

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH; CUTTACK.

ORIGINAL APPLICATION NO. 765 OF 1994.

Cuttack, this the 7th day of September, 1999.

SRI K.S.MONY.

....

APPLICANT.

VERSUS

UNION OF INDIA & OTHERS.

....

RESPONDENTS.

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? Yes.
2. Whether it be referred to all the Benches of the Central Administrative Tribunal? No.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
7.9.99

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CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 765 OF 1994.

Cuttack, this the 7th day of September, 1999.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

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

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Shri K.S.Mony,
Aged about 49 years,
Son of K.B. Shivasankar Nair,
of Village Athigannor, P.O. Aralumoodu,
PS-Nayyattinkara, Dist. Trivendum,
at present working as Parcel Clerk,
Railway Administration Cuttack Railway
Station, Cuttack residing at C/o.
M. Basantha Kumari, Staff Nurse,
Gr. No. 1, SCB Medical College, Campus,
Cuttack.

... APPLICANT.

By legal Practitioner: M/s. D. R. Patnayak, K. C. Pradhan,
S. K. Mallik, R. N. Nayak,
M. K. Khuntia, Advocates.

-VERSUS-

1. Union of India represented by its
General Manager, SE Rly, Garden Reach,
Calcutta.
2. Sr. Commercial Manager, SE Railway,
Khurda Road, At/Po. Jatni, Dist. Khurda.
3. Assistant Commercial Manager,
S. E. Railway, Khurda Road,
At/Po. Jatni, Dist. Khurda.

.... RESPONDENTS.

By legal Practitioner : Mr. R. C. Rath, Additional Standing
Counsel (Railways).

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J. J. M.

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 for quashing the order dated 1-6-1994 (Annexure-3) in which his increment raising his pay from Rs. 1100/- to Rs. 1125/- has been withheld for a period of twelve months with non-cumulative effect.

2. Applicant's case is that while he was working as Parcel Clerk 'B' in Cuttack Railway Station, a minor penalty proceeding was initiated against him. The imputation was that he received two Pkgs. Magazine in respect of which the consignee was the ^{Sachdeva} ~~Sachdeva~~ College, Cuttack. These two Pkgs, were awaiting delivery and the booked weight of the consignment was shown in the records as 36 Kg. The Vigilance Team weights the Pkgs and found that the actual weight of the consignment was 46 Kg. Thus, Rs. 7/- by way of excess weight of the Pkgs was not mentioned by the applicant. Applicant in his explanation stated that he received the Pkgs in perfect condition and the Parcel Clerk 'A' who was effecting delivery, was required to re-weight every pkts of magazine and realise the under charge from the party concerned at the time of delivery. According he has stated that he was not responsible in not recording the excess amount to be recovered from the consignee. The Disciplinary Authority has found the explanation unsatisfactory and imposed the above punishment.

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3. Respondents in their counter have pointed out that applicant has come up before this Tribunal without exhausting the Departmental Remedy by filing appeal before the Appellate Authority. They have also stated that had the Vigilance Team not checked up the Pkts, then the Pkts would have been delivered to the consignee without realising the amount of Rs. 7/- and there would have been loss to the Department. On the above grounds, the Departmental Authorities have opposed the prayer of applicant.

4. We have heard Mr. D. R. Patnaik, learned counsel for Applicant and Mr. R. C. Rath, learned Additional Standing Counsel appearing for the Departmental Authorities and have also perused the records.

5. From the above recital facts of the parties, it is clear that ultimately, in this case, the loss of Rs. 7/- has not been caused to the Railways presumably because, after weighing by the vigilance Team, the amount of Rs. 7/- has been realised at the time of delivery of the goods to the consignee. The punishment of stoppage of one increment amounting to Rs. 25/- per month without cumulative effect for a period of twelve months, has resulted in financial deprivation to applicant for a very much larger amount. It is stated by learned counsel for applicant that no personal hearing has been given to applicant. We are not prepared to accept this contention because in his explanation, copy of which has been enclosed by applicant, the applicant did not ask for a personal hearing and in view of this, the Disciplinary Authority was not obliged to give him personal hearing on his own. We also note that in

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this case applicant has approached the Tribunal without exhausting the Departmental remedy. It is submitted by learned counsel for applicant that a large number of proceedings numbering seven were initiated against the applicant and in all the cases, punishments have been imposed on him. Because of this, he has approached this Tribunal even before exhausting the departmental remedy. Hon'ble Supreme Court has dealt in Rathore's case that ordinarily the Tribunal can not entertain an application without exhausting the Departmental remedy by the officials. In consideration of the above, we dispose of this Original Application by issuing a direction to the applicant to file an appeal before the Appellate Authority within a period of thirty days from the date of receipt of a copy of this order. The appellate Authority is directed not to dispose of the appeal on the ground of limitation. The Appellate Authority should consider the appeal petition and dispose of the same on merits and in accordance with law, through a speaking order. Till disposal of the appeal stay granted by the Tribunal in order dated 30.12.1994 would continue. It is however, made clear that in case no appeal is filed within thirty days from the date of receipt of a copy of this order, by the applicant, the order of stay will stand automatically vacated.

6. In the result, in terms of the observations and directions made above, the Original Application is disposed of. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN