

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.36 of 1988.

Date of decision : October 31, 1988.

Prafulla Chandra Patnaik, A.S.M.
At-Badakhandaita (S.E.Rly), P.O.
Somepur, P.S.Kishannagar, Dist-
Cuttack. ...

Applicant.

Versus

1. Union of India, represented by General Manager, South Eastern Railway, Garden Reach, Calcutta-43. (West Bengal).
2. The Divisional Railway Manager, South Eastern Railway, Khurda Road, At/P.O./P.S. Khurda, District-Puri.
3. The Senior Divisional Operating Superintendent, South Eastern Railway, Khurda Road, At/P.O./P.S.Khurda, District-Puri.
4. The Senior Divisional Personnel Officer, South Eastern Railway, Khurda Road, At/P.O./P.S.Khurda, District-Puri.
5. The Assistant Commercial Superintendent (Enquiry Officer) South Eastern Railway, Khurda Road, At/P.O./P.S.Khurda, District-Puri.

For the applicant ... M/s.B.S.Misra¹,
A.K.Nayak-1, A.K.Sahu,
R.Mohanty-2, B.B.Mohanty,
S.K.Pradhan, R.K.Sahu,
Advocates.

For the respondents ... Mr.R.C.Ratha, Standing Counsel
(Railways)

C O R A M :

THE HON'BLE MR.B.R.PATEL, VICE-CHAIRMAN

AND

THE HON'BLE MR.K.P.ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? NO
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

JUDGMENT

K.P.ACHARYA, MEMBER (J) In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant challenges the order passed by the competent authority imposing punishment to the extent of reverting the applicant to the post of a Switch Man for a period of three years as contained in the order of the disciplinary authority i.e. the Senior Divisional Operating Superintendent, South Eastern Railway, Khurda Road, vide Annexure-2.

2. Shortly stated, the case of the applicant is that while he was working as an Assistant Station Master of Badakhanda Railway Station within the district of Cuttack an allegation was levelled against the applicant that due to his negligence and misconduct, there was a short remittance of Rs.66/- covered within a period of three months. As Assistant Station Master in addition to his duties of operation of different trains through his station, he had to sell tickets to the outgoing passengers. Out of the total collection made during this three months there was short remittance of Rs.66/- at different spells. An enquiry was conducted against the applicant and the enquiring officer found the applicant to be guilty of the charges and accordingly submitted his findings to the disciplinary authority namely the Senior Divisional Operating Superintendent, South Eastern Railway, Khurda Road who concurred with the findings of the enquiring officer and ordered that the applicant be reverted to the post of Switch Man for a period of three years. Being aggrieved by this

adverse order, the applicant has filed this original application.

3. In their counter, the respondents maintained that no illegality having been committed during the course of enquiry and the principles of natural justice having been strictly complied with, there is no scope for the applicant to claim any prejudice and hence the case being devoid of merit is liable to be dismissed.

4. We have heard Mr.B.S.Misra-1, learned counsel for the applicant and Mr.R.C.Rath, learned Standing Counsel for the Railway Administration at some length. We have also given our anxious consideration to the averments made in the original application and the counter and we have carefully considered the relevant documents. After hearing learned counsel for both sides we are of opinion that the findings of the enquiring officer and that of the disciplinary authority cannot be unsettled. The prosecution has proved its case with satisfactory evidence and therefore we find that there was short remittance of Rs.66/- by the applicant during a period of three months, and therefore the finding of guilt of the applicant is hereby confirmed.

5. As a last straw on the camel's back Mr.B.S.Misra-1, vehemently pressed before us that the applicant has to perform various nature of duties namely operational work of the trains and due to frequent current failure, there might have been some laches on the part of the applicant which was

unintentional. There was no mens rea on his part. It was further submitted by Mr. Misra-l, that had there been any ill motive on the part of the applicant then he could have defalcated an amount much higher than Rs.66/- It was also submitted that this amount of Rs.66/- has been already recovered from the applicant. Hence, it was submitted that taking into account pressure of work and other facts stated these irregularities might have occurred. A lenient view should be taken by this Bench on the quantum of penalty. This submission of Mr. Misra-l, was stiffly and emphatically opposed by Mr. R.C. Rath, learned Standing Counsel for the Railway Administration who has submitted that the applicant has also committed similar irregularities after he was convicted in the present case. The misconduct of the applicant forms subject matter of another case and it shall be decided on its own merits. That has not yet been finalised. There is no evidence before us that the said case has been finalised except that Mr. R.C. Rath made an oral statement before us. Without any documentary evidence to the effect that the enquiry in the said case has been finalised we would not attach any importance to this aspect of the argument of Mr. Rath. We repeat that the second case will be decided on its own merits. Mr. Rath drew our attention to the contents of Annexures-C & E. Some punishments have been awarded to the applicant. But still we feel that the quantum of penalty is disproportionate to the gravity of the offence. The disciplinary authority has also recorded the extenuating circumstances in para 3 of his order. In view

of the aforesaid extenuating circumstances we think the order passed by the Senior Divisional Operating Superintendent reducing the applicant to a lower rank is disproportionate to the ^{gravity of the} charge and the ends of justice would be met if two future increments of the applicant are withheld without cumulative effect and the order passed by the disciplinary authority demoting the applicant to the post of Switchman is hereby set aside. The applicant be given the post of Assistant Station Master within one month from the date of receipt of a copy of this judgment. The applicant will not be entitled to any back wages as Assistant Station Master.

6. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.

Received 31.10.88
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Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,



Received 31.10.88
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Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
October 31, 1988. S. Sarangi.