

9

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 337 of 2008
Cuttack, this the ~~01st~~ day of ~~March~~ ^{April}, 2011


Pinakdhar Samantaray Applicant


-v-

Union of India & Others Respondents

FOR INSTRUCTIONS

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


(A.K.PATNAIK)
Member(Judl)


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

10

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No. 337 of 2008
Cuttack, this the ~~01st~~ ^{15th} day of ~~March~~ ^{April}, 2011

CORAM:

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

Shri Pinakdhar Samantaray, aged about 52 years, S/o.Late Chakradhar Pradhan, at present working as Junior Booking Clerk, Barang Railway Station, East Coast Railway, Khurda Road, Railway Division, At/Po-Barang, Dist. Cuttack.

.....Applicant


By legal practitioner: M/s.B.S.Tripathy, M.K.Rath, J.Pati, Counsel.

-Versus-

1. Union of India represented through the General Manager, East Coast Railway, Rail Vihar, At/Po. Chandrasekharapur, Bhubaneswar, Dist. Khurda.
2. The Divisional Railway Manager, East Coast Railway, Khurda Road, At/Po/Dist. Khurda.
3. The Additional Divisional Railway Manager, East Coast Railway, Khurda Road, At/Po/Dist. Khurda.
4. The Senior Divisional Commercial Manager, East Coast Railway, Khurda Road, At/Po/Dist. Khurda.
5. The Divisional Commercial Manager, East Coast Railway, Khurda Road, At/Po/Dist. Khurda.
6. Shri V.V.S.N.Murty, Zonal Railway Inquiry Officer, Waltair, At-E/6-ViLL-Royal Prince Apartment, Siripuram, Visakhapatnam-530003.
7. Shri K.M.S.Rao, Presenting Officer-Cum-Chief Vigilance Inspector (Accounts), East Coast Railway, At/Po-Bhubaneswar, Dist. Khurda.

....Respondents

By legal practitioner: Mr.T.Rath, Counsel



ORDER

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

The case of the Applicant, in nut, shell is that while he was working as Head Booking Clerk in Balugaon Railway Station a major penalty charge sheet under Rule 9 of the Railway Servants (D&A) Rules, 1968 was issued by the Respondent No.5 containing two articles of charge, against him which reads as under:

Article-I: Shri P.D.Samantaray while working as HBC/BALU demanded and accepted Rs.16/ (Rupees Sixteen) as illegal gratification from the Decoy while issuing two IInd M/Exp Ticket Ex BALU to UPR by Training No. 8415 on 21-08-2005;

Article-II: Shri P.D.Samantaray while working as HBC/BALU on IInd night shift on 21.08.2005 at booking office/BALU produced Rs. 697/- short in his Railway cash at the time of Vigilance Check which amounts to temporary misappropriation of Government Cash.

On receipt of the charge sheet, applicant submitted his explanation on 14.11.2005 denying the charges and questioning the trap being not done in accordance with the Rules. The matter was enquired into. Applicant submitted his defence brief on 29.9.2007 stating that the Vigilance Team had arranged the trap to entangle him in a false case and during enquiry the decoy Shri Narendra Jena could not recognize the applicant and that the shortage of cash shown during his duty was amounting to Rs.697/-. Though the IO came to the finding that the vigilance check could not establish the

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demand of illegal gratification by showing any excess cash either in Railway Cash counter or with personal cash yet the charge under Article I taken as proved and Article II as partly proved. The DA supplied copy of the report of the IO to the applicant in letter dated 06.09.2007. Applicant submitted his written statement to the report of the IO on 24.09.2007 requesting to exonerate him from the charges. On receipt of reply, the Disciplinary Authority in letter dated 20.03.2008 issued notice proposing to impose the punishment of reduction from the post of Hd BC to the post of Jr.BC for a period of sixty months with cumulative effect. Applicant preferred appeal dated 4.4.2008. The Appellate Authority after granting personal hearing to the applicant rejected the appeal thereby upholding the order of punishment imposed by the DA on the Applicant. Thereafter, the Revisionary Authority (Respondent No.3) *suo motu* reviewed the case and issued a show cause notice dated 26.8.2008 proposing to enhance the punishment to 'removal from Railway Service'. Applicant filed his reply against the proposed enhanced punishment of 'Removal'. In the aforesaid circumstances, the Applicant has approached this Tribunal in the present OA filed under section 19 of the A.T. Act, 1985 seeking the following relief:

- a) To pass appropriate orders quashing the order of punishment dated 20.03.2008 in Annexure-A/7, order of the Appellate Authority dated 30.05.2008



in Annexure-A/9 and the order of the Revisionary Authority dated 26.08.2008 in Annexure-A/10;

- b) To pass appropriate orders directing the Respondents to reinstate the applicant in the post of Head Booking Clerk w.e.f. 20.3.2008 i.e. the dte w.e.f. which he was reverted to the psot of Junior Booking Clerk; and
- c) TO pass such further order/orders as are deemed just and proper in the facts and circumstances of the case and allow the OA with costs.

2. Respondents filed their counter in which it has been stated that considering the report of the IO, reply submitted by the Applicant and materials available on record, with due application of mind the Disciplinary Authority imposed the punishment of reduction which was also upheld by the Appellate Authority after allowing personal hearing to the Applicant. The order of the Disciplinary Authority as well as Appellate Authority is well reasoned and need no further elaboration. In terms of Rule 25 of the Railway Servants (D& A) Rules, 1968, the ADRM/KUR, the Revisional Authority *suo moto* reviewed the matter and issued show cause notice dated 26.8.2008 to the charged official asking him to show cause as to why penalty of removal from service shall not be imposed on him. This notice of the Revisional Authority cannot be called in question as he is empowered to do so in view of the provisions embodied in Rule 9, 10, 12, 18, 19, 22 and 25 of the Railway Servants (D&A) Rules, 1968. Further contention of the




Respondents is that the punishment imposed on the applicant was inadequate to the offence committed by the applicant. In so far as shortage of the Railway cash during his duty hour, the same was admitted by the applicant in his explanation to the charge sheet and according to him he had deposited the amount on the same day. Next contention of the Respondents is that this was not the first occasion of committing omission and commission by the Applicant. During the period from 1987 to March, 2008, the applicant has been imposed punishment of various natures on twelve occasions and he was also placed under suspension for the period from 04.09.2005 to 08.09.2005. Last contention of the Respondents is that as decision is to be taken by the RA after receipt of the reply of the applicant, interference in the matter at this stage is unwarranted. Accordingly, Respondents have prayed that this OA being premature is liable to be dismissed.

3. Despite service of the counter and adequate opportunity granted by this Tribunal, the Applicant has chosen not to file any rejoinder to the counter filed by the Respondents. Reiteration of the points raised in the respective pleadings having been heard at a considerable length, we have perused the material placed on record.

4. Applicant's contention is that the trap was conducted without following the mandatory provisions as provided in paras

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704 & 705 of the Vigilance Manual and as such, this being a pre arranged trap is not sustainable in the eyes of law. In this connection he has relied on the decision of the Hon'ble Apex Court in the case of **Moni Shankar v Union of India and another**, (2008) 3 SCC 484. It is also the contention of the Applicant that the IO in his finding has categorically held that the demand of illegal gratification is not established but on the other hand came to a conclusion that the charge under Article-I is proved. Similarly the IO came to a conclusion that the charge under Article II is partly proved as shortage of cash is not exactly appropriate to be called *mala fide* intention but due to lack of efficiency in cash dealing. As regards the order of the Disciplinary Authority it is the contention of the Applicant that the DA without assigning any reasons for disagreement with the report of the IO concluded that the charges under Articles I and II are proved and accordingly imposed major penalty which is not sustainable in the eyes of law. Similarly, the Appellate Authority upheld the order passed by the Disciplinary Authority in a cryptic order without discussing points raised by the applicant. As regards the order of the Revisional Authority it is contended by the Learned Counsel for the Applicant that the notice to show cause was no notice as the RA decided to impose the punishment of removal from railway service and issued the show



cause notice was only a formality. Therefore, the said show cause notice as also the order of the Revisional Authority are liable to be set aside. Besides the above, it was stated by the Applicant that no reason was also assigned by the Revisional Authority as to why and on what ground the Revisional Authority sought to enhance the punishment. In this regard, Learned Counsel for the Applicant placed reliance on the decision of the Jodhpur Bench of the Tribunal in the case of **S.K.Chatterjee v Union of India and others**, 1986 (2) SLR 513 and the decision of the Hon'ble High Court of **Punjab and Harayana** in the case of **Prem Kumar v State of Punjab and others**, 1986 (1) SLR 760 and has prayed for the relief claimed in this OA.

On the other hand, it was submitted by Respondents' Counsel that there has been no ground to interfere in the order of punishment imposed on the Applicant and interfering with the order of punishment would encourage the employees like the present Applicant to act according to their sweet will thereby creating disharmony and unpleasant situation. His contention is that the scope of judicial review is limited to the deficiency in decision making process and not the decision. In the instant case there has been no violation of Rules and principles of natural justice have been strictly adhered to by providing adequate opportunity to applicant. It has been argued that it is misconceived



to state that the order impugned in this case is bald and without taking into consideration all the points raised by the Applicant. In fact the authorities reached to such conclusion after taking into consideration all the points raised by the applicant. It has been pointed out by the Learned Counsel for the Respondents that even if it is construed that the order of Disciplinary Authority is bad one, the same is no more available to be commented upon after the order of Appellate Authority. The order of the Appellate Authority is well reasoned and it is wrong to say that the punishment is excessive. The IO in his report conclusively held the charges under Articles I & II are proved and that the finding of the IO about the shortage of cash was not intentional but lack of efficiency is extraneous description and it no way negates the merits of the actual charge. Hence the allegation that the IO disagreed with the finding of the IO in so far as Article I charge is concerned is not true. Finally, Learned Counsel for the Respondents has argued that as there has been no miscarriage of justice in the decision making process of the matter, the order of punishment imposed on the Applicant is liable to be sustained.

5. Interference in the matters of disciplinary proceedings, as in hand, is no more *res intergra* and it has been well settled in plethora of judicial pronouncements that if the proceedings


and/or of that matter the order of punishments are in violation of the Rules, principles of natural justice and based on no evidence, then certainly whatsoever the gravity of the offence may be the Tribunal cannot be a silent spectator and/or a party to such irregularity/illegality committed by the authority. The Tribunal can also rise on an occasion if the order of punishment is without jurisdiction, competence, unreasoned and shocking to the judicial conscience; in other words, power of judicial intervention in the disciplinary proceedings is possible where there has been miscarriage of justice in the decision making process of the matter. Keeping the ratio of various decisions of the Apex Court in mind, now it is to be examined as to whether this case comes in any such category warranting interference by this Tribunal. On microscopic scrutiny of the order of punishment imposed by the DA and upheld by the AA we do not see reason from any of the submissions made by the Applicant to come to a conclusion that the punishment imposed in any manner is excessive or that without due application of mind. The punishment was imposed on the applicant based on the findings of the IO which was after giving due opportunity to the Applicant. Hence we uphold the order of the DA as well as the AA. But it is found that the RA



sought to enhance the punishment in exercise of the power of suo motu review on the ground as under:

"I have *suo moto* reviewed the case under Rule 25 of Railway Servants (D&A) Rules, 1968. After going through the charges, the enquiry report, the defence statement and orders of the Disciplinary Authority, I find that the charges are grave and punishment awarded by DCM/KUR vide his order dated 20.03.2008 is inadequate and not commensurate with the gravity of the offence. I have also considered the fact that the punishment has not been imposed as per extant norms in a trap case as specified in Rly Bd's Directions in their letter No. 98/V-I/Meet/4/1 dated 08.09.1998. Hence I have decided to enhance the penalty and impose punishment of "Removal from Railway Service" since you are involved in a trap case and accepted illegal gratification from the decoy."

Considered the rival submission of the parties including the decisions relied on by Learned Counsel for the Applicant. The decision relied on by the Applicant in the case of Moni Shankar does not *ex facie* state that in each and every case where the trap was not in accordance with paras 704 and 705 of the Vigilance Manual, the trap should be declared void. Rather the decision clearly envisages that its violation could be taken into consideration along with other factors to determine objectively whether charges were proved. In view of the above the contention of the Applicant that as the trap was not conducted in accordance with the Vigilance Manual the report of the trap should not be taken into consideration cannot be upheld.

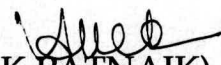



6. But we find some force in the contention of the Learned Counsel for the Applicant that the revision of the punishment was not in accordance with Rule/law. From the show cause notice it is abundantly clear that the Railway Bd's direction contained in letter No. Rly Bd's Directions in their letter No. 98/V-I/Meet/4/1 dated 08.09.1998 weighed in the mind of the RA to impose the punishment rather than the factual matrix such as finding of the IO, order of the DA and AA. The show cause notice does not show the reason for which he wanted to differ from the view taken and punishment imposed by the DA and AA and by merely stating that "**I have gone through the records**" is not sufficient to hold that reason was assigned by the RA for differing with the view and punishment imposed by the DA & AA. Ordinarily we would not have interfered in the show cause notice but in the peculiar fact and circumstances of the matter especially the show cause notice is like allowing post decisional rather than pre decisional hearing by applying the decision of the Jodhpur Bench of the Tribunal in the case of **S.K.Chatterjee v Union of India and others**, 1986 (2) SLR 513 and the Hon'ble High Court of Punjab and Harayana in the case of **Prem Kumar v State of Punjab and others**, 1986 (1) SLR 760, while upholding the order of

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the DA and AA, we quash the notice under Annexure-A/10 dated 26.08.2008.

7. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.


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


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