

Hemanta Kumar Tripathy Vs. Union of India (Uoi) Represented by the General Manager, S.E. Railway and ors.

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Court : Orissa

Decided On : Oct-11-2007

Reported in : [2008(116)FLR693]; (2008)IILLJ495Ori; 2008(I)OLR54

Judge : I.M. Quddusi and; Pradip Mohanty, JJ.

Appellant : Hemanta Kumar Tripathy

Respondent : Union of India (Uoi) Represented by the General Manager, S.E. Railway and ors.

Judgement :

I.M. Quddusi, J.

1. The judgment and order dated 26.2.2001 passed by the Central Administrative Tribunal in O.A. No. 131 of 2000 dismissing the O.A. filed by the petitioner challenging the order of removal from service dated 25.12.1999 and the order dated 25.2.2000 rejecting his departmental appeal with a prayer for reinstatement in service with all consequential service benefits is under challenge in this writ petition under Articles 226 and 227 of the Constitution of India.

2. It is not disputed that the charge sheet in the departmental proceeding was issued on 31.3.1995 to the petitioner. Thereafter the petitioner approached the

Central Administrative Tribunal by filing O.A. No. 253 of 1997 for quashing of the charge sheet but the Tribunal vide order dated 8.7.1999 declined to quash the charge sheet. However, the Tribunal directed to conclude the departmental proceeding within a period of 120 days from the date of receipt of that order, if the same had not been completed and the petitioner was directed to cooperate in the proceeding. Thereafter, the enquiry proceeded and by order dated 25.12.1999 passed by the Deputy Chief Engineer-opposite party No. 3, the petitioner was removed from service. Against the order of removal, the petitioner preferred an appeal to the Chief Engineer, which was rejected by order dated 25.2.2000. Being aggrieved, the petitioner preferred O.A. No. 131 of 2000 before the Central Administrative Tribunal, Cuttack which was rejected by order dated 26.2.2001. Hence, this writ petition.

3. A plea was taken by the petitioner that no opportunity of hearing was given to him and no intimation was received by him regarding the conduct of the enquiry on 29th and 30th of December, 1997. Learned Counsel for the opposite parties submitted that during the enquiry proceedings, notices were issued to the petitioner to attend the proceedings on 29.12.1997 and 30.12.1997. However, the records produced by the opposite parties before this Court did not show receipt of any notice by the petitioner of the conduct of the proceedings on 29th and 30th of December, 1997. On this, we granted opportunity to the learned senior counsel for the opposite parties to produce the documents to show that intimation to conduct the enquiry on 29.12.2007 was received by the petitioner. In spite of time being granted on several occasions, the acknowledgement of the notice could not be produced. On 9.1.-2006, Shri Ashok Mohanty, learned senior counsel, made a submission that the department tried their best to search out if any intimation was sent to the petitioner intimating him regarding the conduct of the enquiry on 29.12.1997 and 30.12.1997 but the same was not available on record. Therefore, presuming that no intimation was sent to the petitioner intimating him that the enquiry was to be conducted on 29.12.1997 and 30.12.1997, we are of the opinion that no adequate opportunity has been granted to the petitioner to defend himself in the departmental proceeding.

4. In view of the above, the departmental proceeding conducted from 29.12.1997 as well as the punishment of removal and the order passed in appeal and the impugned order passed by the Tribunal are liable to be quashed.

5. In the result, the writ petition is allowed in part. The impugned order passed by the Tribunal, the departmental proceeding conducted from 29.12.1997 and the order of removal as well as the appellate order are quashed. It will be open to the opposite parties to conduct de novo enquiry as directed above after providing opportunity to the petitioner to defend himself in accordance with the rules. However, if the proceeding is not started within a period of three months from the date of production of a copy of this order, the petitioner shall be entitled to reinstatement with all consequential service benefits.

There would be no order as to costs.

ORDER

Pradip Mohanty, J.

6. I agree.

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