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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

Original Application No. 262 of 1990

Date of Decision: 8.7.1992

Banabehari Swain

Applicant

Versus

Union of India & Others

Respondents

For the applicant

M/s. Deepak Mishra,  
R.N. Naik, A. Deo,  
B.S. Tripathy,  
Advocates

For the respondents

Mr. D.N. Mishra,  
Standing Counsel  
(Rly. Administration)

...

C O R A M

THE HONOURABLE MR. K.P. ACHARYA, VICE-CHAIRMAN

AND

THE HONOURABLE MR. M.Y. PRIOLKAR, MEMBER (ADMINISTRATIVE)

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


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JUDGMENT

MR. K. P. ACHARYA, VICE-CHAIRMAN, In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to quash the order passed by the competent authority contained in Annexure-2 dated 27th October, 1988 imposing penalty.

2. While the petitioner was working as Station Master in Meramundali Railway Station, vide order dated 15th September, 1988 a proceeding under Rule-II of the Railway Servants (Disciplina and Appeal) Rules, 1968 was served on the petitioner consisting of seven items of charges. Thereafter the petitioner submitted explanation and the competent authority exonerated the petitioner from three items of charges and held the petitioner to be guilty of the remaining charges and vide Annexure-2 dated 27.10.1988, the Divisional Safety Officer, South Eastern Railways, Khurda Road ordered that the next increment due to the petitioner raising his pay from Rs.1600 to Rs.1640/- shall be withheld for a period of 12 months when it will with effect from the date/otherwise <sup>be</sup> due to him and the period of punishment viz. 12 months shall not operate to postpone future increments on the expiry of the punishment. This order is sought to be quashed.

3. In their counter the opposite parties maintain that the explanation submitted by the petitioner being unsatisfactory, rightly the petitioner was guilty of the same charges. & alienient view have been taken on the quantum of penalty imposed on the petitioner. Therefore the order of punishment should not be disturbed - rather it should be sustained.

4.  We have heard learned counsel for the petitioner and Mr. C.

and Mr.D.N.Mishra, learned Standing Counsel for the Railway Administration. Learned counsel for the petitioner vehemently pressed before us that conceding for the sake of argument that the petitioner had derelicted from his duty in regard to the charges levelled against him, without being of trivial nature, no punishment should have been imposed. In addition to the above it was submitted that the Railway Authorities had not made any provision for fixing last vehicle indicator and therefore the petitioner had not violated S.R.4.23.02. Again it was submitted that all the charges are vague in nature and therefore the petitioner has been deprived of giving adequate explanation which is not the fault of the petitioner. Therefore in such circumstances the order of punishment is illegal, unjust, improper and liable to be set aside.

5. On the other hand Mr.D.N.Mishra, learned Standing Counsel contended with equal vehemence that the submissions made on behalf of the petitioner has come up for the first time in this Court and <sup>this</sup> the stand was never taken before the competent authority while submitting an explanation. Had these points been raised before the competent authority in the explanation submitted by the petitioner, then it could have been adequately met by the competent authority <sup>in</sup> to the impugned order and it was further submitted by Mr.D.N.Mishra that all the submissions made on behalf of the petitioner does not find place in the pleadings of the petitioner and therefore opposite parties have no notice regarding these facts and the petitioner cannot be permitted to take these

<sup>grounds.</sup>  
the opportunities.

6. We have given our anxious consideration to the arguments advanced at the Bar. We cannot agree with the learned counsel for the petitioner that the allegations levelled against the petitioner are trivial in nature. A Station Master has a heavy responsibility on his shoulder to be discharged when human lives and properties both of the Government and the public are being carried on by the trains. We are in complete agreement with the submission made by Mr.D.N.Mishra that for the first time this lacuna on the part of the Railway Administration has come up before this Court on behalf of the petitioner. We find there is substantial force in the contention of Mr.D.N.Mishra that the opposite parties cannot be taken <sup>by</sup> ~~into~~ surprise especially when these facts do not find place <sup>anywhere on a prior</sup> ~~on the~~ occasion. Hence we are of opinion that the order of punishment contained in Annexure-2 is not liable to be quashed - rather it should be sustained. But we find there is substantial force in the contention of learned counsel for the petitioner that in case this punishment is taken into consideration by the appropriate authority while considering the case of the petitioner for promotion <sup>Sh</sup> ~~which~~ would amount to a double jeopardy and therefore it was contended by learned counsel for the petitioner that an observation should be made by this Court that this punishment would in no way act <sup>against</sup> ~~upon~~ the petitioner in regard to consideration for promotion in future. Though Mr.D.N.Mishra vehemently objected for acceptance of this submission of

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the petitioner we find that there is substantial force in the contention of learned counsel for the petitioner that if such a step is taken by the appropriate authority to consider this punishment it may amount to double jeopardy. Therefore we direct that while the case of the petitioner will be taken into consideration, <sup>in</sup> ~~if~~ future, for any promotional post, this order of punishment shall not be taken into consideration to adjudicate the suitability or otherwise.

7. Thus the application is accordingly disposed of leaving the parties to bear their own costs.

  
8.7.92  
MEMBER (ADMINISTRATIVE)

  
8/7/92  
VICE-CHAIRMAN

Central Administrative Tribunal  
Cuttack Bench, Cuttack  
dated the 8th July, 1992/BKSahoo