

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 766 OF 1994.

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

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 circulated to all the Benches of the Central Administrative Tribunal or not? *No.*

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
7.9.99

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CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 766 OF 1994.

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

CORAM :

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. S. SHIVASANKAR Nair,
of village Athigannor,
PO. Aralumoodu, Ps. Nayyattinkara,
Dist. Trivendrum, 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. Pattnayak, K. C. Pradhan,
S. K. Mallik, R. N. Nayak,
M. K. Khuntia, Advocates.

- VERSUS -

1. Union of India represented through
its General Manager, SE Railway,
Garden Reach, Calcutta.
2. Senior Commercial Manager,
S. E. 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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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 of punishment at Annexure-3, as also the proceedings and charges.Respondents have filed counter opposing the prayer of Applicant. We have heard Mr.D. R. Patnaik, learned counsel for applicant and Mr. R. C. Rath, Additional Standing Counsel (Railways) appearing for the Respondents and have also perused the records.

2. For the purpose of considering this original Application, it is not necessary to go into too many facts of this case. The admitted position is that while the applicant was working as parcel Clerk in Cuttack Railway station, a minor penalty proceeding was initiated against him on the ground that on account of loading and un-loading of parcel goods from the Madras Mail, the Madras Mail was detained in Cuttack Railway Station on certain dates by extra few minutes. It has been mentioned that on 30-1-1994, 18.2.1994, 20.2.1994 and 21.2.1994, the Madras Mail was detained beyond the scheduled stoppage of eight minutes ^{and} five minutes on 30.1.1994 and 18.2.1994, eight minutes on 20.2.1994 and ten minutes on 21.2.1994. As already noted, the scheduled stoppage of Madras Mail was for eight minutes. Applicant, in the memo of charge issued on 22.2.1994 was asked to file his explanation within ten days. Applicant submitted his explanation on 5.3.1994 in which he had stated that on 18.2.1994 and 21.2.1994, the train arrived at 5.38 and 4.17 hours and

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left the station at 5.46 and 4.25 hours after the scheduled stoppage of eight minutes and there was no extra detention of the train in these two dates. On the other two dates i.e. on 31.1.1994 and 20.2.1994, there was extra detention by two minutes. Applicant has also stated in his explanation that these detention of two minutes was because of exchange of signal and there was no mention in the records of the station that the detention of two minutes on these two dates was on account of delay in loading and unloading of parcel goods. Even though the explanation was submitted on 5-3-1994, the Disciplinary Authority in his order dated 23-11-1994, recorded that as his explanation has not been received, his next increment raising his pay from Rs.1100/- to Rs.1125/- shall be withheld for a period of six months without cumulative effect. Respondents in their counter, have stated that applicant did not submit any explanation within the stipulated time and therefore, the impugned order of punishment was passed. Respondents have also stated that before issuing the charge-sheet, details from the guard-report were collected. On a careful reading of the impugned order of punishment, it appears to us that the order of punishment has been passed without proper application of mind. This is firstly because the order itself is not a speaking order. Secondly, even though it has been charged that the applicant was responsible for detention of the train beyond the scheduled period of stoppage on fair dates and even though no explanation was allegedly filed by applicant within the period fixed, the Disciplinary Authority in his order has referred to extra detention only for three days by implication, therefore,

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he has left the applicant of the charge of extra detention for 20.2.1994. Moreover, even though the 4th day of detention, according to charge is 21.2.1994, in the punishment order, it has been mentioned as 2.2.1994. From this, it is clear that the order of punishment has been passed without application of mind. There is also another angle to be noted that in another proceeding started against the applicant in Memo No. EDCM/Con./ Vig.-30/93, dated 3.11.1993, in which the applicant has been imposed with punishment of stoppage of his increment raising his pay from Rs.1100/- to Rs.1125/- for a period of twelve months which is the subject of challenge in Original Application No. 765 of 1994 disposed of by us today in another order. In the present proceeding, in this Original Application, punishment imposed is again stoppage of increment at the stage of Rs.1100/- to Rs.1125/- for a period of six months from the date it falls due. Thus, this punishment is ^{subsist} ~~subsumed~~ in the proceeding in the punishment given ^{earlier} ~~earlier~~ which is the subject matter of Original Application No. 765 of 1994. In consideration of the above, we hold that the order of punishment is not sustainable. Under normal circumstances, we would have remitted the matter to the Disciplinary Authority to consider the explanation of applicant and proceed further in the matter but considering the fact that the alleged detention of the trained has happened in the year 1994 and on none of these dates the trained arrived at Cuttack Railway Station in right time and the detention was between five to ten minutes according to Respondents and for two minutes according to applicant on these two dates, we think it would not be just

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and proper to remit the matter to the Disciplinary Authority to proceed further in the matter. In view of this, we quash the order of punishment imposed on the applicant in Annexure-3 as also the proceedings and charges framed against the applicant.

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

(G. NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN
7.9.99

KNM/QM.