

3

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

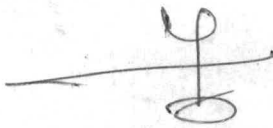
ORIGINAL APPLICATION NO.512 OF 2010
CUTTACK THIS IS THE 24th DAY OF SEPT., 2010

A.K. Sahoo..... Applicant
Vs.
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)
ADMINISTRATIVE MEMBER


(M.R. MOHANTY)
VICE-CHAIRMAN

4

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.512 OF 2010
CUTTACK THIS IS THE 24th DAY OF SEPT., 2010

CORAM:

HON'BLE MR. M.R. MOHANTY, VICE-CHAIRMAN
HON'BLE MR. C.R. MOHAPATRA, ADMN. MEMBER

.....
Sri A. K. Sahoo, aged about 42 years, S/o- Sri J. Sahoo working as Supervisor (P.Way) under Sr. Section Engineer (P.Way)/Talcher reiding at Qr. No. Block II/A, near Railway Colony, P.O. Talcher, Dist-Angul.

..... Applicant

By the Advocate(s) Mr. Achintya Das,

Vs.

1. Union of India, represented through the General Manager, East Coast Railway, Samanata Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
2. Sri Ranjit Yadav, The Commissioner of Railway Safety, Eastern Circle, Kolkata, Pin-700001.
3. The Additional Divisional Railway Manager, E.Co. Railway, Khurda Road, Khurda, Pin-752050.
4. Sr. Divisional Engineer (Central), Eco. Rly., Khurda Road, Jatni, Khurda,
5. Sri S. Srinivasa Rao, Inquiry Officer & Asst. Divisional Engineer, Dhenkanal, E.Co. railway, P.O /Dist-Dhenkanal.

..... Respondents

By the Advocate(s)..... Mr. S.K. Ojha



ORDER
(Oral)

O.A. No.512/2010
24.09.2010

HON'BLE MR. M.R. MOHANTY, VICE-CHAIRMAN

Heard Mr. Achintya Das, Ld. Counsel appearing for the Applicant and Mr. S.K. Ojha, Ld. Standing Counsel for the Railways (to whom a copy of this O.A. has already been supplied) and perused the materials placed on record.

2. Applicant was transferred from Sompeta to Talcher during June, 2006. Long thereafter, during Decembr, 2008, there were an accident between Baruva and Sompeta and upon the Report (dated 18.02.09) of enquiry by Commissioner of Railway Safety/Eastern Circle/Kolkata) a Major Penalty Charge Sheet was served on the Applicant on 15.06.09. After the Departmental Enquiry, a copy of the Enquiry Report was supplied to the Applicant on 24.12.2009 and he submitted a representation on 08.01.2010. Punishment (of reduction to lower grade for 3 years) having been imposed on the Applicant on 22.01.2010, he preferred an Appeal on 02/08.03.2010; wherein he also prayed to stay the punishment (dated 22.01.2010) till disposal of the Appeal. It is the case of the Applicant that, for the reason of the information supplied (under RTI Act' 2005) by the Divisional Railway Manager(Engg.) of E.Co. Railway at Khurda Road (by the communication dated 10.07.2009) he (Applicant) could not have been held responsible long after his transfer from Sompeta. By way of filing this O.A. (on

Y
O

08.09.10 under Section 19 of the Administrative Tribunal's Act, 1985, the Applicant has prayed as under:-

- " (i) To quash the charge sheet under Annexure-A/1; report of the IO under Annexure-A/4 and the order of punishment under Annexure-A/6
- (ii) To direct the Respondents to grant the Applicant all his service and financial benefits retrospectively;
- (iii) To allow the OA with costs;
- (iv) To pass any other order/orders as deemed fit and proper."

Applicant has also made the following interim prayers in the Original Application:-

"Pending final decision on this O.A., the Hon'ble tribunal may graciously be pleased to stay the order of punishment under Annexure-A/6."

3. Mr. Ojha, Ld. Standing Counsel for the Railways has pointed out that since it is the positive case of the Applicant that his Appeal dated 02.03.2010 is still pending un-disposed of with the Appellate Authority/ Respondent No.3, this case is premature; as the Appellate Authority can go into all aspect of the matter in terms of Rule of the Railway Servants (D&A) Rules 1968. He has taken us through the Rule 22(2) of Railway Servants (D&A) Rules of 1968; which reads as under:-

"22(2). CONSIDRATION OF APPEAL:

- (1) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider-

- (a) Whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
- (b) Whether the findings of the disciplinary authority are warranted by the evidence on the record; and
- (c) Whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders—
- i. confirming, enhancing, reducing or setting aside the penalty, or
 - ii. remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case.

Provided that —

- i. the Commissions shall be consulted in all case where such consultation is necessary;
- ii. if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of Rule 6 and an inquiry under Rule 9 has not already been held in the case, the appellate authority shall, subject to the provisions of Rule 14, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 9 and thereafter on a consideration of the proceedings of such inquiry make such orders as it may deem fit;
- iii. if the enhanced penalty which the appellate authority proposes to impose, is one of the penalties specified in clauses (v) to (ix) of Rule 6 and an inquiry under Rule 9 has already been held in the case, the appellate authority shall, make such orders as it may deem fit; and
- iv. subject to the provisions of Rule 14, the appellate authority shall —
 - (a) where the enhanced penalty which the appellate authority proposes to impose, is the one specified in clause (iv) of Rule 6 and falls within the scope of the provisions contained in sub rule (2) of Rule 11; and
 - (b) where an inquiry in the manner laid down in Rule 9, has not already been held in the case, itself hold such inquiry

8

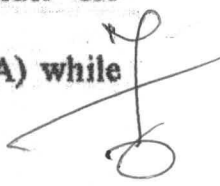
- 5 -

or direct that such inquiry be held in accordance with the provisions of Rule 9 and thereafter, on a consideration of the proceedings of such inquiry, pass such orders as it may deem fit; and

- (v) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of Rule 11, of making a representation against such enhanced penalty."

4. On the other hand, Mr. Achintya Das, Ld. Counsel appearing for the Applicant has pointed out that the Applicant in his Appeal dated 02.03.2010 raised all the grounds and also prayed for stay of the penalty order dated 22.01.2010 till disposal of the Appeal; as every adjudicatory authority (like the Appellate Authority of the Applicant) has got an inherent power to pass interlocutory order, and that, although six months have elapsed in between, the Appellate Authority has neither disposed of the Appeal nor has passed any interim protection order and, by stating so, Mr. Achintya Das, Ld. Counsel appearing for the Applicant has prayed to direct the Appellate Authority to dispose of the Appeal (of the Applicant) within a stipulated time and to stay the penalty order till disposal of the said Appeal.


5. Having heard the Ld. Counsel for the parties, we hereby dispose of this case; by remitting the matter to the Respondents (especially to Respondent No.3) to consider the grievances of the Applicant (as raised in the present OA) while

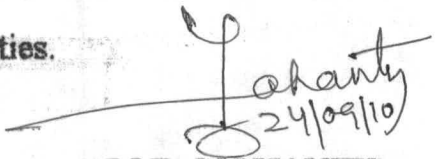


considering his Appeal and pass a reasoned order (on the Appeal) within a period of 30 days from the date of receipt of copy of this order, under intimation to the Applicant. Until then the penalty order dated 22.01.2010 (against which Appeal has been preferred) shall remain stayed.

6. Send copies of this order to the Respondents (together with the copies of this O.A) by Registered Post, at the cost of the Applicant. Mr. A. Das, Ld. Counsel appearing for the Applicant undertakes to deposit the required postages in course of the day.

7. Free copies of this order be also send to the Applicant and the Ld. Counsel appearing for the parties.


(C. R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(M.R. MOHANTY)
VICE-CHAIRMAN