

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 160 of 2008
Cuttack, this the ~~08~~¹⁴ day of March, 2011

Brundaban Chandra Behera Applicant

-v-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? Yes
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not? Yes


(A.K. PATNAIK)
Member(Judl)


(C. R. MOHAPATRA)
Member (Admn.)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No. 160 of 2008
Cuttack, this the 08th day of March, 2011

CORAM:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)
A N D
THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

Sri Brundaban Chandra Behera, aged about 43 years, Son of Murali Behera, at present working as Enquiry and RS Balu under SMR, Balugaon, East Coast Railway, At/Po.Surla, Via-Girisola, Ganjam, PIN-761 009.

.....Applicant

By legal practitioner: M/s.K.P.Mishra,S.Mohapatra,T.P.Triathy,P.Dwivedy, Counsel.

-Versus-

1. Union of India represented through its General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Additional Divisional Railway Manager (ADRM), East Coast Railway, Khurda, At/Po/Dist. Khurda, Orissa.
3. Senior Division Commercial Manager (Sr.DCM), East Coast Railway, Khurda, At/Po/Dit. Khurda, Orissa.

....Respondents

By legal practitioner: Mr.S.K.Ojha, SC

O R D E R

MR. C.R.MOHAPATRA, MEMBER (ADMN.):

The order under Annexure-6 dated 31.12.2007 imposing the punishment of reduction by two stages for a period of two years (in the scale of pay of Rs.5500-9000/-) with cumulative effect with direction that on expiry of the punishment period this will have the effect of postponing the future increment of pay of the applicant and which was upheld in appeal (preferred by Applicant), by the appellate Authority in order dated 20.03.2008 at Annexure-8 have been assailed by the Applicant with prayer to quash both the orders being illegal, arbitrary and bad in law.

The above order of punishment was passed by the Respondents at the conclusion of the Disciplinary Proceedings initiated against the Applicant under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The charge levelled against the Applicant is as under:

"That Shri B.C.Behera, E&RS/BALU while working as ERC-I/BAM on 02.03.02 at the PRS/BAM issued a ticket vide PNR No. 244-1195468 against 1st "A" class Privilege Pass No.079705 dt.22.02.02. This Privilege Pass was issued by DRM/KUR in favour of Shri B.C.Chakraborty, ADEE/IPM/KUR and his family. Shri B.C.Behera issued the ticket with confirmed reservation in 2AC by train No.2904 (Golden Temple Mail) ex-NDLS-BCT for the journey on 28.04.02 in the name of an unauthorized person Shri S.Das (M-43) against the same Privilege Pass Number although the name of Shri S.Das was not included in the said Privilege Pass.

Thus by the above act, Shri B.C.Behera committed grave misconduct as he failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway Servant in violation of para 3.1 (i) (ii) & (iii) of Railway Services Conduct Rules, 1966 thereby rendered himself liable for Disciplinary Action under Railway Servants D&A Rules, 1968 as amended from time to time."

2. According to the Applicant the entire proceedings are liable to be quashed for the *following* ~~aforesaid~~ reasons:

That the allegation levelled against the applicant cannot be construed as misconduct as there was no ill motive. Misconduct means more than the negligence of duty as held by the Hon'ble Apex Court. Since *menseria* of misconduct is not proved, initiation of disciplinary proceeding and imposition of punishment is not justified. Though this was pointed at every stage in the enquiry and even thereafter before the DA and AA, none of the above authorities looked into such point.

That the Departmental Proceedings were initiated with a preconceived/pre-determined mind. This is because the Vital Witnesses such as Shri B.C.Chakraberty, Ravi Kanta Dubey, TTE and Shri Das have not been examined and cross examined in course of the enquiry. Despite request of the applicant, the IO did not ensure appearance of the above officers in the enquiry. Registered letter sent to them returned unserved. Thereafter, no step was taken by the IO for their appearance in the enquiry for examination and cross examination by the Applicant.

That the Memorandum of charge was bereft of the name of witness and list of documents whereas the IO examined some of the witnesses and documents thereby depriving the Applicant of adequate opportunity to cross examine them and look to the authenticity of the said documents. Whereas the IO in the enquiry examined some of the witnesses and took into consideration some of the documents which is not permissible in the eye of law.

That the Presenting Officer asked leading question to the applicant in the enquiry which is not permissible in the eye of Rules and Law.

That Reservation slip was not produced in the enquiry as the same was destroyed as reported by the Sr.DCM/KUR in his letter dated 14.09.2005. The IO acted as a zealous prosecutor and examined the applicant in the enquiry which is not permissible in the eye of law. The

loss allegedly caused to the Railway was not quantified. Despite repeated requests the applicant was not supplied the relevant documents.

In the above context, Learned Counsel for the Applicant has relied on the decision of the Hon'ble Apex in the cases of Mathura Prasad v Union of India, (2007) 1 SCC 437; State of Uttaranchal and others v Kanak Sing, (2008) 8 SCC 236 and (2008) 3 SCC 484 and some of the cases reported in (2007) 4 SCC 566 (page 572); (1999) 1 SCC 733 (P.737), (2007) 1 SCC 437; (2009) 2 SCC (P.541); (2001) 1 SCC 182 (P.19), 2008(Vol.8) SCC 236; (2008) Vol.4 SCC 1; (2003) 8 SCC P.9, (2007) 6 SCC 257; (2000) SCC (L&S) 85 and the decision of this Tribunal dated 20.04.2004 in OA No. 620 of 2000 (Pranakrushna Panda v Union of India and others). But for the reasons best known to the Learned Counsel for the Applicant he has neither supplied copies of the decisions relied on by him nor furnished the name of the parties. Hence we have been deprived of getting and going through some of the decisions relied on by him.

3. Respondents' contention is that there is no scope for this Tribunal to interfere in the matter in absence of any breach of any of the provisions of the Rules and principles of natural justice. The Departmental Proceedings were drawn up against the applicant on the alleged charge. The matter was enquired into through duly appointed IO in which the applicant also participated in the enquiry and he was allowed all reasonable opportunity to defend his case. Since the allegation levelled

against the applicant was proved to the hilt the IO submitted the report of the enquiry holding the applicant guilty of the charge. Thereafter, following the Rules, the disciplinary authority imposed the punishment which was also upheld by the Appellate Authority while considering the appeal of the applicant. Therefore, it was contended by the Respondents since the punishment imposed on the applicant on the basis of the full proof of the allegations there is hardly any scope for this Tribunal to interfere in the matter. They have also denied the allegations in regard to the conduct of the enquiry etc. made by the applicant in his Original Application.

4. Learned Counsel appearing for both sides have reiterated the stand taken in their respective pleadings. Having heard them at length, perused the materials placed on record. Learned Standing Counsel appearing for the Respondents in support of his claim relied on the decision of the Hon'ble Apex Court reported in AIR 2009 SC 664 and the decision of this Tribunal dated 21st May, 2009 in OA No. 509 of 2006 (P.Srinibasan Rao v Union of India and others) and we have also perused the said decision.

5. At the out set we may record that the scope for interference by this Tribunal in disciplinary proceedings as also in the order of punishment is no more *res integra*. The legal position is well settled that the power of judicial review is not directed against the decision but is confined to the decision making process. The court does not sit in

judgment on merits of the decision. It is not open to the Tribunal to reappreciate and reappraise the evidence led before the IO and examine the findings recorded by the IO as a court of appeal and reach its own conclusions. The Tribunal is definitely mandated to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf and whether the rules of natural justice are violated. Secondly whether there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge. This Tribunal interferes where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. Hence keeping in mind the aforesaid parameter, we examine the points raised by the Applicant with reference to the Rules.

6. First point of the applicant is that the charge levelled against the applicant does not come within the purview of misconduct or cannot be construed as misconduct especially because there was no *menseria* of

ill motive in issuing the ticket. In this connection we may state that there is no straight jacket formula available in the Rules in regard to which of the act of an employee can be construed as misconduct and which is not. The Applicant being a responsible officer entrusted with the duties of issuing ticket, it was his first and foremost duty to checkup details. He cannot shift the onus by stating that this was an inadvertent error committed in official transaction. Hence this plea of the applicant is hereby rejected.

Second ground of challenge is that the Departmental Proceedings were initiated with a preconceived/pre-determined mind as vital Witnesses namely Shri B.C.Chakraberty, Ravi Kanta Dubey, TTE and Shri Das have not been examined and cross examined in course of the enquiry despite his request and the IO did not ensure appearance of the above officers in the enquiry. Registered letter sent to them returned unserved. Thereafter, no step was taken by the IO for their appearance in the enquiry for examination and cross examination by him. We do not find any substance on this Allegation because none of the above named persons were cited as witness in the charge sheet. However, the IO summoned them to appear but the letter returned unserved. If their appearance would have been beneficial in any manner to the charged official, he should have taken step on his own accord to make them appear in the enquiry. However when the charge was proved based on the materials, appearance or non appearance of the above named persons and

in absence of any pleading as to how their non appearance prejudiced his interest, there is hardly any scope for this Tribunal to hold a view contrary to the view taken by the IO.

Third ground of challenge of the applicant is that the Memorandum of charge was bereft of the name of witness and list of documents whereas the IO examined some of the witnesses and documents thereby depriving the Applicant adequate opportunity to cross examine them and marshal the documents relied on by the IO. The Presenting Officer asked leading question to the applicant in the enquiry; The Reservation slip was not produced in the enquiry as the same was destroyed as reported by the Sr.DCM/KUR in his letter dated 14.09.2005 and the IO acted as a zealous prosecutor and examined the applicant in the enquiry which is not permissible in the eye of law. This being purely a fact on record, we called for the disciplinary proceedings and pursuant to the direction of this Tribunal, Respondents' Counsel produced the proceeding file of the Applicant and we have also perused the same. From the file it was noticed that two witnesses one cited by the Applicant and the other one furnished by the Department were examined and opportunity of cross examination was also allowed to each other. We also do not find any substance on the allegation that non-supply of some of the document vitiated the proceedings. No where the applicant stated that the particular documents which have been taken into consideration in the enquiry without giving him opportunity and as to how he was prejudiced.

We have perused the decisions relied on by the Applicant to the extent it was available in the library and we find that the facts and issues involved in those decisions are totally different/distinct to the present case and as such are of no help to the Applicant.

7. For the discussions made above, we find no merit in this OA.

This OA is accordingly dismissed. No costs.


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


(C. R. MOHAPATRA)
Member(Admn.)