

9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.8 OF 2009

Cuttack this the ~~22nd~~ day of ~~July~~, 2011
August,

D.K.Kar Applicant

Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?


(C.R.MOHAPATRA)
MEMBER (ADMN.)


(A.K.PATNAIK)
MEMBER (ADMN.)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.8 OF 2009

Cuttack this the ~~02nd~~ day of ~~July~~, 2011

CORAM:

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE
MEMBER
AND
HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

...

D.K.Kar, aged about 39 years, Son of Sri Debendra Kumar Kar, working as Head Goods Clerk under Senior Divisional Commercial Manager, E.co.Rly., Khurda Road residing at Sriram Nagar, near Telephone Bhavan, Dist-Khurda, PIN-752055

...Applicant

By the Advocates: Mr.Achintya.Das
D.K.Mohanty

-VERSUS

1. Union of India represented through its General Manager, E.co.Railway, Chandrasekharpur, Bhubaneswar, PIN-751023
2. The Senior Divisional Commercial Manager, East Coast Railway, Khurda Road, Jatni, Dist-Khurda, PIN-752 050
3. The Divisional Commercial Manager, East Coast Railway, Khurda Road, Jatni, Khurda, PIN-752050
4. The Divisional Operations Manager, East Coast Railway, Khurda Road, Jatni, Khurda, PIN-752 050
5. Sri N.Padhi, Inquiry Officer, Office of Sr.Dy.General Manager, E.Co.Railway, Bhuban3eswar, PIN-751023

...Respondent

s

By the Advocates:Ms.S.L.Pattnaik

...

Alc

ORDER

HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER:

1. Applicant, while working as the Station Master at Charbetia had been proceeded against under Railway Servant (Discipline & Appeal) Rules, 1968 on the following article of charge.

"Sri D.K.Kar while working as SM/CBT on 19.10.2006 recorded the time of loading completion of partly placed BRN rake as 15.00 hrs. whereas the loading was actually seen continuing at 16.30 hrs. of the same date. Sri Kar deliberately did this to help the party evade the demurrage charges thereby causing pecuniary loss to the Railway as detailed in the statement of imputation.

By the above act Sri D.K.Kar, SM/KUR(Ex.SM/CBT) failed to maintain absolute integrity and acted in a manner unbecoming of a Railway servant in contravention of Rule 3.1(i) & (ii) of Railway Service Conduct Rules, 1966 and thereby rendered himself liable for disciplinary action in terms of Railway Servants (D&A) Rules, 1968 as amended from time to time".

2. In the above background the inquiry was conducted & the applicant submitted his written statement of defence against the proposed punishment, whereafter, the Disciplinary Authority, vide Annexure-A/5 dated 12.6.2008 imposed punishment on the applicant, as under.

V.A.K

"Considering the gravity of the offence which has been proved during enquiry and to meet the ends of justice and fair play, I have decided to reduce you from the present grade of Rs.5000-8000/-(RSRP) to the initial grade of Rs.4500-7000/-(RSRP) with a pay of Rs.5375/- for a period of 05(five) years without loss of seniority after expiry of the punishment period".

3. Against the above punishment, the applicant preferred appeal vide Annexure-A/6 dated 18.7.2008, in consideration of which the Appellate Authority vide Annexure-A/7 dated 22.9.2008 modified the punishment as under.

"In view of the above, I have decided to modify the penalty by reducing your existing pay in the present scale of Rs.5000-8000/-(RSRP) by one stage for a period of one year with cumulative effect which will meet the ends of justice and fair play. Other conditions of service remain as it is".

4. Aggrieved with the above orders of the Disciplinary Authority as well as Appellate Authority, the applicant has moved this Tribunal in the present Original Application seeking for the following relief:

- i. To quash the order dated 22.09.2008 under Annexure-A/7.
- ii. To direct the Respondents to pay the Applicant all his service and financial benefits retrospectively".

Val

5. On being noticed, the Respondent-Railways have filed their counter opposing the prayer of the applicant. Besides elaborately stating the facts leading to issuance of charge memo & subsequent inquiry, they have also taken the stand that there being no infringement of any rule or procedure in conducting disciplinary proceedings by providing adequate opportunities to the applicant at every stage of the proceedings, the O.A. filed by the applicant holds no merit for consideration of this Tribunal. According to them, there being no merit, the O.A. is liable to be dismissed.

6. Applicant has filed rejoinder to the counter.

7. We have heard Shri Achintya Das, learned counsel for the applicant and Ms.S.L.Pattnaik, learned Addl. Standing Counsel for the Respondents and perused the materials on record.

At the out set, we may record that it is settled law that the Departmental proceeding is quasi-judicial in nature. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider whether relevant piece of evidence has been taken into consideration and irrelevant facts

V.A.C.

excluded there from, while proving misconduct against an employee. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal is thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meets the requirements of burden of proof, namely preponderance of probability. If on such evidence, the test of doctrine of proportionality has not been satisfied, the Tribunal is within its domain to interfere. Doctrine of unreasonableness is giving path to the doctrine of proportionality. Also it is well settled law that the Tribunal is empowered to consider the question as to whether the evidence led by the Department was sufficient to arrive at a conclusion of guilt or otherwise of the delinquent officer. Keeping in mind the aforesaid dicta, now we are to examine whether on the face of the pleadings and materials placed before us, the conclusion reached by the Appellate Authority is justified; if not what relief the applicant would be entitled to. The doctrine of fairness is complementary to the principle of natural justice, which quasi-judicial authorities are bound to observe. The administrative action is to be just on the test of fair play and reasonableness. It

✓ A.C.

is within the domain of the Tribunal where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The decision must come in the spirit and with the sense of responsibility supported by evidence to meet the ends of justice. If the punishment is in outrageous defiance of logic and based on no evidence or the evidence is such no reasonable man can come to such finding interference by the Tribunal is permissible as ruled by the

8. During the course of hearing the sole point that turned attention of the Tribunal is the findings recorded by the Appellate Authority while modifying the punishment imposed by the Disciplinary Authority, the relevant portions of which are as under:

“...It is also noticed that an amount of Rs.9000/- has been realized as demurrage charges for 03 hours vide MR dt. 21.10.2006 and as such no pecuniary loss to the Railways.

✓
Ae

...It was also stated by the prosecution witness that **there was no scope for the charged official to help party evade the demurrage charges deliberately.**

... After thorough perusal of the speaking order, I feel the impugned penalty is harsh and disproportionate to the offence since **no pecuniary loss is involved in the case".**

9. Since the whole object of issuing charge memo to the applicant is aimed at his omission and commission that he deliberately helped the party to evade the demurrage charges thereby causing pecuniary loss to the Railways has been held by the Appellate Authority that there has been no pecuniary loss as an amount of Rs.9000/- has been realized as demurrage charges for 03 hours vide MR dt. 21.10.2006 as well as the deposition of the prosecution witness has been taken note of by the appellate authority to the extent that there was no scope for the charged official to help party evade the demurrage charges deliberately, in our considered view, no charge did exist and therefore, it was incumbent on the part of the Appellate Authority to rather absolve the applicant of the charge of misconduct than to modify the punishment contrary to his own findings. In other words, the applicant having held not to have been guilty of the charge, it was

✓ Dr

incumbent on the part of the Appellate Authority only to drop the matter after absolving him of the charge and nothing else as it is noticed that the modified punishment imposed by the Appellate is contrary to the finding he himself given on the charge. Not allowing the applicant a scope of personal hearing before passing the order, by the Appellate Authority has been taken as one of the grounds by the Learned Counsel for the Applicant in course of hearing. The Hon'ble Supreme Court in the case of Ramchander v Union of India and others, AIR 1986 SC 1173 while considering a matter dealing with imposition of punishment on a Railway employee, in interpreting Rule 22(2) of the Railway Servants (D&A) Rules, 1968 have held as under:

"It is of utmost important after the 42nd Amendment as interpreted by the majority in the Tulsiram Patel case (1985) 3 SCC 398 that the appellate authority must not only give a hearing to the Govt. servant concerned, but also pass a **reasoned order dealing with the consideration raised by him in the appeal**. Reasoned decisions by the Tribunals such as the Railway Board in the present case will promote public confidence in the administrative process. **An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the authorities regarding the final order that may be passed on his appeal. Considerations of fair play and justice also require that such a personal hearing should be given**".

10. In view of the above, the matter from any angle, the order issued by the Appellate Authority at Annexure-A/7 does

Wll

not have any standing. Hence we quash the impugned order at Annexure-7 issued by the Appellate Authority and remit the matter back to the said Appellate Authority with direction to issue appellate orders afresh, keeping in view the observations made by us above, within a period of sixty days of the date of communication of this order.

11. With the above observation and direction the O.A. is disposed of. No costs.


(C.R. MOHAPATRA)

ADMINISTRATIVE MEMBER


(A.K. PATNAIK)

JUDICIAL MEMBER

BKS