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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.286 OF 2010
Cuttack this the 23rd day of September, 2011

Asita Kumar Nayak Applicant
Vs Respondents
Union of India & Ors.

FOR INSTRUCTIONS

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

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

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

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.286 OF 2010

Cuttack this the 23rd day of September, 2011

CORAM:

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

...
Asita Kumar Nayak, aged about 49 years, S/o. late Sridhar Nayak, At/PO/PS-
G.Udayagiri, Dist-Kandhamal (Orissa) at present residing at Majhi Sahi, Jobra, PO-
College Square, Cuttack, Dist-Cuttack

...Applicant

By the Advocates:M/s.Sanatan Das & A.Panda

-VERSUS-

1. Union of India represented through the General Manager, East Coast Railways, Zonal Headquarters, Chandrasekharpur, Bhubaneswar
2. Divisional Railway Manager, Khurda Road Division, East Coast Railways, At/PO/PS-Jatni, Dist-Khurda
3. Sr.Divisional Personal Officer, Khurda Road Division, East Coast Railway, At/PO/PS-Jatni, Dist-Khurda
4. Sr.Divl.Signal & Telecom Engineer, Khurda Road Division, East Coast Railway, At/PO/PS-Jatni, Dist-Khurda
5. Assistant Signal & Telecom Engineer, Cuttack, East Coast Railway, PO-College Square, Town/Dist-Cuttack

...Respondents

By the Advocates:Mr.T.Rath

ORDER

A.K.PATNAIK, JUDICIAL MEMBER:

Succinctly stated, the case of the Applicant is that while he was working as Office Superintendent, Gr.I under the Respondent-Railways, he was issued with a Memorandum of Charge vide Annexure-A/19 dated 30.11.2009 on the allegation of his unauthorized absence from duty with effect from 21.08.2009 to till the date of issuance of Annexure-A/19. He submitted his written statement of defence vide Annexure-A/20 dated 13.1.2010 praying therein to drop the charges. However, the Disciplinary Authority vide Annexure-A/21 dated 2.2.2010 as modified under Annexure-A/22 dated 18.02.2010, appointed Inquiry Officer to enquire into the charges. It is needless to mention here that on receipt of Annexure-A/21 dated 2.2.2010, the applicant, under Annexure-A/23 dated 25.02.2010, had submitted a representation for change of the I.O. While the matter stood thus, the Applicant

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having been called upon to attend the first sitting of the enquiry scheduled to be held on 19.05.2010 vide Annexure-A/26 dated 12.5.2010, he has approached this Tribunal in the present OA, praying therein to quash the Memorandum of Charges No. S&T/EM/CS/AKN/OS-I/941 dated 30.11.09 (Annexure-A/19).

2. On being noticed, the Respondent-Railways have filed a detailed counter opposing the prayer of the applicant. They have submitted that the O.A. being devoid of merit is liable to be dismissed.

3. Heard Shri S.Das, learned counsel for the applicant and Shri T.Rath, learned counsel appearing on behalf of the Respondent-Railways and perused the pleadings and materials placed in support thereof by the respective parties. Since the applicant has called in question the legality and validity of Memorandum of Charge dated 30.11.2009(Annexure-A/19), we do not feel inclined to go into detailed facts. The sole point that needs determination is whether Annexure-A/19 Memorandum of Charge is legally tenable or not and if so whether this Tribunal is competent to go into the correctness of the charge at this stage.

4. Before proceeding further to the merit of the matter, it is worth mentioning that vide order dated 7th July, 2010 this Tribunal as an interim measure directed stay of the enquiry for a period of seven days. Thereafter, vide order dated 28th July, 2010 after considering the reply filed by the Respondents on the prayer of interim order, the stay order dated 7th July, 2010 was modified directing that departmental enquiry may continue but the final order in the enquiry report shall not be passed without leave of this Tribunal.

5. We have considered the submissions made by the learned counsel for the parties and given our anxious consideration to the arguments advanced at the Bar. The applicant, vide Annexure-A/20 dated 13.1.2010, in his written statement of defence to Memorandum of Charge, had urged as under.

“In view of the Rules no explanation or show cause has been called from me before the issuance of the memorandum of charges as

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such the memorandum as well as the articles of charges vitiates and suffers from infirmities".

6. We have considered the rival submissions of the parties with reference to the provisions under Rule-9 of the Railway Servants (D&A) Rules, 1968. Rule clearly empowers the DA, after receipt of the reply to the show causes whether to proceed with the enquiry or not. If it is decided to proceed then it is the prerogative of the DA either he himself enquire into the matter or to appoint IO and PO to enquire and submit the report. The scope of judicial review in matters relating to quashing of the charge sheet against an employee has been well settled by a catena of decision of the Hon'ble Apex Court. None is prejudiced at the stage of issuance of charge sheet. Ultimately decisions would be taken on the allegation after the enquiry in which the applicant will get full opportunity to prove his innocence.

It is well settled by a series of decisions of the Hon'ble Supreme Court that a mere charge sheet or show cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed that the said party can be said to have any grievance. However, it has been held by the Hon'ble Apex Court in the case of that in very rare and exceptional cases the court can quash a charge sheet or show cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. The discussions made above is supported by the decision of the Hon'ble Apex Court in the case of **Union of India and another vs. Kunisetty Satyanarayana**, [2007]2 SCC

(L&S) 304.

The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. It is not the case of the Applicant that the charge sheet was issued by an authority without jurisdiction or giving any

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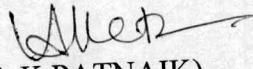
justification ~~inspiring~~ on the judicial conscience so as to interfere in the matter. In view of the above, while declining to interfere in the matter at this stage, we direct the Respondents to complete the enquiry/disciplinary proceedings initiated against the applicant as per charge sheet under Annexure-A/19 within a period of six months from the date of receipt of copy of this order.

7. In the result, with the aforesaid observation and direction this OA

stands disposed of. There shall be no order as to costs.


(C.R.MOHAPATRA)

Member (Admn.)


(A.K.PATNAIK)

Member (Judl.)

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