

8 **CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O. A. No. 362 OF 2013
Cuttack, this the 30th day of August, 2013

CORAM

**HON'BLE MR. A.K. PATNAIK, MEMBER (J)
HON'BLE MR. R.C. MISRA, MEMBER (A)**

.....

Pratap Chandra Das,
aged about 51 years,
Son of Sarangadhar Das,
At/Po- Kantapal, Dis- Dhenkanal,
Presently residing at
Dolamandapasahi, Dist- Dhenkanal

.....Applicant

Advocate(s) M/s. J.Sengupta, D.K.Panda, G.Sinha, A.Mishra,, P.P.Bhera.

VERSUS

Union of India represented through

1. The General Manager,
South Eastern Railways,
Garden Reach,
Kolkata- 43.
2. The Divisional Engineer (South),
South Eastern Railways,
Kharagpur Division, Kharagpur,
West Bengal.
3. Senior Divisional Engineer (CO),
South Eastern Railway,
Kharagpur.

..... Respondents

Advocate(s)..... Mr. S.K.Ojha

.....
ORDER (ORAL)

MR. A.K.PATNAIK, MEMBER (JUDL.):

Heard Mr. J.Sengupta, Ld. Counsel for the applicant, and Mr. S.K.Ojha, Ld. Panel Counsel appearing for the Respondent-Railways, and perused the record.



2. This O.A. has been filed under Section 19 of the A.T. Act by the applicant praying for the following relief:

“....to quash the order dated 11.10.11 (Annexure-A/3), in which respondent No.2 held that the order dt. 17.03.06 in removing the applicant holds good.

And further be pleased to quash the order dated 16.07.12 (Annexure-A/8)

And further be pleased to direct the respondents to reinstate the applicant in service forthwith.

And further be pleased to direct the respondents to treat the period from dtd. 17.03.06 till his reinstatement as duty.”

3. From the facts, it reveals that the applicant had challenged order dated 17.03.2006 before this Tribunal in O.A. No. 559/06. This matter was disposed of by this Tribunal vide order dated 31.07.2009 with the following direction:

(i) The enquiry shall be conducted afresh by nominating another IO. The Applicant shall be allowed full opportunity for his defence as per Rules/Law. The IO should be directed to complete the enquiry and submit the report within a period of 120 days of nomination and the Applicant is directed to cooperate with the enquiry and should not seek any adjournment without sufficient and valid reason;

(ii) On receipt of the report, the DA shall proceed in the matter in accordance with Rules and pass orders within a period of 45 days of receipt of the report and the reply of the Applicant, if any, to the report of the IO;

(iii) During the relevant period i.e. from the date of this order till passing of the final order in the proceedings by the DA in the manner directed above, the status of the applicant would be treated as under deemed suspension entitling him to the suspension allowance as per rules;



(iv) The period from the date of removal till the date of order shall be decided by the DA after the conclusion of the proceedings, as per rules.

4. Pursuant to the above direction, the enquiry was conducted and the I.O. submitted its report to Respondent No.2. Based on the report of the inquiry, Respondent No. 2 issued order of punishment vide Annexure-A/3 dated 11.10.2011 holding that the punishment as had been imposed vide order dated 17.03.2006 holds good. Aggrieved with the above, the applicant preferred an appeal to Respondent No.3 vide Annexure-A/4 dated 01.11.2011. Having received no response from Respondent No.3 on his appeal, the applicant moved this Tribunal in O.A. No. 383/12. This Tribunal vide order dated 15.05.2012 disposed of the said O.A. with direction to Respondent No. 3 to consider and dispose of the appeal of the applicant as at Annexure-A/4 within a period of 30 days from the date of receipt of this order under intimation to the applicant.

5. In the above background, it appears that the matter was put up before the Appellate Authority, who remanded the matter back to the Respondent No. 2 with direction to re-examine the case and pass a fresh order. In pursuance of this direction of Respondent No.3, Respondent No.2 issued the orders as under:

“With such direction from the Appellate Authority the undersigned has carefully re-examined the case in detail and by applying my mind, I am of the opinion that you have secured the Railway Service with the help of a forged school certificate as a proof of your age and educational qualification. There, I pass the following order.

“You are removed from Railway Service w.e.f. 17.03.2006”. However, you are at the liberty to prefer an appeal with decent and polite language



to the Sr. DEN (CO), the appellate authority, within a period of 45 days.”

6. Aggrieved with the above order, the applicant appears to have preferred an appeal to the Sr. Divisional Engineer (Respondent No.3) vide his appeal dated 17.08.2012 (Annexure-A/9) and having received no response on his appeal, he has moved this Tribunal in the present O.A seeking the relief as referred to above.

7. This matter came up before this Tribunal on 20.06.2013 when Respondents were directed to produce order dated 30.05.2012 passed by the Appellate Authority. Pursuant to this direction, Sri S.K.Ojha, Ld. Panel Counsel for the Railways, has submitted copy of order dated 30.05.2012 through a memo dated 26.08.2013. In the aptness of things, the order of the Appellate Authority reads as under:

“After going through the order dt 15.05.12, passed in O.A.No. 383/2012 and order of DA, I am of the opinion that the Disciplinary authority has committed mistake passing order that “The punishment imposed dt 17.03.2006 remains stand good”. Since the order dated 17.03.2006 already been set aside by the Hon’ble Tribunal, Cuttack, the same cannot be declared stand good. Hence, matter be placed before the Disciplinary Authority for fresh speaking order.”

From the above, it appears that there was nothing wrong on the part of the Respondent No.2 in issuing order dated 16.07.2012 against which the applicant has again preferred an appeal to Respondent No.3 vide Annexure-A/9.

8. In view of the above, without expressing any opinion on the merit of the case, we dispose of this O.A. directing Respondent No. 3, i.e. Sr. Divisional Engineer, to take a decision on the appeal preferred by the



applicant on 17.08.2012 and communicate the result thereof to the applicant within a period of 30 days from the date of receipt of copy of this order. No costs.

9. Copy of this order along with O.A. be sent to Respondent No. 3 at the cost of the applicant for which Ld. Counsel for the applicant will file postal requisites within 7 days.

MEMBER (Admn.)




MEMBER (Judl.)