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CENTRAL ADMINISTRATIVE TRIBUNAL CALCUTTA BENCH

No. O.A. 350/01828/2015

Date of order : 14.12.2015

Present : Hon'ble Mr. Justice G. Rajasuria, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

CHANDRA MOHAN SAREN

VS.

UNION OF INDIA & ORS. (S.E. Railway)

For the Applicant : Mr. S. Sen, Counsel

For the Respondents : Mr. B. L. Gangopadhyay, Counsel.

ORDER (Oral)

Per Mr. Justice G. Rajasuria, Judicial Member:

Heard both.

2. This O.A. has been filed seeking the following reliefs:-

- "a) An order be passed setting aside and/or quashing the final order of punishment dated 22.7.2015 issued by the respondent No. 5 herein being Annexure A-12 hereto;
- b) An order be passed setting aside and/or quashing the findings of the Enquiry Officer in his report dated 29.5.2014 (Annexure A-9) to the extent that the applicant made overwriting of his notings in an inappropriate manner as to facilitate employment to Sri Rewani.
- c) An order be passed directing the respondent authorities to grant consequential service benefits issuing an order of promotion to the applicant to the post of Selection Grade Group "A" Railway services, with effect from 1.1.2013 since when his immediate junior was also given such promotion.
- d) To pass such other or further orders as to this Hon'ble Tribunal may seem fit and proper."

3. The Ld. Counsel for the applicant would echo the heart burns of his client



to the effect that a charge was framed against his client as under:-

"Article of Charge I:

"Shri C.M. Saren, the then Sr. DPO/Adra had extended undue favour to Shri Lachhman Rewani, son of late Bhaju Rewani, Ex. Up grade trackman under SSE/PWI/CNI by recommending his employment in Gr. 'D' category in Railway on compassionate ground based on false and fabricated school leaving certificate. Shri C.M. Saren tampered his earlier notings vide No. NS-4 dated 18.9.2008 and NS-5 dated 23.12.2008 and put some new word by scoring off some words of earlier notings with a view to give an affirmative look for facilitating employment to Shri Lachhman Rewani on compassionate ground.

Thus, by the above acts of commission and omission, Shri C.M. Saren, the then Sr. DPO/Adra now Sr. DPO/KGP has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway servant in contravention of Rule No. 3.1(i), (ii) and (iii) of Railway Services (Conduct) Rules, 1966 rendering himself liable for disciplinary action being taken against him in terms of Railway Servants (Discipline & Appeal) Rules, 1968 as amended from time to time and has therefore made himself liable for disciplinary action."

Whereupon enquiry was conducted.

4. Enquiry officer gave a finding that the charge was not proved. However, the disciplinary authority disagreed with the view taken by the enquiry officer and his notes of disagreement was served on the applicant. Thereupon objection was filed to it. Even then the disciplinary authority without even considering the facts that proper witnesses were not examined, documents were not marked and that without applying the principles of natural justice the enquiry was conducted, he simply imposed the punishment of reduction of his pay by two stages in time scale of pay.

5. The Ld. Counsel for the applicant would vehemently argue that without approaching the appellate authority his client did choose to approach this Central Administrative Tribunal because there was blatant violation of the principles of natural justice.



6. Per contra, the Ld. Counsel for the respondents Railways would submit that without exhausting the remedy as contemplated under Section 20 of the AT Act, straightaway filing of this case is not tenable.

7. The short point for consideration in this factual matrix is as to whether without exhausting the appeal remedy, this O.A. could be held to be one tenable.

8. It is trite law that without exhausting the appeal remedy straightaway the O.A. should not be filed. However, the Ld. Counsel for the applicant would vehemently argue that this is a singularly singular case where even though appeal remedy was not exhausted yet this O.A. was rightly filed.

9. We have to observe that this is not a case where disciplinary authority exercised his jurisdiction even though he had no jurisdiction over the matter, the Ld. Counsel for the applicant would make a supine submission that it is not his case that the respondent authority had no jurisdiction, but there was blatant violation of the rules and principles of natural justice.

10. On going into the contents of the records and the facts constituting the charge, we are of the view that, the applicant ought to have exhausted his appeal remedy and no more elaboration is required and, accordingly, the O.A. has to be dismissed and accordingly it is dismissed.

11. On hearing the order pronounced, the Ld. Counsel for the applicant would submit that his client would file appeal and liberty for that might be given. We are having no hesitation to direct as under. Excluding the time taken for prosecuting this application the applicant is given liberty to file an appeal. Even then if there is delay, the applicant shall file an application for condoning the delay and we believe that the appellate authority would condone the delay and entertain this appeal and on hearing the matter on merits would pass order as per law untrammelled and uninfluenced by any of the objections made in the O.A. The appellate authority shall dispose of the appeal memorandum within a period of



three months from the date of filing of the appeal.

12. The O.A. is accordingly disposed of. No costs.

(Jaya Das Gupta)
MEMBER(A)

(G. Rajasuria)
MEMBER(J)

SP