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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 82 OF 1993.

Cuttack, this the 3rd of August, 1999.

Sri Bijay Ganguli. Applicant.
- versus -
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-CHAIRMAN
3.8.99

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK.

ORIGINAL APPLICATION NO.82 OF 1993.

Cuttack, this the 3rd day of August, 1999.

CORAM :

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

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

....

Sri Bijay Ganguli,
Aged about 55 years,
S/o. Late B.N. Ganguli, at present working
as Charge-man (A) (Mechanical) Diesel Locoshed,
Bandamunda, Dist. Sundargarh, Orissa,
residing at the same place (being a repatriot
from erstwhile, East Pakistan has no permanent
residence anywhere).

.... Applicant.

By legal practitioner: Mr. D. P. Sarangi, Advocate.

- Versus -

1. Union of India represented by the General Manager, SE Railway, Garden Reach, Calcutta-43.
2. Senior Divisional Mechanical Engineer (Diesel), SE Railway, Bandamundai, At/present-Bandamunda, Dist. Sundargarh, Orissa.
3. Divisional Mechanical Engineer (Diesel), SE Railway, Bandamunda, At/PO-Bandamunda, Dist. Sundargarh, Orissa.
4. Loco Foreman (Diesel), SE Railway, Bandamunda, At/PO. Bandamunda, Dist. Sundargarh, Orissa.

... Respondents.

By legal practitioner : Mr. D. N. Mishra, Standing Counsel.

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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, applicant has prayed that the chargesheets in two proceedings initiated against him which are at Annexures-6 and 16 should be quashed. By way of interim order, it was prayed that further proceedings in response to Annexures-6 and 16 should be stayed. On the date of admission of the petition on 24.2.1993, the Disciplinary Authority was restrained from passing the final orders in connection with the disciplinary proceedings pending against applicant until further orders.

2. Applicant's case is that he is working as a Chargeman 'A', Mechanical in the Railways from 1958. His promotion was due since 1990 but he realised that promotion is not possible in a fair way. Therefore, he kept himself away from the process of promotion now being followed by the Respondents 2 and 3. Because of this, Respondent No. 2, Senior Divisional Mechanical Engineer (Diesel), Bandamunda was annoyed with him and applicant was suspended w.e.f. 11.2.1992 in order at Annexure-1 and the leave granted earlier to him was also cancelled. Formal order of suspension dated 10.2.1992 is at Annexure-2. On 29.4.1992, chargesheet was issued to him at Annexure-3 and the substance of the charge was that on 8.2.1992 when applicant was shift incharge from 16.00 hours to 24.00 hours, he had shown gross negligence in duty in allowing six staff of his shift to indulge/playing cards at the fueling

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point. Applicant has submitted that he was given the duty of shift incharge in addition to his normal duties as Chargeman 'A', although in all other shifts, the foreman concerned is the shift-incharge. Applicant in his explanation dated 9.5.1992, at Annexure-4, denied the charge and prayed that the charge may be cancelled or failing which if an enquiry is to be conducted, he should be provided with documents mentioned in this letter. Thereafter in order dated 19.5.1992, at Annexure-5, the chargesheet was cancelled and in order dated 19.5.1992, at Annexure-6 fresh charge was issued against him. This fresh charge is exactly the same charge at Annexure-3 except that in place of 8.2.1992 as the date of occurrence in the fresh charge the date of occurrence has been mentioned as 9.2.92. In letter dated 8.6.1992 (Annexure-7) applicant's request for documents was rejected, and he was informed that an enquiry will be conducted by the Enquiry Board consisting of Senior Divisional Mechanical Engineer(Diesel) and Divisional Mechanical Engineer(Diesel) both of Bandamunda. Applicant has stated that in order dated 6.7.1992 (Annexure-8) two officers were appointed as the enquiry board. It is further stated that even though a Board was constituted consisting of Respondents 2 and 3 in order at Annexures-9 and 10, which were notices for holding the enquiry, Respondent No. 3 held the enquiry himself ignoring the earlier

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order of holding an enquiry by a Board. Applicant has stated that the proceedings against him are being unusually adjourned by Respondent No. 2 only with an intention to drag the matter indefinitely in order to harass applicant. It is also stated by applicant that he has learnt that Respondent No. 2 has taken no action against the persons who were involved in playing cards during his alleged surprise visit but has been persuading them to give evidence in the disciplinary proceeding against applicant. On the above grounds, applicant has prayed for quashing the charge-sheet at Annexure-6. With regard to charge-sheet at Annexure-16, applicant has stated that he availed two days leave and one day casual rest from 3.6.1992 to 5.6.1992 and was at his quarters at Tata Nagar. After the leave period, he was due to report for duty on 6.6.1992 but he became suddenly sick and submitted an application under certificate of posting on 6.6.1992 to Respondent No. 2 through Respondent No. 4 alongwith a certificate granted by a Private Doctor who was treating the petitioner for grant of medical leave. After becoming alright, applicant reported for duty on 25.6.1992 alongwith a fitness certificate from the concerned doctor. Respondent No. 4 accepted the fitness report and allowed applicant to perform his duty in the shift commencing from 16.00 hours of the same day after obtaining the counter signature of the Railway Doctor on the medical certificate submitted by applicant. Although there was no reason to discard the medical certificate and Respondent No. 4 had rightly allowed

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applicant to join without raising any objection, suddenly Respondent No. 2 procured a report dated 27.6.1992 from the Respondent No. 4 alleging that the applicant has absented from duty w.e.f. 6.6.1992 to 24.6.1992 without any intimation. This report is at Annexure-12. On the same day i.e. on 27.6.1992 in order at Annexure-13, applicant was placed under suspension. The formal order of suspension was issued on 29.6.1992 at Annexure-14. In this order at Annexure-14, it was intimated that he has been placed under suspension w.e.f. 27.6.1992. The order of suspension was revoked w.e.f. 7.7.1992 in order dated 6.7.1992 at Annexure-15. Applicant has stated that he was asked by a hand-written slip of Respondent No. 4 dated 9.7.1992 to attend his office on 10.7.1992 to receive the charge-sheet and applicant attended the office of Respondent No. 4 and received the chargesheet drawn up on 9.7.1992 (Annexure-16). The charge against applicant is that while working as Chargeman A, he had absented from duty w.e.f. 6.6.1992 to 24.6.1992 without any authority. Applicant submitted his explanation dated 20.7.1992 at Annexure-17, explaining that due to attack of Typhoid from 5.6.1992 he was not in a position to report on duty on 6.6.1992 and this fact was intimated over telephone to AFO on duty on 5.6.1992 afternoon by the daughter of applicant. Further intimation was also sent alongwith unfit certificate to Respondent No. 4 under certificate of posting on 6.6.1992. By order dated 16.9.1992 at Annexure-18, the Assistant Mechanical Engineer was appointed as Inquiring Officer and on the next day on 17.9.1992, vide Annexure-19, the IO asked applicant to nominate his defence counsel

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alongwith his willingness letter within ten days. Again on the same day in another letter dated 17.9.92 at Annexure-20, the first sitting of the enquiry was fixed to 15.10.1992 at 10 AM in the Office of the Inquiring Officer. It is submitted that the enquiry was held on 15.10.92 and the IO himself acted as the Presenting Officer and the IO submitted his report on 3.11.92 (Annexure-21) holding the applicant guilty of the charge of unauthorised absence. The IO did not discuss the materials collected in the enquiry and held applicant guilty on the sole ground that applicant has not sent the unfit certificate through Regd. Post with AD. Res. No. 2, by a letter dated 8.1.93 (Annexure-22) sent a copy of the report of the Inquiring Officer to applicant and gave him opportunity to represent against the report of IO within ten days on receipt of the letter at Annexure-22. But in this letter, at Annexure-22, applicant was not intimated about the proposed punishment nor was it intimated as to on what aspect of the report of the IO, Respondent No. 2 wants the representation. Applicant has stated that from this it appears that Respondent No. 2 somehow wants to punish applicant for no fault of his and in order to give a legal colour to his mala fide actions, he took resort to the enquiry which was only an empty formality. In view of this, he has come up in this Original Application with the prayers referred to above.

3. Respondents, in their counter have stated that the enquiry in the charge-sheet at Annexure-16 had already been completed and the punishment imposed in letter dated

13-2-1992 which was served on the applicant and applicant acknowledged the same on 3-3-1992. As punishment in respect of the proceeding at Annexure-16 has been issued on 13-2-1992, prior to the stay order dated 24-2-1993 issued by the Tribunal, the order of the Tribunal with regard to the proceeding at Annexure-16 could not be implemented. It is further stated that the final order in respect of the charge-sheet at Annexure-6 has not been implemented in view of the order dated 24-2-1993 of the Tribunal. It is further stated that applicant participated in an illegal strike in July, 1960 resulting in break in service due to his unauthorised absence on 12-7-1960. Besides, punishment of withholding his increment raising his pay from Rs. 212/- to Rs. 219/- for a period of three months with non-cumulative effect in view of his guilt of indifference on duty for attending to repair of locomotives was ordered. As regards the averments regarding his promotion, Respondents have stated that he was not eligible to appear in the selection for the next higher post of Foreman-B in 1990. He was found eligible for appearing in the selection for the post of Foreman B but he did not qualify in the written examination. This examination was held by the Selection Board and not by the Respondent No. 2. It is further stated that placing him under suspension and cancellation of his leave was fully warranted because applicant managed to get the leave sanctioned by LF(D) after knowing that he is going to be placed under suspension. It is also stated that applicant is in habit of remaining unauthorised absence from duty and the date/dates, periods during which applicant

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was away on unauthorised absence have been indicated by Respondents. It is further stated that applicant was not given the duty of shift in charge in addition to his normal duties. Applicant has no other duty to perform except overseeing the shift work as shift incharge. The duty of shift incharge is normally performed by the Senior most supervisor available in a shift and there is no specific pay or grade for the same. The duty of a shift incharge does not require him to physically involve himself in the maintenance and repair of locomotives in a shift but he merely acts as a co-ordinator between various groups and oversees the works in general. Therefore, it is binding upon him to see that staff do not waste their time and do not indulge in undesirable activities. It is stated that in course of enquiry into the charge at Annexure-6 it was revealed from the statement of the witness that applicant himself was playing cards just before the six staffs, who were caught red handed while playing cards by the officer-in-charge during surprise inspection on 9.2.1992. It was further stated that the original charge-sheet issued was cancelled because there was a typographical error in mentioning the date of occurrence as 8.2.1992 which was changed to the correct date of occurrence as 9.2.1992 in the charge-sheet at Annexure-6. It is further stated that the enquiry into the charge at Annexure-6 was not conducted by Respondent No. 2 alone. Only notices were issued by Res. No. 2 but the enquiry was conducted by Respondents 2 and 3 jointly and the enquiry report has been jointly signed by the two I.Os constituting the Board and by the defence counsel.

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and the accused. This clear proof that the Board conducted the enquiry and not Respondent No. 2 alone. As regards adjournment of the enquiry, it is stated that as the Inquiring Officer, had the ~~other~~ responsibility and pre-occupations, the enquiry was adjournment for some time but intime the enquiry has been completed. Respondents have further stated that in both the enquiries full opportunity was given to applicant to prove his ~~innocence~~ and all Rules of natural justice were strictly observed. Respondents have made several averments with regard to the charges at Annexure-16 but it is not necessary to go into those facts. On the above grounds, Respondents have opposed the prayers of the applicants.

4. Respondent No. 2 has filed para-wise comments through another letter which is in file but copy of this does not seem to have been served on the counsel for applicant and therefore, this is not taken into consideration.

5. When this matter was taken up on 19.7.1999, after the matter was put in the ~~warning~~ list, learned counsel for applicant was absent nor was any request made on his behalf seeking adjournment. As the matter has come from the warning list and in this 1993 matter pleadings have been completed long ago, the matter could not be allowed to drag on indefinitely. We have, therefore, heard Mr. D. N. Mishra, learned Standing Counsel appearing for the Respondents and have also perused the records. Hearing was concluded on that day. Learned Standing Counsel for Respondents wanted to file written note of submission for which time was given till 23.7.1999. Learned counsel for

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applicant was also permitted to file written note of submission by 23.7.1999 but no written submission was filed by either side.

6. Applicant, in this petition has prayed for quashing the chargesheets at Annexures-6 and 16. So far as charge at Annexure-16 is concerned, from the enclosures filed by applicant himself it is seen that by the date this OA was filed and taken up for admission on 24.2.1993 the enquiry had already been completed and enquiry report was sent to applicant in letter dated 18.1.93 (Annexure-22) requiring him to file representation against the report of the Inquiring Officer within ten days. This letter was received by applicant on 9.1.1993 as we see from the endorsement of applicant at Annexure-22. Respondents have stated that by the time, the stay order was issued on 24.2.1993, the final order of punishment in respect of the charges at Annexure-16 and the enquiry in pursuance thereof have already been passed on 13.2.1993. In view of this, the prayer of applicant for quashing the chargesheet at Annexure-16 has become infructuous and therefore, is held to be without any merit and is rejected. In consideration of the above, it is not necessary to go into the submissions of applicant and Respondents with regard to chargesheet at Annexure-16.

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7. As regards the charge at Annexure-6, Respondents have pointed out that in this case also the enquiry has been completed but final order in respect of this charge has not been implemented in view of the stay order of the Tribunal dated 24.2.1993.

8. The point for consideration, therefore, is whether the charge-sheet at Annexure-6 should be quashed. The position of law is well settled that in a ~~Departmental~~ enquiry, the scope of interference by Tribunal is limited. The Tribunal can not act as an Appellate Authority and in a case of a Disciplinary proceeding which has been completed and punishment imposed, the Tribunal can interfere only if reasonable opportunity has been denied or there has been violation of principles of natural justice or the findings are based on no evidence or are patently perversed. The scope of interference of the Tribunal in case of pending disciplinary proceeding is still more limited. An employer is entitled to initiate disciplinary proceeding against an employee for alleged misconduct, if any.

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In course of such, all opportunities have to be given to the charged officer to deny the charge and to prove his innocence of the alleged misconduct. At this stage, the Tribunal can not interfere and quash the proceedings unless the proceedings have been initiated by a person who is not authorised to initiate the ~~Departmental~~ proceeding. Applicant has made no averments that the Disciplinary proceeding at Annexure-6 has been initiated by a person who is not authorised to initiate the ~~Disciplinary~~ proceeding against him. In view of this, we find no merit in the prayer of applicant to quash the charge at Annexure-6.

9. In view of the above, we hold that the applicant has not been able to make out a case for any of the reliefs sought for by him in this Original Application. The Original Application is therefore, rejected but in the circumstances,

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without any order as to costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.

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(SOMNATH SOM)
VICE-CHAIRMAN
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