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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.828 of 2011

Cuttack this the 07th day of Aug', 2014

Ganesh Pradhan...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *Yes*
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ? *Yes*


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.828 of 2011

Cuttack this the 01st day of Aug, 2014

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HON'BLE SHRI A.K.PANAİK, MEMBER(J)

HON'BLE SHRI R.C.MISRA, MEMBER(A)

Ganesh Pradhan
Aged about 32 years
S/o. Gopal Pradhan
Village-Budhipadar
PS-Loisingha,
Dist-Bolangir
At present at-Muniguda
Dist-Rayagada

...Applicant

By the Advocate(s)-Mr.B.Satpathy

-VERSUS-

Union of India represented through

1. The General Manager
East Coast Railway
Rail Vihar,
Chandrasekharpur
Bhubaneswar
Dist-Khurda
2. Divisional Railway Manager
East Coast Railway
Sambalpur Division,
At/PO/Dist-Sambalpur
3. Additional railway Manager
Sambalpur
At/PO/Dist-Sambalpur
4. Sr.Divisional Signal & Telecom Engineer
East Coast Railway
Sambalpur,
Dist-Sambalpur

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5. Asst.Signal & Teoecom Engineer
East Coast Railway,
Titlagarh
Dist-Balangir
 6. J.P.Naik, Enquiry Officer, SSE(Tab) of Enquiry Officer
East Coast Railway,
Sambalpur
At/PO/Dist-Sambalpur

...Respondents

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

ORDER

R.C.MISRA, MEMBER(A):

Undraped facts of the matter are that while working as Helper-II at Muniguda Station under Section Engineer (Signal)/Titlagarh under Sambalpur Division, applicant was issued with a charge sheet vide Memorandum dated 2.8.2006, in contemplation of major penalty proceedings. The Articles of Charge are as under:

- i) Shri Ganesh Pradhan, Helper-I/MNGD, under SE/Sig/TIG has manhandled Sri S.P.Gouda, JE/Sig-II/MNGD at MNGD station on date, 13.07.06 at about 10.45 Hors.
- ii) Shri Ganesh Pradhan while manhandling JE/Sig/II/MNGD was unauthorized absent from duty. He is unauthorized absent since 17.01.06 to till date.

Thus, he has violated Rule 3-1(ii) & (iii) of Rly. Servants Conduct Rules, 1966 & there by rendered himself liable for disciplinary action under Rly. Servant (D&A) Rules, 1968.

2. In the above backdrop, although the applicant was placed under suspension with effect from 21.7.2006, but the suspension order was revoked on 31.7.2006. It reveals from the record that on the alleged



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incident of manhandling, an FIR was lodged against the applicant on 13.07.2006 before GRP/Rayagada and he having surrendered himself before the learned SDJM, Rayagada was released on bail on 25.7.2006. However, the applicant did not file written statement of defence against the charge sheet issued to him nor did he attend day to day inquiry and in effect, inquiry was concluded ex parte holding the charges framed against the applicant justified. Applicant was supplied with copy of inquiry report to submit his written statement. In the meantime, he approached this Tribunal in O.A.No.508 of 2007 praying for quashing the charge sheet dated 2.8.2006 and also for direction to Respondents to pay subsistence allowance as due and admissible to him for the period he was placed under suspension. This Tribunal disposed of the said O.A. vide order dated 24.1.2008 in the following terms.

“Considering the submissions made by the parties, liberty is given to the applicant to submit his presentation with reference to Annexure-A/11 within a period of 15 days. Thereafter, the Disciplinary Authority will take immediate action to conclude the proceedings as per Rules/Law. The applicant should produce the non-engagement certificate within a period of 15 days and thereafter, subsistence allowance, as admissible under Rules, should be released within next seven days by the concerned authority.

With the above observations this Original Application stands disposed of without going into the merits of the case”.

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3. Applicant, in compliance with the aforesaid direction of the Tribunal submitted reply to the inquiry report vide Annexure-4 dated 4.2.2008, the focused points of which run thus:

"On perusal of the enquiry report, with my little knowledge, I find that the enquiry officer has not discussed any evidence nor has given any reason as to how the charge(s) against me are proved by him. At best some discussion has been made with regard to the charge of unauthorized absence. Not a single word has been spelt out with regard to the manhandling of Sri Gouda by me. Thus, it can be concluded that the charges have not been proved and that there is no material available with the Department to prove the charges.

Hence the report, which has been supplied to me could not prove any of the charges, as such I am to be exonerated and the charges are to be dropped.

In view of the above, I would request your honour not to accept the enquiry report and to exonerate me from the charges".

4. The Disciplinary Authority, after taking into consideration all the facts and circumstances, issued order dated 19.03.2008 imposing punishment of removal of the applicant from service. In the fitness of things, the relevant part of the speaking order reads as under.

"As per the inquiry report in ref.3, the charges framed against Shri Ganesh Pradhan are justified.

The Inquiry Officer has intimated and fixed inquiries 05 times that Sri Ganesh Pradhan has not attended any of the enquiries, which indicates his non-cooperation with the inquiry.

In reply to the inquiry report, Shri Ganesh Pradhan vide his letter under ref.2 brings to knowledge that he was aware of the intimation



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sent for inquiry by the inquiry officer. But since subsistence allowance was not paid, his purse did not permit him to take a journey from Muniguda to Titilagarh. Bill for subsistence allowance was not made due to non-receipt of non-engagement certificate from Sri G.Pradhan himself.

There is no mention of any attempt made to communicate any information via post or telephone or any other method (which can be managed without subsistence allowance) to the inquiry officer during the period of inquiry. Thus, he has not co-operated with the railway management for inquiry into the charges framed against him.

It may be put forward that apart from not attending the inquiry, Sri G.Pradhan has also not made any reply to the SFS(ref) issued to him nor has any excuse regarding it.

The inquiry officer further states that Sri Ganesh Pradhan was absent unauthorisedly from 17.1.06, which is evident from the records of the office of SE/S/TIG.

The inquiry statement made by the witness to manhandling of Sri S.P.Gouda are recorded which have evidence to the incident.

As a disciplinary authority in this case, I have exercised the power conferred under RS(D&A) Rules, 1968 and decided to impose punishment of "Removal from Rly.Service with immediate effect".

5. Though the appeal preferred by the applicant is not enclosed to the O.A., yet, applicant appears to have filed appeal dated 15.5.2008 and 9.6.2010 addressed to the Additional Divisional Railway Manager, East Coast Railway, Sambalpur Division, a reference to which has been made vide Annexure-6 to the O.A. which itself is in the nature of appeal dated 18.8.2010. There appears to be no consideration and disposal of



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the same by the Appellate Authority as referred to above. However, Sr. Divisional Signal & Telecom Engineer, East Coast Railway, Sambalpur styling some representation dated 09.06.2010(as referred to above) preferred by the applicant as mercy appeal, has issued orders 12.7.2012 vide Annexure-7, the gist of which is reproduced as under.

"It is seen that the disciplinary authority had imposed punishment "Removal from service with immediate effect".

The appellate authority also agreed to the punishment imposed by the disciplinary authority. Hence your appeal is not considered once again".

6. While the matter stood thus, on a review petition being moved by the applicant dated 19.10.2010(copy not annexed), Additional Railway Manager, in the office of Divisional Railway Manager, E.Co.Railway, Sambalpur vide Annexure-8 dated 28.11.2010 has disposed of the review petition as under.

"Under the circumstances, I find that revision petition filed by the C.O. does not merit consideration. More so because the offences committed are very serious. Any leverage may spread indiscipline amongst other Govt. Servants. It may also convey wrong messages to others. Therefore, I also upheld the punishment imposed by Disciplinary Authority and upheld by Appellate Authority, i.e., removal from service".

7. Aggrieved with the above orders, applicant has approached this Tribunal seeking the following relief.

"...to admit this Original Application and call for the records and after hearing both the parties set aside the order of punishment under Annexure-1.



...Respondents may be directed to allow all the service benefit as is applicable for the said post from time to time.

...Any other relief the Hon'ble Tribunal may deem fit and proper".

8. The grounds urged by the applicant in support of his claim are :
(i) the proceedings suffer from infirmity of violation of the principles of natural justice, (ii) the order of the Disciplinary Authority does not deal with all the points raised in the written reply to the report of the I.O, (iii), punishment of removal from service is harsh, (iv) the Appellate Authority also without appreciating the points raised in the appeal, confirmed the order of the D.A., and (v) there has been procedural lapse in the conduct of the disciplinary proceedings.

9. In the counter-reply, Respondent-Railways have strenuously objected to the relief sought by the applicant in the present O.A. They have at the out set submitted that despite repeated notice to the applicant, he did not attend inquiry and therefore, there was no other alternative than to conclude the enquiry ex parte. While not refuting the sequence of facts as narrated above, they have submitted that there has been no procedural lapse on the part of the Disciplinary Authority during the course of the proceedings nor has there been violation of the principle of natural justice. According to Respondents, the findings of the Disciplinary Authority have been confirmed by the Appellate Authority vide order dated 12.07.2010(A/7 of O.A.). Against the order of Appellate Authority, the applicant submitted mercy appeal to A.D.R.M., Sambalpur for consideration. As revisional authority, ADRM considered

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the petition and disposed it of vide order dated 23.11.2019^{oio}. It is also clarified that applicant was 'removed' from service and not 'dismissed'. Order of dismissal is harsher than the order of removal. Further, the counter affidavit mentions that the offences committed by applicant is of a serious nature. He along with one Chapadhari Bag scolded as well as assaulted one Sri S.P.Gauda, JE (II) Sig. with lathi and other seapons. In all, the Respondents have submitted that there being no procedural irregularity nor there being violation of the principles of natural justice, the Tribunal should not interfere with the order of punishment imposed by the Disciplinary Authority as well as the order confirming the said punishment by the Appellate Authority and the Reviewing Authority.

10. Both applicant and Respondents have filed their written note of submissions. In the written note of submission filed by the applicant, it has been submitted that the punishment of removal is shockingly disproportionate to the gravity of offence committed. Besides, it has been urged that the report of the I.O. holding the charges proved is perverse and based on no evidence. A new and important point, that has been urged by the applicant is that one Chapadhari Bag who was proceeded against along with the applicant for the self same charges and also visited with the same punishment of removal from service on conclusion of the disciplinary proceedings, has been reinstated in his former post whereas applicant has been discriminated against. To establish this plea, applicant has annexed to the written note of submission, an illegible Office Order dated 27.2.2009 issued by the Asst.

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Personnel Officer, in the Office of Divisional Railway Manager(P), E.Co.Railways, Sambalpur, purporting to reinstate Chapadhari Bag in service, and order dated 19.03.2008 by which he was removed from service. In this regard, applicant has also relied on the decision in [2010] 5 Supreme Court Cases 783 – State of Uttar Pradesh & Ors. Vs. Raj Pal Singh, wherein it has been held by the Hon'ble Supreme Court that ***"when charges are same and identical in relation to one and the same incident, to deal with the delinquents differently in the award of punishment, would be discriminatory"***.

11. On the other hand, Respondents, in their written note of submission, while reiterating their earlier view point, have placed reliance on some decisions of the Hon'ble Apex Court in the matter of disciplinary proceedings. They have cited a decision in [2009] 2 SCC (L&S) 729, wherein it has been held by the Hon'ble Supreme Court that ***"mere abuse to the superior can be termed as serious offence and the order of dismissal is justified"***. It is further mentioned in the written note of submission that under the statute, no second show cause notice is required before imposing punishment, in view of the settled law laid down by the Hon'ble Apex Court in the case of Chairman, Ganga Yamuna Gramin Bank vs. Devi Sahai (AIR 2009 SC 2126). Citing the decision of the Hon'ble Apex Court in the case of State Bank of Bikaner & Jaipur vs. Sri Prabhu Dayal Grover 1995(2) SCSLJ 375, Respondents have contended that where Disciplinary Authority is in agreement with

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inquiry report, there is no necessity of passing a speaking order. ~~in the~~
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12. We have heard the learned counsel for both the sides and perused the pleadings.

13. It is observed that applicant has not annexed to the O.A. the appeal preferred by him before the Appellate Authority against the order of punishment of removal from service, which puts a spanner to know what exactly were the points raised therein and not considered by the Appellate Authority. Viewed from this, the O.A. suffers from non-substantiation of facts germane to the issue. Be that as it may, in the matter of disciplinary proceedings, the Tribunal cannot reappreciate the evidence as an Appellate Authority over the decision of the Disciplinary Authority nor can it dictate terms for conduct of the proceedings in a manner so as to arrive at a particular conclusion which it thinks fit and proper. Law is well settled that the scope of interference by the Tribunal in the matter of disciplinary proceedings is very limited and it can only interfere if there has been violation of the principles of natural justice or the conclusion arrived at is perverse and based on no evidence.

14. Having come across the arguments of both the sides as enumerated above, we do not find that there has been violation of the principles of natural justice nor the findings arrived at by the I.O. or D.A. are perverse and based on no evidence. Applicant has not pointed out as to what precisely is the nature of procedural irregularities or the violation of the principles of natural justice. To this extent, we ^{fail to} come

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across ourselves any such irrefutable proof to have been adduced by the applicant for our appreciation. Judged from this, we are not impressed with such submission made by the applicant in this regard. However, on a cursory view on the order passed by the Appellate Authority vide Annexure-7, which is quoted above, we cannot convince ourselves that the said order is a reasoned and speaking one. Although we do not have the appeal petition preferred by the applicant so as to evaluate the application of mind by the Appellate Authority to the points urged by the applicant, but, at the same time, ex facie, we cannot but call this order a bald and sketchy one. However, as indicated above, vide Annexure-6 dated 18.8.2010, applicant had addressed a representation styling it to be an appeal against the order of punishment issued by the Disciplinary Authority, wherein, he had indicated thus.

“Mr. Ch^apadhari Bag, who was also penalized and punished in the same case along with me, has already joined the job at BAMR under SE(Sig) RAIR on 27.2.2009 O.O.No.S&T/2009 though the case is in the same stage of proceeding as of me.

From the above your august office will appreciate that the departmental proceeding was conducted in an arbitrary manner and without giving adequate opportunity to me to defend my case properly”.

15. This particular appeal/representation appears to have not been considered by the Additional Divisional Railway Manager, although an appeal/representation dated 19.10.2010 stated to have been filed by the applicant at a later stage has been disposed of vide Annexure-8 dated 28.11.2010, by the Addl. Railway Manager. In the counter reply,



Respondents have not categorically submitted as to what is the fate of this particular appeal and/or representation.


16. For the foregoing reasons, we are not inclined to interfere with the order of punishment as imposed by the Disciplinary Authority and confirmed by the Appellate Authority. However, we cannot brush aside the fact that one Chpadhari Bag, who had been proceeded against along with the applicant for the delinquency in the same incident and visited with the same punishment of removal from service in the same line of consideration as that of the applicant, has evidently been reinstated to service by an O.O.No.S&T/14/2009 dated 27.02.2009, copy of which is enclosed to applicant's written notes of submission.. This being the sole grievance of the applicant, which admittedly has not been addressed by the Respondents, we conclude that the action of the Respondents in this regard is not above board. Again, this attitude and approach of the authorities may unleash discontentment and disgruntlement amongst the employees who are similarly placed. In this connection, it is to be noted that the Additional Railway Manager, by his communication dated 28.11.2011(Annexure-8) made to the applicant, observed that ***"Any leverage may spread indiscipline amongst other Govt. Servants. It may also convey wrong messages to others"***. This observation is quite discountenanced with his action in so far as reinstatement of Shri Bag is concerned. The judgment of the Hon'ble Apex Court in the case of State of U.P. vs. Raj Pal Singh has already been discussed. Discriminatory



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treatment to employees placed in the same circumstance is anathema to good administration.

17. For the discussions held above, while we do not feel inclined to interfere with this matter in so far as disciplinary proceeding is concerned, keeping in mind the peculiar facts and circumstances of the case, we remit this matter back to the Respondents, particularly, Divisional Railway Manager, E.Co.Railway, Sambalpur Division)(Respondent No.2) to consider the matter as to why applicant cannot be reinstated to service in application of standard of consideration based on which Shri Chapadhari Bag has been reinstated to service, as pleaded by the applicant in his representation dated 18.8.2010 (Annexure-6 of the O.A.) and pass a reasoned and speaking order within a period of sixty days from the date of receipt of this order.

In the result, the O.A. is disposed of as above. No costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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