

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/362/2012

Cuttack this the 21st day of December, 2018
CORAM:

HON'BLE SHRI G.C.PATI, MEMBER(A)
HON'BLE SHRI S.K.MISHRA, MEMBER(J)

D.Umamaheswar Rao, aged about 54 years, S/o. Late Sundar Rao, Senior Clerk, O/o. Senior Divisional Electrical Engineer (General), East Coast Railways, Sambalpur – a resident of Shambepara, Gopalanal, near Radhakrishna Mandir, PO-Budharaj, Dist-Sambalpur

...Applicant

By the Advocate(s)-M/s.S.Patra-1
P.K.Mohapatra
A.Panda
S.J.Mohanty
D.D.Sahu

-VERSUS-

Union of India represented through:

1. The General Manager, East Coast Railways, Chandrasekharpur, Bhubaneswar, District-Khurda.
2. Senior Divisional Electrical Engineer (G), East Coast Railways, Sambalpur, District-Sambalpur.
3. Additional Divisional Railway Manager, East Coast Railways, Sambalpur, District-Sambalpur.
4. Chief Electrical Engineer, East Coast Railways, Chandrasekharpur, Bhubaneswar, District-Khurda.

...Respondents

By the Advocate(s)-Mr.B.K.Mohapatra
ORDER

S.K.MISHRA, MEMBER(J):

Applicant while working as Head Clerk(Elect) under the East Coast Railways, Sambalpur was proceeded against departmentally under Rule-9 of the Railway Servants (Discipline & Appeal) Rules, 1968 vide Memorandum dated 11.01.2008 (A/1). It was directed inter alia that the applicant should submit a written statement of defence admitting and/or denying specifically in respect of each article of the charges. The applicant submitted his written statement of defence vide A/2 dated 21.01.2008. Vide order dated 10.02.2010 (A/4) applicant was imposed punishment of reversion to the lower grade vide

A/4 dated 10.02.2010. Against this order, the applicant preferred an appeal dated 11.03.2010 (A/5) and the Appellate Authority vide order dated 18.05.2010(A/6) upheld the punishment as imposed by the Disciplinary Authority. Revision Petition submitted by the applicant was also rejected vide order dated 08.03.2011 (A/8). Hence, by filing the present O.A., the applicant has prayed for the following reliefs:

- i) Orders under Annexure-A/4, A/6 and A/8 be quashed after declaring those as illegal.
- ii) Any other order/orders as deemed fit and proper may be passed.

2. The main thrust of the O.A. is that the punishment which has been imposed by the Disciplinary Authority and upheld by the Appellate Authority and the Reviewing Authority is disproportionate to the gravity of offence and whereas the other co-delinquents have been awarded lesser punishment the applicant has been awarded harsh punishment and therefore, there has been a discrimination meted out to the applicant.

3. On the other hand, by filing a detailed counter, the respondents have opposed the prayer of the applicant. While narrating the factual background of the case, the respondents have submitted that the O.A. being devoid of merit is liable to dismissed.

4. We have heard the learned counsels for both the sides and perused the records.

5. It is found from the record that the applicant while working as Tender Clerk/Head Clerk was associated with the Tender Notice No.SBP/EL/W/469/02/04-05/02 dated 29.10.2004 and had tampered the same. It is alleged that the word "above" has been corrected to "below" and thereby the applicant had committed a grave misconduct. It is contended that

the said correction was done after the tender has been opened and the applicant had endorsed the correction in the tender opening register. He had neither raised any objection to the corrections made on the rate sheet nor brought this fact to the notice of the higher officers. Apparently, a Memorandum of Charge was issued to him on 11.1.2008 (A/1) mentioning that he failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway Servant contravening rule 3.1(1), (ii) and (iii) of Railway Service Conduct Rules, 1966 rendering himself liable for disciplinary action being taken against him inters of Railway Servants (D&A) Rules, 1968 was issued to him asking him to submit his written statement of defence.

6. The applicant submitted his show cause vide A/2 dated 21.1.2008. In Paragraph-3 & 4 of the show cause the applicant had mentioned as under:

"3. Sir, the duties of mine as a Hd.Clerk has been narrated in reply to question No.2 during the clarificatory statement recorded on 26.4.2006. Being a non-regular clerk in dealing tender opening, I was not aware of the procedures to be followed for opening of tenders. Secondly on that particular day, the regular person Sri K.Narasingham, Ch. OS has started the proceedings initially in the tender opening register (this can be observed from the page no. 50 of the tender opening register in which two different hand writings can be found) and filled certain portion of the columns and the remaining work was entrusted to me, as Sri K.Narisingham has left the site in the midway due to his personal problems. I was not aware of the correction in rates made by whom (reply to question no.10 of clarificatory statement recorded on 26.04.05). More over the rates have been encircled by the tender opening officials and both the members have put their initial before handing over to me. This has confused me regarding my entry in the tender opening register immediately after opening the envelope. Raising of objection against some body without proper evidence may lead to other complications and especially against superiors. Thinking I have entered the words wrongly in the tender opening register, I have corrected the previously written "Above" words to "Below". After due correction in the tender opening register. I approached the then DEE/G/SBP Sri Sunil Kumar for taking

his initial in the tender opening register where the correction was made by me, but I could succeed as he was busy in other works and told that he will put his initial afterwards. I only obtained the initial of Sr.SO(Accts)/SBP, the other member of the tender opening committee besides mine then and there.

4. Being a non-regular person to attend tender opening, I have also made mistakes in opening the details of the documentation made by tender opening officials in the tender documents to tender opening register. The mistakes happened are due to my lack of experience in dealing such cases and not intentional".
7. Thus in the disciplinary proceedings under Rule-9 of Railway Servants (Discipline & Appeal) Rules, 1968 was initiated against the applicant and the Disciplinary Authority passed order dated 10.02.2010 (A/4) holding that the applicant accepted that he has made necessary correction in the tender opening register. It was found that the applicant had not taken adequate care to witness the tender opening process and failed to perform his duty as a tender clerk. Hence, the Disciplinary Authority imposed the following punishment:

" Sri D.U.M.Rao, Head Clerk (Elect) in scale of PB2 Rs.9300-34800 + Grade Pay Rs.4200 is reverted to the post of Sr.Clerk in PB-1 Rs.5200-20200 + Grade Pay Rs.2800/- with the minimum pay of Rs.11,170/- for a period of 05 (five) years with immediate effect. After completion of the punishment he will regain his original post, grade and seniority, from which he has reduced".

8. Thereafter, the applicant preferred an appeal dated 11.02.2010(A/5). The Appellate Authority after consideration the facts and circumstances of the case and the fact that the applicant has accepted that the envelope was opened by him and the rates were recorded in the tender opening register immediately after opening of the envelope and the rate in the tender opening register was corrected after getting back the tender documents from the

tender opening official after due documentation and initials, upheld the punishment as imposed by the Disciplinary Authority. Thereafter the applicant preferred a revision vide A/7 which was rejected by the concerned authorities as per order dated 8.3.1011 (A/8) by giving a detailed reasons.

9. The matter regarding imposition of disproportionate punishment on him in comparison to the punishment imposed on the other officials was also mentioned in the said order and it was found that the Disciplinary Authority and the Appellate Authority have dealt that the punishment imposed is commensurate with the gravity of misconduct.

10. It was submitted by the learned counsel for the applicant that the charges as against the applicant as well as other delinquents were the same. Sri Sunil Kumar DEE(G) was a member of the Tender Committee. It was further submitted by him that there was no mala fide intention on the part of the applicant and the mistake committed by him was not intentional. It was further submitted on behalf of the applicant that the applicant was initially appointed as casual Khalasi. Therefore, due to lack of sufficient experience and on the other hand, pressure of work on that particular day, the mistake was committed and accordingly, it was urged on behalf of the applicant that he will be more careful in future.

11. It is the settled principle of law that the Tribunal has limited jurisdiction to interfere in the matter of quantum of punishment imposed on a particular Government employee. In the present case taking into consideration and allegations made against the applicant, his admission in this regard and the financial implication on the tender process which would have affected the state exchequer leading to the economic development of the society, the punishment was imposed on the applicant. This Tribunal does not find that

the punishment as imposed on the applicant is disproportionate to the gravity of offence proved against him.

12. At this juncture, learned counsel for the applicant brought to the notice of the Tribunal the decision reported in 2017 (II)-CUT – 317 (Jaya Prakash Mohanty vs. State of Odisha & Ors.) in support of his submission and stated that doctrine of equality must apply to all those who are equally placed.

13. We have examined the decision as cited by the learned counsel for the applicant to the facts of the present case. We are of the opinion that the facts of and circumstances of the said case are not the same to the facts and circumstances of the present inasmuch as in the said case one of the petitioners was departmentally proceeded against and given punishment of compulsory retirement whereas in another departmental proceedings for similar type of charges one of the delinquents was let off with censure.

14. Learned counsel for the applicant also relied on the decision reported in 2012(I) OLR – 180 (Sri Manoj Kumar Kar vs. Board of Directors, Kalinga Gramya Bank & another). In the said case some of the delinquents was let off with an warning whereas the petitioner was directed to face the departmental proceedings. Therefore, the facts being distinguishable from the case is hand the ratio decided in that case is not applicable. In the facts and circumstances of the case which are not applicable.

15. This Tribunal also does not agree with the submission made by the learned counsel for the applicant that harsh punishment has been imposed on the applicant whereas the other delinquents have been awarded lesser punishment. For the purpose of ascertaining about this, the post which the applicant was holding and the nature of duties and responsibilities of the applicant in handling the particular work has to be taken into consideration

and the same having not been taken care of by the applicant, this Tribunal does not find any merit to interfere in this case.

16. In view of the discussions held above, we find no merit in this O.A. which is accordingly dismissed. No costs.

(S.K.MISHRA)
MEMBER(J)

(G.C.PATI)
MEMBER(A)

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