

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 681 OF 1993  
Cuttack, this the 25th day of January 1999

Sri Parsuram Mohapatra

.....

Applicant

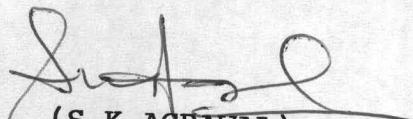
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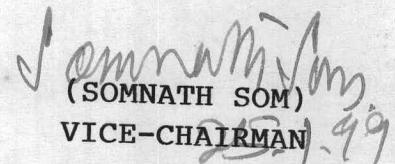
Union of India and others .....

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.*

  
(S.K.AGRAWAL)  
MEMBER (JUDICIAL)

  
(SOMNATH SOM)  
VICE-CHAIRMAN  
25.1.99

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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.681 OF 1993  
Cuttack, this the 25<sup>th</sup> day of January 1999

CORAM:

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

Sri Parsuram Mohapatra,  
aged about 53 years,  
son of late Manindra Mohan Mohapatra,  
At/PO-Talatelembazar,  
P.S-Purighat, Dist. Cuttack,  
working as Grade B Guard under S.E.Railway,  
Cuttack .....

Applicant

By the Advocates -

M/s

A.K.Mohapatra  
K.N.Parida  
M.Misra.

Vrs.

1. Union of India,  
represented through the General Manager,  
South Eastern Railway,  
Garden Reach,  
dCalcutta-43.
2. Divisional Railway Manager,  
South Eastern Railway,  
Khurda Road Division,  
At/PO-Jatni, Khurda Road,  
Dist. Khurda.
3. Senior Divisional Operating Manager,  
South Eastern Railway  
at Jatni, Khurda Road, Dist.Khurda.
4. Divisional Safety Officer,  
S.E.Railway,  
Jatni, Khurda Road, Dist. Khurda.
5. Senior Divisional Personnel Officer,  
S.E.Railway, Jatni,  
Khurda Road, Dist.Khurda .....

Respondents

Advocates for Respdts.

- Mr.B.Pal

SOMNATH SOM, VICE-CHAIRMAN

O R D E R

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

quashing the charge issued against him on 9.9.1993 (Annexure-1) and the order dated 2.11.1993 (Annexure-3) imposing the punishment of withholding his next increment raising his pay from Rs.2000/- to Rs.2040/- for a period of three years without cumulative effect.

2. Facts of the case of the petitioner are that at the relevant time he was working as Grade-B Guard under Khurda Road Division of S.E.Railway with headquarters at Cuttack. He received the memo of charge dated 9.9.1993 on 20.9.1993. He submitted an application on 28.9.1993 to supply him copies of documents containing the materials in support of the charges. This application is at Annexure-2. The applicant states that the application was duly received by Station Manager, Cuttack, on 18.9.1993 (sic), but no communication was received by him from the departmental authorities. No reply to his letter (Annexure-2) was also received by him. While he was kept in dark, Divisional Safety Officer, S.E.Railway (respondent No.4) passed the impugned order of punishment on 2.11.1993 withholding one of his increment for three years without cumulative effect. The applicant further states that respondent no.4, who has imposed the punishment, is not the disciplinary authority, and as such the charges issued under Annexure-1 and the punishment order issued under Annexure-2 are without jurisdiction and void ab initio. According to the petitioner, he is an operating staff and for him, Senior Divisional Operating Manager is the disciplinary authority. It has also been submitted that the order of punishment is violative of the principles of natural justice. In view of this, the petitioner has come up in this O.A. with the prayers referred to earlier.

3. Respondents in their counter have submitted that on 4.7.1993 the petitioner was ordered to work in Train No.D/PRDP/Jamboo Goods Train from Cuttack Station Yard. The train left Cuttack at 15.45 hours after attaching six wagons positioned

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next to the train engine. The load of the train was 69 CRC empty wagons and one match truck. While the train was on the run between Cuttack and Kandarpur Stations, one CRC empty wagon jumped off the track and derailed at KM-410/3-4 and dragged up to KM-410/6. Two wagons positioned third and fourth from match truck capsized and dropped down from bridge No.4 and another wagon 5th from the match truck capsized and dropped down at the right side of the bridge. The next wagon, i.e., the 6th from the match truck was hanging over the bridge and mounted on the fifth wagon at Kandarpur end and subsequently dropped down from the bridge at about 16.05 hours. The incident took place in broad daylight and in fair weather. There was extensive damage to Railways property and movement of train services between Cuttack and Kandarpur Stations was interrupted for more than 16 hours. A Committee was appointed by competent authority, the Divisional Railway Manager, to enquire into the cause of the accident. The Committee consisted of Assistant Engineer-II, Cuttack, Assistant Area Superintendent, Cuttack and Assistant Mechanical Engineer (Power), Khurda Road. The Committee submitted a report which is at Annexure-R/1. The Divisional Railway Manager accepted the report and further action was initiated. Respondents have stated that respondent no.4, the Divisional Safety Officer, Khurda Road, was one of the officers of the Operating Branch, was specifically earmarked to look after the safety aspect of train operation. He was required to scrutinise the cause and effect of accident and also to function as the disciplinary authority for the staff of Operating Branch involved in accident. This is laid down in Establishment Serial No.47/84, which is at Annexure-R/2. Accordingly, the Divisional Safety Officer initiated disciplinary proceedings against the petitioner and issued chargesheet for minor penalty on the charge that the applicant while functioning as Guard of D/F HOP Jamboo Goods Train from Cuttack was not alert in his duties in destroying vacuum at the time of the accident and also did not exchange signal with the Driver and D.D.A. on curvature to ensure safe running of train, as

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a result of which four CRC wagons derailed at KM 410/3-4. Accordingly, the applicant was charged for having violated Rules 4.43, 2.11 (2)(c) and (d) of GR 4.42.01 (b) of Safety Rules and Rule 3.1(ii) of Railway Servants Conduct Rules, 1966. These Rules are enclosed at Annexure-R/3 to the counter. It is alleged that had the applicant been alert in destroying the vacuum in time, the accident and consequent heavy loss to the Railway administration could have been avoided. The respondents have stated that the applicant received the chargesheet on 20.9.1993. He was asked to submit explanation within ten days. The applicant without submitting the explanation, made an application demanding certain documents as mentioned in Annexure-2 to the O.A. In order to provide reasonable opportunity, a phone message dated 11.10.1993 was sent to the applicant by the Divisional Safety Officer through the Station Master, Cuttack, to direct the applicant to collect the documents from the office of respondent no.4. Copy of this message is at Annexure-R/4. It was learnt from the applicant that he would attend the office on 13.10.1993 for collecting the documents. The applicant, however, did not turn up on 13.10.1993. Then another message was sent on 14.10.1993 directing him to collect the documents. The applicant remained on sick leave from 15.10.1993 to 31.10.1993 and resumed duties on 1.11.1993. Thereafter also he did not attend the office of Divisional Safety Officer to collect the documents. He also failed to submit his explanation even after he joined his duties on 1.11.1993. The Divisional Safety Officer, therefore, took the view that the applicant has no explanation to offer and after due consideration of the materials on record and without any denial from the applicant, passed the punishment order withholding his one increment for three years without cumulative effect. This order of punishment is at Annexure-R/6. The order of punishment was received by the applicant on 8.11.1993. It is further submitted that the petitioner did not file an appeal before the appellate

authority within the specified period of forty-five days and straightaway came to the Tribunal for quashing the orders at Annexures 2 and 3. The respondents have stated that as the applicant had not exhausted the departmental remedy, the O.A. is not maintainable. The respondents have also stated that all reasonable opportunity was given to the petitioner and there has been no denial of natural justice. It has also been submitted that the disciplinary authority has issued the punishment order after going through the materials on record and as such the Tribunal may not have jurisdiction in the matter. On the above grounds, the respondents have opposed the prayer of the petitioner.

4. The petitioner has filed a rejoinder in which he has submitted that the report of the Enquiry Committee at Annexure-R/1 is not the complete report of the Enquiry Committee because Annexure-R/1 is dated 17.8.1993 whereas the petitioner was asked to attend the enquiry on 14.12.1993. The letter calling the petitioner to attend the enquiry on 14.12.1993 is at Annexure-4 to the rejoinder. The petitioner has further stated that in the enquiry the Driver was not examined. As the Driver and the Guard were not examined, how could the responsibility be fixed in the report dated 17.8.1993. It has been further stated that the Driver was examined on 14.12.1993, but the chargesheet was issued to the petitioner on 9.9.1993 and the punishment was awarded on 2.11.1993. The applicant has also challenged the averment of the respondents that Divisional Safety Officer (respondent No.4) is an officer of Operating Branch and he is the disciplinary authority. The applicant has also stated that Establishment Serial No.47/84 is an old order and has been superseded and therefore, reliance cannot be placed on Annexure-R/2. Further it is stated that even according to this Annexure-R/2, the Divisional Safety Officer cannot be taken as the disciplinary authority. It is further submitted that Hyderabad Bench of the Tribunal has held that the

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Senior Divisional Safety Officer cannot be treated as the disciplinary authority of the operating staff. The applicant has also denied that any message was received by him about collecting copies of the documents. Overall he has stated that the punishment has been imposed on him without following the principles of natural justice, and on that ground he has reiterated his prayer.

5. We have heard Shri A.K.Mohapatra, the learned counsel for the petitioner and Shri B.Pal, the learned Senior Counsel appearing for the Railway authorities. Learned counsels of both sides have submitted written notes of arguments which have also been taken note of.

6. The first point urged by the learned counsel for the petitioner is that Divisional Safety Officer is not the disciplinary authority so far as the applicant is concerned and therefore, issuing of chargesheet by the Divisional Safety Officer at Annexure-1 and the punishment order at Annexure-3 are without jurisdiction and are void ab initio. In support of his contention it is submitted by the learned counsel for the petitioner that this point came up for consideration of Madras Bench of the Tribunal in OA No.941 of 1991 (R.Palanikumar v. Union of India and another), decided on 1.7.1992, and it was decided by the Tribunal that Divisional Safety Officer is not the disciplinary authority so far as operating staff are concerned. A copy of this order has been furnished by the learned counsel for the petitioner. From this, it appears that the applicant in that case was a Station Master, Grade III. In a disciplinary proceeding against him, he was chargesheeted that he had allegedly appeared on duty before the Accident Enquiry Committee without uniform. The chargesheet was issued by the Divisional Safety Officer. In reply to the chargesheet, the applicant raised only one point that Divisional Safety Officer was not competent to initiate disciplinary proceeding against him. But his contention was not accepted and the Divisional Safety Officer

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imposed the penalty of withholding of the applicant's increment for three years without cumulative effect. An appeal filed by the applicant before the appellate authority on the same point of competency of the Divisional Safety Officer was rejected. He took the matter before the Tribunal in the above noted case and the Tribunal taking into consideration certain circulars of the Railway Board held that by the orders referred to by them in their order the Railway Board has set the matter beyond any possible doubt, particularly regarding Station Masters and Assistant Station Masters in respect of disciplinary proceedings against them. The Tribunal specifically held that the Chief Personnel Officer had no authority to overrule the specific orders of the Railway Board. The Tribunal also stated that besides the order referred to by them, no other orders were produced before them in support of the contention that the Divisional Safety Officer could be the disciplinary authority for Station Masters and Assistant Station Masters. The Tribunal also pointed out that it is only proper that the administrative superior should function as the disciplinary authority and not an outsider even if there is functional inter-relationship. It is submitted by the learned counsel for the petitioner that this judgment is a judgment in rem and is applicable to other Railways also. The applicant while working as Guard was an operating staff and the Divisional Safety Officer could not be the disciplinary authority so far as operating staff is concerned. The respondents have taken the stand that Divisional Safety Officer is an officer of the Operating Branch to which the petitioner belongs. The Divisional Safety Officer is specifically earmarked to look after the safety aspects of the train operation, etc. He is required to scrutinise the cause and effect of an accident and also to function as disciplinary authority for the staff of Operating Branch. In support of this contention, the respondents have

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enclosed the copy of a letter dated 23.8.1993 from Chief Safety Officer, S.E.Railway, Garden Reach, Calcutta, in which a reference has been made to Establishment Serial No.47/84 and the relevant extracts have also been quoted. From this, it appears that prior to issue of circular dated 2.11.1983, C.T.S.S. is deemed to be Head of Department of safety organisation being responsible to General Manager direct. It is mentioned in this letter that arising out of this decision, a question has arisen whether Divisional Safety Officers should continue to enjoy the same disciplinary powers in respect of operating staff or the matter should be reported to the Divisional Safety Officers for initiation. By way of clarification, it has been mentioned that Divisional Safety Officers should continue to be treated as the disciplinary authority in respect of operating staff as hitherto, as they belong to Operating Department. Only for administrative convenience in so far as safety matters are concerned, it has been decided in circular dated 2.11.1983 that they should report directly to the respective Divisional Railway Managers. In so far as the Operating Department is concerned, the principal Head of Department is Chief Operating Superintendents and all appeals/reviews, etc., received from Divisional Railway Managers must be put up to them under the extant rules and not to C.T.S.S. even in disciplinary and appeal cases arising out of accidents. Such cases may, however be routed through CTSS for information and monitoring. The respondents have also enclosed at Annexure-R/3 a circular of Chief Personnel Officer, which is addressed to Divisional Railway Managers, Khurda Road and others, dealing with disciplinary powers of Safety Officers. It is mentioned in this circular that a reference has been received from Divisional Railway Manager, Visakhapatnam, seeking clarification whether Senior Divisional Safety Officers and Divisional Safety Officers can exercise disciplinary powers in

matters pertaining to safety against the staff of Operating Department in the background of order dated 1.7.1992 passed by Madras Bench of the Tribunal. In the said order it was concluded that disciplinary authority in respect of Station Masters could only belong to the Operating Department and none else. In this circular, it is mentioned that the matter has been thoroughly examined and on enquiry from Southern Railway, it is learnt that the said order of the Madras Bench has been implemented for the applicant in that case only and the same has not been made applicable to other cases of similar nature. On the same analogy, the direction given by Madras Bench of the Tribunal is not applicable to disciplinary cases in S.E.Railway especially when there are no specific instructions from the Railway Board for universal application of Madras Bench's order dated 1.7.1992 on various Zonal Railways. In view of the above, in this circular it has been clarified that instructions contained in Establishment Serial No.47/84 which empower Senior Divisional Safety Officers/Divisional Safety Officers to exercise disciplinary powers in matters pertaining to safety against the staff of Operating Department will continue to be in force on this Railway. In the context of the above submissions, the question which arises for consideration is whether the Divisional Safety Officer had the jurisdiction to issue the chargesheet and the punishment order in respect of the applicant. On a perusal of the order of the Madras Bench in OA No.941/91, it is seen that the Tribunal had taken the view that the administrative superior should function as disciplinary authority even if there is functional inter-relationship. The Tribunal had noted in that case that a Station Master, who was the applicant there, discharges many functions relating to commercial, operative and safety aspects of the Railways. But he is basically a staff of Operating Department and his administrative hierarchy is in the Operating Department. On that basis, a view was taken that the

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Divisional Safety Officer could not be the disciplinary authority so far as operating staff are concerned. The first point to be noted, in this connection, is that the Divisional Safety Officer is an officer of the Operating Department though because of overriding considerations given to safety measures, he reports directly to Divisional Railway Manager and not through the operating departmental hierarchy. But that does not make him any less of an officer in the Operating Department. The learned counsel for the petitioner has not brought any material on record to show that the Divisional Safety Officer is not an officer of Operating Department. The two circulars at Annexures R/2 and R/3 make it clear that the decision of Madras Bench of the Tribunal in OA No.941/91 has been made applicable for the applicant in that case and in the Railways including the Southern Railway from where OA No.941 of 1991 originated, the Divisional Safety Officers are continuing to exercise disciplinary powers over operating staff so far as safety measures are concerned. It has been submitted by the learned counsel for the petitioner that the Railways cannot issue orders particularly clarifications in derogation of the judgment of Madras Bench of the Tribunal in OA No.941/91. As we have already noted, the ratio of the decision is that the disciplinary authority should vest in the departmental hierarchy and Divisional Safety Officers are officers of the Operating Department and therefore, the action of the Railways in allowing the Divisional Safety Officers to exercise disciplinary powers with regard to safety aspects of the work of operating staff cannot be said to be against the decision of the Tribunal. In any case, that decision relates to a Station Master and the applicant here is a Guard. Both belong to the Operating Department but so is the Divisional Safety Officer. In view of this, we hold that the Divisional Safety Officer had the jurisdiction to initiate and continue disciplinary proceedings against the petitioner. This contention of the learned counsel for the applicant is, therefore, held to be without any merit and

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is rejected.

7. The second ground urged by the learned counsel for the petitioner is that there has been denial of natural justice in the disciplinary proceedings. He stated that even though the petitioner immediately after getting the chargesheet asked for certain documents, the same were not made available to him. Because of this, he was not in a position to submit his explanation to the charge. In support of his contention, the learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of Kashinath Dikshita v. Union of India and others, AIR 1986 SC 2118, in which the Hon'ble Supreme Court held that where the Government refused to its employee who was dismissed, the copies of the statements of the witnesses examined at the stage of preliminary inquiry preceding the commencement of the inquiry and copies of the documents said to have been relied upon by the disciplinary authority in order to establish the charges against the employee and even in this connection the reasonable request of the employee to have the relevant portions of the documents extracted with the help of his stenographer was refused and he was told to himself make such notes as he could, and the Government failed to show that no prejudice was occasioned to the employee on account of non-supply of copies of documents, the order of dismissal rendered by the disciplinary authority against the employee was violative of Article 311(2) inasmuch as the employee has been denied reasonable opportunity of defending himself. In the instant case, the petitioner in his letter dated 28.9.1993 called for his statement in the enquiry and also the statements of Driver and Assistant, the enquiry report and findings in enquiry. In this letter, he also stated that the allegations are not supported by any material and therefore, he requires the copies of documents on the basis of which the allegations are prepared and put to him. The respondents in their counter have stated that a

phone message was sent to Station Manager, Cuttack, on 11.10.1993 for directing the petitioner to attend the office of Divisional Safety Officer on 13.10.1993 in connection with derailment of goods train on 4.7.1993 and to collect the documents. Below this phone message dated 11.10.1993 there is an endorsement that A.R.S. was contacted at 17.00 hours by D.S.O. Shri Mohapatra, i.e., the petitioner will attend on 13.10.1993. There is a further endorsement on 14.10.1993 that Shri Mohapatra, the applicant will resume duties on 16.10.1993. Shri Mohanty, Deputy Station Superintendent, told to direct him on Monday, i.e. 18.10.1993. There is one more endorsement on 19.10.1993 which says that the Station Superintendent, Cuttack, was contacted on 19.10.1993 at 16.30 hours. Shri Mohapatra is on leave from 15.10.1993. At Annexure-R/5 is a letter dated 28.10.1993 from Divisional Safety Officer to Station Manager, S.E.Railway, Cuttack, on the subject of directing Shri Mohapatra, Guard, Cuttack. It is mentioned in this letter that Shri P.Mohapatra, Guard, Cuttack, has asked for some documents which are kept ready in this office. Despite issue of letter and contact over phone the above named has not been directed to this office as yet. It is understood that he is still under sick. The Station Manager was instructed by the Divisional Safety Officer to send copy of muster sheet of the above named from 11.10.1993 and direct him to this office soon after he resumed his duty without fail. It was mentioned that this should be treated as most urgent. The petitioner has taken the stand that these two Annexures have been manufactured later and no such intimation was sent to him and he was denied supply of copies of the documents. We are not prepared to accept this bland assertion in the absence of any other supporting evidence that these two documents at Annexures R/4 and R/5 are spurious. From Annexure-R/4 it appears that several entries have been made indicating the positions so far as contacting the applicant is concerned. It also mentions correctly

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that the applicant is on leave from 15.10.1993. Station Manager, Cuttack, has been further directed by Annexure-R/5 that the applicant should be directed to the office of Divisional Safety Officer to collect the documents after he resumed his duties. From this, it is clear that the respondents have taken all steps possible to give copies of the documents to the petitioner. As the petitioner was on leave, naturally to supply copies of the documents to him, he was directed to collect the copies of the documents from the office of Divisional Safety Officer. But besides writing the letter at Annexure-2, the applicant did not take any steps to collect the copies. His conduct does not bring out the fact that he tried to collect the copies and the same were denied to him. Therefore, it is not possible to hold that copies of the documents have been intentionally denied to him and thereby there has been denial of natural justice. In page 2 of his rejoinder the applicant has stated that in the enquiry the Driver or the Guard was not examined. He was called upon to appear only on 14.12.1993 and at the time the three-member Committee submitted the report, the applicant was not examined. If this is his stand, then it is difficult to understand his prayer vide Annexure-2, which is dated 28.9.1993 that he should be supplied copies of his statement in the enquiry and also the statements of the Driver and the Assistant. So far as the enquiry report is concerned, from Annexure-R/1 to the counter, it appears that the report was submitted on 17.8.1993. Possibly, this report was ready to be delivered to the applicant, but the applicant did not take any steps to collect the documents. We, therefore, hold that the applicant's stand that there has been denial of reasonable opportunity by not supplying the documents asked for by him is without any basis and this contention is, therefore, rejected.

8. The third submission made by the learned counsel for the petitioner is that the enquiry report at

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Annexure-R/1 is not a complete report of enquiry because the applicant was directed in letter dated 2.11.1993 to attend an enquiry against the Driver on 14.12.1993. The applicant has tried to make out a case that as the enquiry against the Driver has not been completed by 14.12.1993 when he was asked to appear in that enquiry, how in Annexure-R/1 responsibility could be fixed on the Driver and the applicant as the Guard. From the letter dated 2.11.1993, which is at Annexure-4 to the rejoinder, it appears that through this letter the applicant was directed to appear in the disciplinary and appeal enquiry against A.Chitti Babu, Driver of the Goods Train on 14.12.1993. From this, it is clear that basing on the report of three-member Committee, disciplinary proceeding was also initiated against the Driver who has been held primarily responsible for the accident and in that disciplinary enquiry the applicant was directed to appear on 14.12.1993. In the same enquiry, it has been held that the Guard was not directly responsible, but he failed in his devotion to duties. Had he been vigilant on run on the curvature this disaster of empty wagons getting bunched up and capsized over the bridge could have been avoided. So this Committee fixed responsibility on the applicant P.Mohapatra for violation of certain rules referred to by us earlier. The Committee also recommended that there is a prima facie case against the accused staff and proper disciplinary action should be initiated. It is on the basis of this that disciplinary proceeding was initiated against the Driver and in that disciplinary proceeding the applicant was asked to appear on 14.12.1993. Therefore, on the basis of this notice asking the applicant to appear on 14.12.1993 it cannot be held that the enquiry by the three-member Committee was not completed by the date the applicant was asked to appear in the enquiry against the Driver.

9. The learned counsel for the petitioner has also submitted that no enquiry was conducted into the charges. It is

also submitted that the report of enquiry of three-member Committee at Annexure-R/1 was not supplied to him. We have already dealt with the question of non-supply of documents asked for by the applicant which included the report of enquiry at Annexure-R/1. Learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of Managing Director, ECIL, Hyderabad and others v. B.Karunakar and others, (1993) 25 ATC 704, in which it has been held that after enquiry is conducted into the charges and the enquiry officer submits his report, a copy of the enquiry report should be given to the charged officer to enable him to make a representation and non-supply of copy of the enquiry report would mean denial of reasonable opportunity. But this decision is not relevant for the present purpose because in the instant case, the departmental proceeding has been initiated against the applicant under Rule 11 of the Railway Servants (Discipline & Appeal ) Rules, 1968, which lays down the procedure for imposing minor penalties. According to this Rule, the requirement is only to the extent of informing the Railway servant in writing of the proposal to take action against him and of the imputations of misconduct on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal. The Rule also provides that in cases where disciplinary authority is of the opinion that an enquiry should be held, then such enquiry should be held in the manner laid down in sub-rules (6) to (25) of Rule 9 which deals with the procedure for imposing major penalties. The third stage is taking into consideration the representation, if any, submitted by the Railway servant and the record of enquiry, if any, held into the charges. Thus, it is clear from Rule 11 that the procedure for imposition of minor penalties does not ipso facto envisage holding of an enquiry, but the Rule only provides that enquiry should be held only if the disciplinary authority is of the view that holding of enquiry is

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necessary. Sub-rule (2) of Rule 11 also lays down that in a case where it is proposed, after considering the representation made by the Railway servant, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension or special contribution to Provident Fund payable to the Railway servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an enquiry shall be held. In the instant case, the applicant's increment raising his pay from Rs.2000/- to Rs.2040/- has been held for three years without cumulative effect and therefore, his case is not covered under sub-rule (2) of Rule 11 and the enquiry was not necessary in this case. The question of supplying a copy of the enquiry report to the applicant in accordance with the law as laid down by the Hon'ble Apex Court in the case of **Managing Director, ECIL, Hyderabad and others (supra)** also does not arise. This contention of the learned counsel for the petitioner is also rejected.

10. It is further submitted by the learned counsel for the petitioner that the impugned order of punishment was issued on 2.11.1993 whereas in letter dated 28.10.1993 at Annexure-R/5, the applicant was asked to come and collect the documents from the office of Divisional Safety Officer. In view of this, it has been urged by the learned counsel for the petitioner that the punishment order has been passed only three or four days after the letter dated 28.10.1993 and therefore, this is a case where the applicant's lapses have been prejudged and he has been found guilty. We are unable to accept this contention because we have held that the applicant has not taken reasonable steps from his side to collect the copies of the documents asked for by him. He has also not denied the lapses alleged against him. In view of this, the disciplinary authority, in the absence of any denial of charges by the petitioner, has found him guilty and imposed the penalty which is minor in nature.

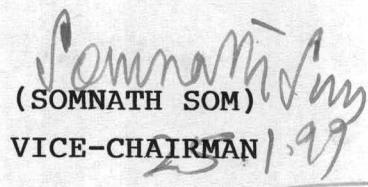
11. The respondents, on the other hand, have submitted that against the penalty imposed in the order dated 2.11.1993 at Annexure-3, the applicant has not filed any appeal, and without exhausting the departmental remedy, he has come up before the Tribunal and on that ground, it has been urged that the petition is not maintainable. In view of our rejecting the contentions of the learned counsel for the petitioner, it is not necessary to consider this submission of the respondents.

12. In the result, therefore, we hold that the applicant has not been able to make out a case for the relief asked for by him. The Application is held to be without any merit and is rejected, but, under the circumstances, without any order as to costs.



(S.K.AGRAWAL)

MEMBER (JUDICIAL)

  
25.1.99

(SOMNATH SOM)

VICE-CHAIRMAN

AN/PS