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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.118 OF 1993

Cuttack, this the 14th day of September, 1998


Kanhu Charan Jani Applicant

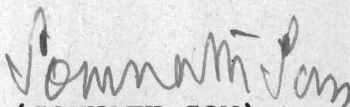
Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No


(G. NARASIMHAM)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN 14.9.98

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

....

Kanhu Charan Jani,
aged about 44 years, son of Parsu Jani,
Village-Guhariapata,
P.O-Baladhuapalli, P.S-Khallikote,
Dist.Ganjam, at present Senior Meter Reader-Time Keeper,
At/PO-Khurda Road, Jatni, Dist.PuriApplicant

By the Advocates - M/s D.R.Pattnaik
C.R.Kar
K.C.Pradhan
B.K.Misra
R.N.Nayak
J.K.Misra
N.Srinivas

Vrs.

1. Union of India,
represented by General Manager, S.E.Railway,
Garden Reach, Calcutta.
2. Senior Divisional Electrical Engineer,
S.E.Railway, Khurda Road, Jatni,
Dist.Puri.
3. Additional Divisional Railway Manager,
S.E.Railway, Khurda Road, Jatni, Dist.Puri
- Respondents

By the Advocates - M/s B.Pal
O.N.Ghosh

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of
Administrative Tribunals Act, 1985, the petitioner has

prayed for quashing the order dated 18.2.1993 (Annexure-3) imposing the punishment of reduction to the next lower stage from Rs.1500/- to Rs.1470/- for a period of two years with cumulative effect. Under this order, a sum of Rs.3784.24 paise is also ordered to be recovered from the salary of the applicant towards shortage of store. The petitioner has also prayed for imposing heavy damages against the respondents to the tune of Rs.20,000/-. On the date of admission of the petition on 11.3.1993 by way of interim measure, it was ordered that the punishment order to the extent of reversion of the petitioner to a lower post was stayed and the recovery of the amount was also stayed. Subsequently, in order dated 29.4.1993 the stay order was made absolute.

2. Facts of this case, according to the petitioner, are that he was serving as a Senior Clerk under Senior Divisional Electrical Engineer, Khurda Road (respondent no.2) from 6.2.1976 . On 12.1.1984 major penalty proceeding under Rule 9 of Railway Servants (Discipline & Appeal) Rules, 1968 (hereinafter referred to as "Discipline & Appeal Rules") vide Annexure-1 was initiated against him. The applicant submitted his showcause denying the charges. Copy of the reply submitted by the petitioner is at Annexure-2. The petitioner took the stand that during special surprise stock verification of the store the inspecting authority ^{verified} only the ledger stock position of the store and did not verify the stock position physically. He also took the stand that he had never received the correct balance position of stock from Shri B.Swain. He also stated that the alleged shortage of items had been detected earlier and some charges were framed against him on the selfsame

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grounds and therefore, these charges are not maintainable. According to the petitioner, there was no progress in the departmental proceeding against him till 18.2.1993 when he received the impugned order of punishment in which a major penalty as noted earlier was imposed on him. The petitioner has taken the stand that the proceedings are violative of Articles 14 and 16 of the Constitution and in the same proceeding, two punishments have been awarded to the applicant without affording reasonable opportunity to him to state his case. It is also stated that the proceedings have continued for a period of nine years and on that ground, the punishment should be quashed. It is also submitted that from the impugned order of punishment it is seen that along with the order of punishment a copy of the enquiry report was allegedly sent to him. The petitioner's case is that the enquiry report said to have been enclosed to the order of punishment was not actually enclosed. It is further submitted that according to the law as laid down by the Hon'ble Supreme Court in the case of Union of India v. Mohd. Ramzan Khan, (1991) 1 SCC 588, copy of the enquiry report has to be supplied to the petitioner to enable him to make a representation against the findings of the Enquiring Officer. But as the enquiry report was not supplied to him, this opportunity has been denied to him. On the above grounds, he has come up with the aforesaid prayers.

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3. The respondents in their counter have taken the stand that the impugned order of punishment was appealable under the Discipline and Appeal Rules. The petitioner has not filed an appeal and has not availed the statutory remedy and therefore, the application under

Section 19 of Administrative Tribunals Act, 1985 is not maintainable. The respondents have also pointed out that in disciplinary proceedings, the Tribunal does not act as an appellate authority and can only interfere if the findings are based on no evidence and are contrary to law. The respondents have stated that the applicant was promoted as Store Clerk in 1976 and took over charge of stores of Divisional Electrical Foreman, Khurda Road, on 30.3.1976. During his tenure as Store Clerk, the store was verified by the Railway administration and also subsequently by the Vigilance Department. After verification, a lot of discrepancies involving shortage of store items valued at Rs.3784.24 paise was detected. As the applicant was the Store Clerk, it was his responsibility to produce the correct ground balance of the stock of store items as per the ledger balance. Because of his lapses, major penalty proceeding was initiated against him. On receipt of the chargesheet, the applicant filed a writ application before the Hon'ble High Court of Orissa which was transferred to the Tribunal. The Tribunal in its order dated 7.9.1989 dismissed the application and as per the direction of the Tribunal, disciplinary proceedings were continued against the applicant. The Enquiring Officer submitted his findings holding him guilty of the shortage of stores. The matter was put up before the disciplinary authority, i.e., respondent no.2. Respondent no.2 after proper application of mind and going through all the papers, held the applicant guilty of the charges and inflicted the punishment vide order at Annexure-3. The respondents have also stated that the service career of the applicant is not spotless. He has been proceeded against for his

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lapses and negligence in duties several times. Charges issued on 12.1.1984 were framed by the Vigilance Department on detection of genuine lack of integrity. The respondents have denied the allegation of the applicant that the stock position was not physically verified. It has been asserted that both the ledger stock position and ground balance were taken into account. The second plea of the applicant that he has not received the correct balance position has also been denied by the respondents who have pointed out that the applicant never complained about any discrepancy in the stock received by him to his superior officers or departmental authorities. The respondents have further stated that the enquiry was conducted by the Enquiring Officer after copies of all documents were given to the applicant. He was also allowed to defence his case with the assistance of a defence counsel of his choice. On completion of the enquiry, the applicant has submitted a defence statement on 4.3.1992 where he clearly admitted the shortage of store items amounting to Rs.3784.24 paise and stated that it was due to his lack of knowledge in the accounting procedure of stores. The respondents have stated that the allegation of the applicant that he received the order of punishment all on a sudden without any prior knowledge of the proceedings is totally false. The respondents have also stated that assertion of the applicant that the copy of the enquiry report was not given to him is incorrect. Along with the punishment order a copy of the enquiry report was supplied to him and the allegation that this enclosure was not there in the copy of Annexure-3 sent to the applicant has been denied by the respondents. As regards the delay in completion of the proceedings, the respondents have

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stated that the applicant filed a writ application in the Hon'ble High Court of Orissa and obtained an order of stay for which the disciplinary proceedings could not proceed till 1989. The Hon'ble High Court vide their order dated 24.8.1989 permitted the Railway administration to complete the enquiry. Thereafter four Inquiring Officers were changed due to retirement and transfer. Thus, there was no deliberate delay on the side of the respondents. It is also asserted that the disciplinary authority has given his speaking order before passing the punishment order at Annexure-3. On the above grounds, the respondents have opposed the prayers of the petitioner.

4. We have heard Shri D.R.Patnaik, the learned counsel for the petitioner and Shri B.Pal, the learned Senior Panel Counsel appearing for the respondents and have also perused the records. Shri J.K.Mishra also appearing on behalf of the petitioner has filed a written note of submission which has also been taken note of.

5. Learned Senior Panel Counsel appearing for the respondents has raised the preliminary point that the petitioner not having filed an appeal against the order of punishment and thus not having exhausted the statutory and departmental remedy cannot approach the Tribunal. In this connection, the learned Senior Panel Counsel for the respondents has referred to sub-section (1) of Section 20 of Administrative Tribunals Act, 1985, which lays down that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of

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grievances. In reply, it is submitted by Shri D.R.Pattnaik, the learned counsel appearing for the petitioner that as the Tribunal had admitted the Original Application in their order dated 11.3.1993, it is not open for the Respondents to urge that the petition is not entertainable by the Tribunal on the above grounds. We have considered the submissions made by the learned counsels of both sides. It is a fact that on 11.3.1993 when the matter came up the Tribunal directed that the petition should be admitted. There is, therefore, some force in the contention of the learned counsel for the petitioner that the Tribunal having already admitted the petition, the question of jurisdiction cannot be raised. Moreover, in sub-section (1) of Section 20 of Administrative Tribunals Act, 1985, it is mentioned that the Tribunal should not ordinarily entertain an application unless the statutory remedies have been exhausted. It was submitted by the learned Senior Panel Counsel for the respondents that "ordinarily" would mean invariably. He had indicated that he would cite certain authorities in support of his submission, but no such authorities have been cited by him. We are unable to accept the submission of the learned Senior Panel Counsel for the respondents that "ordinarily" would mean invariably. The word "ordinarily" mentioned in sub-section (1) of Section 20 would mean in ordinary course of circumstances leaving it open for the Tribunal to entertain an application though as an exception even where the applicant has not exhausted the statutory/departmental remedy against the impugned order. As in this case, the Tribunal has already admitted the petition on 11.3.1993, we do not think that it is open for us to throw out the application at the threshold on

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the above ground. This contention of the learned Senior Panel Counsel for the respondents is accordingly rejected.

6. It is submitted by the learned lawyer for the petitioner that arising out of one proceeding vide Annexure-1, in the impugned order at Annexure-3 two punishments, one major and the other minor, have been imposed. According to Rule 6 of Discipline & Appeal Rules, recovery from the pay of a Railway servant of the whole or part of any pecuniary loss caused by him to the Government or Railway Administration by negligence or breach of orders, is a minor penalty. Under the same Rule, reduction to a lower stage in the time scale of pay for a specified period is a major penalty. Thus, by the impugned order at Annexure-3 one major and one minor penalty have been imposed on the petitioner and this has been challenged by the learned counsel for the petitioner. It is submitted by the learned Senior Panel Counsel for the respondents that there is no statutory or legal bar against imposing two penalties at the conclusion of one disciplinary proceeding. Whether two statutory penalties can be imposed under the Central Civil Services (Classification, Control and Appeal) Rules, 1965 for a single offence committed by an official has been discussed at page 19 of **Swamy's Compilation of CCS (CCA) Rules (9th Edition)**. We are conscious that the applicant has been proceeded against under Railway Servants (Discipline & Appeal) Rules, 1968 and not under CCS (CCA) Rules, 1965. But the Rules applicable to the Railway servants are by and large structured on the CCS (CCA) Rules, 1965 though with certain major differences which, however, do not concern us in the present case. To give an example of such

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differences and for the purpose of record, it is mentioned that in case of Railway servant found guilty of any act or omission which resulted or would have, ordinarily, resulted in collisions of Railway trains, Rule 6 specifically provides that ordinarily the punishment of dismissal or removal from service should be imposed and where such penalty is not imposed, reasons thereof shall be recorded in writing. On the question, which is before us, regarding imposition of two statutory penalties, under the CCS (CCA) Rules it has been clarified at page 19 of **Swamy's Compilation of CCS (CCA) Rules (9th Edition)** that ^{while} normally there will be no need to impose two statutory penalties at a time, the penalty of recovery from pay of the whole or part of any loss caused by an official to the Government by negligence or breach of order can be imposed along with another penalty. In this case, besides the major penalty of reduction to the lower stage of the time scale, the minor penalty is for recovery of a sum of Rs.3784.24 paise. The penalty of recovery can be imposed along with another penalty as has been noted above and as such, this contention of the learned counsel for the petitioner is rejected.

7. The next contention of the learned counsel for the petitioner is that enquiry into the charges was held ex parte, no notice was given to the applicant, and after submission of the explanation by the applicant vide Annexure-2, the next intimation he got was the punishment order at Annexure-3. The respondents have denied this and stated that the applicant participated in the enquiry. He was allowed to defend his case with the assistance of a defence counsel of his choice and copies

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of all documents were supplied to him. It is also stated that on completion of the enquiry, the applicant submitted his defence statement on 4.3.1992 where he admitted the shortage of store items amounting to Rs.3784.24. In view of such contending submissions on factual matters, it was for the learned counsel for the petitioner to prove that the applicant had not participated in the enquiry and had not been assisted by a defence counsel of his choice in that enquiry. But these assertions of the respondents have not been denied by the applicant by filing a rejoinder. In view of this, it is not possible to accept the submission of the learned counsel for the petitioner that the hearing was held ex parte and the applicant had no notice of the enquiry.

8. The last submission made by the learned counsel for the petitioner is that after conclusion of the enquiry, copy of the enquiry report was not supplied to him. The applicant has stated that in the punishment order at Annexure-3 it has been mentioned that a copy of the enquiry report has been enclosed to the order of punishment, but actually copy of the enquiry report was not enclosed to the order at Annexure-3. The respondents have submitted that the copy of the enquiry report was enclosed to the order at Annexure-3. It has been submitted by the learned counsel for the petitioner that from Annexure-3 itself, it is proved that before imposition of the punishment a copy of the enquiry report was not supplied to the applicant enabling him to make a representation against the findings of the Inquiring Officer and this, according to the learned counsel for the petitioner, is denial of reasonable opportunity. It

has been laid down by the Hon'ble Supreme Court in **Mohd. Ramzan Khan's case (supra)** that after completion of the enquiry a copy of the enquiry report should be supplied to the delinquent officer to enable him to make a representation against the findings of the Inquiring Officer. In **Mohd. Ramzan Khan's case (supra)**, their Lordships of the Hon'ble Supreme Court indicated that the law as laid down by them in this case would be applied prospectively, i.e., from 20th November 1990. In this case, punishment has been imposed in order dated 18.2.1993 and therefore, the law as laid down in **Mohd. Ramzan Khan's case (supra)** squarely applies to the case of the petitioner. The law as laid down in **Mohd. Ramzan Khan's case (supra)** was again considered by the Hon'ble Supreme Court in the case of Managing Director, E.C.I.L., Hyderabad, and others v. B.Karunakar and others, (1993) 25 ATC 704 and was affirmed in the following words:

"26. The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that

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the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it."

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In view of the law as laid down in the observations quoted above, it is clear that in this case by not giving a copy of the enquiry report to the applicant and thereby depriving him of the opportunity of making a representation against the findings of the Inquiring Officer, there has been denial of reasonable opportunity.

9. The next question which arises for consideration is what effect such non-supply of the copy of the enquiry report could have on the final result of the disciplinary proceedings. The observation of the Hon'ble Supreme Court in **B.Karunakar's case (supra)** from paragraph 30 of the judgment can be profitably extracted at this point:

"The next question to be answered is that is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case.

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Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice."

In the instant case, we note that a major penalty has been imposed on the applicant in that his pay has been reduced from Rs.1500/- to Rs.1470/- for a period of two years with cumulative effect. This would mean that for the rest of his service career, the applicant would suffer the effect of reduction in his pay and loss of two increments for two years for which his pay has been brought down to the level of Rs.1470/-. As the Hon'ble Supreme Court have observed that the point is to be decided taking into account the punishment awarded. In this case, a major punishment has been awarded besides the minor punishment of recovery and therefore, it must be held that non-supply of copy of the enquiry report has prejudiced the petitioner. The other aspect of the question is whether by non-supply of copy of the enquiry report, the petitioner has been prejudiced. To answer this, one has to go into the charges. The first charge is that while the applicant was functioning as Senior Clerk and was custodian of the stores from April 1976 to September 1977 he failed to produce correct ground balance of the stock of stores under his control as per ledger balance and was responsible for the shortage of stores amounting to Rs.3784.24 paise. The second charge is that he did not maintain correct ledger accounts of the

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stock of stores including released stores with regard to physical stock amounting to Rs.5548.80 with intent to misappropriate the said excess stores. Thus, of the two charges the first one is about shortage of store and the second one is about excess of physical stock. There is also the allegation that he did not maintain the records properly. The applicant in his explanation has stated that during his probationary period he was posted in the Store and he had asked the authorities for handing over the charge. But he was instructed orally to carry on with the work of receiving and posting of ledger and issuing materials. He further states that in January 1978 the store was bifurcated and 156 items were handed over to another person, one Shri G.Behera. During August 1977 to September 1977 a special surprise stock verification of the store was held by the Accounts Inspector who found some shortage of store articles amounting to Rs.3784.24 and excess of store articles valued at Rs.5548.80. The applicant has stated that during the surprise stock verification only the ledger stock position was verified but physical verification did not take place. The applicant has also stated that he did not receive the correct balance position of stock from his predecessor Shri B.C.Swain. It is further stated by the applicant that when handed over charge of stock to Shri G.Behera in 1978 after bifurcation of store certain shortages were detected and charges were framed against ^{him} for the same and again for the self-same shortages charges have been framed in the memo dated 12.1.1984. On the above grounds, the applicant has denied the charges in his letter dated 16.5.1984 (Annexure-2). Unfortunately, neither the petitioner nor the respondents have submitted a copy of the enquiry report. According to the petitioner, he has not received a copy of the enquiry report even along with the punishment

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order. But the respondents have not enclosed a copy of the enquiry report and it is, therefore, not possible for us to know if the Inquiring Officer held one or both the charges to have been proved against the petitioner. From the punishment order at Annexure-3 it is also not clear if the disciplinary authority accepted the findings of the Inquiring Officer with regard to the two charges and what those findings of the Inquiring Officer were. But from the above recital of facts, it is clear that the charges and the explanation deal with the factual position with regard to shortage and excess of stock and proper posting of ledgers and proper accounting of the stocks in the ledgers. The Inquiring Officer must have come to a finding with regard to these aspects and the applicant should have had an opportunity to submit a representation against the findings of the Enquiring Officer. Thus, from the factual aspects also it is seen that the non-furnishing of copy of the enquiry report to the petitioner and thereby denying him an opportunity to make representation against the findings of the Inquiring Officer has prejudiced the petitioner. In view of this, we quash the impugned order at Annexure-3. We, however, make it clear that the departmental authorities will be free to continue with the departmental proceeding after supplying a copy of the enquiry report to the applicant if the same has not been supplied along with Annexure-3 and after giving him a reasonable opportunity to make a representation against the findings of the Inquiring Officer. We are conscious that the lapses relate to more than 20 years ago, but loss of Government property is involved in this case and for the long continuation of the departmental proceedings, the petitioner is also someway responsible because he had come up before the Hon'ble High Court and also before the Tribunal earlier

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arising out of this proceeding, and in the process the matter has taken time. In view of this, we are not inclined to quash the departmental proceedings on the ground of delay.

10. As we have left it to the disciplinary authority to continue further with the departmental proceedings, if he is so inclined, the question of awarding damages to the petitioner does not arise. This prayer is, therefore, rejected.

11. In the result, therefore, the Application is partly allowed and the impugned order at Annexure-3 is quashed subject to the observation and direction contained in paragraphs 5 to 10 of this order. There shall be no order as to costs.

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(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

14.9.98

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