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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Date of order: 06-09-2010

PRESENT:

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

In the Matter of

O.A. No.610 /2009

R.R.Dash ... Applicant
Versus
Union of India & Ors. ... Respondents

(For Full details, see the enclosed cause title)

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For Applicant: M/s.G.Rath, N.R.Routray, S.Mishra, T.K.Choudhury, Counsel

For Respondents: Mr.M.K.Das, Counsel

O R D E R

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

Applicant is at present working as Junior Engineer Gr.I (P>Way) under Senior Divisional Engineer (Co.), E.Co.Railway, Khurda Road. By filing this Original Application under section 19 of the A.T. Act, 1985 he seeks to quash the Memorandum of charge dated 23.07.2007 (Annexure-A/1) and the notice of punishment dated 21.08.2008 (Annexure-A/5) and direction to grant him all consequential benefits. The Memorandum of charge under Annexure-A/1 dated 23.7.2007 reads as under:

“Shri R.R.Dash (Designatoin) JE/I/P/KIS (Office in which working under SE/P/CTC hereby informed that the undersigned propose(s) to take action against him under Rule-II of the Railway Servant (Disciplinary and Appeal) Rules, 1986 statement of imputations of misconduct or misbehavior on which actions is proposed to be taken as mentioned above is enclosed.

Sri R.R.Dash, JE-I (P.Way) KIS while appearing the departmental examination on 23.4.2007 for promotion to the post of Section Engineer (P.Way) was detected to have committed the following irregularity.

That in spite of being a responsible senior subordinate, he was found in possession of study materials i.e. IRPWM

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2004 edition in the examination hall while he was appearing the said examination.

By the above act, Sri R.R.Das, JE (P.Way) KIS has failed to maintain absolute integrity and acted in a manner unbecoming of a Railway Servant in contravention of Rule 3.1 (i) & (ii) of R.S (Conduct) Rule-1966 and thereby rendered himself liable for disciplinary action under R.S (D&A) Rules, 1968 as amended from time to time.

Sd/-23/07.2007

Sr.Divnl. Engineer (North)
E.Co.Rly, Khurda Road

Sri R.R.Dah, JE/I/P/KIS is hereby given an opportunity to make such representation, if any should be submitted to the undersigned to reach within 10(ten) days of receipt of this memorandum.

Sri R.R.Dash, JE/I/P/KIS fails to submit the representation within the period specified in para 2 it will be presumed that he has no representation to make an order will be liable to be passed against Sri R.R.Dash, JE/I/P/KIS.

The receipt of this memorandum should be acknowledged by Sri R.R.Dash, JE/I/P/KIS.”

Annexure-A/5 dated 21.8.2008 is the order of punishment. It

reads as under:

“Allegation of charges as Sri R.R.Das, JE Gr.I (P.Way) KIS while appearing the departmental examination on 23.4.2007 for promotion to the post of Section Engineer (P.Way) was detected to have committed the following irregularity.

That inspire of being a responsible Senior Subordinate, he was found in possession of study materials i.e. IRPWM 2004 edition in the examination hall. While he was appearing the said examination.

By the above act, Sri R.R.Das, JE (P.way) KISS has failed to maintain absolute integrity and acted in a manner unbecoming of a Railway servant in contravention Rule 3.1 (i) & (ii) of R.S. Conduct Rule 1966 and thereby rendered him self liable for disciplinary action under R.S. (D&A) Rule, 1968 as amended from time to time.

In your first explanation you stated on 23.4.07. You were at your HQ i.e. at CBT again one corrigendum was issued in view of typographical error on date of examination i.e. on 24.4.07 in place of 23.4.07.

The charge sheet was issued to Sri R.R.Das not JE (P.Way)/CBT or KIS. You did not clarify whether you are Mr.R.R.Das appeared in the SE (P.Way) Examination on 24.4.2007 or not rather tried to prolong the matter.

From your explanation it is quite clear that you did not come to the core issue that is appearing on 24.4.07 and keeping study materials in examination.

As Disciplinary Authority I concluded that you have nothing to say against the above charges.

Hence the following punishment imposed as:-

“Stoppage of increment for the period of 2(two) years and 11 (eleven) months with NCE when it will otherwise be due to you.”

You are to acknowledge receipt of this notice.”

2. This OA was filed on 23.12.2009. Notice was issued to the Respondents by the order of this Tribunal dated 06.01.2010. Despite appearance of the Respondents' Counsel and on his prayer sufficient time was to file counter, no counter was filed by the Respondents. The matter came up to the Bench on 7.7.2010. On the specific prayer of the Learned Counsel for the Respondents to file counter by 20.7.2010, the matter was posted to 23.7.2010. No counter was filed by the Respondents by 20.7.2010 and on the other hand and Mr. Das, Learned Counsel for the Respondents remained on accommodation on 23.07.2010. Therefore, the matter was posted to 26.7.2010. On the insistence of Learned Senior Counsel for the Applicant the matter was heard in part without any counter of the Respondents in presence of Mr. Das Learned Counsel for the Respondents and with his consent and knowledge the matter was fixed to 30.7.2010. On 30.07.2010, Mr. Das, Learned Counsel for the Respondents did not turn up even after pass over was granted by this Tribunal. In view of the above, heard Mr. G.Rath, Learned Senior Counsel for the Applicant and with his aid and assistance perused the materials placed on record and reserved for delivery of orders. After closure of the case and departure of Mr. Rath, Learned Senior Counsel, Mr. Das, Learned Counsel appearing for the Respondents suddenly appeared and wanted to file the counter and accordingly filed the counter without serving copy thereof on the Learned Counsel for the Applicant.

3. In the counter it is the case of the Respondents that the applicant along with others were called for attending the written examination for promotion to the post of Section Engineer (P.Way) held on 24.4.2007.



Applicant along with others attended the said examination on 24.4.2007 at 12.00 hrs to 13.30 hrs. During the course of examination vigilance team from zonal headquarters office had kept surveillance on the conduct of the examination and the Vigilance Team found and seized the IRPWM Book 2004 edition which was in possession of the applicant in the examination hall in the presence of invigilator which was unbecoming on the part of a Railway Servant. Hence disciplinary action under Railway Servants (D&A) Rules was initiated against him under Annexure-1 for holding study materials i.e. IRPWM, 2004 edition in course of examination. In support of appearing at the examination by the Applicant on 24.4.2007 and seizure of the study materials in course of examination by the Vigilance Team, Respondents relied on the report of the Vigilance copy of which is annexed to their counter as Annexure-R/2. On receipt of the memorandum of charge applicant submitted his reply denying to have appeared at the examination on 24.4.2007 and according to him, he appeared at the examination only on 5.9.2007. The Disciplinary Authority considered the reply of the applicant and with due application of mind imposed the punishment of withholding of increments for a period of two years and 11 months with NCE. Applicant preferred appeal. The Appellate Authority on considering the points raised in the appeal with reference to the materials available on record rejected and communicated the reason of rejection. In substance it is the case of the Respondents that there having no merit in any of the contentions of the applicant and this Tribunal being not the appellate authority so as to sit over the decision of the competent authority in the matter of disciplinary proceedings this OA is liable to be dismissed.

4. The contention of the Learned Counsel for the Applicant is that the charge sheet having not been issued in accordance with the Rules in other

words without any imputation of misconduct or misbehavior, the charge is not sustainable and that before imposing the punishment, the Respondents ought to have made enquiry in compliance with the principles of natural justice as provided in sub rule 19 of rule 9 of the Railway Servants (D&A) Rules, 1968. In this connection he has also drawn my attention to the provision of sub rule 19 of Rule 9 of the Rules, 1968. It was contended by Learned Senior Counsel appearing for the Applicant that as the allegation does not come within the purview of the misconduct, by applying the ratio of the decision of the Hon'ble Apex Court in the case **Union of India v R.K.Dhawan**, AIR 1993 SC 1478 the charge sheet is not at all maintainable and accordingly prayed for quashing the same. By relying on the decision of the Hon'ble Apex Court in the case of **V.S.Menon v UOI and Others**, AIR 1963 SC 1161 it was contended by the Learned Senior Counsel for the Applicant that in absence of the ingredients of the relevant rules alleged to have been violated in the charge sheet, the imposition of punishment being bad in law is liable to be set aside and that by relying on the decision of the Hon'ble Apex Court in the case of **Govind Menon v UOI and others**, AIR 1967 SC 1874 it was contended by him that as there was no *prima facie* material for showing misconduct by the applicant the very initiation of the departmental inquiry is not justified. In support of his stand that the charge sheet being vague and unspecific is liable to be set aside, Learned Senior Counsel appearing for the Applicant relied on the decision of the Hon'ble Apex Court in the case of **Sawai Singh v State of Rajasthan**, AIR 1986 (2) SC 316; **Surat Chandra v State of West Bengal**, AIR 1971 SC 752, **State of UP v Mohiammed Sheriff**, AIR 1982 SC 937 and **Savvai Singh v State of Rajasthan**, AIR 1986 SC 995. Further for violation of the principles of natural justice and for imposing punishment without making regular enquiry as provided in the Rules even in minor penalty



proceeding, the proceeding is liable to be set aside, Learned Senior Counsel appearing for the Applicant relied on the decision of the Hon'ble Apex Court in the case of **Canara Bank and others v Debasis Das and others**, (2003) 4 SCC 557 and **O.K.Bhardwaj v. Union of India and others**, 2002 SCC (L&S) 188. By placing reliance on the decision of the Hon'ble Apex Court in the case of **Bongaigaon Refinery and Petrochemicals Ltd and others v Girish Chandra Sarma**, (2007) 2 SACC (L&S) 638 it was contended by Learned Senior Counsel for the Applicant that while others who were found in possession of the incriminating materials were imposed with the lesser punishment of stoppage of pass for the same offence imposition of punishment of stoppage of increment, being discriminatory is not sustainable in the eyes of law. Accordingly, Learned Senior Counsel for the Applicant vehemently prayed for quashing of the entire proceedings taken up against the applicant.

5. After considering the arguments advanced by Learned Senior Counsel for the Applicant with reference to his pleadings, I have gone through the materials placed on record including the materials in support of the contentions raised in the counter by the Respondents. I have also gone through the decisions relied on by the Applicant and the concerned Rules. But I find the decisions relied on by the Applicant have hardly any help to him especially the facts and issues involved in those cases being quite different and distinct. I also do not find any force in the contentions of the Learned Senior Counsel appearing for the Applicant that in each and every minor penalty proceeding the Disciplinary Authority has to conduct inquiry as is required to be undertaken in the major penalty proceedings. However, there was no such request put forward by the Applicant while making his representation to the charge and subsequently also. Rule 11 of the Railway Servants (D&A) Rules, 1968 deals with regard to the procedure for imposing minor penalties. The



sub clause (b) of Clause (1) of Rule 11 of Rules, 1968 clearly empowers the Disciplinary Authority to decide in regard to holding of enquiry in minor penalty proceedings in the manner as provided in sub rules (6) to (25) of Rule 9 but not as a matter of right as it is not mandatory to do so. However, it is seen that it is the specific stand of the Respondents that the applicant had appeared at the examination conducted by them on 24.4.2007. This was strongly denied/refuted by the Applicant from the stage of submission of his reply to the charge sheet. On the other hand in paragraph 5.J it has been stated by the Applicant that “.....for the same alleged offence along with applicant another three similarly situated employees were charge sheeted.....”. Similarly Respondents substantiate their stand of appearing at the examination by the applicant on 24.4.2007 through the vigilance report under Annexure-R/2. It is common practice for obtaining signature from a candidate on the copying materials during the examination. But the Respondents do not substantiate their stand either by producing the seized material or at least the signature portion of the applicant if at all taken by the vigilance team; nor the report submitted by the Vigilance Team. The document enclosed to the counter as Annexure-R/1 does not contain the signature of the Applicant. It is the positive case of the Applicants that the Respondents ought not to have imposed the punishment without conducting regular enquiry in the manner provided in sub rules (6) to (25) of Rule 9. It is trite law in the case of O.K.Bhardwaj (supra) that if the charges are factual and if they are denied by the delinquent employee, an enquiry should be called for even in a case of minor penalty. This is the minimum requirement of the principles of natural justice and the said requirement cannot be dispensed with. The above case relates to an employee of Central Government. He was imposed with the punishment in minor penalty proceeding under Rule 16 of CCS (CC&A)

Rules, 1965 taken up against him. The provision embodied in the said rules is found to be akin to the rule under which the present applicant was proceeded with. In view of the above, in my opinion since the fact of appearing at the examination on 24.4.2007 is in dispute the Respondents ought not to have imposed the punishment without making regular enquiry as provided under sub rule 6 to 25 of Rule 9. In case it is proved that the applicant has resorted to falsehood the allegation against the applicant will be more serious and in case it is proved otherwise the applicant being innocent shall not be visited with any punishment. I was contemplating to impose heavy cost for the casual approach in dealing with the present matter especially in the matter of filing the counter but I refrain from doing so for the reason that although the applicant annexed the order of the Appellate Authority dated 2.12.2009 as Annexure-A/11 he did not pray to quash the same in this OA. But for the reason that the miscarriage of justice would be allowed to perpetuate if this OA is dismissed on hyper technicality for not impugning the order of the Appellate Authority, I hereby quash the order of the Disciplinary Authority at Annexure-A/5, dated 21.8.2008 and remit the matter back to the Respondents so as to ensure that any order of punishment may be imposed on the applicant only after causing enquiry in the manner provided in sub rule 6 to 25 of Rule 9. This would not cause prejudice to either of the parties. The Applicant should cooperate with the enquiry so that the Respondents can conclude the enquiry within a period of 120 days from the date of receipt of this order. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.


(C.R.Mohapatra)
Member (Admn.)