in OA No. 276/07 which was dismissed by this Tribunal. Thereafter, the applicant challenged the said order of this Tribunal along with the order of punishment passed by the DA dated 30.7.2007 in WP (C) No.10976 of 2007 before the Hon'ble High Court of Orissa which is still *sub judice*. It is a settled legal proposition that if initial action is not in consonance




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with law, subsequent order/proceedings would not sanctify the same. In such a fact situation, the legal maxim "*Sublato fundamento cadit opus*" is applicable, meaning thereby, in case a foundation is removed, the superstructure falls-**Chairman Cum MD Coal India Ltd & Ors v Ananta Saha & Ors** Civil Appeal No. 2958 of 2011 (Arising out of SLP (C) No. 1100 of 2009) dated 06-04-2011. In case the Applicant succeeds in the said Writ Petition then automatically he will be restored to his original post. In view of the above, we are not inclined to enter into and interfere in the matter when admittedly the Writ Petition is still ^h~~under~~ *sub judice* before the Hon'ble High Court of Orissa. In the result, with the discussions made above, this OA stands disposed of. There shall be no order as to costs.


(R.C.MISRA)
Member(Admn.)

BKS,PS


(A.K.PATNAIK)
Member (Judl.)