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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.55 OF 1992
Cuttack, this the 6 February, 1998

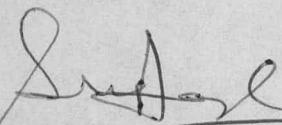
Sri Nimaia Charan Dash Applicant

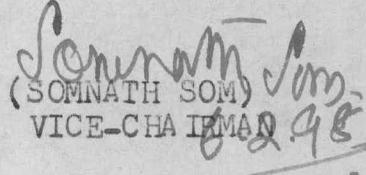
Vrs.

Union of India and others Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?


(S.K. AGARWAL) 6/2/98
MEMBER (JUDICIAL)


(SOMNATH SOM) 6/2/98
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 55 OF 1992

Cuttack, this the 6th day of February, 1998

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI S.K.A GARWAL, MEMBER(JUDICIAL)

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Sri Nimaín Charan Dash,
aged about 56 years,
son of Daitari Dash,
Vill/PO-Tarpur,
District-Cuttack,
at present Lower Section Grade (In short LSG),
Sorting Assistant,
Head Record Office, Railway Mail Service,
N Division, Cuttack- 7 Applicant

By the Advocate - Mr. R. C. Rout.

Vrs,

1. Union of India,
represented by the Secretary to
Government in the Department of Posts,
Ministry of Communication,
New Delhi.
2. Director General,
Postal Services, Government of India,
Dak Bhawan, New Delhi-110 001.
3. Member(Personnel), Postal Services Board,
Dak Bhawan, New Delhi-110 001.
4. Chief Post Master General,Orissa Circle,
Bhubaneswar-751 001.
5. Director, Postal Services,Orissa Circle,
Bhubaneswar-751 001.
6. Senior Superintendent, R.M.S., N-Division,
Cuttack-753001

By the Advocate - Mr. Aswini Ku. Misra,
Senior Panel Counsel.

ORDER

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of
Administrative Tribunals Act, 1985, the petitioner has prayed
for a direction to the respondents not to withhold

his increment of pay due for a period of one year pursuant to the order dated 23.1.1991 of Director of Postal Services, Bhubaneswar and for quashing the above order, which is at Annexure-9. The above punishment was issued at the conclusion of disciplinary proceedings and the respondents in their counter filed on 9.4.1992 had taken the stand that against the order of punishment passed by Director of Postal Services, the applicant did not prefer an appeal to the Member(Personnel), Postal Board. But a copy of the appeal filed by the applicant is at Annexure-9(b). During pendency of this O.A., learned counsel for the respondents filed M.A.No.348 of 1996 in which it was submitted that a copy of the appeal was received by respondent no.4 on 16.4.1996 and was forwarded to respondent no.3 on 18.4.1996. Accordingly, the respondents had asked for time for disposal of the appeal. The appeal was rejected and this fact was brought to the notice of the Court on 7.3.1997. Thereupon the applicant has amended the Original Application in M.A.No.381/97 filed on 18.7.1997 in which the appellate order, copy whereof has ~~not been filed~~ at Annexure-12, been filed/ has been brought within the ambit of the O.A.

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2. Facts of this case, according to the applicant, are that while he was working as L.S.G.Sorting Assistant in the office of Head Record Officer under Senior Superintendent, R.M.S., N.Division, Cuttack, he availed L.T.C.advance of Rs.2200/- on 22.5.1986. But as the bill was submitted by him only on 20.8.1986 the amount of L.T.C. advance along with penal interest was recovered from the pay of the applicant in order dated 25.8.1986 (Annexure-1). On the basis of the L.T.C. Bill submitted by the applicant, notice for departmental enquiry was issued to him on 30.3.1988 (Annexure-2). There were two charges. The first charge is that the applicant preferred an L.T.C.Bill on 18.8.1986 claiming an amount of Rs.3018/-

towards the to and ~~for~~ journey performed by his father and two sons from Cuttack to Hardwar via Delhi. As per the Bill, the above three members of the applicant's family had performed ~~fixx~~ forward journey from Cuttack to New Delhi on 9.6.1986 in Railway A.C.II Tier and return journey from New Delhi to Cuttack was performed by two members in A.C.II Tier on 29.6.1986 and by the third member on 25.6.1986 by Railway Second Class. The applicant in the L.T.C. Bill mentioned that the forward journey started from Cuttack on 9.6.1986 at 11.50 hours, noted the ticket numbers as 00416, 00417 and 00418, and also produced the reservation ticket nos. 11923, 11924 and 11925. But on verification with the Railway authorities, it was revealed that no such tickets were issued for A.C.II Tier journey on 9.6.1986 from Cuttack to New Delhi. Thus under the first charge, the applicant has been charged for preferring an ungenuine claim. The second charge is that the applicant mentioned in his L.T.C. Bill that two of the above three persons performed ^{the} return journey from New Delhi to Cuttack on 29.6.1986. He produced ticket No. 702302 for Rs. 1150/-. On verification with the Railway authorities, it was found that ticket No. 702302 was issued not for Rs. 1150/- for the journey performed from New Delhi to Cuttack, but this was for Rs. 550/- for the cancellation of A.C.II Tier Ticket No. 00327 and 00328 issued on 26.5.1986 in favour of Mr. D. Dash and Mrs. B. Dash for journey by 915 UP on 9.6.1986 from Cuttack to New Delhi. His preferring of claim of Rs. 1150/- was found to be *prima facie* ungenuine and this is the second charge against him. At the conclusion of the enquiry, report of the inquiring officer was supplied to the applicant and he also made a representation after getting the report of the inquiring officer. After considering the report of the inquiring officer and the representation of the applicant, the impugned order of punishment was passed. The applicant was

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awarded with the punishment of withholding of his next increment of pay due for a period of one year with cumulative effect. On the date of admission of the O.A. on 13.2.1992, the impugned punishment was stayed till the disposal of the O.A. The applicant has challenged the impugned order of punishment on several grounds. It has been submitted that the charges were initiated by Senior Superintendent, R.M.S., who is not disciplinary authority and therefore, the entire proceeding is bad. It has been further stated that the documents referred to in the charges were not supplied to the applicant even though asked for. Statements of witnesses were also not supplied. The applicant had submitted that the inquiring officer was biased against him, but this was not considered. It is also submitted that of the two prosecution witnesses examined, one G.K.Dhali was not cross-examined and the other witness was one D.C.Das even though in the chargesheet the name of one B.C.Das was mentioned. It is further submitted that the findings of the inquiring officer are not supported by evidence and the appellate authority has not applied his mind.

3. Respondents in their counter have submitted that the enquiry was conducted strictly in accordance with rules and instructions and all facilities were given to the applicant for defending himself. After detailed enquiry, one of the charges has been proved against him. The punishment order has been passed by the appointing authority, Director of Postal Services and there is no irregularity in the Senior Superintendent, R.M.S., initiating the disciplinary enquiry. The representation of the applicant regarding bias of the inquiring officer was considered and rejected by the Director of Postal Services. As one of the charges has been proved against the applicant during the enquiry, the respondents have opposed the prayer of the applicant.

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4. We have heard the learned lawyer for the applicant and the learned Senior Panel Counsel, Shri Aswini Kumar Misra appearing on behalf of the respondents at length and have also perused the records.

5. The position of law is well settled that in a departmental enquiry the Tribunal does not act as the appellate authority and cannot reappraise the evidence and substitute its judgment for that arrived at by the inquiring officer and the disciplinary authority. In a case where the findings and the punishment have been challenged, the Tribunal can interfere only if in course of the enquiry proper procedure has not been followed resulting in prejudice to the charged officer and if the findings are based on no evidence or on such evidence that no reasonable person would come to the finding arrived at in the enquiry. The various submissions made by the learned lawyer for the petitioner have to be considered in the context of the above ^{well} settled position of law.

6. The admitted position is that Director of Postal Services is the appointing authority for the applicant. In this case, the impugned order of punishment has been passed by the Director of Postal Services. The enquiry has been conducted by the inquiring officer specially appointed for the purpose. But that does not mean that Senior Superintendent, R.M.S., is not authorised to initiate the disciplinary proceeding. The Senior Superintendent, R.M.S. is not authorised to impose penalty and this he has not done in the case. This position has also been intimated to the applicant in response to his representation dated 28.3.1990, by the Director of Postal Services in his letter dated 9.11.1990 (Annexure-7).

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7. The second point is that even though the applicant had asked for copies of documents mentioned in the statement of articles of charges (Annexure-3), the same

were not supplied to him. The disciplinary authority has noted in the order dated 23.1.1991 that in his letter dated 26.4.1988 the applicant requested for supply of listed documents and the Senior Superintendent, R.M.S. supplied xerox copies of the documents at Serial Nos. 1 to 13 of Annexure 3, referred to earlier, in his letter No.J.4/LTC(Sub) dated 13.5.1988. On 24.5.1988 the applicant requested for supply of Railway money receipt purported to have been submitted by him with his L.T.C. Bill stating that the documents supplied were not sufficient. We find from Annexure-3 that Railway Money Receipt No.702302 for Rs.1150/- is item no.5 and this apparently was supplied to him. It appears that the applicant wanted two more documents, verification certificate in respect of tickets purchased and the recall application of L.T.C. Bill. The inquiring officer called for these documents from the departmental authorities who reported that no verification statement or recall application of L.T.C. Bill was submitted by the applicant. As such, there was no question of supplying the copies of those documents to the applicant. Thus the ground taken that the necessary documents were not supplied to the applicant is held to be without any merit and is rejected.

Comments from 6.2.98

8. The next point made was that statements of witnesses, mentioned in Annexure-4, to the articles of charges were not given to the applicant. In this Annexure, four witnesses have been mentioned. The departmental authorities reported to the inquiring officer that statements of these witnesses had not been taken down and therefore, these were not supplied. In any case, out of the four witnesses mentioned, three witnesses did not appear and were not examined in course of the enquiry. Therefore, it cannot be said that non-supply of copies of the statements of these witnesses has prejudiced the applicant in any manner.

9. In course of enquiry, one D.C.Das was examined. He was the Chief Reservation Clerk in Cuttack Railway Station. The applicant took the stand in course of the enquiry that in the list of witnesses attached to the imputations, the name has been mentioned as B.C.Das. Inquiring officer has noted that the name was typed not very distinctly and the Railway authorities reported that there was no person named B.C.Das working as Chief Reservation Clerk and the concerned person was D.C.Das and therefore, he was examined. The applicant has taken the stand that examination of this witness is unauthorised because his name was not forwarded along with the charge. Thus the applicant is merely trying to make out a case on the basis of a typographical error. It appears from the enquiry report that the person who was required to prove the documents was the Chief Reservation Clerk and D.C.Das was the Chief Reservation Clerk and the name was indistinctly typed and appeared to be B.C.Das. It cannot, therefore, be held that examination of D.C.Das was illegal. Another witness G.K.Dhali was produced by the presenting officer. He was also a Clerk in the Railways who had the custody of used Money Receipt Books. He merely proved a document. Therefore, by non-supply of copies of the statements of those two witnesses to the applicant, no prejudice can be said to have been caused to him.

10. Lastly, the applicant has stated that even though he alleged bias against the inquiring officer, the inquiring officer was not changed. His petition alleging bias was sent to the Director of Postal Services who rejected the prayer for changing of the inquiring officer. In his petition, he merely stated that the inquiring officer and the presenting officer are friends and therefore, he alleged bias. The inquiring officer, the presenting officer and the defence assistant were all employees of Postal Department and they all could be known to each other. On that basis, bias cannot be alleged and

Verdict
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the order of Director of Postal Services rejecting his prayer for change of inquiring officer cannot be held to be illegal.

11. In view of the above discussions, we hold that the applicant has not been able to make out any case proving that procedural irregularity has been committed in course of the enquiry resulting in denial of natural justice and prejudice to him. This contention of the applicant is, therefore, rejected.

12. The last point is that the conclusion arrived at by the inquiring officer is against the weight of evidence. We have gone through the report of the inquiring officer and we find that the inquiring officer has gone into the matter in great detail. The first charge was that even though the applicant had mentioned the ticket numbers and the reservation ticket numbers for the onward journey from Cuttack to New Delhi, the railway authorities have reported that no such tickets bearing those numbers were issued. Even though this fact was proved in the enquiry, the inquiring officer has held the first charge as not proved because in one copy of the L.T.C. Bill the ticket numbers have been written in a different ink and even though the inquiring officer held that the writing appears to be similar to the writing of the applicant, he held that the prosecution has not been able to prove that the applicant himself had written those ticket numbers. The first charge, therefore, has been held to be not proved.

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13. As regards the second charge, the learned lawyer for the applicant has submitted that as the first charge regarding the journey from Cuttack to New Delhi has been held to be not proved, the second charge relating to making of false claim/~~for~~ the journey from New Delhi to Cuttack must also be held to have been not proved. This contention is absolutely without any basis because in the second charge it has been

alleged that he produced a Money Receipt for Rs.1150/-.
But it was proved that the Money Receipt was actually for
Rs.550/- and the amount has been overwritten and that was
issued on 26.5.1986 in favour of Mr.D.Dash and Mrs.M.Dash
for journey by 915-Up on 9.6.1986 from Cuttack to New Delhi.
This Money Receipt has been interpolated and the amount and
the date have been changed and this has been shown towards
return journey from New Delhi to Cuttack. The inquiring officer,
after a thorough analysis of the evidence, has come to the
finding that this charge has been proved, and his finding
cannot be held to be based on no evidence. Learned lawyer for
the applicant has also submitted that the prosecution witness
G.K.Dhali who proved that the Money Receipt was actually
issued for Rs.550/- and for a journey from Cuttack to
New Delhi and not from New Delhi to Cuttack was not subjected to
cross-examination. There is nothing on record that he wanted to
cross-examine this witness and the same was refused. In any
case, the witness has merely proved a document and not given
evidence on the basis of his personal knowledge. This
contention must, therefore, also fail.

14. By way of amendment, the applicant has
submitted that the order of the appellate authority has been
passed without application of mind and without taking into
account the points raised in his representation. The
order dated 6.6.1996 of the appellate authority is at Annexure-12.
On a perusal of this order, we note that the appellate
authority has specifically considered the various submissions
made by the applicant and has rejected the same. This
appellate order has been passed after perusal of records and
after considering all aspects of the case. It is, therefore,
not possible to accept the contention of the applicant that
the appellate order has been passed without application

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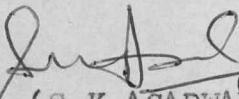
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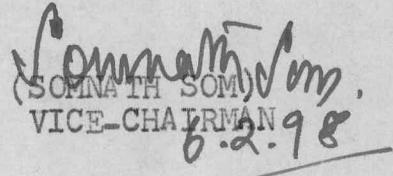
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of mind. In view of this, this contention of the applicant cannot be accepted.

15. In the result, therefore, we hold that the applicant has not been able to make out a case for quashing and Annexure-12, the impugned orders at Annexure-9. The Application, therefore, fails and is rejected. The stay order issued on 13.2.1992 also stands vacated. There shall be no order as to costs.


(S.K. AGARWAL)
MEMBER(JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN
6.2.98

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