

91

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 66 of 2008

Cuttack, this the ~~01st~~ day of April, 2011

Maddula Rama Rao 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?

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

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

10
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.66 OF 2008

Cuttack this the *01st* day of March, 2011

CORAM:

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE
MEMBER

AND

HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

...

Maddula Rama Rao, aged about 41 years, S/o. late
M.Bangarayya, presently residing At-Raly Qtr.No.3/20,
PO/PS-Titligarh, Dist-Bolangir

...Applicant

By the Advocates:M/s.A.kanungo, S.Sen, S.K.Kar & C.Nayak

-VERSUS-

1. Union of India represented through General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist-Khurda
2. Chief Operation Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist-Khurda
3. Addl.Divisional Railway Manager (ADRM) Waltair, Waltair Division, East Coast Railway, Visakhapatnam
4. Divisional Railway Manager, Walgtair Division, Waltair, East Coast Railway, Visakhapatnam
5. Sr.Divisional Operation Manager, Waltair, Waltair Division, East Coast Railway, Visakhapatnam
6. Sr. Divisional Operation Manager, Sambalpur Division, East Coast Railway, At/PO/Dist-Sambalpur

...Respondent

s

By the Advocates: Mr.S.K.Ojha,SC

ORDER

HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER:


This is the 2nd round of litigation by the applicant before this Tribunal. Earlier, the applicant had approached this Tribunal in O.A.No.448/2006 challenging the order of the

disciplinary authority dismissing him from service as well as the order of rejection by the appellate authority against which he preferred a Revision which was pending before the Revisionary Authority. While the matter stood thus, in compliance with the interim direction of this Tribunal issued in the O.A No. 448/2006., the Revisional Authority, reduced and modified the punishment of dismissal imposed by the Disciplinary Authority as upheld by the Appellate Authority, to that of reversion to the post of TNC in scale Rs.3050-4590 (RSRP) with a direction to draw pay at the minimum of the scale of pay, i.e., Rs.3050/- affecting his seniority and treating the period from dismissal to reversion as "dies non". Taking in to consideration of the aforesaid development, the O.A.No.448/2006 was disposed off vide order dated 7.12.2007 as under:

"The O.A. is thus disposed of as become infructuous. The applicant, if so advised, may file a fresh application within the ambit of Act and Rules".

Hence, the applicant has moved this Tribunal in the present O.A. challenging the legality and validity of the order of reversion dated 11.6.2007 (Annexure-A/11) of the Revisional Authority inter alia, seeking the following relief;

- i) Direction and/or directions be issued quashing the order of punishment under Annexure-11 declaring the same as illegal, arbitrary and contrary to law.



ii) Direction and directions be issued to restore the applicant to the post of Goods Guard with all the arrear and consequential benefits.

2. The genesis of the case is that the applicant while working as Goods Guard under the Respondent-Railways, was proceeded against under Rules 6 to 11 of Railway Servants (D& A) Rules, 1968, due to unauthorized absence from duty. After a preliminary enquiry, the Inquiry Officer submitted his report basing upon which the Disciplinary Authority (Resp No.5) passed the order of dismissal from service against the Applicant. The said punishment having been upheld by the Appellate Authority, the applicant preferred a petition, in consideration of which the Revisional Authority reduced and modified the punishment, as indicated above, vide Annexure-A/11 dated 11.06.2007 which is the subject matter of challenge in the present O.A.

3. Respondent-Railways have filed their counter opposing the prayer of the applicant. In the counter, it has been submitted by the Respondent-Railways that the allegations of the applicant regarding non-supply of required documents and not to permit him to engage defence counsel are false and fabricated. During inquiry held on 23.12.2003, the applicant had admitted that no further documents were necessary and he is satisfied with the proceedings. According to them, the applicant has accepted the

charges leveled against him without any dissent. It has been submitted that the applicant has never indicated anywhere, even in the appeal memo or in the revision petition that the leave was sanctioned for the alleged period and he cannot be punished for the alleged allegation. According to Respondents, there being compliance of the principles of natural justice at every stage of the proceedings, the Tribunal should not interfere with the matter and the O.A. being devoid of merit is liable to be dismissed.

4. It was contended by Learned Counsel for the Applicant that leave having been sanctioned in respect of alleged unauthorized period of absence, the punishment inflicted treating the said period as unauthorized absence amounts to mala fide and total non-application of mind. The inquiry having been conducted more than three years of the issuance of charge sheet, that too completed at the preliminary stage without the documents being exhibited and witness examined, the same is vitiated as there has been complete violation of the principles of natural justice & reasonable opportunity is never given for hearing. There being no presenting officer appointed to prosecute the case, the inquiry officer acted as a prosecutor as well as judge and therefore, the inquiry is completely vitiated. The order under Annexure-A-11 is a non-speaking and mechanical one which shows the total non-

application of mind and that the punishment of reversion is a product of mala fide and disproportionate.

On the other hand Mr.Ojha, Learned Standing Counsel appearing for the Respondents has submitted that after issuance of charge sheet applicant has submitted his explanation on 24.9.2002 and at the same he asked some documents which were supplied to him later on. After receipt of such demanded documents, applicant submitted another explanation on 20.5.2003 in which while admitting his fault for remaining absent unauthorizedly has prayed to excuse. During enquiry held on 23.12.2003, the applicant has specifically admitted before the IO that he has received all the documents listed in charge memo and also submitted explanation on 26.9.2002. He also accepted the charge framed against him and unequivocally submitted that he does not require any more documents and the assistance of Defence Counsel. By placing reliance on the decision of the Hon'ble Apex Court in the cases of **State of Punjab and others v Charanjit Singh, (2003) 2 SCSLJ 524** and **Maan Singh v UOI & Ors, (2003) 1 SCSLJ 329**, it was submitted by Mr. Ojha, Learned Standing Counsel for the Respondents that sanction of leave cannot take away the right of the Respondents to proceed in disciplinary proceedings. Similarly, it was submitted by him that on the sole ground of delay,

disciplinary proceedings cannot be vitiated and also appointment of PO not being obligatory but discretionary in nature, non-appointment of the PO cannot also be a ground to vitiate the order of punishment imposed on the applicant for his unauthorized absence from duty. Further contention of the Respondents' Counsel is that in absence of any prayer for quashing the order of the DA imposing the punishment of dismissal and upheld by the Appellate Authority, in case the prayer to quash the order of Revisional Authority is allowed, the Applicant will be out of employment and the Tribunal cannot go beyond the prayer made by the Applicant in the OA. In this connection, by relying on the decision of the Hon'ble Apex Court in the case of **Gyan Mandir Society v Ashok Kumar**, AIR 2010 SC 1548 and the Railway Board instruction No. E (D&E) 70-RG 6-4 dated 20.10.1971, Respondents' Counsel while opposing the prayer of the applicant has prayed dismissal of this OA.

5. We have considered the rival submission of the parties and perused the materials placed on record including the disciplinary proceedings file produced by Mr. Ojha, Learned Standing counsel appearing for the Respondents. We have also gone through the rejoinder filed by the Applicant and the notes of arguments filed by the Respondents' Counsel.

6. The contention of the applicant that he had been issued with charge memo (Annexure-A/1) on the ground of alleged unauthorized absence from duty, in response to which, he submitted his explanation and representations dated 24.9.2002 (Annexure-A/2 series), stating therein for supply of listed documents under Annexure-III to the charge memo, based on which the charges were sought to be proved, conducting an inquiry, supply of additional documents and nomination of defence counsel etc. While the matter stood thus, the applicant was transferred to Waltier Division & again he received a letter dated 5.5.2003 (Annexure-A/3) from Sr. Divisional Operation Manager, Waltair (Resp No.5) asking for an explanation on the SF-5 issued by the Resp. No.6. Therefore he again sent a reply to the Resp. No.6 with a copy to Resp. No.5 vide Annexure-A/4 dated 20.5.2003, referring to his earlier explanation and representations dated 24.9.2002 as at Annexure-A/2 series, with a prayer to withdraw the imputations made against him in the charge memo. Thereafter Inquiry Officer was appointed to enquire into the charges vide Annexure-A/5 dated 26.5.2003 who conducted the enquiry without making him available the documents and ensuring appointment of the PO. Hence, the order of punishment imposed on him is not sustainable. We see no force in the above

submission of the Applicant. Because from the records of the disciplinary proceedings we find that during first hearing conducted on 23.12.2003, the Applicant deposed before the IO that **"He accepts the charges framed against him. He does not need any document and assistance of defence counsel."** In view of the allegation of the applicant that the punishment is not sustainable as the same was issued without supplying him the documents is not sustainable as it is settled principle of law that where the delinquent admitted his charge in such an eventuality, even the enquiry is not necessitated [**HJimachal Pradesh Road Transport Corporation and another v Hukam Chand**, (2009) 2 SCC (L&S) 615]. This apart merely non-supply of document cannot ip-so-facto vitiate the enquiry. The delinquent must establish as to how non-supply of any of the documents prejudiced him. Unless prejudice is shown or proved, plea of violation of natural justice for non supply of documents is not sustainable as held by Hon'ble Apex Court in the cases of **Chandrama Tewari v Union of India & Others**, 1987 (Supp) SCC 518; **State of UP and others v Ramesh Chandra Mangalik**, (2002) 3 SCC 443; and in the case of **Pathrella v Oriental Bank of Commerce**, (2007) 1 Supreme Court Cases (L&S) 224. In the case of **U.P. State Spinning Co. Ltd v R.S.Pandey and another**, 2006 SCC (Labour & Service) 78,

the Hon'ble Apex Court has gone to the extent of holding that non-supply of **enquiry report** before acting on the same by the Disciplinary Authority will not vitiate the punishment unless specific prejudice is shown by the delinquent. As it appears from record, the Applicant participated in the enquiry without raising objection for non-supply of document and therefore, is estopped from raising this objection at later stage as held by the Hon'ble Apex Court in the case of National High School, Madras v Education Tribunal.


7. Law is well settled that the Tribunal is not a court of appeal over the decision of the authorities holding a departmental enquiry against an employee. The Tribunal is concerned 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 not 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, it is not the function of the Tribunal to review the evidence and to arrive at an independent finding on the evidence. The Tribunal interferes where the authorities have held the proceedings against the

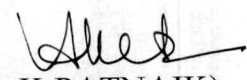
delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision taking into consideration extraneous to the evidence and the merits of the case 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. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the Tribunal. Keeping in mind the above principles set out by the Hon'ble Apex Court, we see no reason to interfere in the matter.

8. However, remaining absent without leave for long periods was clearly regrettable and unfortunate. No establishment can function if it allows its employees to behave in such a manner. The unauthorized absence of the applicant is not in dispute. In the above premises, the Hon'ble Apex in very many cases have upheld the order of punishment of termination imposed by the authority but in the present case, the Revisional Authority has taken a

lenient view and modified the order of punishment of dismissal to that of reversion to the post of TNC in scale of Rs.3050-4590/- (RSRP) with direction to draw pay at the minimum of the scale of pay i.e. Rs.3050/- affecting his seniority and treating the period from dismissal to reversion as dies non.

9. When the factual scenario is examined in the background of the legal principles set out above, the inevitable conclusion is that none of the points canvassed by the Applicant in support of the relief claimed in this OA warrants interference in this OA. Hence for the reasons recorded above, this OA stands dismissed by leaving the parties to bear their own costs.


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


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