

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/930 of 2012

Cuttack this the 20th day of December, 2018

CORAM:

HON'BLE SHRI G.C.PATI, MEMBER(A)

HON'BLE SHRI S.K.MISHRA, MEMBER(J)

Prasanta Kumar Bagh, aged about 40 years, S/o.Dhruba Chandra Bagh, a permanent resident of village – Nuagaon, PO-Sakuntalapur, PS-Badachana, Via-Dhanmandal, Dist-Jajpur, at present working as Divisional Engineer (Bridge), East Coast Railway, Jatni, Khurda, Dist-Khurda.

...Applicant

By the Advocate(s)-M/s.N.R.Routray
T.K.Choudhury,
Smt.J.Pradhan
S.K.Mohanty
S.Dash

-VERSUS-

Union of India represented through:

1. The General Manager, South Eastern Railway, Garden Reach, Kolkata-43, West Bengal.
2. Secretary, Railway Board, Ministry of Railways, Railway Bhawan, New Delhi.
3. General Manager, east Coast Railway, Rail Vihar, Chandrasekharapur, Bhubaneswar, Dist-Khurda.
4. Chief Engineer, South eastern Railway, Garden Reach, Kolkata-43 (West Bengal).
5. Chief Engineer (Construction-I), East Coast Railway, Rail Vihar, Chandrasekharapur, Bhubaneswar, Dist-Khurda.
6. Chief Administrative Officer (Con.), East Coast Railway, Chandrasekharapur, Rail Vihar, Bhubaneswar, Dist-Khurda.

...Respondents

By the Advocate(s)-Mr.S.K.Ojha

ORDER

S.K.MISHRA, MEMBER(A):

In this Original Application under Section 19 of the A.T.Act, 1985, the applicant has prayed for the following reliefs:

“Under the facts and circumstances, the applicant humbly prays that the Hon'ble Court may graciously be pleased to quash the order of punishment dated 3.5.2002 communicated in order dated 16.5.2002 under Annexure-A/5, the order of the appellate authority dated 6.8.2004 communicated in order dated 10.8.2004

under Annexure-A/7 and the order dated 05.12.2011 under Annexure-A/9.

And further be pleased to direct the respondents to pay the applicant all his service and financial benefits retrospectively".

2. From the facts of the matter it appears that earlier the applicant had approached this Tribunal in O.A.No.917 of 2005 which was disposed of by this Tribunal vide order dated 4.5.2011, remitted the matter back to the Disciplinary Authority for considering imposition of punishment as has been imposed on PWI and DEN for committing same offence along with the applicant.

3. In compliance with the aforesaid direction of this Tribunal, the General Manager, East Coast Railways in the capacity of Disciplinary Authority has passed an order dated 05.12.2011 (A/9) imposing the same punishment as had already been imposed on the applicant. Being aggrieved, the applicant has moved this Tribunal in the present O.A. seeing for the reliefs as mentioned above.

4. Contesting the claim of the applicant, respondents have filed a detailed counter. According to them, the punishment imposed on the applicant is commensurate with the gravity of offence. However, the basic fact that they have inputted is that pursuant to the orders of this Tribunal dated 4.5.2011 in O.A.No.917/2005, the General Manager, East Coast Railways examined the inquiry reports on the charge memorandum and the penalties imposed by the respective disciplinary authorities. The General Manager arrived at a conclusion that the gravity of offence committed by the applicant is different from that of committed by Shri G.S.N.Murty, Ex-PWI and the then DEN Shri A.Gupta and accordingly, the punishment imposed on their virtually varies from the applicant.

5. We have heard the learned counsels for both the sides and perused the record. WE have also gone through the rejoinder and the decision relied on by the applicant.

6. It is submitted by the learned counsel that the applicant was not given a personal hearing to put forth his case. He had further submitted that there has been a discrimination in awarding punishment and since the applicant has been differently treated by imposing harsh punishment although minor punishment has been given to other employees, there has been violation of Article 14 of the Constitution. Learned counsel for the applicant has drawn the attention of this Tribunal to the averments made in Para 4.7 of the O.A. which reads as under:

"That it is humbly submitted that the work for which the charge sheet was framed against the applicant was not only done by the applicant. This was a team work where D.R.M. Shri S.Parmeswar Lyar, D.E.N., Ankush Gupta and surprising to note that against the D.E.N., Mr.Ankush Gupta, though major punishment proceedings was started, the same was converted to minor punishment proceedings and only he was inflicted with stoppage of one increment.

Similar was the case of P.W. 1, Mr.G.S.N.Murty and the proceedings was dropped which was initiated against him.

It is submitted at this juncture that the D.E.N. and P.W.I were the major part of the duties in the matter for which charge sheet has been framed against the applicant. But they were made scot free, whereas the applicant was roped for the reason best known to the authorities. Possibly, there would be no plausible explanation available with the authorities as to why they were behind the applicant".

7. It is to be noted that this Tribunal in the earlier O.A.No.917/05 filed by the applicant held that *"as regards the claim of personal hearing before the appellate order could be passed, the applicant has not produced any document before us to substantiate that the personal hearing is mandatory"*. Once the said finding has been given by this Tribunal, the said point cannot be

permitted to be re-agitated by the applicant before the same forum. Whatever it may be, the said judgment has attained finality and the issue before us is regarding awarding of punishment. The applicant is not at liberty to urge other points since our categorical findings hold good and for the reasons best known, the applicant has not challenged those findings/observations before any higher forum. It is seen that as per the said judgment, this Tribunal had further observed and directed as follows:

"...As regards discriminatory treatment in awarding punishment on him vis-a-vis other, i.e., PWI and another official DEN, it is an admitted position that those two officials notwithstanding their involvement along with the applicant in the acts of similar omission and commission have been let off with minor punishment. The Respondents have not made the position conspicuous as to why and how those two officials, viz., PWI and DEN were treated unlike the applicant. In this view of the matter, we are of the view that this is a fit matter which should be remitted back to the Disciplinary Authority for considering imposition of punishment akin to the punishment awarded on PWI and DEN who were proceeded for same office and under similar circumstances as that of the applicant. Accordingly, we quash the impugned order dated 3.5.2001 (enclosed to Annexure-A/5) issued by the Disciplinary Authority imposing punishment of reduction by three stages in the time scale of pay of Rs.7500-2500-12,000/- for three years and on the expiry of this three years period, the reduction will have the effect of postponing the future increments of pay and the order dated 6.2.2004 (enclosed to A/7) of the Appellate Authority, confirming the order of punishment as imposed by the Disciplinary Authority. It is directed that the Disciplinary Authority shall consider imposition of similar punishment on the applicant as has been imposed on PWI and DEN for committing same offence along with the applicant".

8. After receipt of copy of the said judgment, the General Manager, East Coast Railway (Res.No.3) passed the order dated 5.12.2011 (A/9). The said order reveals that the concerned authority had carefully gone through the representation of the applicant, the report of the I.O. and the other materials on record. He had also considered the major penalty memorandum issued

against the co-delinquent and the facts and circumstances of the case. It was also discussed by Respondent No.3 regarding the gravity of offence committed by the applicant and the gravity of misconduct by the other two employees, viz., S/Shri G.S.N.Murty & A.Gupta. Therefore, we do not find any flaw in the order passed by the Respondent No.3 the legality of which is under challenge in this O.A.

9. We have also gone through the decision cited by the applicant in Bongaigaon Refinery & Petrochemicals Ltd. & Others vs. Girish Chandra Sarma [(2007) 2 SCC(L&S) 638]. This decision is not applicable to the case of the applicant herein as the facts and circumstances of that case are quite different and distinct from facts of the case in hand.

10. For the aforesaid reasons, the O.A. is dismissed being devoid of merit.

No costs.

(S.K.MISHRA)
MEMBER(J)

(G.C.PATI)
MEMBER(A)

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