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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.198 OF 1994.
Cuttack, this the 7th day of January, 2000.

R.K.Bose Ray Choudhury. Applicant.

- Versus -

Union of India & 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
7.1.2000.

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ORIGINAL APPLICATION NO.198 OF 1994.

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C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
A N D
THE HONOURABLE MR.G.NARASIMHAM, MEMBER (JUDICIAL).

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Shri R.K.Bose Ray Choudhury,
Son of late S.N.Bose Rai Choudhury,
Aged about 46 years, at present
working as Aerodrome Operator Gr.I,
Aviation Research Centre, Charibatia,
Dist.Cuttack.

Applicant.

By legal practitioner: M/s .A.S.Naidu, P.K.Mohapatra, A.K.Rath,
P.Mohanty, Advocates.

-VERSUS-

1. Union of India Ministry of Defence,
represented through Cabinet Secretary,
Central Secretariat, New Delhi,
Beekaneer House, Annexe, New Delhi-110 011.
2. Director, Aviation Research Centre,
East Block, V.R.K.Puram, New Delhi-16.
3. Deputy Director (Administration),
Aviation Research Centre,
At/Po.Charbatia, Dist.Cuttack.
4. Asst.Director (Administration),
Aviation Research Centre,
At/Po.Charbatia, Dist.Cuttack.

Respondents.

J.Som
By legal practitioner : Mr.U.B.Mohapatra, Additional Standing
Counsel (Central).

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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 punishment imposed on the applicant in order at Annexure-5 and the order of the Appellate Authority rejecting the appeal. Alongwith the Original Application, the applicant had not enclosed the order of the Appellate Authority. At the time of hearing, the order dated 21.12.1993 of the Appellate Authority rejecting the appeal has been submitted.

2. Applicant's case is that he joined as Aerodrome Operator at Aviation Research Centre, Charibatia on 01.08.1972. His daughter is a patient of Epilepsy. In 1987, applicant was transferred from ARC, Charibatia to Dum Duma. He joined his duty at Dum Duma on 16th of October, 1987. He filed Original Application No.75(G) of 1989 before the Central Administrative Tribunal, Guwahati Bench who directed that his request for transfer from Dum Duma to ARC, Charibatia should be sympathetically considered. Thereafter, the applicant was transferred from Dum Duma to Charibatia and he joined at Charibatia in 1991. At Charibatia, he was not allotted with any Govt. quarters. His representation to allow him quarters inside the Campus was not allowed. Applicant states that he was

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staying away from the ARC and it took him atleast 2 $\frac{1}{2}$ hours time to reach his place of work from his house. It is further stated that the duty hours are from 9.00 AM to 4.00 PM but the Departmental Authorities repeatedly allotted him additional duties beyond the working hours after 4.00 PM. Applicant has stated that as Aerodrome Operator, it was not necessary for him to attend additional duties more so when Assistant Aerodrome Officer is present. On 21.5.1992, the applicant was directed to stay beyond duty hours. As on that day, the Assistant Aerodrome Officer was verymuch present and the applicant's daughter was not well, the applicant requested the authorities to permit him to go to his home but his prayer was rejected and he was directed to attend the duties beyond the working hours on 23rd and 24th of May, 1992. For not attending attending to his duty, on 23rd and 24th of May, 1992, Departmental proceeding was initiated against him in not attending to his duties. Memorandum issued to applicant indicating his lapses, is at Annexure-4. After the applicant submitted his explanation to the charge, the Disciplinary Authority held that the applicant is guilty of refusing to perform the additional duty but as the applicant had come to adverse notice for the first time, a lenient view was taken and he was awarded punishment of withholding the increment for two years without commulative effect. His appeal against the order of punishment was rejected in order dated 21.12.1993. Applicant challenged the findings in the proceeding against him and the punishment on the ground that at the relevant time, the

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Assistant Aerodrome Officer was very much present and as such, he should have been directed to perform the additional duty after 4.00PM. It is also stated that as the applicant has not been allotted with a Govt. quarters within the Campus of ARC, Charibatia, there was no justification to direct him to perform the additional work. It is also stated that the enquiry report was not supplied to him and the applicant was not asked to show cause with regard to the quantum of punishment. On the above grounds, the applicant has come upon this Original Application with the prayer referred to earlier.

3. Respondents, in their counter, have stated that in view of his lapses, minor penalty proceeding, under Rule-16 was initiated against him. He was given opportunity to submit his explanation and after consideration the explanation, charges were held proved and punishment was imposed. Applicant's appeal was also rejected by the Appellate Authority. Respondents have further admitted that the normal duty hours is from 9.00 AM to 4.00PM in the Air Traffic Control wing where the applicant works. It is further stated that detaining the applicant for additional duty on 21.5.92, 23.5.92 and 24.5.1992 was as per the exigencies of service. Instead of performing the duty, the applicant left his place of duty on the ground that he would not perform extra operational duties unless he is provided with Govt. accommodation.

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He also mentioned this in his representation dated 7.10.1991 which is at Annexure-R/5. In the absence of the applicant, the duty officer, Assistant Aerodrome Officer, assumed the duties of the applicant in order to meet the operational requirement. It is stated that this was necessary for ensuring the departure of aircraft which was fixed to 1700 hours on 23.5.92. Regarding allotment of quarters, it is stated that the applicant could not have been allotted quarters out of turn. The Respondents have also stated that the applicant is staying in a rented house in Orissa Housing Board Colony, which is within half KM of the ARC campus and 2&½ KMs from his place of duty. They have stated that the contention that the applicant is staying 10 KMs away from his place of duty is not correct. Respondents have stated that the punishment has been imposed for the lapses which have been held proved. The punishment imposed also is a minor punishment and on the above grounds, the Respondents have opposed the prayer of applicant.

4. We have heard Mr. A. S. Naidu, learned counsel for the applicant and Mr. U. B. Mohapatra, learned Additional Standing Counsel appearing for the Respondents and have also perused the records.

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5. Learned counsel for the applicant has relied on the decision of the Hon'ble Apex Court in the case of RAM CHANDER - VRS. -UNION OF INDIA & ORS, reported in 1986(2)SLR, (SC) 608. In view of our subsequent discussions, it is not necessary to refer to the facts of this case. We have, however, perused the case.

6. The first point urged by learned counsel for the applicant is that in the proceeding against the applicant, principle of natural justice has been violated. As no enquiry was conducted into the charges. This contention is not acceptable because in this case, proceeding was drawn up against the applicant under Rule 16 of the CCS(CCA)Rules for imposition of minor penalty. No formal enquiry need be conducted in the case of minor proceeding and the rules lay down that after receipt of explanation, the Disciplinary Authority may come to a finding with regard to the charge. In such cases, enquiry can be ordered, if the applicant asks for conducting an enquiry and if the Disciplinary Authority considers that an enquiry is necessary. The applicant has not enclosed a copy of the explanation but this has been enclosed by the Respondents, at Annexure-R/2 of their counter. From this explanation, we find that the applicant did not ask for an enquiry to be conducted and therefore,

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he can not make any grievance that no enquiry was conducted into the charges. This contention, is, therefore, held to be without any merit and is rejected.

7. The second ground urged by learned counsel for the applicant is that no copy of the enquiry report was supplied to him. As no enquiry was required to be conducted in this case, the question of supplying a copy of the enquiry report to the applicant does not arise. This contention is also held to be without any merit and is rejected.

8. The third contention of learned counsel for the applicant is that the Appellate Authority has passed a non-speaking order. It is further stated that in accordance with sub rule-2 of Rule-27 of CCS (CCA) Rules, the Appellate Authority while considering the appeal should see if the procedure has been complied with and if not whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice. The order of the Appellate Authority which has been submitted by learned counsel for the petitioner at the time of hearing is dated 21.12.1993. We find from this that this is not the complete order. Only the operative portion of the order of the Appellate Authority agreeing with the penalty awarded by the Deputy Director (Admn.) ARC, Charibatia

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has been communicated to the Applicant. Respondents have pointed out that while forwarding the appeal of the applicant, parawise comments on his appeal was also submitted and the Appellate Authority had gone through the same. In view of this, we hold that there is no infirmity in the order of the Appellate Authority rejecting the appeal of the applicant.

9. It is also to be noted that the applicant was transferred from Charibatia to Dum Duma after having put in 15 years of service at Charibatia. Because of his personal difficulties on his representation, he was transferred back from Dum Duma to ARC Charibatia. Applicant can not claim under the Rules that unless he is allotted with a quarters inside the campus, he would not perform operational duty more so when he was working in Air traffic control section where his duty is related to arrival and departure of aircrafts. In consideration of his lapse, the punishment of stoppage of increment for two years without cumulative effect, can not be considered disproportionate ~~as~~ ^{too} severe.

10. In the result, therefore, we hold that the application is without any merit and is rejected. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

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VICE-CHAIRMAN
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