

9

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

Original Application No. 260/00150 of 2015
Cuttack, this the 17th day of June, 2015

CORAM
HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL.)
HON'BLE SHRI R.C.MISRA, MEMBER (ADMN.)

.....

Chittaranjan Mishra,
aged about 63 years,
S/o Sashadhar Mishra
At – Erein, PO- Charampa, Dist- Bhadrak.
Retired as Headmaster,
Mixed Primary School, Old Settlement,
South Eastern Railway, Kharagpur.

...Applicant

(Advocates: M/s. P.K.Rath, R.N.Parija, A.K.Rout, S. Pattnayak, A. Behera,
P.K.Rath)

VERSUS

Union of India Represented through its

1. Secretary,
Railway Board, Ministry of Railways,
Rail Bhawan, New Delhi-110001.
2. General Manager,
G.M.Building, South Eastern Railway,
Garden Reach, Kolkotta-700043.
3. Chief Personal Officer,
G.M.Building, South Eastern Railway,
Garden Reach, Kolkotta-700043.
4. Divisional Railway Manager,
DRM Building, South Eastern Railway,
Kharagpur-721301.
5. Divisional Personal Officer,
DRM Building, South Eastern Railway,
Kharagpur-721301.

... Respondents

(Advocate: Mr. T.Rath)

.....

Allee

ORDERA.K.PATNAIK, MEMBER (JUDL.):

Applicant in this Original Application is a retired Headmaster of Mixed Primary School, under S.E.Railway, Kharagpur. He had earlier approached this Tribunal in O.A. No.771 of 2014 for direction to Respondents to dispose of the disciplinary proceedings initiated against him under A/4 dated 27.09.2012. This O.A. was disposed of by this Tribunal vide order dated 10.11.2014 with direction to Respondent No.4 to consider the representation and communicate the decision thereon to the applicant within a period of sixty days from the date of receipt of the order. In compliance of the orders of this Tribunal, applicant was communicated with the decision of the Respondents vide A/10 dated 02.02.2015, advising him to attend the enquiry as and when fixed by the enquiry officer, so that the same could be finalized early. It was also indicated therein that on acceptance of the report of enquiry committee and its decision regarding imposition of penalty by the Ministry of Railways, the case would be disposed of.

2. Aggrieved with the above decision, applicant has moved this Tribunal in the instant O.A. seeking the following relief.

“...to admit this application, call for records and after hearing the parties allow the same quashing Annexure-A/10 and to direct the respondents to dispose of the disciplinary proceeding initiated under Annexure-A/4 with the available enquiry report under Annexure-A/6 immediately”.

3. Heard Mr.R.N.Parija, learned counsel for the applicant and Mr.T.Rath, learned Standing Counsel for the Railways on the question of admission.

4. It reveals from the record that while applicant was in service, a major penalty proceedings had been drawn up against him vide Memorandum of Charge dated 27.9.2012. Thereafter, on 30.9.2013, applicant retired from service. After his retirement, inquiry was conducted and vide A/6 dated 29.4.2013, he was called upon



to make representation on the IO's report. In response to this, applicant submitted his representation dated 03.05.2015(A/7) to the Disciplinary Authority. Since no action was taken by the Disciplinary Authority, applicant moved this Tribunal in O.A. No.771 of 2014 which was disposed of vide order dated 10.11.2014, as referred to above.

5. It is the case of the applicant that the Respondents, instead of concluding the disciplinary proceedings on the basis of materials available before them, again, vide A/10 dated 2.2.2015, issued by them in compliance of the orders of this Tribunal in O.A.No.771 of 2014, have advised him to attend the enquiry as and when fixed by the enquiry officer, which according to him, is illegal and arbitrary as the Disciplinary Authority could not have ordered for conducting fresh inquiry during the existence of the inquiry report to which he has filed his written representation.

6. We have perused the communication dated 2.2.2015(A/10). In this communication, the Divisional Railway Manager, S.E. Railway, Kharagpur, has mentioned as under.

"On completion of the enquiry, since this was a case of post retirement, the case was sent to the Railway Board for finalization. The Railway Board vide their letter No.E(D&A) 2013 AE 9-2 dated 27.11.2013 have ordered for conducting a fresh enquiry. Accordingly, a fresh enquiry was ordered with Dy.CPO/Welfare as the Disciplinary Authority and then then DPO(II)/Kharagpur and now DPO/Kharagpur Workshop as the Enquiry Officer. Thereafter, in spite of repeated sittings fixed for the enquiry committee on 30.10.2014, 25.11.2014, 10.12.2014 and 26.12.2014 you had failed to attend the proceedings for which the enquiry could not be completed and the enquiry report could not be sent to the Railway Board. On finalization of the report of enquiry committee and acceptance of the same by the Railway Board, imposition of penalty in accordance to the rules the case can be disposed off".

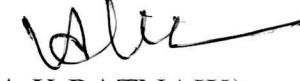
7. On being pointed out during the course of hearing on admission as to what prevented him from challenging the legality of Railway Board's letter



No. E(D&A)2013AE 9-2 dated 27.11.2013, learned counsel for the applicant submitted that he is unable to procure copy of this letter as he has not been communicated with the same by the Railway authorities. Since the whole structure of initiation of the fresh inquiry rests upon the Railway Boards' letter as referred to above, unless the legality or validity thereof is challenged, in our considered view, the Tribunal cannot adjudicate the sustainability of A/10 dated 2.2.2015. This apart, the point which has been urged by the applicant in this O.A., in the first instance, should have been urged before the authorities in the Railways for their consideration. In the absence of any such consideration by the authorities, the Tribunal has hardly any scope to adjudicate this matter. Since the subject matter of judicial scrutiny in this O.A. has not formed the basis of consideration by the respondents, in our considered view, the O.A. is too premature to entertain.

8. For the above reasons, the O.A. is dismissed without being admitted. No costs.


(R.C.MISRA)
MEMBER(Admn.)


(A.K.PATNAIK)
MEMBER(Judl.)

RK