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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 543 of 2009

Cuttack, this the ~~30th~~ day of November, 2011

Y.Rama Rao

.... Applicant


-v-

Union of India & Others

.... Respondents

FOR INSTRUCTIONS

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


(A.K.PATNAIK)
Member(Judl)


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

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No. 543 of 2009

Cuttack, this the 30th day of November, 2011

CORAM:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

AND

THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

Sri Y.Rama Rao, Ex.Peon, Office of the Senior Divisional Commercial Manager, East Coast Railway, Khurda Road, At/Po.Jatni, Orissa, PIN-752050 aged about 48 years, permanent address: At/Po.Ramachandrapur, Dist. Srikakulam, Andhrapradesh.

.....Applicant

By legal practitioner: M/s.J.Sengupta, G.Sinha, D.K.Panda,
A.Mishra, Counsel.

-Versus-

1. Union of India represented by General Manager, East Coast Railway, Railkunj, Chandrasekharpur, Bhubaneswar, Orissa.
2. Divisional Railway Manager, East Coast Railway, Khurda Road, At/Po.Jatni, Dist.Khurda.
3. Additional Divisional Railway Manager, East Coast Railway, Khurda Road, At/Po.Jatni, Dist.Khurda, Orissa, Pin-752 050.
4. Senior Divisional Commercial Manager, East Coast Railway, Khurda Road, At/Po.Jatni, Dist. Khurda, Orissa, Pin-752 050.
5. Assistant Commercial Manager, East Coast Railway, Khurda Road, At/Po.Jatni, Dist. Khurda.

.....Respondents

By legal practitioner: Mr.P.C.Panda, Counsel

ORDER

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

The Applicant, a catering bearer, was issued with a Memorandum under Annexure-A/1 dated 26.02.2004 alleging therein that the applicant had committed gross misconduct in

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remaining absent unauthorizedly from his duty since 18.6.2002.

The disciplinary proceeding arising out of this memorandum ended with the imposition of punishment under Annexure-A/5 dated 21-08-2008. Full text of the order of the DA under Annexure-A/5 reads as under:

" I have carefully gone through the charges, the enquiry report and relevant records of the case in detailed. Briefly the charges levelled against you are that you were absent from duty w.e.f. 18.6.2002. The charges levelled against you, were enquired by Sri S.C.Kar, Inquiry Officer cum Ch.CI/KUR. You have attended the enquiry⁶ and I feel that reasonably opportunity has been given to defend your case. During the course of enquiry, the charge of unauthorized absence from duty has been proved. You have also admitted your absence from duty due to family problems and mental disturbance since your son had left house and his whereabouts were not found. The enquiry report was supplied to you on 10.12.2007 but no representation has been received till date. It appears, you have nothing to state in this regard. It is revealed from the records that you are habituated to remain absent without intimation.

You have resumed duties on 07.12.2007 after the PMCs for the absent period have been countersigned and declared fit by Railway doctor. After joining duties, your performance is satisfactory and I have taken a lenient view for your recent performance and devotion to duty as a public servant. In consideration of the above facts and gravity of the offence, I have decided to impose a major penalty by reducing your existing pay by one stage in the present scale of pay for a period of one year with cumulative effect. The imposed penalty will affect your future increment of pay after expiry of the punishment. However, the period of absent from 18.6.2002 to 06.12.2007 is treated as leave without pay. Appeal against the penalty lies with DCM/KUR within a period of 45 days from the date of receipt of this notice."

2. Thereafter, the Sr. Divisional Commercial Manger, ECoRly, KUR Cum Revisionary Authority issued notice for enhancement of the punishment imposed on the applicant vide notice under Annexure-A/6 dated 12.02.2009. The notice under Annexure-A/6 reads as under:

"In terms of para 25 of the R.S. (D&A) Rules, 1968 the undersigned have decided to undertake suo moto review of the subject case.

In connection with unauthorized absence from duty from 18.6.2002 to 06.12.2007 and the major penalty charge sheet issued against you, ACM as DA has disposed off the case awarding the punishment of reduction of your pay by one stage for a period of one year with cumulative effect vide punishment Notice No. SDCM/D&A/UA/YRR dtd.21.08.2008.

While going through the case in detail, it is seen that the punishment imposed by the DA does not commensurate with the gravity of misconduct committed by you i.e. unauthorized absence from duty for a prolong period of 05 years, 05 months and 18 days.

In consideration of above, it is proposed to enhance the punishment imposed by the DA to that of Compulsory Retirement which will meet the ends of justice. As such, you are hereby given an opportunity to submit your representation as to why the proposed punishment of Compulsory retirement will not be imposed.

Your representation should reach the undersigned by 19.02.2009 failing which the case will be disposed off on merits without further correspondence."

3. Applicant preferred his reply under Annexure-A/7 dated 22.2.2009. Thereafter, the Revisionary Authority vide order under Annexure-A/8 dated 02/03/2009 modified the punishment imposed by the DA to that of Compulsory retirement from service w.e.f. 03/03/2009. The Speaking order attached to the letter under Annexure-A/8 of the Revisionary Authority reads as under:

"The undersigned as the Revisionary Authority of this case have conducted Suo moto review of the case in terms of para 25 of railway servants [D&A] Rules, 1968 examined the case in detail and passed observations as under:

- (1) In consideration of gravity of misconduct committed by Sri Y.Rama Rao, Peon i.e. remaining unauthorized absence from 18.6.2002 he was taken up under major penalty charge sheet vide No.SDCM/D&A/UA/YPR dt. 26.2.2004 and in continuation to this period as mentioned in the charge sheet he also continued as unauthorized absentee upto 06.12.2007.

[Handwritten signature]

- (2) His conduct in this case relates to remaining unauthorized absence for a prolong period continuously from 18.6.02 to 06.12.07 i.e. covering a period of 05 years, 05 months and 18 days.
- (3) As per the prescribed provision, the inquiry proceedings have been completed and also it is seen from the case records that all the due opportunities have been properly offered to Sri Y.Rama Rao to defend his case;
- (4) His conduct of unauthorized absence from duty and its frequency is the admitted fact from his own depositions recorded in the preliminary hearing held on 15.09.06 vide his reply to Q. No. 03 and 04 and also vide his reply to Q.No.6 recorded on 04th sitting of regular hearing;
- (5) The above fact has also been further established by the evidences adduced through the depositions of both the prosecution witnesses;
- (6) It is seen from the records that till closure of the inquiry proceedings, Sri Rao has submitted nothing in writing in support of his cause of defence. However, while exploring the true force of natural justice the undersigned by have also taken note of the contentions submitted by Sri Rao in his letter dated 15.9.06 and 13.08.07 addressed to the Inquiry Officer.
- (7) In both the above letters, Sri Rao has mentioned that because of missing of his eldest son of about 20 years, he was mentally physically and financially shocked and could not intimate the situation to the administration. If such situation prevailed over any human being, it may entail consideration on humanitarian grounds, if it deserves merits from other angle also. But in his case there is no such supportive evidence produced by Sri Rao for acceptance of his above contention that it was circumstantial and not of intentional. Moreover, such a major loss of his life should have factual sequences like date of missing, remedial steps taken by him, any of his report to the concerned police authority and also civil authority etc. In the absence of any convincing evidence, it is highly improbable to believe such contention and accordingly the same is found without any merit.
- (8) The reply of Sri Y.Rama Rao to the show cause notice has been submitted in 07 para. The contentions/allegations in para 2 to 6 of his reply are completely evasive and out of afterthought bearing no relevance to the subject case of show cause notice issued under the prescribed provision. Such contention could have thrown proper light to decide the case on merits, if it would have been placed at proper stage of the inquiry proceedings, even during the final stage of personal hearing offered and also availed by Sri Rao from the Disciplinary Authority. But it is seen from the



records of the case, there has been no such submission till the final decision taken by the DA. Even after imposition of the punishment by the DA he has not preferred any appeal in which he could have submitted such points if there were at all. Further the mention of RTI reference holds no relevance in this case. On the above scores, his allegations hold no water.

- (9) The show cause notice was issued as per the proviso under RS [D&A] Rules, 1968 without indication of any such confidential letters of Sr. DPO/KUR and pressure from DRM/KUR which Sri Rao has mentioned in para 1(a) of his representation dated 22.02.2009. Unquestionably, such contention does not fall within the topic of the subject case since there has been no reference/mention to bring to his knowledge for proper representation. The case of this nature is decided on merit basing on the records/documents that have already formed part of D&A proceedings and the aggrieved party should have been given due opportunities in this context as provided under RS [D&A] Rules, 1968. Instead of placing the points of defence in proper form, the indication of any such confidential letter is termed as the sign of imaginary thought and in the absence of factual position in this context, I find such contention of Sri Rao as farfetched.
- (10) Then after examining all aspects of the case as per the above analysis and observations and also the value of natural justice duly honoured in this case. I find no merits in the reply submitted by Sri Rao to the show cause notice. Considering the gravity of his conduct i.e. long unauthorized absence for more than five years which clearly indicates lack of devotion to duty and sincerity and its consequential advance effect on the assigned job as well as upon the working atmosphere of the co employees, I am convinced that the present punishment imposed by the DA does not weight at par with the gravity of his misconduct.

While honouring the value of justice and fair play and also subsistence for livelihood of himself and also the family of Sri Y.Rama Rao in future on humanitarian ground, I am inclined to impose this modified punishment of Compulsory Retirement upon Sri Rao working as Peon. The punishment will take effect from 03.03.09. He is entitled for all settlement dues as permissible under the prescribed provisions."

4. The Applicant preferred appeal under Annexure-A/9

dated 11-03-2009 against the aforesaid order under Annexure-

A/8. But the Appellate Authority rejected and communicated the

reason of rejection to the applicant under Annexure-A/10 dated 07.09.2009. It reads as under:

"I have carefully gone through your appeal dated 11.03.2009 and also all other relevant papers connected with the case file.

Briefly the charge was framed against you for remaining unauthorized absent from duty w.e.f. 18.06.2002 and you also continued as unauthorized absentee upto 06.12.2007 i.e. covering a period of more than five years.

While taking note of all the points raised in your appeal I have also meticulously examined all the papers related thereof. It is seen that all the required due procedures have been followed in the entire D&A proceedings and there is ample evidences on record that all care has been taken in honouring the principle of natural justice.

While observing as per above, I am fully convinced that the decision of Compulsory Retirement taken by the Sr. DCM/KUR as Revisionary Authority is just and proper to meet the ends of justice."

5. Hence by filing the present OA U/s.19 of the A.T. Act, 1985, the Applicant has prayed to quash the order of punishment under Annexure-A/8 dated 02.03.2009 and the order of rejection of his appeal under Annexure-A/10 dated 07.04.2009 with prayer to direct the Respondents to reinstate him in service with all consequential service and financial benefits.

6. The Respondents have filed their counter objecting to the prayer of the Applicant and pleading for dismissal of this Original Application.

7. We have heard Learned Counsel for both sides and perused the materials placed on record. Learned Counsel for the Applicant in course of hearing has taken us through the



notice under Annexure-A/6 to state that as the said notice was issued after six months and that too taking into consideration some period of unauthorized absence other than what is stated in the charge sheet the same is not sustainable. Further he has taken us through the points raised in the reply under Annexure-A/7 vis-à-vis the order of punishment under Annexure-A/8 so also the appeal under Annexure-A/9 vis-à-vis the order of the appellate authority under Annexure-A/10 to state that the orders without meeting/answering the points raised by him are not sustainable in the eyes of law.

On the other hand it was contended by the Respondents' Counsel that charge sheet under Rule 9 of the Rules was framed against the applicant; the matter was duly enquired into, the IO submitted its report holding the charge proved and thereafter the DA imposed the punishment but the Sr.DCM, ECoRly, KUR in exercise of the power under Rule 25(i)(v) of RS, DA Rules, 1968 reviewed the matter *suo moto* and after being convinced that the punishment imposed on the applicant was inadequate to the gravity of the offence committed by him issued notice to show cause. Applicant submitted his reply and on consideration of the reply the Revisionary Authority modified the punishment to that of Compulsory Retirement. Applicant preferred appeal and the


appeal was rejected. Hence it was submitted by the Respondents' Counsel that the proceedings were initiated and conducted in accordance with rules and in compliance of the principles of natural justice. Respondents' Counsel by relying on the decision of the Hon'ble Apex Court in the case of **Union of India and others V Bishamber Das Dogra**, AIR 2010 SC 3769 has submitted that non supply of the inquiry report would not ipso facto vitiate the proceedings. Hence it was submitted by him since there has been no irregularity or illegality in the matter of imposition of punishment no interference is warranted in the matter and, therefore, this OA be dismissed in limine.

8. Applicant's prayer is to quash the order of punishment of compulsory retirement imposed in Annexure-A/8 and the order rejecting his appeal under Annexure-A/10. Leaving aside all other points, it is seen that the applicant was charge sheeted vide memorandum dated 26.2.2004 for his unauthorized absence for the period from 18.06.2002 obviously meaning thereby till 26.2.2004 whereas the revisionary authority issued the enhancement notice for the unauthorized absence period from 18.6.2002 to 06.12.2007 which did not form part of the charge sheet. Although the applicant has stated this point in his reply to the show cause notice but this point has not been dealt with by any of the authorities in the orders impugned



in this OA. Taking into consideration the absence period from 18.6.2002 to 06.12.2007 the applicant was imposed with the punishment of compulsory retirement. This is not in accordance with the law and law is well settled in a plethora of judicial pronouncements that imposition of punishment by taking into consideration extraneous matter is not sustainable. Simultaneously, it is seen that the order of the Appellate Authority is without meeting/answering the points raised by the applicant in his appeal and in short the said order is a bald order. Hence while maintaining the order of punishment imposed by the DA we quash the order under Annexure-A/8 and A/9. The applicant should be reinstated/taken back in service forthwith. The period from 3.3.09 till reinstatement should be counted towards qualifying service. He is not entitled to any back wages on the principles of no work no pay but he would be entitled to notional pay fixation.

9. In the result this OA is allowed to the extent stated above. There shall be no order as to costs.


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


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