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IN THE HIGH COURT OF ORISSA: CUTTACK.
CUTTACK BENCH, CUTTACK.

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ORIGINAL APPLICATION NO.86 OF 1993
Cuttack, this the 4th day of January 1999


R.Laxman Rao Applicant

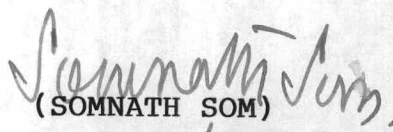
Vrs.

General Manager, S.E.Railway
and others Respondents

FOR INSTRUCTIONS

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


(A.K.MISRA)
MEMBER(JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN
4.1.99

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.86 OF 1993

Cuttack, this the 4th day of January 1999

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI A.K.MISRA, MEMBER(JUDICIAL)
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R.Laxman Rao, aged about 39 years,
son of R.Mallesu, Ex-Head Clerk, in
the office of the Sub-Divisional Commercial
Superintendent,
Khurda Road,
S.E.Railway,
at present residing at Qrs.No.29/B,
Retang Colony,
PO/PS-Jatni, Dist.Khurda Applicant.

By the Advocates -

M/s R.N.Naik,
A.Deo,
B.S.Tripathy &
P.Panda.

Vrs.

1. General Manager,
South Eastern Railway,
Garden Reach,
Calcutta-700 043
2. Divisional Railway Manager,
South Eastern Railway,
Khurda Road,
At/PO-Jatni, Dist.Khurda.
3. Senior Divisional Commercial Superintendent,
South Eastern Railway,
Khurda Road,
P.O/PS-Jatni, Dist.Khurda.
4. Assistant Traffic Superintendent-cum-
Inquiry Officer,
South Eastern Railway, Khurda Road,
PO/PS-Jatni, Dist.Khurda

Respondents

By the Advocate -

Mr.Ashok Mohanty

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to produce the records of the enquiry against him and also for setting aside the order of dismissal dated 16.4.1992 at Annexure-2.

2. Facts of this case, according to the applicant, are that the applicant was working as Head Clerk in the office of Senior Divisional Commercial Superintendent, S.E.Railway, Khurda Road (respondent no.3). A departmental proceeding was started against him on an allegation of misappropriation of sale proceeds of 850 Railway Time Tables during the period from May 1985 to October 1987, irregular attendance from 3.11.1987 to 30.8.1988 without any authority, and keeping pending all important correspondences relating to his seat. Respondent no.3 ordered for recovery of a sum of Rs.500/- from the salary of the applicant towards adjustment of the alleged misappropriated funds. As the applicant was innocent, he objected to the recovery without holding an enquiry, but his objection was not listened to. A sum of Rs.11,000/- was recovered from the applicant at the rate of Rs.500/- per month towards the cost of Railway Time Tables. On the same

issue of misappropriation of sale proceeds of Time Tables, a charge-sheet was issued to him and an Inquiring Officer was appointed and enquiry was conducted without any regard to the proper procedure. The applicant filed his defence which is at Annexure-1. On the basis of findings in the enquiry, the disciplinary authority passed the impugned order dated 16.4.1992 dismissing the applicant from service with immediate effect. Against the order of dismissal, an appeal was filed by the applicant which is at Annexure-3, but no order was passed on his appeal. Against the above facts, the applicant has come up with the aforesaid prayers.

3. Respondents in their counter have submitted that the applicant was originally appointed as a Junior Booking Clerk on 28.9.1976. He was promoted to the post of Senior Booking Clerk and Head Booking Clerk at Cuttack Railway Station. The applicant while working at Cuttack had misappropriated huge amount of Railways cash by selling tickets from the Ticket Tube in irregular manner without accounting for the same in the Daily Train-cum-Summary Books. He was chargesheeted and finally removed from Railways service with effect from 26.9.1979. On a mercy petition filed by the applicant, General Manager gave him a

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fresh appointment as Junior Clerk debarring him from cash handling duty. While working as Junior Clerk, the applicant misappropriated sale proceeds of 850 Time Tables and remained absent without leave from 3.11.1987 to 30.8.1988. Respondents have submitted that it was not correct that the amount of Rs.500/- was deducted from the salary bill of the applicant without any enquiry. The applicant was served with a showcause notice which was acknowledged by him but not replied to. Thereafter the recovery of the outstanding amount from him was ordered. Respondents have submitted that the Railway Time Tables are issued twice a year. The discrepancy in the accounts ^{could} ~~can~~ only be detected in May 1988. After scrutiny of three years Way Bills and other concerned documents, it was found that sale proceeds of 850 copies amounting to approximately Rs.11,000/- have been misappropriated by the applicant and accordingly the same was debited to his account and recovery at the rate of Rs.500/- per month was started from his salary. Apart from recovery, he was chargesheeted for this and other lapses. Respondents have submitted that it is not correct that the applicant has been chargesheeted twice for one and the same offence. The respondents have submitted that the enquiry was conducted fairly and the impugned order of dismissal was passed. The applicant did not submit an appeal. Without submitting the appeal, he has come up with the aforesaid prayers.

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The respondents have submitted that against the order of dismissal, he did not file an appeal before the appellate authority and therefore, he cannot be allowed to agitate the matter before the Tribunal.

4. We have heard the learned lawyer for the applicant and the learned counsel Shri Ashok Mohanty appearing on behalf of the respondents and have also perused the records.

5. Shri B.S.Tripathy, the learned lawyer for the applicant has submitted that for the selfsame lapses the applicant has been punished twice by recovery of Rs.11,000/- towards sale proceeds of the Time Tables from him and by including the same lapses in the charges in the disciplinary proceeding in which the impugned order of punishment was passed. It has also been submitted that the charge that he is irregular in attendance is vague and nothing was proved. It has also been stated that the enquiry report was not served on him and he was not allowed to represent before the order of dismissal was passed. Learned lawyer for the applicant has also filed a written note of submissions in which he has taken the further stand that the enquiry is vitiated because the Inquiring Officer conducted the enquiry in one day i.e. on 24.10.1991 and the enquiry report was submitted in 1991. It has also been submitted

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that the applicant was not given adequate opportunity to defend himself in the enquiry. It has been further submitted that the applicant was suffering from Pulmonary Tuberculosis during the period from 21.5.1991 to 1.11.1992 and was under treatment of Government Dispensary, Venkatapuram, Palasa, but during his sickness the impugned order was passed. It has also been stated that passing of order of dismissal in a departmental proceeding where no enquiry is conducted cannot be sustained and must be set aside.

6. We have gone through the defence brief submitted by the applicant to the Inquiring Officer, which is at Annexure-1, and the order of the disciplinary authority. The applicant has not submitted a copy of the enquiry report which was apparently sent to him by the disciplinary authority. The applicant and the respondents have also not filed the copy of the enquiry report. As such, it is not possible to look into the report of enquiry. From the defence brief, i.e., the explanation submitted by the applicant, we find that in this explanation he has mentioned the charges against him. Coming to the submission of the learned lawyer for the applicant that for misappropriation of sale proceeds of the Time Tables, the order of recovery was passed against him and therefore, this lapse should not have

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been included in the charge against him, we are unable to accept this contention. The applicant has not denied in his explanation that the amount has been misappropriated by him. It would not be correct to hold that if a person has misappropriated an amount, with the recovery of the misappropriated amount he stands cleared of the charge. For the lapse of misappropriation, the departmental authorities are within their rights to proceed against him departmentally. Recovery of the amount misappropriated by him is not a punishment and therefore, it cannot be held that for this lapse he has been punished twice. This contention of the learned lawyer for the petitioner, therefore, fails.

7. The second contention that the charge relating to his irregular attendance from 3.11.1987 to 30.8.1988 is vague is not correct because from the explanation itself it appears that details of these were given in the statement of imputation which has not been filed by the applicant. In reply to this charge as also the third charge that he kept all important correspondences relating to his seat pending, the applicant has merely stated that he was sick and keeping indifferent health which is beyond his control and therefore, the charge is not

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tenable.

8. The well settled position of law is that in a departmental enquiry the Tribunal does not act as an appellate authority and cannot substitute its judgment with regarding to findings as also the punishment arrived at by the Inquiring Officer and the disciplinary authority. The applicant has also not submitted any document or produced any evidence in support of his contention that reasonable opportunity was not given to him. As such, this contention of the learned lawyer for the applicant cannot be accepted. As regards the contention that the copy of the enquiry report was not supplied to him in order to enable him to make a representation against the findings, it appears from the speaking order passed by the disciplinary authority that a copy of the enquiry report was sent to him by registered post at his last known address but the same was returned undelivered. It has been mentioned that all registered letters addressed to the applicant were returned with postal endorsements such as "Addressee left, returned to sender, Not known, Absent, left". In view of the above, the applicant cannot plead that the punishment is vitiated because of non-supply of a copy of the enquiry report to him. The reasonable efforts to supply him with copy of the enquiry report, but the registered letter has been

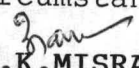
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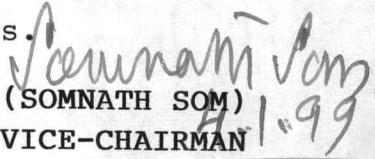
returned undelivered. A copy of the enquiry report was, however, sent to him along with the order of punishment. It is no doubt true that according to the law as laid down by the Hon'ble Supreme Court in the case of Union of India v. Mohd. Ramzan Khan, AIR 1991 SC 471, copy of the enquiry report is required to be supplied to the delinquent officer to enable him to make a representation against the findings of the Inquiring Officer. But in a subsequent case, Managing Director, ECIL, Hyderabad v. B. Karunakar, AIR 1994 SC 1074, Hon'ble Supreme Court have held that non-supply of copy of the enquiry report would not by itself invalidate the proceedings. In such event, the facts and circumstances of the case have to be looked into by the Courts and Tribunals to come to a finding that if non-supply of copy of the enquiry report has vitiated the proceedings. In the instant case, we find that the respondents sent the copy of the enquiry report to the applicant through registered post, but the same was returned unserved. Under the circumstances, it is not possible to hold that non-receipt of a copy of the enquiry report by the applicant has vitiated the proceedings against him.

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9. On the question of punishment, it has been submitted by the learned lawyer for the applicant that the applicant belongs to a Scheduled Tribe and the punishment is

disproportionate to the charges held to have been proved against him. In this case, from the order of the disciplinary authority we note that out of three charges, the Inquiring Officer has held that charge nos. 1 and 2 have been proved against the applicant. The position of law is well settled that Tribunal cannot substitute its judgment with regard to the punishment except in cases where the punishment is so disproportionate to the offence committed that it shocks the judicial conscience. This has been laid down by the Hon'ble Supreme Court in the case of Union of India and another v. G.Ganayutham (Dead) by L.Rs., AIR 1997 SC 3387. In the instant case, we note from the counter that the applicant had earlier been removed from service on 26.9.1979 on charge of misappropriation of Government cash. But on a mercy petition, he was reinstated in service as Junior Clerk with instructions that he should not be put to any cash handling duty. In the above context, we cannot hold that punishment of dismissal from service passed by the disciplinary authority is excessive. There is, therefore, no case for interfering with the punishment.

10. In the result, therefore, the Original Application fails and is dismissed but, under the circumstances, without any order as to costs.


(A.K.MISRA)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN