

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No.260/317/2017

Date of Reserve:01.10.2019

Date of Order:28.11.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)  
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Bibhuti Bhusan Nayak, aged about 38 years, So. Dhula Nayak, At-Nuapada,  
P.S.Tritol, Via-Tarpur, Dist-Jagatsinghpur, Orissa.

...Applicant

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

-VERSUS-

Union of India represented through:

1. The General Manager, East Coast Railways, Chandrasekharapur, Bhubaneswar, Dist-Khurda.
2. Senior Divisional Signal, Telecom Engineer, Khurda, At-Divisional Railway Manager Building, East Coast Railways, Khurda Road, Post-Jatni, Dist-Khurda.
3. Divisional Signal Telecom Engineer-II, Khurda, At-Divisional Railway Manager Building, East Coast Railways Khurda Road, Post-Jatni, Dist-Khurda.
4. Assistant Signal Telecom Engineer, Khurda, At-Divisional Railway Manager Building, East Coast Railways Khurda Road, Post-Jatni, Dist-Khurda.
5. Senior Section Engineer, Telecom/BBS, At/PO-East Coast Railways, Bhubaneswar, Dist-Khurda.
6. Senior Section Engineer, Telecom, Keonjhar Railway Station, Keonjhar.
7. Senior Section Engineer, Telecom/Wireless/Khurda, At/PO-East Coast Railways, Khurda Road, Khurda, Dist-Khurda.

...Respondents

By the Advocate(s)-Mr.T.Rath

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

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

- i) The Hon'ble Tribunal may admit the Original Application and issue notice to the Respondents to file show cause.

- ii) The Hon'ble Tribunal after hearing the counsel for both the applicant and Respondent as well as perusing the causes shown by Respondents be pleased to quash the order of Removal dated 19.5.2016 (Annexure-A/10) passed by Respondent No.1 by modifying the order of dismissal dated 25.3.2013 passed by Respondent No.3 and direct the Respondent No.1 to 3 to reinstate the applicant in his previous post, i.e., TECH-II(Tom).
- iii) The Hon'ble Tribunal may pass any other relief or reliefs as deemed fit and proper.

2. Shorn of unnecessary details, the relevant facts leading to filing of this Original Application as apparent therein are thus: The applicant while working as TCM-II/BBS under the East Coast Railways was issued with a Memorandum of Charge dated 03.09.2012 (A/3) in contemplation of disciplinary proceedings against him under Rule-9 of Railway Servants (Discipline & Appeal) Rules, 1968, containing the following Article of Charge:

"That the said Sri B.B.Nayak, TCM-II/BBS working under SSE(T/KUR) has committed gross negligence of duty that he has been remaining unauthorised absent from duty w.e.f. 06.05.2012 to till date without any intimation to his Supervising Unit.

That Sri Nayak, TCM-II/BBS has failed to maintain devotion to duty in contravention to Rule 3.1(ii) of R.S. Conduct Rules, 1965 as amended from time to time and has rendered himself liable for disciplinary action under R.S. D&A Rule, 1968 as amended from time to time".

3. In response to this, the applicant submitted his written statement of defence vide A/4 dated 12.10.2012 denying the allegations, as a result of which, an inquiry was conducted. The Disciplinary Authority vide order dated 25.03.2013 (A/8), imposed punishment of dismissal from service on the applicant, the relevant part of which reads as follows:

"The charged official has attended the 1<sup>st</sup> sitting of the inquiry on 03.12.12 and 2<sup>nd</sup> sitting of the inquiry on 21.12.12 when he has been supplied with the required documents and advised to attend the 3<sup>rd</sup> sitting of the inquiry on 04.01.12 along with his D.C. The 3<sup>rd</sup> sitting of

inquiry which was proposed to be conducted on 14.01.13 has been postponed to 28.01.13 as per the request of the charged official.

Despite of fixing the date on 28.01.12 as per his request, party has again requested to postpone the inquiry for a week from 28.01.12.

The inquiry officer has decided to conduct the inquiry ex parte as the request made by the delinquent for postponing the date of inquiry without sufficient reason rather wasting time of the inquiry officer as well as the prosecution witness.

The inquiry was conducted ex parte on 28.01.12 examining the prosecution witness, Smt.K.Rajlaxmi, SSET/BBS and defence witness Sri Sk.Akbar Hussain in absence of the CO

During the examination of the prosecution witness by the inquiry officer, she has stated that the charged official has neither submitted the LC application for the period in question/PMC nor intimated to the supervisor about the reason of his absence.

During the examination the Defence Witness stated that the charged official has not submitted any CL application to him at Bhubaneswar.

The inquiry report has been sent to the party on his home address by Regd.Post, 01 copy sent to his office and another copy passed in his work spot in presence of 02 witnesses. But till date party has not submitted any appeal.

The decision taken by the inquiry officer is acceptable in view of the material facts. After careful examination of the IO's report and explanation submitted by the charged official, the undersigned being the disciplinary authority has applied my mind and come to the conclusion that he is not a fit person to continue in Railway Service any more.

In view of the above, I have decided to impose the following punishment under Rule 6(ix), i.e."Dismissal from service with immediate effect".

4. While the matter stood thus, the applicant instead of preferring any appeal against the orders of punishment, submitted an application dated 31.05.2013 to the Railway Administration requesting for acceptance of his resignation from Railway Service. Since this application of the applicant was

not entertained on the ground that he had already been dismissed from Railway Service vide order dated 12.10.2012, he approached this Tribunal in O.A.No.532 of 2013 praying for direction to be issued to respondents for acceptance of resignation and to release arrears dues as admissible. This Tribunal vide order dated 12.08.2013 disposed of the said O.A. with direction to Respondents to consider the resignation letter as per rules and regulations. In the above backdrop, the applicants' representation was disposed of vide letter dated 10.09.2013 under intimation to him. Even thereafter, the applicant did not prefer any appeal against the orders of punishment. On the other hand, he again approached this Tribunal in O.A.No.967/2013, which was disposed of on 21.01.2015 with a direction to the applicant to file a petition to the Appellate Authority for condonation of delay while filing appeal, which the Appellate Authority may consider as per rules and regulation in force and dispose of the appeal as early as possible by way of a reasoned and speaking order. In obedience to the above order, the applicant submitted an appeal to the Appellate Authority on 17.03.2015 along with an application for condonation of delay inter alia, on the ground that due to wrong advice tendered by the conducting Advocate, he failed to prefer appeal to the Appellate Authority against the dismissal order within the prescribed time limit. The Appellate Authority did not find the ground urged in the application for condonation of delay to be convincing and therefore, he did not entertain the appeal. Aggrieved with this, the applicant submitted a petition to the reviewing authority, i.e., General Manager, East Coast Railway, who passed an order dated 19.05.2016 (A10), which reads as follows:

"In view of the above, the undersigned being the Revising Authority has decided to reduce his punishment from 'Dismissal' to 'Removal' from service from the same date

i.e., 25.03.2013 and his revision petition is disposed of accordingly".

5. Aggrieved with this, the applicant has filed the present O.A. seeking for the reliefs, as mentioned above.

6. The grounds urged by the applicant, amongst other things, are that whereas the charge sheet was signed by the Disciplinary Authority (Res.No.4), the punishment was imposed by Respondent No.3 and although this point had been raised by him in his petition, the Reviewing Authority did not consider the same and held that the punishment as imposed is commensurate with the gravity of offence. It has been submitted that the report of the I.O. was not supplied to him and therefore, he could not put up his defence effectively. However, the Disciplinary Authority, going by the report of the I.O. imposed punishment of dismissal from service. The appeal preferred by the applicant was not considered on merit by the Appellate Authority, who rejected the appeal solely on the ground of delay. The Reviewing Authority, without considering the matter on merit, only modified the punishment of dismissal from service to that of removal from service. It is the case of the applicant that there has been gross violation of the principles of natural justice while during the course of disciplinary proceedings against him and therefore, this Tribunal should grant reliefs as sought for in the O.A.

7. Resisting the claim of the applicant, the respondents have filed a detailed counter. According to respondents, the applicant has been given sufficient time and opportunities to defend his case. The inquiry report was sent to the applicant in his home address through Registered Post. The applicant did not respond to the same as a result of which the Disciplinary Authority had to pass final orders. Instead of filing appeal, the applicant

submitted an application for acceptance of resignation from railway service on health grounds and as already mentioned above, on the direction issued by this Tribunal, the appeal submitted by the applicant was considered along with the application for condonation of delay and as the delay explained by the applicant was found to be not convincing, the same was rejected. The Reviewing Authority, after considering the petition modified the punishment of dismissal to that of removal from service. As regards the contention of the applicant that whereas Respondent No.4 being the Disciplinary Authority signed the Memorandum of Charge, Respondent No.3 imposed punishment, the respondents have made it clear that as per the Schedule for Disciplinary Power, ASTE or any Junior scale Group B Gazetted Officer is the authority competent to impose penalty on a staff under his administrative control, who is receiving Grade Pay of Rs.2400/-. In this case, the applicant being a Tech.II(TCM) carries the Grade Pay of Rs.2400/-. They have pointed out that as per Rule-2(i)(c)(iii) and Rule 8(2) an authority competent to impose any of the minor penalties can initiate disciplinary proceedings for imposition of a major penalty in relation to Rule-9, in respect to non-gazetted staff. However, in terms of Railway Board's letter No.2010/VI/DAR/1/1 of 11.08.2010, major penalty No.6(vii), (viii) & (ix) will be imposed only by the appointing authority or the higher authority. Therefore, the penalties of dismissal, removal or compulsory retirement from service on a railway servant should be imposed only by the higher authority or by the appointing authority. Respondents have further pointed out that as per RS(D&A) Rules, 1968, Rule-11, where the disciplinary authority is of the opinion that the penalty warranted is such which is not within its competence, he shall forward the records of the enquiry to the appropriate authority for imposing penalty which will be

commensurate to the gravity of charges proved in the inquiry. According to respondents, there has been no procedural violation in the proceedings and therefore, the O.A. led by the applicant deserves to be dismissed.

8. Heard the learned counsels for both the sides and perused the records including the rejoinder filed by the applicant and the written notes of submission submitted by the respective parties. In the written notes of submission, the applicant has relied on the decision of this Bench in O.A.No.302 of 2014 disposed of on 20.07.2016 in which, this Tribunal had directed the Appellate Authority therein to reconsider the case of the applicant only on the question of quantum of punishment and to pass a fresh order except major punishment. On the other hand, in the written notes of submission, the respondents have pointed out that the O.A.No.967/2013 filed by the applicant earlier praying for condonation of delay for preferring appeal having been rejected by this Tribunal vide order dated 21.01.2015, interference by this Tribunal on the ground that the Appellate Authority rejected the appeal for the same having suffered delay and laches, would amount to reviewing the order dated 21.01.2015 in O.A.No.967/2013. According to respondents, resignation submitted by the applicant would go to show that he was no longer interested in Railway Service. Besides, the Respondents have relied on the decisions of the Hon'ble High Court Orissa in Minaketan Das vs. Union of India (WPJ (C) No.11328 of 2009 – decided on 01.02.2019) and Chandrama Bhusan Sarangi vs. Union of India & Ors. Reported in 2011(I) ILR-CUT-398 to fortify their standpoint.

9. In the instant case, admittedly, the applicant attended 1<sup>st</sup> and 2<sup>nd</sup> sitting of the inquiry. The 3<sup>rd</sup> sitting of the inquiry had been fixed to 04.01.2013, when the applicant submitted an application to postpone the same by 15 days.

Accordingly, the IO deferred the 3<sup>rd</sup> sitting of the inquiry to 28.01.2013. Again the applicant submitted an application to postpone the 3<sup>rd</sup> sitting which was not considered and accordingly, 3<sup>rd</sup> sitting of the inquiry was conducted ex parte. Apart from this, the applicant did not submit his representation to the report of the I.O., although the same had been sent to him in his home address. Thereafter, the Disciplinary Authority imposed punishment of dismissal from service vide order dated 25.03.2013. Instead of preferring appeal against the orders of the Disciplinary Authority, the applicant submitted an application for acceptance of his resignation. This having not been considered, he approached this Tribunal in O.A.No.532/2013 for direction to respondents to accept his resignation and to release the admissible dues. In pursuance of the direction of this Tribunal disposing of the said O.A. vide order dated 12.08.2013, resignation tendered by the applicant was examined and it was not accepted on the ground that prior to that the applicant had already been dismissed from railway service. The applicant thereafter, approached this Tribunal in O.A.No.967/2013 for condonation of delay so that he could submit his appeal against the orders of punishment. Pursuant to the order 25.03.2013 passed in the said O.A., the applicant submitted his appeal accompanied with an application for condonation of delay. The ground urged by the applicant for condonation of delay that due to wrong advice given by his Advocate, he could not prefer appeal within the stipulated time, was found to be not convincing and therefore, the appeal was turned down on the ground of delay and laches. However, the review petition preferred by the applicant was considered and disposed of by the Reviewing Authority by modifying the punishment of dismissal to that of removal from service.



10. We have considered the rival submissions and perused the order dated 23.08.2016 passed by this Tribunal in O.A.No.302/2014 (Asita Kumar Nayak vs.UOI) as relied on by the applicant. From the facts therein in the said order, it is found that a number of litigations had been filed by the applicant before this Tribunal as well as the Hon'ble High Court. Be that as it may, the fact remains that in that case the applicant had preferred an appeal to the Appellate Authority against the orders of punishment which had been turned down on merit, whereas in the instant case, no such appeal was preferred within the prescribed time by the applicant and ultimately, by the intervention of this Tribunal, the applicant though submitted his appeal, accompanied with an application for condonation of delay, the Appellate Authority being not convinced with the reasons adduced by the applicant, did not condone delay and thereby, the appeal was rejected. However, the point that this Tribunal in the said O.A. had decided is ***"even if for the sake of argument, it is admitted that the applicant was absent from duty for few months, will it entail his dismissal from service, overlooking the fact that the applicant has already served the department for more than two decades"***. To make the matter more conspicuous, the relevant Paragraphs of the order of this Tribunal are quoted hereunder:

- "5. We are concerned about the legal proposition that the scope of interference by the Tribunal in interfering the order of punishment is very limited. However, in the case of Hombe Gowda Educational Trust and Another vs. State of Karnataka and Others, 2006 SCC(L&S) 133, Their Lordships have summarized the law by observing that unless the punishment imposed by the Disciplinary Authority of the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Since the punishment imposed in the instant case is shockingly disproportionate, it would be appropriate to direct the Disciplinary Authority and the Appellate Authority to consider the penalty imposed, as has been observed by Their Lordships in the aforesaid case. By the time, the

charge memo was issued, the delinquent employee had already served the department for more than 20 years and was in a pensionable job, and if for absence of 3 to 4 months shall be removed from service without any other grave punishment, shall amount to injustice being disproportionate to the gravity of delinquency.

6. In the case of Krushnakant B.Parmar vs. Union of India & Ors. (2013) 3 Supreme Court Cases 178, their Lordships have observed that unless there is an observation that the absence was wilful, the order becomes vulnerable. In the said case, the applicant was unauthorizedly absent for more than three consecutive spells of 36 days, 32 days and 234 days. However, taking into consideration the circumstances, Their Lordships without remitting the proceedings to the Disciplinary Authority have passed an order for reinstatement of the appellant with 50% back wages.
7. In the instant case, since the applicant has some years of service left, it may not be just and proper to pass an order of dismissal merely because the applicant remained absent for 103 days. Hence, instead of interfering with the conclusion of the Disciplinary Authority, we feel it expedient to interfere with the punishment imposed by the Disciplinary Authority and affirmed by the Appellate Authority. It may not be out of place to mention here that the right to impose penalty carries with it the duty to act justly, considering the facts of the case and in the instant case there can be no two opinions that the penalty of dismissal from service imposed upon the applicant was whimsical and not in consonance with the mis-conduct. It may not be out of place to mention here that the gravity of misconduct plays a vital role in imposing punishment. Here the misconduct was unauthorized absence though for some absence period, he had informed to the authorities and for some period there is dispute because when the applicant says that he had sent intimation, but the office says, not to have received the same. However, the enquiry officer in para 16 of his report, has observed that the original leave application dated 30.09.2009, 30.10.2009, 26.11.2009 and 22.11.2009 are available in the case file of Shri A.K.Naik. So, instead of churning the matter, we feel it appropriate to remit the matter to the Appellate Authority to consider imposition of proper punishment on the delinquent keeping in view the degree of delinquency and it is a fit case for passing minor penalty. Hence ordered".

11. At this juncture, it is pertinent to note that the findings of the I.O. in the instant case are self-contradictory. In the other words, the IO in his report has

held that from the available official records, it could not be proved that the delinquent has ever submitted any C.L. application to his higher official for sanction for the period 06.05.2012 to 11.05.2012. But it is found from the papers attached in the file that he had submitted PMC from 12.05.2012 onwards. There is nothing on record to show that as to what consideration the respondents have shown to the PMC submitted by the applicant seeking leave from 12.05.2012 onwards. Since this aspect of the matter has not been considered by the Disciplinary Authority, Appellate Authority and the Reviewing Authority, in our considered view, this matter needs to be reconsidered by the Reviewing Authority, i.e., General Manager, East Coast Railways, (Respondent No.1).

12. We would like to note that, we have gone through the decision in Minaketan Das (supra) relied upon by the respondents. In that case the applicant had preferred appeal within the stipulated time frame, whereas in this case the applicant has not done so and his appeal has been rejected solely on the ground of delay. Therefore, the facts in Minaketan Das's case being different from the facts of the present O.A. are of no assistance.

13. Apart from the above, we are of the considered view that the punishment of removal from service is disproportionate to the gravity of misconduct committed and proved. Therefore, the punishment of removal from service needs to be revisited by the Reviewing Authority. In view of this, we remit the matter to the General Manager, East Coast Railway, (Respondent No.1) to reconsider the review petition filed by the applicant and pass appropriate orders, keeping in view the observations made above, within a period of ninety days from the date of receipt of this order.

14. With the above observation and direction, this O.A. is disposed of, with no order as to costs.

(SWARUP KUMAR MISHRA)  
MEMBER(J)

(GOKUL CHANDRA PATI)  
MEMBER(A)

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