
(2003) 02 OHC CK 0011
In the Orissa High Court
Case No : O.J.C. No. 9634 of 1999

Dashrathi Nayak	Vs	APPELLANT
Central Administrative Tribunal, Cuttack Bench and Others		RESPONDENT

Date of Decision : 19-02-2003

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2004) 1 LLJ 472 : (2003) 1 OLR 398

Hon'ble Judges : B.P. Das, J;B. Panigrahi, J

Bench : Division Bench

Advocate : Subrat Kumar Mohanty and Siva Mohanty, for the Appellant; B. Pal, N.S. Ghose and Meera Ghose, for the Respondent

Judgement

B. Panigrahi, J.—In this writ petition the order of the learned Central Administrative Tribunal, Cuttack Bench dated June 30, 1999 in O. A. No. 739 of 1993 whereby and whereunder the petitioner's order of removal from service was maintained. The petitioner was appointed as Engine Cleaner (E. C.) on June 30, 1976 in the LOCO Department under South Eastern Railway, Khurda Road Division. The petitioner was promoted to the post of Driver "C" in 1990. It is alleged by the petitioner that throughout his career he did no work which at any point of time amounted to carelessness and recklessness. The Goods Train in which he was working as driver was derailed on June 3, 1991. After such rail accident the petitioner was placed under suspension. No sooner did the accident take place a high-power fact-finding body visited the spot and submitted their report on June 12, 1991. Certain charges were framed against the petitioner and in reply to the article of charges, he claimed for supplying of a copy of fact-finding report, so that he would be in a position to submit a comprehensive statement of defence. But the Disciplinary Authority failed to supply the same, rather replied to the petitioner that the latter was not entitled to receive copy of the fact-finding report. Thereafter witnesses have been examined before the Enquiring Officer by both parties and the Enquiring Officer in his report had suggested to impose major punishment on the petitioner. Thereafter the

Disciplinary Authority communicated the petitioner asking him to show-cause as to why he shall not be removed from service. Pursuant to the letter issued by the Disciplinary Authority, he submitted his show-cause by stating that there is no exceptional ground for imposing drastic punishment of removal and he craved for a lesser punishment. But all his request did not evoke any response from the disciplinary authority and, accordingly, they removed the petitioner from service. After such removal he preferred an appeal before the appellate authority which also did yield no better result. Thereafter he filed an application before the Central Administrative Tribunal, Cuttack Bench challenging the order of removal. Learned Tribunal agreeing with the punishment imposed by the Disciplinary Authority dismissed the petitioner's application.

2. At the outset, the learned counsel, appearing for the petitioner has argued with vehemence that petitioner was highly prejudiced for having not supplied with the copy of fact-finding report. Had such report been supplied to the delinquent, he could have answered the charge in a better manner. For such non-supply it has resulted in miscarriage of justice and he was denied proper opportunity of defending himself before the Enquiring Authority due to non-supply of the document. He has also taken us through the written statement of defence wherein the delinquent has clearly mentioned that:

"The following additional documents may please be supplied vide Railway Board's Letter No. E (D & A) 61 RG6-45 D/-10-10-61 to attend this D & A enquiry.

- 1) All the statements of staff obtained in the fact- finding accident of joint enquiry,
- 2) The accident fact-finding joint enquiry report (of this accident) submitted to the Head Office GRC."

To this, the Department in its Letter No. A1/19/H/91/1242, dated March 8, 1992 has refused to supply the copy of the report of the fact-finding body on the ground that the articles of charges have not been framed on the basis of the report submitted by the fact- finding body.

3. In the above circumstances, it is to be considered whether such document comprising the fact-finding report should have been supplied by the Department to the delinquent officer or not. Even if the articles of charges are not based on such document, the charges have been framed on account of derailment of MD/ JNC Pilot Ex JNC at Talcher on June 3, 1991 and after such derailment a High Power Committee visited the spot and submitted their report to their higher authority as to the cause of the accident, therefore, such report is necessary to be supplied to the delinquent.

4. In the report it has been vividly discussed about the reasons of the accident and also the person/persons responsible for causing such accident. In course of argument the petitioner's learned counsel has made a prayer to direct the

opposite parties to produce the fact-finding report. On the basis of the prayer of the petitioner the opposite parties are asked to produce the fact-finding report in course of hearing and also the record connected with the enquiry against the delinquent.

5. Mr. Pal, learned senior counsel appearing for the opposite parties has submitted that at no point of time, the delinquent had complained, after submission of his statement of defence, to supply him a copy of the fact-finding body's report. Had the petitioner renewed his prayer for supply of copy of fact-finding report before completion of enquiry, such report must have been supplied to him. Since that was not the basis of the charges, therefore, it was not obligatory for opposite parties to supply to the delinquent a copy of the report of the fact-finding body.

6. Pursuant to our order the report of the fact-finding body has been produced in Court today. It is stated as thus:

"Responsibility: Sri D. R. Naik, Driver, Talcher is primarily held responsible for failing to keep his train under control and for not applying the brakes correctly and in time. He also failed to observe the speed restriction over the siding and also failed to stop at the four locations where he is required to do so and finally derailed after disregarding the stop board.

Other irregularities".

1. The intensive examination of the N BOX rake was not properly done at VSKP. From an intensive examination point the train should not have been permitted with 80% brake power endorsed on the BPC, though actually the effective brake power was much less (45.7%). The check at Talcher revealed that the train had been allowed with 8 distributor valves deficient, 11 IOP and 11 wagons with brake blocks and pull rod pins deficient or brake blocks badly worn-out. The PPC also had an endorsement "valid up to Talcher only." The examination at VSKP needs to be improved.

2. As per the SWR, catch sidings have been provided for the South Balanda Siding line and Talcher siding. These catch sidings have been permanently spiked/permanently locked thereby serving no purpose. The catch sidings are also not of standard design, catch sidings of standard design need to be provided.

3. The assisted portion of the South Balanda line is in poor state of maintenance. The lines need to be revamped.

4. At present the pilots are being allowed with the brakevan in the rear. As such, when the pilot returns, the brakevan becomes next to the loco and as such the guard-is not able to play any effective role in the controlling of the train. It is, therefore, suggested that the MT should be marshalled next to the loco while going to the siding. This can be done easily if an overlapping MT is kept along with the pilot power."

7. Since such report relates to the accident and also the persons responsible for the accident has been noted therein, it is, therefore, imperative for the opposite parties to supply a copy of the same to the delinquent driver. The articles of charges are inextricably intertwined with the facts stated in the report. Therefore, while fixing the responsibility against the delinquent driver, the report of the fact-finding body has a far-reaching consequence and non-supply of same would definitely result in miscarriage of justice and it would amount to denial of natural justice. Therefore, the opposite party No. 5 shall supply a copy of the fact-finding body's report to the delinquent within 4 weeks from date and after such supply of report if the delinquent driver has anything to answer in support of the charges, he may do so within two weeks thereafter. The Enquiring Officer namely, the Assistant Mechanical Engineer, shall hold enquiry by taking into consideration the evidence which are already on record. If the parties are so advised, they can lead further evidence in support of their pleas. Accordingly, the order of removal vide Annexure-8 is hereby quashed, so also the order passed by the learned Tribunal as well as the appellate authority. Since we had no occasion to deal with the evidence adduced by the department as well as delinquent in detail it shall not be construed that on merits we have disposed of the case, save and except on technical ground of non-supply of fact-finding report to the delinquent. The petitioner for the purpose of communication of correspondence should furnish the present address to the opposite parties 4 and 5 within a week from date. Since this matter is dragging over years, the opposite parties 4 and 5 are directed to expedite the enquiry and conclude it within 6 months from the date of communication of the order. The delinquent driver is hereby asked to afford all possible co-operation for completion of enquiry by the Enquiring Officer within the time stipulated.

8. The writ petition is accordingly disposed of,

B.P. Das, J.

9. I agree.