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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 390 OF 1994
Cuttack this the 03rd day of May, 2000

Prafulla Kumar Mishra

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Applicant(s)

-VERSUS-

Union of India & Others

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Respondent(s)

(FOR INSTRUCTIONS)

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

Somnath Som
(SOMNATH SOM)
VICE CHAIRMAN

3-5-2502
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 390 OF 1994
Cuttack this the 03rd day of May, 2000

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)

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Prafulla Kumar Mishra, aged about 52 yrs.
S/o. Late Ramachandra Mishra
Vill - Budhapada, PO: Harirajpur
Dist: Puri - at present serving as
Shunter, Office of the Divisional
Mechanical Engineer, S.E.Railway
Khurda Road, PO: Khurda Road,
Dist: Khurda

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Applicant

By the Advocates

Mr. G.C.Mohapatra
Miss.B.L.Tripathy

-VERSUS-

1. Union of India represented by
the General Manager, S.E.Railway
Garden Reach, Calcutta-43
2. Divisional Mechanical Engineer
S.E.Railway, Khurda Road
PO: Khurda Road
Dist: Khurda
3. Divisional Railway Manager
S.E.Railways, Garden Reach
Calcutta-43
4. Chief Operating Manager
Garden Reach
Calcutta-43

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Respondents

By the Advocates

Mr.Ashok Mohanty

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O R D E R

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MR.G.NARASIMHAM: MEMBER (JUDICIAL): Applicant, a Loco Driver, under the Railways has been awarded penalty of reversion to the post of Driver with effect from 1.3.1992 for a period of five years with cumulative effect in a disciplinary proceeding by order dated 27.2.1992 passed by Respondent 2, the disciplinary authority. The only charge against him is that on 19.7.1989, while working with Loco No.18291 he left Paradeep Station on line clear without DDA and pilotman proceeded towards Paradeep Port Yard and in that process side collided with last 8 Box loads of moving EP 21 rake on Plot No.2, as a result of which three pairs of engine leading wheels of long hood trolley got derailed and shifted to three feet on right side of track and was dragged to a distance of about 8.5 mts. damaging the loco on left side and the said wagons on right side about 23.15 hrs.

The applicant preferred departmental appeal dated 27.2.1992 (Annexure-8) and the appellate authority, i.e. Divisional Railway Manager, S.E.Railway, Khurda Road, by his order dated 23.9.1992 under Annexure-A/9, while confirming the finding of the disciplinary authority reduced the punishment of reversion for a period from five years to three years. Thereafter the applicant preferred revision before Respondent No.4, Chief Operating Manager, S.E.Railway, Garden Reach, Calcutta under Annexure-A/10 dated 9.11.1992. This revision was rejected by order dated 13.1.1994 under Annexure-A/11.

This application has been preferred by the applicant for quashing the orders of the disciplinary authority, appellate authority and the revisional authority. The grounds urged are

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that the orders have been passed mechanically and whimsically without proper application of mind and the findings are perverse and based on no evidence.

2. In the counter the Department justified their action in passing those orders.

No rejoinder has been filed by the applicant.

3. We have heard Shri G.C.Mohapatra, learned counsel for the applicant and Shri Ashok Mohanty, learned senior counsel appearing for the Respondents (Railways). Also perused the records.

4. We have carefully gone through the charges, written statement of the applicant in response to charges, inquiry proceedings, inquiry report, representation of the applicant against the inquiry report, impugned orders and so on, all of which have been annexed as Annexures-A/1 to A/11. We do not agree with the contention advanced on the side of the applicant that the orders are perverse and not based on any evidence. There is no violation of principles of natural justice. The impugned orders are reasoned orders, exhaustive and based on evidence.

During arguments, learned counsel for the applicant raised two more points not dealt in the pleadings. One is that the very fact that an Inquiring Officer was appointed along with the charge memo under Annexure-A/1 served on him would indicate non-application of mind of the disciplinary authority. According to learned counsel appointment of Inquiring Officer will arise only when a delinquent does not admit the charge. The fact remains that the applicant did not admit the charge. Hence it is not understood how the appointment of Inquiring Officer on the day when the charges were framed caused prejudice to the applicant. This apart, Rule-9(2) of Railway Servants (Discipline

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and Appeal) Rules, 1968 read with Rule-9(9)(iv) makes it clear that even at the time of framing charges the disciplinary authority can appoint Inquiring Officer in anticipation of non admission of the charge by the delinquent. The learned counsel, however, placed reliance on a Division Bench decision of this Tribunal in O.A. 597/92, which does not lay down that even if there is no prejudice to the delinquent, the entire proceeding on that ground has to be quashed. As earlier stated, the applicant could not persuade us as how he was prejudiced in the appointment of Inquiring Officer on the day the charge was framed.

The next contention raised by the learned counsel for the applicant is on the Doctrine of Contributory Negligence. In this connection he placed reliance on the fact finding report annexed to the charge memo. As per Rules, D.D.A./Pilotman was to have been provided for driving the engine. Admittedly they were not provided. This does not however mean that the applicant would be free from the blame because he had proceeded ^{more} cautiously and remained ^{more} alert.

We do not see any force in these two contentions advanced on the side of the applicant.

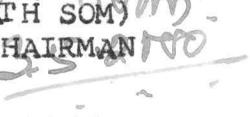
5. Apart from merit, this Original Application can also be rejected as barred by time. The order of the disciplinary authority was passed on 27.2.1992 under Annexure-A/7. The applicant preferred departmental appeal on 25.4.1992 maintaining that he had received the report of the disciplinary authority on 28.2.1992. The appeal was rejected on 23.9.1992 (Annexure-A/9). Hence he should have challenged the order of the disciplinary authority by 27.8.1993 and since the appeal has been disposed of on 23.9.1992, the appellate order could have been challenged

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through an application filed not later than 23.9.1993. However, this O. A. was filed on 6.6.1994 without any petition or explanation for condonation of delay, as required under Rule-8(4) of the C.A.T.(Procedure)Rules, 1987. We are aware that the applicant had moved the higher authority by way of revision and the revisional authority dismissed the same on 13.1.1994 under Annexure-A/11. But the period of filing the revision and the dismissal of the revision would not save limitation, because, a delinquent has no right to file revision. Revision is a discretionary power to be exercised by the revisional authority. It is only a period spent in ^{the} ~~appeal~~ preferring, is saved by limitation as mentioned under Section 21 of the Administrative Tribunals Act, 1985.

6. In the result, we do not see any merit in this application which is accordingly dismissed, leaving the parties to bear their own costs.


(SOMNATH SOM)
VICE-CHAIRMAN


B.K.SAHOO//

3.5.2002
(G.NARASIMHAM)
MEMBER (JUDICIAL)