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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH; CUTTACK.

ORIGINAL APPLICATION NO. 595 OF 1993.  
Cuttack, this the 11<sup>th</sup> day of August, 2000.

BHAGIRATHI PATRO.

....

APPLICANT.

VRS.

UNION OF INDIA & ORS.

....

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-CHAIRMAN



CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No. 595 of 1993.  
Cuttack, this the 11<sup>th</sup> day of August, 2000.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN  
A N D

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDL.).

..

Bhagirathi Patro,  
Aged about 46 years,  
S/o. R.K. Patro,  
At/Po/Dist. Rayagada, At present  
Ex-Head Clerk, Deputy Chief Engineer,  
RAYAGADA.

... Applicant.

By legal practitioner: M/s. A.K. Mishra, S.K. Das, S.B. Jena, J. Rath,  
Advocates.

-Versus-

1. Union of India represented through  
its General Manager, S. E. Railway,  
Garden Reach, Calcutta-43.

2. Chief Administrative Officer,  
S. E. Railway, Bhubaneswar,

3. Chief Engineer, Construction-I,  
S. E. Railway, Rayagada.

... Respondents.

By legal practitioner: M/s. B. Pal, O.N. Ghosh, Sr. Counsel (Rly.s).

.....

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application, the applicant has prayed  
for quashing the order dated 17/20.1.1996 (Annexure-6) removing  
him from service and the order dated 1.10.1992 at Annexure-8  
of the Appellate Authority rejecting his appeal.

2. The case of the Applicant is that while he was working  
as Ward Keeper in the South Eastern Railway, Koraput in 1984, a  
Departmental Proceedings were initiated against him under Rule-9  
of the Railway Servants Discipline and Appeal Rules, 1968.

According to the Applicant, the charge against him was that while  
functioning as Ward Keeper he failed to take over charge of the  
ground balance of various engineering materials including cement





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as on the date of joining as Ward Keeper on 24.8.1984 and he had deliberately allowed the mixing up the fresh cement stocks received after 24.8.1984 with old stocks, without verifying the ground balance through physical verification. It is further alleged that he has failed to notice or report the huge deficiency of 3370 bags/163.65 Mts. of cement till the same was detected during the stock verification. It is also stated that during verification it was found that the stocks of cement was in good and countable condition. It is further alleged that he had not been discharging his duties properly and not keeping the account upto date with reference to the various vouchers relating to issue and receipt of stocks. The charge-sheet is at Annexure-1. Petitioner denied the charges and a joint enquiry was conducted in which in which the Deputy Store Keeper, Assistant Store Keeper, Ward Keeper (Petitioner) were proceeded against. After receipt of documents, the applicant filed a representation on 22.4.86 for perusing different documents. This representation is at Annexure-2. All the documents were not supplied to him. Some documents were given to him in letter dated 12.5.86 of the Additional Chief Engineer and he was asked to submit his defence within ten days from receipt of documents. On 6.6.86, Shri A. K. Ganguly, Dy. Chief Engineer was appointed as Inquiring officer and enquiry was started. The I.O. submitted his report holding the applicant guilty of the charges. The other two persons against whom joint enquiry was conducted, were completely exonerated even though there was no order to split up the enquiry. Copy of the enquiry report is at Annexure-3. After receipt of report of the enquiry, the applicant was removed from service in order dated 8.9.89. His appeal against the



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impugned order was also rejected by the Appellate Authority in his order dated 28.2.1990. Thereafter, applicant approached the Tribunal in O.A. No. 148/90 which was disposed of in order dated 12.3.1991 (Annexure-4). Tribunal in their order quashed the order of removal dated 8.9.89 as also the order of the Appellate Authority and directed that a copy of the enquiry report be supplied to the applicant and he should be allowed an opportunity to represent. In pursuance of that direction, a copy of the enquiry report was given to the applicant and he submitted representation on 8.7.91. Thereafter, in order dated 17.1.92 (Annexure-6), order of punishment removing the applicant from service was passed. His appeal dated 4.3.1992 was also rejected in order dated 1.10.92. Applicant has stated that when the disciplinary authority had suggested for a joint enquiry, the Io has no jurisdiction to split up the enquiry and proceed only against this applicant. It is also stated that there was actually no enquiry and only a face saving enquiry was made in order to punish the applicant. It is also stated that the I.O. conducted a roaving enquiry. He himself went to different places to collect materials and as such the enquire proceedings have been vitiated. It is further stated by the applicant that when he joined duty as Ward Keeper the post was vacant as his predecessor had expired four months prior to the joining and the Store was being managed by the Store Keeper(DSK-I) and Asst.Store Keeper (DSK-II). It is also stated that during the enquiry no list of document or list of witness were furnished to the applicant. He was also not given adequate opportunity. It is also stated that the order of the disciplinary authority and the Appellate Authority are violative of statutory rules and the punishment is disproportionate to the gravity of the charges.



*S. J. M.*



On the above grounds the applicant has come up in this petition with the prayers referred to earlier.

3. Respondents, in their counter have opposed the prayers of the applicant and denied various averments made by the applicant in his original Application.

4. Applicant has also filed rejoinder reiterating the submissions made by him in his original Application and also with regard to the averments made by the Respondents in their counter. It is not necessary to mention these averments at this stage because these will be discussed while considering the submissions made by learned counsel for both sides.

5. We have heard Mr. Aswini Kumar Mishra, learned Counsel for the applicant and Mr. B. Pal, learned Senior Counsel appearing for the Respondents and have also perused the records.

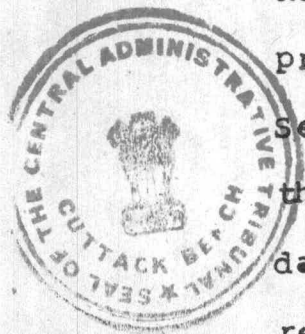
6. At our direction Sr. Counsel appearing for the Respondents has submitted the proceedings file relating to the applicant and this has also been perused.

7. Before considering the submissions made by learned counsel for both sides, it is to be noted that in a disciplinary proceedings scope of interference of this Tribunal is very limited. Tribunal can interfere only if there has been any denial of reasonable opportunity to the applicant or if there has been violation of principles of natural justice. Interference is also possible if the findings are based on no evidence or are patently perverse. The submissions made by learned counsel for both sides is being considered in the context of the above well settled position of law.



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8. The first submission made by learned counsel for the petitioner is that in the instant case, joint proceedings against the applicant, as also against the Dy. Store Keeper and Asst. Store Keeper known as DSK-I and DSK-2 were ordered by the Disciplinary Authority and the Inquiring Officer, split up the enquiry and proceeded against the applicant separately. This according to learned counsel for the applicant, should not have been done by the Inquiring Officer and because of this the entire proceedings have been vitiated. Respondents in their counter have pointed out that no joint enquiry was ordered or started. Respondents have stated that it was proposed to conduct common proceedings and no joint enquiry under rule-13 of the Railway Servants discipline and Appeal Rules, 1968 has been ordered and the IO was appointed by the disciplinary authority in his order dated 6.6.86. Later on one of the charged officers Shri MN Rao requested the Disciplinary Authority that another charged officer in the same case i.e. the applicant, be allowed as a Defence witness to defend Shri Rao's case and this was permitted by the Disciplinary Authority. According to the Rly. Board's letter dated 16.10.1971 (Annexure-R/2), it has been ordered that where in a joint proceedings one of the delinquent officers is cited as a witness for another delinquent officer, joint enquiry should not be held and in such cases, separate enquiry should be held. This circular has been issued by the Railway Board taking into account various decisions which have been elaborately dealt in the circular itself and it is not necessary to go into this aspect. In the present



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case, there was no joint enquiry. Applicant has also not produced any document showing that joint enquiry was ordered. Respondents have pointed out that common proceedings under Rule-13 of Railway Servants(Discipline and Appeal) Rules, 1968 was ordered but as the applicant himself/cited as witness for another charged officer, the enquiry was split up in accordance with the Railway Board's Circular dated 16.10.1971. We find that the splitting up of the enquiry was done strictly in accordance with the Circular of the Railway Board and therefore, the action of the Respondents for splitting up of the enquiry, can not be found fault with. It is also to be noted that the applicant was not prejudiced in any way by holding separate enquiry.

9. Second ground urged by the applicant is that even before receipt of his explanation, the Disciplinary Authority appointed the Inquiring officer and this shows that the Disciplinary Authority has prejudged the case. Respondents have pointed out in para-11 of the counter that in terms of the Railway Board's Circular dated 29.3.1985, Inquiring officer can be appointed simultaneously to expedite the disciplinary proceedings. In any case, in the present case, the I.O. has not been appointed simultaneously with issue of charges. After giving the applicant adequate time to submit his explanation, the I.O. was appointed in order dated 6.6.86. This contention, is also held to be without any merit and is rejected.

10. Next contention is that applicant was not supplied with all the documents asked for and thereby he has been denied reasonable opportunity. Respondents have pointed out that all documents listed in the charge was supplied to him. Applicant in his letter dated 22.4.86 wanted to peruse seven documents.



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Respondents have pointed out that in this letter, applicant has not indicated how these documents are relevant. In any case, in letter dated 7.5.86, at Annexure-R/1, he was allowed to peruse certain documents and certain documents were also supplied to him. One of the documents asked for by the applicant in his letter dated 22.4.1986 had already been supplied to the applicant earlier because it was a document listed alongwith the chargesheet. Some of the other documents like the note purportedly submitted by him to DSK and the note given by DSK to ASK, were not available on record and this was specifically mentioned in the letter at Annexure-R/1. From the above, it is clear that the Respondents have supplied the documents which were available with them. Applicant has also not pointed out how the other documents were relevant. He has also not brought any evidence showing that notes purportedly given by him to DSK and by the DSK to ASK was actually written and therefore, in the context of the above, it is not possible to hold that the relevant documents were not supplied to him. Moreover, the findings in respect of the charge is based on the evidence listed as an enclosure to the charge and these have been admittedly supplied to the applicant. In view of the above, this contention is held to be without any merit and is rejected.

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11. The next contention of the applicant is that the IO himself went to different places and collected evidence and this shows that the IO was biased against him. Respondents have correctly pointed out that in case the applicant felt that the IO is biased against him it was open to him to take up the matter with the Disciplinary Authority for change of IO



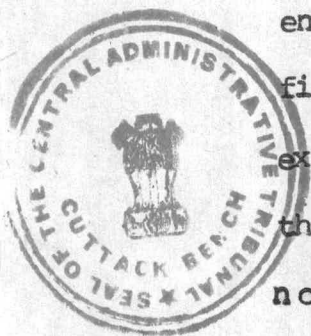
but as he has not done the same, it is not open for him and after conclusion of the enquiry to claim that the IO was biased against him. The contention of the Respondents in this case is upheld and this submission of the applicant is also rejected.

12. The next submission of learned counsel for the applicant is that there was no evidence of entrustment of Cement to him. There was no actual shortage and the findings of the IO that there was shortage and the applicant is responsible for the same is not based on any evidence. It has also been submitted by the applicant that he took the charge of the post of Ward Keeper after the post remained vacant for four months due to the death of the previous Ward Keeper and no detailed charge was given to him. This has been denied by the Respondents in their counter. For considering this contention it is necessary to refer to the charges against the applicant, the explanation dated 16.8.88, which has not been enclosed by either side in this case but it is available in the proceedings file, as also the findings of the IO. These are being looked into only for the purpose of examining if the findings are based on no evidence or are patently perverse.

*S. Som.*

13. Charge against the applicant is that while he was working as Ward Keeper, at Koraput, he failed to take over charge of the ground balances of various engineering materials including cement as on the date of his joining as Ward Keeper w.e.f. 24.8.84. Further he has deliberately allowed the mixing up the fresh cement stocks received after 24.8.84 with that of the old stock existing on that date without taking over the ground balance by physical verification. He has failed to notice

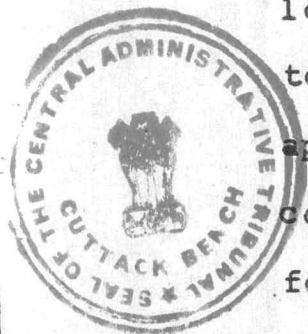
or report the huge deficiency of 3370 bags/163.65 Mts. of Cement till this was detected during the stock verification and reported although the stock of cement was in good and countable condition. It is alleged that all this proves that he has not been discharging his duties properly and keeping the accounts of the Cement properly and therefore, he is personally responsible for the loss of 3370 bags/163.65 Mts. of Cement. Before proceeding further, it is seen that in his explanation dated 16.8.88, the applicant has merely challenged the holding of enquiry on the ground of violation of various statutory rules. There is no other explanation submitted by applicant in time. Applicant has mentioned in para-2 of his original Application that he denied the charges but has not enclosed a copy of his explanation and in the proceedings files besides this letter dated 16.8.88, there is no other explanation given by the applicant. The IO has mentioned in the report that one retired official Y. Suryanarayana was nominated by the applicant as Defence Counsel and on several occasions in spite of notice and sending of pass to Suryanarayana, he did not turn up but ultimately enquiry was conducted in presence of applicant and his defence Assistance. I.O. has noted that there was an excess of 403.25 tonnes of Cement Portland Pozzlana and an excess of 3.00 Tonnes of Cement Imported in Plastic/paper bags whereas there is a shortage of 333.70 tonnes of Cement OPC in gunney bags and 252.75 tonnes of Cement PBFS. From this it is seen that there is no shortage of cement imported in plastic/paper bags, rather there is a nominal excess. Applicant during his oral submission before the



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I.O. has stated that the shortage was due to the receipt of cement in damaged bags during July, 1984. But I.O. has found that there was actually no shortage of imported cement rather there was nominal excess of 3.00 tonnes. Applicant has explained that the shortage was because the imported cement came in damaged bags and he was asked during enquiry that this could not be so because the imported cement was actually in excess. To this, the applicant explained that the shortage was due to receipt of cement in damaged bags and mixing up all the stocks. Enquiry officer has noted that shortage of cement could have occurred due to short receipt of the cement from Railway Wagons, over issue of cement while issuing cement for railway works to railway contractors and lastly short receipt of cement from outside agencies returning back the cement taken on loan. The IO has held that shortage could not have been due to short receipt from Railway wagons because besides the applicant two other independent agencies i.e. RPF and the commercial staff of the Station are also involved in accounting for the cement receipt. Similarly misappropriation of Cement during its issue to the Railway Contractors can also be ruled out since such issues are witnessed independently by a third party viz., RPF and unless a very remote possibility of the RPF also being in collusion is taken into consideration a chance of such misappropriation taking place can be ruled out. Therefore, the IO has held that the only logical conclusion is that the misappropriation has occurred in account of receipt of cement while outside Agencies returned it after having taken it earlier on loan since such receipts are not witnessed independently by the RPF and is accounted for by the Ward Keeper as is evident from the relevant daily receipt register. In this Register,



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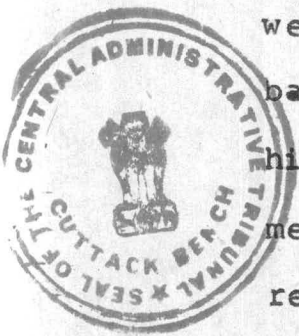
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the return of such cement has been acknowledged by the applicant himself and as he has acknowledged the receipt, the IO has held that he is responsible for the shortage. The IO has also held that lapse of not taking over the ground balance of cement at the time of joining can not be held proved because there was no stock verification done after the death of the previous incumbent and there was a lapse of a period of four months before handing over the charge of Cement to the applicant and for this lapse the applicant can not be held responsible. But the fact of the matter is that applicant joined on 24.8.85 and the cement bags were in countable condition but he did not verify the ground balance. After going through the report of the IO, we find that it is not possible to hold that the findings are based on no evidence or are patently perverse. Applicant in his oral submission in answering the specific question have merely repeated that shortage had occurred because of less receipt of cement from the Railway wagons and this has not been accepted by the I.O.

14. In view of this, the contention of learned counsel for the applicant that the findings is against the weight of evidence is held to be without any merit.

15. The last ground urged is that there was no actual shortage in the Cement but it was in excess. This contention is without any merit because there was some excess stock in case of Portland Pozzlana and cement imported in plastic/ paper bags but there was shortage of other categories i.e. 333.70 tonnes of Cement OPC in gunney bags and 252.75 tonnes of cement PBFS and taken the entire thing together, there has been shortage of 163.65 MTs of Cement. In view of this, the contention



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that there is no shortage of Cement can not be accepted. This contention of the learned counsel for the applicant is accordingly rejected.

16. Coming to the question of punishment, we note that in pursuance of the earlier decision of the Tribunal, a copy of the Enquiry report was supplied to the applicant and the applicant submitted his representation. The disciplinary Authority has elaborately discussed the findings of the IO as also the representation of the applicant against the findings and come to hold hold that the charge that the applicant is responsible for the shortage has been proved. We find no reason to interfere in the findings and considering the charge and considering the fact that the applicant was responsible for keeping and maintaining the stock, the punishment imposed can not be stated to be disproportionate.

17. In the result, therefore, the application is held to be without any merit and is rejected. No costs.

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

KNM/CM.



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(SOMNATH SOM)  
VICE-CHAIRMAN  
11/8/2020