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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 328 OF 1993

Cuttack, this the 31st day of August, 1999

Bidyadhar Singh 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
(SOMNATH SOM)
VICE-CHASIRMAN

31.8.99

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....
Bidyadhar Singh, aged about 31 years, son of late Sanatan Singh, at present working as Marker, Cuttack Goods Shed, S.E.Railway, Cuttack Applicant

Advocates for applicant -M/s A.R.Dash
N.Lenka
N.Das

Vrs.

1. Union of India, represented by the General Manager, S.E.Railway, Garden Reach, Calcutta.
2. Divisional Railway Manager, S.E.Railway, Khurda Road, Khurda.
3. Chief Commercial Superintendent, S.E.Railway, 14, Strand Road, Calcutta.
4. Divisional Commercial Superintendent, S.E.Railway, Khurda Road, Khurda ... Respondents

Advocate for respondents - Mr.B.Pal

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

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In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 6.9.1989 at Annexure-4, the order dated 6.3.1990 at Annexure-5, and the order dated 20.2.1991 at Annexure-7 passed in the departmental proceedings against him. The second prayer is to allow the applicant to continue in the post of Booking Clerk.

2. The facts of this case, according to the applicant, are that he was appointed as Commercial Clerk in the Railways on 3.11.1980 and after completion of training, was posted as Booking Clerk at Korai Railway Station on 21.2.1981. He joined Bhubaneswar Booking Office on 26.8.1986. While functioning as Booking Clerk at Bhubaneswar Railway Station it was alleged that he has committed acts of grave misconduct for which two sets of charges were framed against him. Broadly speaking the charges relate to short remittances of cash and absence from duty without authority. Two different disciplinary proceedings were initiated against him. The charges in the two proceedings were also different. These charges are dated 6.1.1987 at Annexure-1 and dated 11.3.1987 at Annexure-1(a). The applicant has stated that under normal rules one disciplinary proceedings should have been initiated as lapses in both the charges are similar in nature. But two separate orders were passed by the inquiring officer relating to charges including common charges finding the applicant guilty of the charges relating to short remittances alone. The disciplinary authority agreeing with the findings of the inquiring officer ordered for applicant's removal from service. It is stated that the punishment of removal from service was passed in analogous proceedings. The applicant has further stated that the copy of the enquiry report was not supplied to him for making representation. Against the punishment orders passed the applicant preferred two appeals. In the appeal pertaining to the disciplinary proceedings initiated with the charges dated 6.1.1987 the appellate authority set aside the punishment of dismissal from service and ordered fresh enquiry by the Assistant

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Commercial Superintendent, Khurda Road. He was also ordered to remain under suspension. This order of the appellate authority is dated 6.9.1989 at Annexure-4 which has been challenged in this petition. While the order under Annexure-4 was subsisting the Senior Divisional Personnel Officer in his order dated 6.3.1990 considering his appeal dated 24.10.1989 in the second proceedings initiated along with the charges dated 11.3.1987, directed reappointment of the applicant as Marker in the Commercial Department by reversion. As two conflicting orders were operating, the applicant filed a review petition which is at ^{without} Annexure-6. The reviewing authority/ applying mind confirmed the order of reversion in his order dated 20.2.1991 (Annexure-7) which has also been challenged in this petition. The applicant's case is that while considering the appeals and review petition he was not given an opportunity of hearing. He has stated that the materials available on record show that he had no mala fide intention so far as the allegations levelled against him are concerned. He has also stated that some of the instances of short remittances have been included in both the charges. In this connection, he has mentioned about short remittances in respect of dates 11.11.1986, 4.12.1986 and 8.12.1986 which have been included in both the charges. In the context of the above facts, the applicant has come up with the prayers referred to earlier.

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3. The respondents have filed a counter and an additional counter. The averments made by the respondents in both these counters are taken up together. The respondents have stated that the impugned order at Annexure-7 having been passed on 20.2.1991, the application filed after more than two years on

22.6.1993 is clearly barred by limitation. The respondents have further stated that the applicant was initially appointed as a Trainee Commercial Clerk on compassionate ground. After completion of training he was posted as Junior Commercial Clerk at Korai Railway Station. He worked at Bhubaneswar Railway Station from 27.8.1986 to 28.4.1987. He worked at Talcheras Window Booking Clerk from 29.4.1987 to 15.9.1989. While the applicant was working at Bhubaneswar Railway Station as Booking Clerk he issued one student concession in 2nd class monthly ticket No.00767 on 6.12.1986 which was not consistent with the party's request. The validity of this ticket expired on 4.1.1987. Instead he mentioned the date of expiry as 2.3.1987 and collected Rs.60/- towards the cost of the quarterly season ticket but he accounted for only Rs.24/- in the D.T.C.Book and misappropriated the balance amount. He also resorted to short remittance of Rs.1,682/- in 16 occasions from November 1986 to January 1987. He was accordingly proceeded against. During inquiry he was afforded all reasonable opportunity and finally basing on the enquiry report the disciplinary authority removed him from service with effect from 15.9.1989. The applicant preferred an appeal on 24.10.1989 and the Additional Railway Divisional Manager considering his appeal, decided that the applicant be reappointed as Marker in the Commercial Department vide memo dated 6.3.1990. The applicant joined at Cuttack Goods Shed on 19.4.1990 as Marker and is continuing as such. The post of Marker does not involve any money transaction. After joining as Marker on 19.4.1990 the applicant filed a review petition before the Chief Commercial Superintendent. The review petition was considered on the basis of materials on record and the impugned order

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dated 20.2.1991 (Annexure-7) was passed upholding the decision of the appellate authority. The respondents have stated that prior to this major penalty the applicant had been punished twice. While he was working at Jajpur-Keonjhar Road Railway Station from 21.10.1981 to 26.8.1986 as Reservation Clerk he resorted to short remittance of Rs.2431.25 in March 1987 for which he was punished with stoppage of increment for one year. This punishment order is at Annexure-R/1 of the original counter. Again in another case in Jajpur-Keonjhar Road Railway Station he unloaded two cases of Bata Shoes in sound condition and unauthorisedly kept the consignment in his own custody. When the consignment was delivered, 11 KG of Bata Shoes were found short for which he was proceeded against and punished with stoppage of increment for three years in order dated 23.2.1987 at Annexure-R/2. It is further stated that the applicant was ordered to be removed from service and thereafter he was reappointed as Marker in Commercial Department as a fresh entrant and this was not a case of reversion. The impugned order also does not speak of reversion. On the above grounds, the respondents have opposed the prayers of the petitioner.

4. We have heard Shri A.R.Dash, the learned counsel for the applicant and Shri B.Pal, the learned Senior Counsel for the respondents. The learned Senior Counsel for the respondents has filed a date-chart which has been taken note of. The learned counsel for the petitioner has filed written note of argument which has also been perused.

5. As two proceedings were initiated against the applicant and from the averments made by the applicant in his petition and the respondents in their counter and additional counter, proper linking up of orders with the proceedings is not apparent. From the date-chart filed by the respondents this aspect has become clearer. It is necessary to note the same before considering the submissions made by the learned counsels for both sides.

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6. As earlier noted, two sets of charges were issued, one in memo dated 6.1.1987 and the other in memo dated 11.3.1987. both the sets of charges were enquired into in two different disciplinary proceedings. In the first set of charges issued on 6.1.1987 the order of the disciplinary authority dismissing the applicant from service is at Annexure-2(a). This order of dismissal is dated 17.1.1989. A copy of the enquiry report dated 24.6.1988 has been enclosed to this order and is at Annexure-3. In the second disciplinary proceedings started with the charges dated 11.3.1987 the applicant was removed from service in order which is at Annexure-3(a) to the OA. Against the order of removal from service an appeal was filed and in order dated 6.9.1989 at Annexure-4 a direction was issued for re-enquiry. There is no material on record what happened further with regard to this enquiry. Against the order of dismissal he filed an appeal and the appellate authority in his order dated 6.3.1990 directed that the applicant be re-appointed as Marker and posted at Cuttack against an existing vacancy. The applicant's review petition against this order was rejected in order dated 20.2.1991 which is at Annexure-7. In this order the punishment imposed at Annexure-5 was upheld.

7. The submissions made by the learned counsel for the petitioner will have to be considered in the context of the above facts. It has been contended by the learned counsel for the petitioner that before passing the order of dismissal from service on 17.1.1989 a copy of the enquiry report was not supplied to the applicant and this has resulted in denial of reasonable opportunity. The Hon'ble Supreme Court in **Mohd. Ramzan Khan's case** have laid down that copy of the enquiry report has to be supplied to the charged official to enable him to make representation against the findings of the inquiring officer. The Hon'ble Supreme Court in **Mohd. Ramzan Khan's case** have also mentioned that the law as laid down by their Lordships will have prospective operation. In this case,

the order of punishment has been issued prior to the above decision of the Hon'ble Supreme Court and therefore it cannot be said that non-supply of copy of the enquiry report has resulted in denial of reasonable opportunity.

8. It has been further submitted that in this case on the same set of facts two proceedings have been initiated against him. The respondents have rightly pointed out that the applicant has repeatedly indulged in short remittances of cash and therefore for his repeated alleged misconduct two sets of proceedings were initiated. In any case in this case punishment order has been issued only in one proceeding which has been challenged before us. In the other proceeding the punishment order has been set aside and re-enquiry has been ordered. If in the second proceeding some of the matters are already covered in the other proceedings which have already been finalised, it is for the applicant to urge the same before the inquiring officer, but the legality of the proceedings which have already been concluded and punishment order issued cannot be assailed on this ground.

9. The next contention of the learned counsel for the petitioner is that he is a direct recruit in the post of Booking Clerk and in the impugned order at Annexure-5 he has been re-appointed as Marker in a grade which is lower than the grade in which he was originally appointed. He has stated that this amounts to reversion and a person cannot be reverted to a grade lower than the grade to which he was initially recruited. In support of his contention the learned counsel for the petitioner has relied on the case of Hassain Sasansaheb Kaladgi v. State of Maharashtra, AIR 1987 SC 1627, in which their Lordships of the Hon'ble Supreme Court have held that a direct recruit to a post cannot be reverted to a lower post. Only a promotee can be reverted from the promotional post to a lower post from which he was promoted.

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It has been submitted by the learned counsel for the petitioner that the order appointing him as Marker is in effect an order of reversion. As Booking Clerk he was in the scale of Rs.975-1650/- and was in Group-C. The post of Marker is in Group-D and is in the scale of Rs.800-1150/-. As he has been directly recruited in a Group-C post, by way of punishment he could not have been reverted to a Group-D post. We note that in the impugned order at Annexure-5 it has not been mentioned that the applicant is reverted from the post of Booking Clerk to that of Marker. It has merely been mentioned that after considering his appeal it has been decided to reappoint him as Marker in the Commercial Department. We note that originally the applicant was appointed as Booking Clerk on compassionate ground. In consideration of this, the departmental authorities might have given him fresh appointment as Marker. The fact that he has not been reverted but has been given fresh appointment is also borne out by the fact that in order at Annexure-5 it has been stated that he is appointed as Marker in the scale of Rs.800-1150/- with the pay of Rs.800/- which is the initial of that scale. Had he been reverted from the post of Booking Clerk to that of Marker, then his pay in the post of Booking Clerk would have been protected. It is no doubt true, as has been laid down by the Hon'ble Supreme Court, that a direct recruit cannot be reverted to a post lower than the one to which he was initially recruited. But this is not a case of reversion and in consideration of his appeal he has been given fresh appointment. In view of this, we find no merit in this contention and the same is therefore rejected.

10. The learned counsel for the petitioner has also submitted that the inquiring officer and the disciplinary authority have come to a finding which is against the weight

of evidence. It has been mentioned that PW 1 had reported that the mistakes have been committed by the applicant not because of any mala fide intention to embezzle Government money but because of his lack of experience. We have noted that the applicant has already been punished twice for similar lapses, one of which relates to short remittances of cash in another office. We cannot therefore hold that the inquiring officer committed a mistake by not going by this statement of PW 1. In any case law is well settled that in a disciplinary proceeding the Tribunal does not act as an appellate authority and cannot reappraise the evidence and substitute its finding and judgment in place of the finding and decision arrived at by the enquiring officer and the disciplinary authority. The Tribunal case only interfere if the findings are based on no evidence or are patently perverse. After going through the report of the enquiring officer we do not find that this is a case of no evidence or the findings are patently perverse.

11. In consideration of all the above, we hold that the Original Application is without any merit and the same is therefore dismissed but, under the circumstances, without any order as to costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som.
(SOMNATH SOM)
3/8/99
VICE-CHAIRMAN