

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 40 OF 1993.

Cuttack this the 4th day of January 1994.

BUDHIA SINGH.

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APPLICANT.

-Versus-

UNION OF INDIA & OTHERS.

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RESPONDENTS.

(FOR INSTRUCTIONS)

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

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 (A. K. MISHRA)
 MEMBER (JUDICIAL)

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 (SOMNATH SOM)
 VICE-CHAIRMAN
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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 40 OF 1998.

Cuttack, this the 4th day of January, 1999.

C. O R A M:-

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. A.K. MISHRA, MEMBER(JUDICIAL).

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IN THE MATTER OF:-

BUDHIA SINGH,
at present working as Guard,
Bhadrak Railway Station,
South Eastern Railway,
Bhadrak, Dist. Balasore. Applicant.

By legal Practitioner:- M/s. A. Deo, B.S. Tripathy, P. Panda,
Advocates.

- Versus -

- 1) Union of India represented by its
General Manager, South Eastern Railway,
Garden Reach, Calcutta-43.
- 2) Senior Divisional Operating Superintendent,
South Eastern Railway, Khurda Road, Jatni,
Dist. Khurda.
- 3) Additional Divisional Railway Manager,
South Eastern Railway, Khurda Road,
Jatni, Khurda.
- 4) Chief Operating Manager,
South Eastern Railway,
Garden Reach, Calcutta-43. Respondents.
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By legal Practitioner :- Mr. R.C. Rath, Additional Standing
Counsel (Railways).

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:-

In this Original Application, under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing the order dated 1.10.1991 at Annexure-4, imposing punishment on him after completion of the Departmental Proceeding, the order dated 7.1.1992 at Annexure-6 rejecting his appeal and the order dated 26.11.1992, at Annexure-7, of the Revisional Authority, rejecting his revision petition.

2. Facts of this case fall within a small compass and can be briefly stated. At the relevant time, the applicant was working as Guard/BHC. On 24.3.1983, he signed a Memo detailing the condition of the track of M/s. FACOR siding as unsafe due to heavy rain and because of this 12 BOX empties out of 32 BOX empties could not be drawn out. Subsequently, this report was found to be false. As this resulted in unnecessary detention of those 12 BOX empties upto 18.05 hours of 28.3.1983 and thereby loss of revenue was caused to the Railways, he was charged in order dated 6.5.1990 at Annexure-1. Statement of imputation and the relevant materials etc. were given to him. After conclusion of the enquiry, enquiry report dated 12.3.91 was submitted and a copy of the same was also furnished to the applicant. Applicant submitted a representation on getting the enquiry report. This representation is at Annexure-3. In this, he

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pointed out that the report was written by the Chief D.T.I., his superior officer, and who asked him to sign the same and he signed the same on good faith. He never anticipated that his superior officer will mis-represent the actual facts and thereby he has been put into trouble. It is also mentioned by him that in his rough journal, he had written the actual fact/position that the track was jammed with coal. He further states that if it was his intention to misrepresent in the report, then in the rough journal, he would not have written the correct position. He stated that the mistake is due to his ignorance and he prayed for being excused. The Disciplinary Authority, in his order, at Annexure-4, imposed the punishment of reduction of his pay from the present pay of Rs. 1800/- to 1200/- in the time scale of Rs. 1200/- to 2040/- for a period of three years. It was also ordered that after restoration of punishment period, this will not affect his seniority and future increments. His appeal, which is at Annexure-5 was rejected by the Appellate Authority in his order at Annexure-6 noting that 'knowingly or un-knowingly, he has signed a false memo and for which, he is guilty of the charges'. Appellate Authority also noted that considering the financial loss aspect, he felt that the punishment is on ^{the} higher side and accordingly, the punishment was modified and reduction of pay from Rs. 1800/- to Rs. 1200/- was made for a period of 18 months instead of the period of three years, ordered by the Disciplinary Authority.

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The Revisional Authority, in his order dated 26-11-1992, at Annexure-7 noted that the applicant, has, himself, admitted that he has signed the wrong memo prepared by D.T.I. and this fact has been noted by the Disciplinary Authority and also by the Appellate Authority and as the punishment imposed because of this lapse, ^{Regional} had been reduced, the Authority, did not find any reason for change of punishment awarded by the Appellate Authority. In the above context, the applicant has come up with the prayer referred to earlier.

2. Respondents, in their counter stated that all the procedures were scrupulously followed in the Disciplinary Proceedings and the applicant was given adequate opportunity. The initial order of punishment imposed by the Disciplinary Authority, has been reduced from a period of three years to 18 months by the Appellate Authority and the order of the Appellate Authority has been confirmed by the Revisional Authority. It has been further averred that in case of Disciplinary proceedings, the Tribunal's role is limited and the Tribunal can not re-assess the evidence and come to a finding different from what has been arrived at by the Disciplinary Authority unless, it is a case of no evidence or the evidence is such, that no reasonable person can come to the finding arrived at by the Disciplinary Authority. On the above grounds, Respondents have opposed the prayer of the applicant.

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3. We have heard Shri B.S.Tripathy, learned Counsel for the Applicant and Shri R.C.Rath, learned Additional Standing Counsel appearing on behalf of the Respondents, and have perused the records. Learned Counsel for the Applicant has filed written note of submission which has also taken note of.

draft

4. From the draft statement of imputation, which is an enclosure to the charges, it is seen that the applicant, while working as Guard/BHC, on 24.3.1983 was booked by the Station Master/BUDR, S.E.Railway, in a light diesel engine with Shri Syed Jilan as Driver, under the supervision of Shri K.C.Mohanty, the then DTI/S.E.Railway to M/s.FACOR, siding to withdraw 32 BOX empties from there. The applicant has returned with 20 BOX empties out of 32 and left 12 BOX empties in the siding. According to the procedure, the Guard has to submit a memo to the Station Master regarding the performance in the siding during his stay. Shri Singh (applicant) submitted a memo which was written by Shri K.C.Mohanty, the then DTI on which Shri Singh (applicant) has signed. In the said report an incorrect information was mentioned that 12 BOX wagons were placed on engine escape line which was blocked by new soil slipped due to rain. Apparently, there was no rain on 22.3.83 and 23.3.83 and it was felt that this false report has been given to get the demurrage charges waived thereby causing loss to railways. Thus, from the draft statement of imputation, it is clear that an incorrect

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statement was written by the Chief D.T.I., Shri K.C. Mohanty under whom, the Applicant was working and the Applicant only signed the Memo on the direction of the then D.T.I., Shri K.C. Mohanty. The entire thing has been brought out clearly by the Inquiring Officer in his report at Annexure-2. In course of his submission, learned counsel for the Applicant submitted that as has been mentioned by the Inquiring Officer that the applicant came from the ranks which develops a spirit of obedience to orders of superior and he was bound to obey the Chief D.T.I. who asked him to sign the report and because of this he signed the incorrect report. The relevant portion of the report of the Inquiring Officer is quoted below:-

* ANALYSIS OF EVIDENCE:

1.1. The allegation that the SPS has signed a Memo on 24.3.83 given to SM/BUDR stating reasons for non-drawal of 12 BOX empties because of track sinkage due to heavy rain(Ext.P/2) is correct(sic) and accepted by the SPS.

1.2 It is also established that the memo was written by the Chief DTI-Shri K.C. Mohanty (vide his Ans.to Q.No.2 of 5.9.1990). In the same Ans.the Ch.DTI has admitted that the SPS was a semi-literate person.

It is established that the Guard came from bottom rank of pointsman promoted to CLM then as switchman and then as Guard in the year 1980 (Vide his Ans.to Q.No.5 of 14.2.91). It is also established that he belongs to ST community(vide Ans. to Q.No.13 of 14.2.91).

1.3. I have seen his rough journal book in which he has recorded the reason for nondrawal of 12 Box empties on 24.3.83 due to track jammed with coal.

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1.4 That the memo was made out by the Ch.DTI and he was asked to sign the same is evident because any smart Guard would have understood the anomaly between his own record and the memo and would have refused to sign the same.

1.5 Since the SPS came from the ranks which develops "obedience to orders of superior" as secondary nature he has signed the memo written by Ch.DTI without scrutiny or question.

1.6 Thus, technically he is responsible for signing the memo which allegedly contained false report but preponderance of probabilities based on his rough journal indicate that he signed unknowingly. This could have been properly established if the original T.32 HF submitted by ~~the~~ him was made available as per his demand.

1.7 Thus, the mistake committed by the SPS is out of ignorance and his service back ground had not a wanton or deliberate act for misleading or concealing facts. But for his rough journal entries there would have been no case at all. However, he can not escape the responsibility of signing the the memo.

CONCLUSION:

Of the charges levelled against the SPS under Conduct Rules.

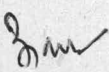
3.1 (i) not proved.
(ii) Proved.

(iii) Not proved. *

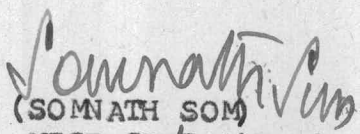
5. In consideration of the above, while we do not intend to quash the Disciplinary proceeding, we note that in the counter filed by the Railways, there is no mention that any action has been taken against Shri K.C. Mohanty Chief D.T.I. who has written out the false memo and on whose direction the memo has been signed by the application. In view of this we feel that it will be only fair if while maintaining the

Disciplinary proceeding, we reduce the punishment of reduction of pay from Rs. 1800/- to Rs. 1200/- for a period of 18 months to a period of six months. The petitioner is at the fag end of his service career and it will to our mind, meet the ends of justice. We are conscious of the various pronouncements of the Hon'ble Supreme Court that the Tribunal can not reappraise the evidence and substitute its findings in place of the findings arrived at by the Disciplinary Authority. In the instant case, we have gone by the findings of the Inquiring Officer. The order of the Disciplinary Authority has been held to be on the higher side by the Appellate Authority and it has been reduced but according to us not sufficiently considering all the facts of this case and in view of this we reduce the period of reduction of pay from 18 months to 6 months.

7. In the result, therefore, the Original Application is partly allowed leaving the parties to bear their own costs.


(A.K. MISHRA)
MEMBER (JUDICIAL)

KNM/CM


(SOMNATH SOM)
VICE-CHAIRMAN
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