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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 430 of 2008
Cuttack, this the 01st day of April, 2011

G.Tukuna Reddy 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.)

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

G.Tukuna Reddy, aged about 26 years, Son of Late
G.Mangulu Reddy, At/Po.Kalyanpur, Via-Dist.Ganjam.

.....Applicant

By legal practitioner: M/s.B.S.Tripathy-I.A.Milu,G.K.Bhera, Counsel.

-Versus-

1. Union of India represented through its General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Senior DSTE/KUR, East Coast Railway, Khurda Road, Dist. Khurda.
3. ASTE/BAM, Office of the Sr.DSTE/KUR, East Coast Railway, Khurda Road, Dist. Khurda.

....Respondents

By legal practitioner: Mr.T.Rath, Counsel

ORDER

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

In this Original Application filed U/s.19 of the A.T.

Act, 1985, the Applicant seeks to quash the order under Annexure-6, dated 04-07-2008 issued by the ASTE, ECoRly, Berhampur terminating the service of the Applicant and the order under Annexure-8 dated 18.09.2008 rejecting the appeal preferred by the Applicant. According to the Applicant as his service was terminated without holding any enquiry in consonance with Rules

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and in compliance of principles of natural justice, he filed appeal but the Appellate Authority without considering his appeal in accordance with Rules, rejected the Appeal without assigning any reason and intimated to the applicant in Annexure-8. Hence this OA.

2. Respondents, in their counter, have stated that vide order dated 18.09.2006, the Applicant was appointed as Apprentice Technician Gr.III (Signal Maintainer) in the Railway on compassionate Ground. It was made clear to him that his appointment in the Railway was subject to successful completion of Apprentices Training. Initially he was posted under the Senior Section Engineer (South), Khurda Road and subsequently, vide order dated 03.05.2007; he was transferred to Gangadharpur Railway Station (Annexure-R/1). While he was continuing as such at Gangadharpur Railway Station, on 5.4.2008 at 23.00 hrs, but for the precaution and immediate action of the Driver of the Coromondal Express, for the fault of the Applicant, collision of the said train with a Goods Train could not have been avoided. For the above lapses, the Assistant Signal and Telecom Engineer, Berhampur placed the applicant under suspension w.e.f. 6.4.2008. A Committee constituted for enquiring into the matter, after examining all aspects of the matter and obtaining the statement

from the applicant and others on 5.5.2008 submitted its report (Annexure-R/2) primarily holding the Applicant responsible for the incident. Through notice dated 27/28.05.2008 explanation of the applicant was called for. Instead of submitting the reply, the applicant sought some documents through his application dated 5.6.2008, in regard to the enquiry said to have been conducted by the Committee. As the applicant had already been given reasonable opportunity by the Committee, in letter dated 16.6.2008 he was intimated to submit his reply within seven days. After that, the Applicant submitted his reply in Annexure-5 dated 24.6.2008. The Disciplinary Authority examined the report of the committee and the reply submitted by the Applicant and imposed the punishment of dismissal from service. Applicant submitted appeal but the appeal of the applicant was rejected upholding the punishment of the applicant and intimated to him.

Further contention of the Respondents, in their counter, is that Chapter XIX of Railway Manual Vol.II Rule 1913 deals with regard to termination of Apprenticeship. It provides that 'except as otherwise provided in his service agreement, the apprenticeship shall be liable to termination by the Railway Administration on one week's notice. However, the Apprentice is one to whom the provisions of the Industrial Dispute Act, 1947,

applies shall be entitled to notice or wages in lieu thereof in accordance with the provisions of that Act". In the present case the applicant having not been appointed under Apprentices Act, 1961 has been terminated from service in terms of his letter of Appointment.

Next contention of the Respondents is that not only the Applicant but also all other staffs who have been held responsible for the incident by the Committee Members have been proceeded against under the D&A Rules, the applicant cannot divert the responsibility by putting the blame on others having committed sheer negligence of duty by adopting short cut methods and by passing relay which leads to mal function of interlocking system as a result of which the Goods train in question was about to dash against the Coromondal Express but the incident was avoided only by the timely action of the Driver of both the Coromondal Express and the Goods Train. Accordingly, it has been contended by the Respondents that this OA being devoid of any merit is liable to be dismissed.

3. Applicant filed rejoinder reiterating some of the stands taken in his OA and rebutting some of the pleas of the Respondents taken in their Counter.

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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. Among the other points, the vital point raised by the Applicant's Counsel is to determine whether the termination of the applicant based on the fact finding enquiry even without supplying him copies thereof is justified. Respondents' Counsel contended that as the applicant was an Apprentice Technician Gr.III, his service was rightly terminated in terms of the conditions stipulated in his order of appointment, without following the procedures provided in the Railway Servants (Discipline and Appeal) Rules, 1968. Since the Applicant is a trainee Apprentice this Tribunal lacks jurisdiction to entertain this OA. Hence it was submitted by Respondents' Counsel that the arguments advanced by Applicant's Counsel is not tenable. By placing reliance on various provisions made in Chapter xix dealing with the rights of the 'Apprentices' it was submitted by Mr. Rath, Learned Counsel appearing for the Respondents that since the termination was in accordance with the terms and conditions stipulated in the order of termination, the punishment, being just and proper, does not warrant any interference by this Tribunal.

5. In view of the above, we would like to first address the vital and important point raised by the Respondents' Counsel that since the applicant was a trainee Apprentice, this Tribunal lacks jurisdiction to adjudicate this OA. In this connection we may profitably note that para 1902 of Chapter XIX relied on by Respondents' Counsel clearly envisages that "Annexure-apprentice means a person deputed for training in a trade or business with a view to employment in Government service, who draws a stipend at monthly rates from Government during such training but is not employment in or against a substantive vacancy in the cadre of a department (Rule 103(4) RI). Further para 1913 of the aforesaid provision deals in regard to termination of Apprenticeship. It provides that "Except as otherwise provided in his service agreement the apprenticeship shall be liable to termination by the Railway Administration on one week's notice. However, if the Apprentice is one to whom the provisions of the Industrial Dispute Act, 1947, apply he shall be entitled to notice or Wages in lieu thereof in accordance with the provisions of that Act". Whereas, as it appears from the record, the applicant was appointed on compassionate ground and he was sent for apprentice training during which period such unfortunate incident took place. As such, the plea of the Respondents that as the

applicant is a trainee apprentice this Tribunal lacks jurisdiction is not sustainable.

6. Relevant portion of the order of appointment is quoted herein below:

"6. This appointment is terminable on 14 days notice on either side but no such notice will be required if the training period is terminated due to your mental or physical incapacity or failure in examinations or your removal or dismissal as a disciplinary measure.

NOTE:-

6. You will confirm strictly in all respect to all rules and regulations of temporary Railway service in force from time to time.

7. In Annexure-A/6 the applicant was imposed with the punishment of 'removal' as a measure of punishment. Removal is one of the major penalties available in the Railway Servants (D&A) Rules, 1968 which punishment can be imposed only after following the procedure provided therein or by following the rigors provided in the order of appointment issued to the Applicant. It goes without saying that the Disciplinary Authority removed the applicant from service as a measure of punishment. When the exercise of power was as a measure of punishment as per the Rules and various judge made laws, the rigors of the provisions of the RS (D&A) Rules, 1968 ought to have been followed. The conditions of appointment do not ex facie empower

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any authority to impose the order of removal as a measure of punishment without following the Rules. Undisputedly, the applicant was appointed on compassionate ground. We are aware that appointment on compassionate ground is always made against a substantive post. After being appointed, the Applicant was sent for Apprentice Training. It is common knowledge that an appointee is sent for training as a prelude to substantive appointment only. The Applicant was not recruited as an apprentice and hence the Chapter XIX of IREM (Vol.II) cannot be made applicable to him. In this case the applicant having been appointed on compassionate ground as a trainee apprentice cannot be shown the door without following the laid down procedure. The Respondents admitted in paragraph 13 of their counter that the applicant is not covered under the I.D. Act as he is not an appointee under the Apprenticeship Act, 1961. In the circumstances, the service conditions of the Applicant are deemed to be governed by the Rules [RS (D&A) Rules, 1968] which are applicable to other employees of the Railways and hence any misconduct of the Applicant has to be dealt with as per the said Rules and not by arbitrary rules of hire and fire. This would be against the very object of providing compassionate appointment. This apart, it is seen that the applicant was warned by the

Respondents to be careful in future whereas on the other hand for such incident he has been imposed with a harsh punishment giving a short shrift to the principles of natural justice. But other officers such as Station Master etc. have been excused by imposition of lesser punishment whereas the applicant, a novice, has been visited with the punishment of dismissal from service.

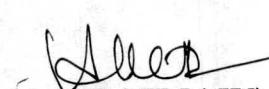
This apart, removal from service without holding enquiry in accordance with Rules has been held unsustainable by the Hon'ble Apex Court in the case of **M.D. University, Rohtak v Ajit Singh Nandal and Another**, (2009) 1 SCC (L&S) 471. It is also seen that the DA imposed the punishment based on the report of the Committee. Though applicant sought copy of the report and other records based on which he was imposed with the punishment he was denied the same on the ground that he was present at the time of enquiry. Similar question came up for consideration before the Hon'ble Apex Court in the case of **State of Karnataka vs. Satrughna Sinha** AIR 1998 SC 3038 in which it was held by the Apex Court that non supply of the said materials violated the principles of natural justice and accordingly nullified the order of punishment imposed on the applicant therein. Non supply of copy of document relied upon to prove the charge vitiates the proceedings (Ref:- **K.Vijayalakshmi vrs. Union of**

India (1998 SCC (L&S) 1124). In the case of **Central Bank of India Ltd v Prakash Chand Jain**, AIR 1969 SC 983 and **Ministry of Finance and another v S.B.Ramesh**, 1998 (2) SLJ 67 (SC) it has been held that 'the principle that a fact sought to be proved must be supported by statements made in presence of the persons against whom the enquiry is held and the statement made behind the back of person charged is not to be treated as substantive evidence, is one of the basic principles which cannot be ignored. Further it is settled that no statement recorded behind the back of person can be made use of against him in a proceeding unless the person who is said to have made that statement is made available for cross examination. Though the applicant has been visited with the punishment of removal without any regular departmental enquiry, as it appears from record, before doing so no personal hearing was afforded to him as provided in the Rules (Ref: **Ram Chander vrs. Union of India and others**- AIR 1986 SC 1173). Failure to give reasons amounts to denial of justice. Giving reasons is a fundamental principle provided in the Rules and fortified by various decisions of different Courts including this Tribunal. Even the Appellate Authority rejected the appeal of the applicant without spelling out any reason.

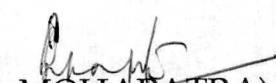


8. For the aforesaid reasons, in no circumstances the order under Annexure-6 or the order under Annexure-8 of the Appellate Authority rejecting the appeal of the Applicant can be justified being contrary to Rules and various judge made laws. Hence, both the order at Annexure-6 & A/8 are hereby annulled. Applicant should be reinstated in service forthwith, of course, without any back wages. However, liberty is granted to the Respondents, if they so like to proceed against the applicant in accordance with Rules and in case any proceedings are drawn up against the applicant that should be completed within a period of 6 (six) months from the date of issuing of the charge sheet to the Applicant.

9. In the result, with the observation and direction made above, this OA stands allowed. No costs.



(A.K. PATNAIK)
Member(Judl)



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