

24

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

OA No. 78 of 2009
Cuttack this the 03rd day of July, 2012

Sri Parsu Applicant
Versus
UOI & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? Y^{es}.
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not? Y^{es}.

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

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

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

OA No. 78 of 2009
Cuttack this the 03rd day of July, 2012

CORAM

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

.....

Sri Parsu, aged about 65 years, S/o.Late Jayakrushna, At-Patharkata, PO-Baradi Harikunda, PS-Banapur, District-Khurda.

.....Applicant
By legal practitioner- M/S.D.P.Dhalsamanta,
P.K.Bhera, Counsel

-Versus-

1. Union of India represented through its General Manager, East Coast Railways, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Divisional Railway Manager, East Coast Railways, Khurda Road Division, At/Po.Jatni, Dist. Khurda.
3. Additional Divisional Railway Manager, East Coast Railways, Khurda Road Division, At/Po.Jatni, Dist. Khurda.
4. Divisional Engineer, East Coast Railways, Khurda Road, Khurda.
5. Assistant Engineer (South), S.E. Railways, Khurda Road, Khurda presently redesignated as Assistant Divisional Engineer, East Coast Railways, Balugaon, Dist. Khurda.

....Respondents

By legal practitioner –Mr. M.K.Das, Counsel.

.....



O R D E RC.R.MOHAPATRA, MEMBER (A):

The factual matrix of this case reveals the following incontrovertible facts.

✓

2. The Applicant was working as Sr. Trackman under SE (P.Way)/KAPG; Vide order dated 01-07-1998 he was placed under suspension w.e.f. dated 17.01.1996 which has not been challenged either prior to filing this OA or even in this OA; Memorandum of Charge dated 18.08.2000 under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 on the allegation of his unauthorized absence from duty with effect from 27-01-1996 till the date of the charge sheet was issued; The matter was enquired into and the IO after holding two sittings of the enquiry submitted its report holding the charge as proved on 03-04-2003; In letter dated 05.04.2003, applicant was allowed seven days time to submit his reply as to why he should not be removed from service; In order dated 12.4.2003 the applicant was removed from service with immediate effect; On 31.05.2003, Applicant preferred appeal against the said order of removal from service;

1

Applicant reached the age of superannuation (60 years w.e.f. 31-10-2003; After expiry of near about FIVE years [REDACTED] on 24.10.2008, he filed OA No.410 of 2008 before this Tribunal challenging his order of removal from service; On 31-10-2008 this Tribunal disposed of OA No. 410 of 2008 at the admission stage directing Divisional Engineer (South), ECoRly,KUR –Appellate Authority to dispose of the appeal of the applicant within a period of one month, if not already disposed of hitherto and Appeal of the Applicant was disposed of on 05.12.2008. Further, the Applicant was admitted to jail being convicted and kept under jail custody at Puri in connection with Criminal Case No. ST 23-122/89 U/s. 302/140/148/307/34 IPC.

3. In the above back drop, being aggrieved by the order of rejection of his appeal, the applicant has brought the matter in this second round of litigation filed U/s.19 of the Administrative Tribunals Act, 1985 and has sought the following relief in this OA:

“8.1. That the order of removal dated 12.04.2003 (Annexure-A/4) and order

[REDACTED]

dated 5.12.2008 (Annxure-A/6) be quashed;

8.2. That direction be issued to the respondents to grant the consequential benefit to the applicant since the applicant has crossed the age of superannuation;

8.3. Any other order/order(s) as it would deem fit and proper be granted to give complete relief to the applicant."

4. Respondents filed their counter, in which while denying the contentions have strongly opposed the granting of the relief sought by the applicant in this OA. The Respondents submit that the IO held the applicant guilty of unauthorized absence with effect from 27-01-1996 till 18.8.2000 (the date of issue of charge sheet) and during the said period he was undergoing imprisonment in view of the sentence awarded by the competent court of law in Criminal Case No. ST 23-122/89 U/s. 302/140/148/307/34 IPC. Despite adequate opportunity after receipt of counter filed by the Respondents, the Applicant has not filed any rejoinder.

5. Heard respective arguments advanced by Mr. D. P. Dhalsamanta, Learned Counsel for the Applicant

and Mr. M.K. Das, Learned Counsel appearing for the Respondent-Railway and also perused the records. Mr. Dhalsamanta's contention is that (i) though charge sheet was served on the applicant for his unauthorized absence from 27-01-1996, the DA imposed the punishment of 'removal' from service on the ground of his conviction in Criminal case from 13.6.1996; (ii) copy of the report based on which punishment of 'removal' was awarded by the DA was not supplied to the applicant prior to imposition of the punishment and the same was served on the applicant's counsel in court – wherefrom it could reveal that the absence of the applicant was due to his admission in jail custody at Puri; (iii) Applicant being an illiterate person, was led to sign on a blank paper by the IO on 03-04-2003 and based on which the applicant was held guilty of the charge by the IO; (iv) Disciplinary Proceeding is not an empty formality. The Prosecution has to prove the charges after examining their witnesses. In this case the prosecution has neither proved the charge through any witness or documents. In this regard he has placed reliance

on the decision of the Hon'ble Apex Court in the cases reported in **2008 (2) SCC (L&S) 698; 2006 (6) SCC (L&S) 919** and **2009(1) SCC (L&S) 398;** (v) Rules and instructions in the matter of departmental proceedings were not adhered to in proper perspective and copy of the report of the IO and other documents were not supplied to the applicant during enquiry – failure to do so the entire proceedings are nullified and for this he has placed reliance on the decision of the Hon'ble Apex Court in the cases of **Monisankar V UOI, 2008 (1) SCC (L&S) 819 & 2008(2) SCC (L&S) 698;** (vi) he has also brought to our notice copy of the Railway Board's instruction to substantiate that the applicant having not been given opportunity to submit his written brief and written brief of the prosecution having not been supplied, punishment imposed on the applicant is not sustainable. In addition to the above, the order of the DA & AA is not a speaking one and the order of the DA is not in accordance with the Rules.

On the other hand, Mr. M.K.Das, Learned Counsel appearing for the Railway-Respondent contended that since the Applicant was convicted and remanded to custody in a Criminal case U/s.302, 307 etc. IPC, he is not entitled to continue in service on being released after undergoing imprisonment notwithstanding any order whether valid or invalid passed terminating the service of the Applicant. Mr. Das, Learned Counsel for the Respondents, by placing reliance on various decisions of the Hon'ble Apex Court emphasized that as the applicant has confessed his guilt during enquiry before the IO and has not shown anywhere how he was prejudiced due to non supply of the report of the IO, the infirmity pointed out is hardly of any help to him. He further submitted that mere technical irregularity due to non-observance of the procedure prescribed will not vitiate the disciplinary proceedings unless any positive case of prejudice is established by the Applicant due to such violation of procedures prescribed especially when the applicant was convicted in a Criminal Case and sentenced to Rigorous

Imprisonment of life though this was reduced to five years at the level of the Hon'ble Apex Court. The Applicant also suffered five years rigorous imprisonment from 1996 which he had suppressed and during enquiry the applicant resorted to falsehood by stating that his unauthorized absence was due to sickness but the truth is otherwise. It is further contended by Mr. Das that taking into consideration the report of the IO, conviction of the applicant in criminal case, his conduct, after allowing him due opportunity, the disciplinary authority in a well reasoned order imposed the punishment of removal from service which was subsequently upheld by the Appellate Authority. In view of the above, by placing reliance on the following decisions, Mr. Das, Learned Counsel appearing for the Respondents has prayed that as there has been no injustice caused to the applicant and principle of natural justice has been followed by issuing notice before punishment, the Tribunal may not ~~interference~~ in the matter and prayed to dismiss this OA. The decisions relied on by him are as under:

1. Union of India and others -Vs- Subba Rao, 2008 (4) 262 (DB);
2. Subash Ch. Das Vrs State 2010(1)OLR 127;
3. Oriental Insurance Co. Ltd. -Vs- S.Balakrishna, 2001(L&S) 2379;
4. Asma Parveen Vrs Alligarh Muslim University and Ors, 2001(L&S) 2379;
5. Haryana Financial Corn. Vrs Kailash Ch. Ahuja; 2008(2) SCC (L&S) 789;
6. Ex Constable Ramvir Singh Vrs Union of India & Ors, 2009(1) SCC (L&S) 581;
7. 2010(1)(L&S) 212;
8. Sayeed Rahimuddin, 2002 SCC (L&S) 251.

6. Arguments were heard *in extenso*. We have also gone through the documents, Rules & Procedures prescribed for initiating disciplinary proceedings against employees of the Railway and the decisions produced/relied on by respective parties.

7. We may state that as far as Disciplinary Proceeding is concerned, there is no doubt that the same has to be conducted within the parameters laid down in the RS (Discipline and Appeal) Rules, 1968 and the

instructions issued by the Railway Board thereon in which certain guidelines have been prescribed for progressing such quasi judicial proceedings. It is a fact that IO has submitted a sketchy report and has taken the admission of guilt of the Applicant as a ground of proving the charge leveled against him. But at the same time, it appears he had been influenced by certain extraneous material like conviction of the applicant leading to Jail Custody since 27-01-1996 after being convicted in the Criminal Case. It appears that the IO has digressed from his domain possibly because of the gravity of the sentence in the Criminal Case. The Disciplinary Authority also placed reliance on this aspect of the case even if the same was not incorporated in the charge sheet as a possible cause of absence. Similarly, the Appellate Authority who was required to restrict his consideration within the four corners of the charge sheet as well as findings of the IO's report excluding the extraneous material available with the IO in his personal capacity glossed over this aspect and endorsed the orders of the DA. Thus, we cannot but hold

L

that the Disciplinary as well as Appellate Authority being overwhelmed with the fact of conviction of the applicant and consequential jail custody in the Criminal Case lost sight of their responsibility in discharging quasi judicial function arising out of the Memorandum of Charge under which the Applicant was taken to task for his unauthorized absence. Hence we are of the view that the Disciplinary proceedings which started with the issuance of Memorandum of charge for unauthorized absence lost its track in the meanderings of the Criminal Case culminating in conviction and jail custody of the Applicant.

8. While we note with dismay the lackadaisical manner in which the case of the disciplinary proceedings against the applicant has been dealt with by the Respondents, we cannot close our eyes to the fact that an employee resorting to falsehood suppressed the information before the IO as well as DA and tried to hide the fact of retention in jail from 1996 submitting that he was absent because of sickness. His assertion that he being

an illiterate person was lured to sign on the blank paper does not cut much ice when we find that he has fought his Criminal Case right upto to the Apex Court to get relief from Rigorous Imprisonment for life. Be that as it may, we find that the prescribed procedures have not been scrupulously adhered to/followed by the Respondents in the disciplinary proceedings. But the applicant has nowhere brought to our notice how such non adherence caused prejudice to him in getting justice in the quasi judicial proceedings.

9. We are confronted with an avoidable but intricate situation due to the peculiarity of the case and the irresponsible manner of handling the same by the Respondents. We find that the applicant was placed under suspension (possibly deemed suspension) and would have remained under suspension till the order of punishment of removal from service vide order dated 12.4.2003. Subsequently, on 31.10.2003 he reached the age of superannuation.

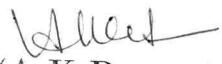
10. It is crystal clear from the records we well as from the arguments advanced by the parties in course of hearing that the applicant had **undergone RI for five years after being convicted U/s. 302 & 307IPC** since 1996 and this appears to be the plausible reason as to why the Applicant remained absent from his duty unauthorizedly. The plea of sickness for such a long period and suppression of fact i.e. non-reporting of his conviction to his superior authority are facts which cannot be brushed aside.

11. In the ordinary situation, had the applicant not crossed his age of superannuation, the case could have been remanded to the Appellate Authority for ordering de novo enquiry with reference to the charge sheet issued to the Applicant. This proposition is not feasible at this juncture. While we would like to set aside the orders of the DA and AA we do not want to be seen as protectors of a Criminal.

12. In view of the above, we quash the orders of the DA (Annexure-A/4 dated 12.04.2003) and the AA (Annexure-A/6 dated 05.12.2008). While doing so, we also

set the Appellate Authority (Respondent No.4) at liberty to deal with the matter in accordance with Rules/Law as the quashing of the orders at Annexure-A/4 & A/6 will not automatically entitle the Applicant to get any of the consequential benefits since the Applicant has been convicted in Criminal Case U/S 302, 307 IPC and had undergone RI for long five years.

13. With the aforesaid observation and direction this OA stands disposed of. No costs.


(A.K. Patnaik)
Member(Judicial)


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