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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 92 of 2010
Cuttack, this the ^{23rd} day of September, 2011


Sunil Kumar Roujtray 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? X


(A.K.PATNAIK)
Member(Judl)


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

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No. 92 of 2010
Cuttack, this the 23rd day of September, 2011

CORAM:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)
AND
THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

.....
Sri Sunil Kumar Routray, aged about 42 years, S/o. Padma Charan Routray, at present working as ECRC-I, under S.S.R. Cuttack, East Coast Railway, At/Po. College Square, Dist. Cuttack.

.....Applicant

By legal practitioner: M/s.Kalayan Pattnaik
R.K.Samal,S.Patnaik,
K.K.Mohapatra, Counsel.
-Versus-

1. Union of India represented through its General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist.Khurda.
2. Divisional Commercial Manager, East Coast Railway, Khurda, At/Po. Khurda, Dist. Khurda.
3. Senior Divisional Commercial Manager, East Coast Railway, Khurda, At/Po/Dist. Khurda.
4. Chief Reservation Supervisor, East Coast Railway, Cuttack Railway Station, At/Po/Dit. Cuttack.

.....Respondents

By legal practitioner: Ms.S.L.Patnaik, Counsel

ORDER

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

The prayer of the Applicant is to quash the punishment order under Annexure-7 and the order of the Appellate Authority dated 17.2.2009 being illegal, arbitrary and contrary to Rules and Law.

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2. Respondents filed their counter contesting the case of the Applicant. According to the Respondents on receipt of reply on the memorandum of charge under Rule 9 of the Railway Servants (D&A) Rules, 1968, the matter was duly enquired into. The IO in his report dated 08-02-2008 held Article I and II as proved and Article III partly proved. Thereafter, following the procedure provided in the Rules, the DA imposed the punishment of reversion reverting the applicant from the post of ERC I scale of pay of Rs.5000-8000/- to the post of ECRC pay scale of Rs.4500-7000/- with a pay of Rs.4500/- for a period of five years with cumulative effect which will meet the ends of justice. The imposed penalty will affect his future increments in pay. However, on consideration of the appeal preferred by the Applicant, the Appellate Authority modified the punishment to that of reversion in grade i.e. from the post of ERC I to ECRC with pay Rs.4500/- for a period of 03 years without postponing the future increments i.e. the punishment shall not affect his future increments and seniority on restoration. In substance it is the case of the Respondents that since there was no violation of the Rules and principles of natural justice were strictly complied with, interference of this Tribunal is not warranted. Hence they have prayed to dismiss this OA.



3. Heard the rival submissions of the parties and perused the materials placed on record.
4. It is seen that the IO in his report held Articles I, II as proved & II as partly proved. Based on the report of the IO the DA imposed the punishment whereas the Appellate Authority in his order at Annexure-12 held the Articles II & III as not proved but agreed with the findings of the IO I respect of charges at Article I only. Accordingly modified the punishment to the above effect. The substance of the charge at Article-I was that the applicant had kept more money than what was declared by him in the register as private cash. The finding of the Appellate Authority in respect of Article I is quoted herein below:

"Against the declared private cash of Rs.50/-, the CO produced an amount of Rs.8070/- as detected by the checking team.

In addition to the supportive evidences from the prosecution side, this inflated amount over the declared personal cash is the admitted fact because of its physical recovery from the possession of the CO and the existence of such extra amount has been further strengthened by the statement of Shri B.N.Pattnaik, CRS/CTC as PW-V recorded in the form of answer to Qr.No.25 and 28 during inquiry held on 10.05.2007.

In respect of the extra amount of Rs.8020/- excluding the declared amount of Rs.50/-, the CO has pleaded in his answer to Qr.No.268 deposed on 14.11.2007 that the amount of Rs.8020/- was received from his brother at 09.30 hrs on 22.11.2005 to hand over the same to his friend as a balance amount out of total deposit of Rs.19, 390/- towards TATA AIG Scheme vide MR No. 0234636 dated 16.11.2005. If this existence of such extra amount was clean in

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transaction, then the CO should have also such intention to observe the extant provision in recording the same in the relevant register and I find no cogent reason as to why he failed to record the same in the relevant register despite clear instruction from the CRS. As such, all the pleas taken by the CO defending his cause holding no relevant in this case are consequently found farfetched, hence not acceptable. Thus with the progress of acquiesces as per the above observation, the CO is found guilty of the charges framed vide article-I."

5. We find that the Appellate Authority sustained the charge levelled in Art.I on the basis of the statement made by Shri B.N.Pattnaik, CRS/CTC as PW-V on 10.05.2007. We have gone through the Qr.No.25&28. It reads as under:

Q25. Please recall and tell whether there was any discussion with Sri S.K.Routray with you regarding any extras cash with him beyond the amount mentioned in the personal cash declaration register?	Ans. I have gone to booking office/CTC to deposit cash of previous day during 08.30 to 10.00 hrs. Sri Routray has informed me over phone that he has got some extra money other than the cash declared in the personal cash declaration register. I have advised him to mention the same in the cash declaration register which I will I will counter sign only after returning from booking office and verification of the same.
Q.28. Please recall and say what was the extra amount Shri Routray has told you other than the personal cash maintained in the personal cash declaration register?	Ans. He has not specifically told me the exact extra amount with him but he has appraised me about the availability of extra amount with him.

6. It was not controverted that the amount of Rs.8020/- was received by the applicant from his brother at 09.30 hrs on

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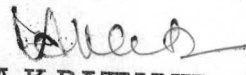
22.11.2005 to hand over the same to his friend as a balance amount out of total deposit of Rs.19, 390/- towards TATA AIG Scheme vide MR No. 0234636 dated 16.11.2005. From the above it is clear that possession of the amount of Rs.8020/- was within the knowledge of the authority but he has been punished for not mentioning the amount in the register. It is trite law that if the punishment imposed is based on no evidence, disproportionate and/or shocks the conscience of the Tribunal it would appropriately mould the relief. No cogent reason has been assigned by the Respondents either in the counter or in course of hearing so as to reach a conclusion other than the irresistible conclusion that the punishment was not proportionate to the gravity of offence committed by the Applicant. In view of the above, we hold that the modified punishment imposed by the Appellate Authority for not mentioning the amount in the register is grossly disproportionate to the gravity of offence allegedly committed by the Applicant. Hence, we quash the punishment imposed by the Appellate Authority and as a consequence we hold that the applicant is entitled to all consequential service and financial benefits retrospectively. While reaching the conclusion we have also taken note of the decision of the Hon'ble High Court of Orissa relied on by the Learned Counsel for the Applicant, in the case of **Jatabar**

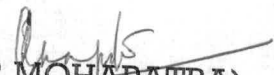
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Behera V Manager, Reserve Bank of India and another dated 22.11.1991 in OJC No. 1907 of 1987 confirmed by the Hon'ble Supreme Court of India in SLP (Civil) No. 4825 of 1992 dated 30.3.1992. The Respondents are hereby directed to comply with the above direction within a period of 90 days from the date of receipt of copy of this order.

7. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.


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


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