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Date of decision : October 5, 1990.

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Applicant.

Versus

M/s. A. K. Bose,
P. K. Giri, Advocates.

Mr.R.C.Ratha,
Standing Counsel(Railways)

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he prays should be quashed.

2. The respondents in their written reply have stated that the order of promotion was not given effect to as there was a disciplinary case pending against the applicant and no vigilance clearance had been obtained. He was however allowed to join at Khurda Road in Grade II.

3. We have heard Mr. A.K. Bose, learned counsel for the applicant and Mr. R.C. Ratha, learned Standing Counsel (Railways) for the respondents and perused the relevant records. Mr. Bose has argued that charges were framed as per Annexure-3 and they were duly enquired into. The disciplinary authority however held that the findings of the enquiring officer were not conclusive as the Railway Doctor who had medically examined the delinquent officer had not been examined during the course of enquiry. In view of this the disciplinary authority ordered a 'supplementary' enquiry to be conducted in the presence of the delinquent officer in order to meet the natural justice. This order was passed on 4/7.12.1987 vide Annexure-4. Thereafter on 25.1.1988 the same authority without waiting for the 'supplementary' enquiry passed an order imposing the following penalty.

" Your pay is reduced from Rs.2420/-P.M. to Rs.2300/-P.M. for a period of One year with effect from 01.02.88.

2. The period of punishment of ONE year shall not operate to postpone further increments on the expiry of punishment."

Thereafter, the Chief Engineer, Gardenreach enhanced the punishment to one of withholding of increment for at least

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five years vide Annexure-7. Mr. Bose challenges the order of the Chief Engineer on the ground that the Chief Engineer is not the appellate authority and as such has no authority whatsoever to enhance the punishment. Mr. Ratha on the other hand drew our attention to Annexure-R/4 wherein it has been stated that all proved cases of misuse of passes/PTOs should be reported by the disciplinary authority to the respective Head of Department who will consider the adequacy or otherwise of the penalty imposed and initiate action for the enhancement of the penalty if considered necessary. This however, ^{does not} empower the Chief Engineer who is the Head of the Department to act as the appellate authority.

We are unable to appreciate the action of the disciplinary authority because he had earlier himself passed an order that the requirement of natural justice had not been met by the enquiry officer inasmuch as the Medical Doctor who was a material witness had not been examined. It was to meet the requirement of natural justice that he ordered for another enquiry which he termed as 'supplementary enquiry'. Without waiting for the result of that enquiry he had passed the order dated 25.1.1983 (Annexure-5). We have come to the conclusion that the order dated 25.1.1983 has not complied with the requirement of natural justice as a material witness like the Medical Doctor who had examined the delinquent officer had not been examined in the course of enquiry and as such this order

[Signature]

of the disciplinary authority dated 25.1.1988 (Annexure-5) is hereby quashed. ~~THE~~ Chief Engineer who had no authority to award punishment, as stated above, had acted beyond his jurisdiction in passing the order at Annexure-7 which is hereby quashed.

4. Mr. Rath has argued that as stated above, the order of promotion had not been given effect to as there was no vigilance clearance obtained. He drew our attention in this regard to Annexure-R/3 dated 7.6.1989 which is in the nature of a reminder to the Divisional Railway Manager (P)/ADA, South Eastern Railway to immediately let the Office of the Divisional Railway Manager, Khurda Road know about the clearance of SPE/Vigilance/D & A CBI cases pending against the applicant. It is not known what has happened to the vigilance clearance till now. In the meantime the applicant has retired from 31.7.1989. We have considered Annexure-R/3 in the light of the order of promotion issued on 19.6.1986 vide Annexure-R/1. We cannot but observe that the applicant has suffered for no fault of his. Till today there is no information available that there was any vigilance case pending on 19.6.1986 when the order of promotion was passed or on 4.7.1986 when he joined at Khurda Road which was his new place of posting. Mr. Ratha has however contended that there was a disciplinary case pending against him for which the order of promotion has not been implemented. On perusal of the documents produced by Mr. Ratha we have noticed that the disciplinary proceeding was started only in December, 1986 vide Annexure-3 which is a copy of the report of the Enquiry Officer. There is, therefore, no justification for denying the

Dr. N. K. S. S. S.

applicant the promotion to the rank of Inspector of Works Grade I. We, therefore, direct that the arrear dues should be calculated in respect of Inspector of Works Grade I with effect from 4.7.1986 and paid to the applicant within four months from the date of receipt of a copy of this judgment.

5. The applicant succeeds. We allow consolidated cost of Rs.200/- to the applicant.

[Signature] 5/10/90
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Member (Judicial)



Central Administrative Tribunal,
Cuttack Bench, Cuttack.
October 5, 1990/Sarangi.

[Signature] 5.10.90
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Vice-Chairman