

10
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No.257 of 2010
Cuttack this the 7th day of March, 2012

CORAM:

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

.....
Nagendra Prasad, aged about 45 years, S/o. late
Narayan Prasad, At/PO-Kalyani Nagar, Dist-Cuttack,
Ex-Station Superintendent/DMNJ, WAT Division

...Applicant

By the Advocates: M/s.D.R.Patnaik, N.Biswal,
N.S.Panda & Miss L.Patnaik.

-VERSUS-

1. Union of India represented by it's General Manager,
East Coast Railway, Chandrasekharpur, Bhubaneswar,
Dist-Khurda
2. Union of India represented by it's Chief Operating
Manager, East Coast Railway, Bhubaneswar, Dist-
Khurda
3. Additional Divisional Railway Manager, East Coast
Railway, Waltair
4. Senior Divisional Operating Manager, East Coast
Railway, Waltair

...Respondents

By the Advocates:Mr.S.K.Ojha, SC

.....
ORDER

C.R.MOHAPATRA, MEMBER(A):

Invoking the jurisdiction of this Tribunal,
applicant in this Original Application has sought the
following relief.

- i) To direct the Respondents to restore the
applicant to the post of Station

L

- ii) Superintendent with all financial, consequential and service benefits.
- iii) To direct the Respondents to grant all consequential benefits.
- iv) To direct the Respondents to restore the applicant to his former post before initiation of de novo enquiry.
- v) To pass such other order/direction as deemed fit and proper
- v) To allow the Original Application.

2. Briefly stated, the facts of the matter are that applicant, while working as Station Superintendent, Waltair Division, East Coast Railways, having been proceeded against departmentally had been imposed with the punishment of reversion vide order dated 15/21.4.2004. Aggrieved with the above order, applicant had earlier moved this Tribunal in O.A.No.829 of 2006, which was disposed of by this Tribunal vide order dated 21.01.2010, the relevant portion of which reads thus:

“...Supply of enquiry report before imposition of punishment by the DA to the delinquent is no more res integra and requires no authority, in view of subsequent rules made by the Railway and by the Government in this respect. Similar is the situation of passing of the speaking order by the Appellate Authority. Supply of report of the IO is a vital component of principles of natural justice. The non-supply of enquiry report before imposition of the punishment in the present has neither been disputed by the Respondents in the counter filed

in this case nor in course of hearing. Hence, without going to any other points raised/canvassed by learned counsel for the applicant in his pleadings as also in course of hearing the impugned order of the Disciplinary Authority under Annexure-8 dated 15/21.4.2004 and consequently the order of the Appellate Authority and Revisional Authority are hereby quashed. As a consequence, the matter is remitted back to the Disciplinary Authority to supply a copy of the enquiry report to the applicant giving him opportunity to submit his reply. Consequent upon receipt of such reply within the time to be granted to him, the Disciplinary Authority is free to pass order as would be deemed fit and proper in the facts and circumstances of the case. Thereafter, if the applicant has still any grievance, he is free to avail of the opportunity as per rules and law".

3. As it reveals from the record, after compliance of the above direction, the Disciplinary Authority imposed on the applicant the punishment of dismissal from service. The Appellate Authority having upheld the punishment as imposed by the Disciplinary Authority, applicant had preferred a Petition before the Revisional Authority. The Revisional Authority though upheld the order of the Disciplinary Authority as well as Appellate Authority, by exercising the powers conferred upon him under the relevant Rules, modified the order of punishment of dismissal on humanitarian grounds to that of reduction to the post of ASM

in the scale of Rs.4500-7000/-(RSRP) until the applicant is found fit by the competent authority to be restored to the higher post from which he was reduced and will have the effect of postponing future increments of pay and affect his seniority in the higher post on his restoration to the higher post. Being aggrieved with the above order of the Revisional Authority, the applicant had again approached this Tribunal in O.A.No.830/2006. This Tribunal, vide order dated 29.1.2010 disposed of the said O.A., the relevant portion of which reads as under.

“We find no justification especially there being no injustice in the decision making process of the matter to quash the entire disciplinary proceedings as prayed by him. It appears, the Revisional Authority has imposed the punishment available under clause (vi) of the major penalties in place of the order of punishment of dismissal. Clause (vi) provides the punishment ‘reduction to a lower time scale of pay, grade, post or service, with or without further directions regarding conditions of restoration to the grade or post or service from which the Railway servant was reduced and his seniority and pay on such restoration to that grade, post or service’ whereas the punishment imposed on the applicant reads “reduction to the post of ASM in the scale Rs.4500-7000/-(RSRP) until Shri N.Prasad is found fit by the competent authority to be restored to the higher post from which he was reduced and will have the effect of postponing future increments of pay and affect his seniority

14
in the higher post on his restoration to the higher post". On going through the provisions quoted in clause (vi) vis-à-vis the order of punishment imposed by the Revisional Authority we do not see that the punishment is in consonance with the provisions of the rules; inasmuch as reduction to the post of ASM in scale Rs.4500-7000/-(RSRP) 'until' Shri N.Prasad is found fit by the competent authority is vague. The conditions of restoration have to be specific. It can, therefore safely be held that the order of punishment is vague and as if it has been imposed for indefinite period. No employee cannot be allowed to suffer indefinitely or kept in dark regarding his career progression. As such, according to us, this needs reconsideration by the Revisional Authority. For the discussions made above, we remand the matter back to the Revisional Authority for giving a fresh looking to the matter and passing appropriate orders within a period of 90(ninety) days from the date of receipt of this order".

4. While the matter stood thus, applicant has again moved this Tribunal in the present Original Application seeking the relief as referred to above. The whole object of filing this O.A. relates to restoration of the applicant's position to the grade of Station Superintendent on the ground that this Tribunal vide order dated 21.1.2010 in O.A.No.829 of 2006 having quashed the punishment of reversion as was imposed by the Disciplinary Authority, the applicant should have been restored to his original position.

5. Respondent-Railways have filed their counter opposing the prayer of the applicant. They have submitted that there being no cause of action for the applicant for approaching this Tribunal, particularly when the applicant had moved this Tribunal in O.A.No.830/2006 based on the liberty granted to him in O.A.No.829/2006, the present O.A. is not at all maintainable.

6. We have heard Shri D.R.Patnaik, learned counsel for the applicant and Shri S.K.Ojha, learned Standing Counsel for the Respondents and perused the materials on record.

7. Admittedly, this Tribunal had quashed the order of punishment of reversion of the applicant solely on the ground that before imposition of such punishment applicant had not been supplied with copy of the inquiry report and as such, there was sheer violation of the principles of natural justice. It is also an admitted position that this Tribunal, while quashing the punishment order did not utter a single word that in consequence of quashing of the punishment of reversion, the applicant should have been restored to his substantive post of Station Superintendent, albeit, the

Tribunal directed to complete the disciplinary proceedings after supplying copy of the inquiry report to the applicant. This by itself unequivocally makes it clear that the Tribunal was very much conscious that the punishment of reversion had been quashed only on a technical ground but not on merit. Be that as it may, the cause of action which arose after compliance of the directions issued by this Tribunal in O.A.No.829/2006 by the Respondent-Railways, the applicant had approached this Tribunal in the second round of litigation in O.A.No.830/2006 and while compliance of the order of this Tribunal in the said O.A. was in the pipeline, the applicant has moved this Tribunal in the present O.A. seeking the relief as referred to above.

8. From the above recital of facts, the point to be decided herein is as to whether after disposal of O.A.No.830/2006 based on the cause of action that had arisen pursuant to direction of this Tribunal in O.A.No.829/2006, the applicant has a further cause of action to approach this Tribunal based on the directives issued in O.A.No.829/2006 by this Tribunal.

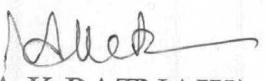
9. We have considered the submissions made by the learned counsel for the parties. In so far as restoration of the applicant to the post of Station Superintendent by virtue of quashing of the reversion order in O.A.No.829/2006 is concerned, we would like to say that applicant has no cause of action in that behalf in view of the fact that if the prayer for restoration to the post of Station Superintendent is allowed at this stage, it would amount to reviewing the order of this Tribunal in O.A.No.829/2006. Secondly, as stated above, the applicant having moved this Tribunal in O.A.No.830/2006 based on the cause of action in O.A.No.829/2006, his prayer for restoration to the post of Station Superintendent in the present O.A. is not at all maintainable.

10. However, during the course of hearing, Shri S.K.Ojha, learned Standing Counsel furnished before the Tribunal the order dated 5.7.2010 issued by the Revisional Authority in compliance with the direction of this Tribunal in O.A.No.830/2006, which reads as under:

“Keeping the rule position in view, I hereby order that the penalty of dismissal from service of Shri N.Prasad ordered by the

Disciplinary Authority and upheld by the appellate Authority is modified to the penalty of reduction to the post of ASM in scale Rs.4500-7000/- (RSRP)(V CPC) to be restored to higher post from which he was reduced after a period of 07(seven) years and will have the effect of postponing future increments of pay and will affect his seniority in the higher post on restoration to the higher post".

11. Having regard to what has been discussed above, the OA is dismissed being devoid of any merit. No costs.


(A.K.PATNAIK)
MEMBER(JUDL.)


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