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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 767 OF 1994

Cuttack, this the 28th day of September, 1999

K.S.Mony

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Applicant

Vrs.

Union of India and 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
28.9.99

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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CORAM:

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

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Sri K.S.Mony, aged about 49 years, son of K.S.Shivasankar Nair of village Athigannor, P.O-Aralummoodu, P.S-Nayyattinkara, Dist.Trivendum, at present working as Parcel Clerk, Railway Administration, Cuttack Railway Station, Cuttack, residing at C/o M.Basantha Kumari, Staff Nurse, Qr.No.1, S.C.B.Medical College Campus, Cuttack...

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Applicant

Advocates for applicant - M/s D.R.Patnaik

R.N.Nayak
K.C.Pradhan
S.K.Mallik

Vrs.

1. Union of India, represented by its General Manager, S.E.Railway, Garden Reach, Calcutta.
2. Sr.Commercial Manager, S.E.Railway, Khurda Road, At/PO-Jatni, District-Khurda.
3. Asst.Commercial Manager, S.E.Railway, Khurda Road, At/PO-Jatni, District-Khurda

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Respondents

Advocate for respondents - Mr.R.Ch.Rath

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

S. Som
In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 20.1.1994 imposing the punishment of withholding his increment for a period of six months without cumulative effect.

2. Short facts of this case are that while the applicant was working as Parcel Clerk in Parcel Office, Cuttack Railway Station, charges were framed against him alleging that on 12.10.1993 and 13.10.1993 he detained the train No. 6003 UP Madras Mail beyond the scheduled halt period for loading and unloading certain consignments. The charge is at Annexure-1. In his explanation (Annexure-2) the applicant stated that on 12.10.1993 there was no unloading from the front brake van. He loaded 34 baskets of fish and 38 bundles of skin within the schedule period of halt and no extra time was taken by him. According to him, extra detention was caused for heavy unloading of newspaper packets in the rear brake van which was attended to by the other Parcel Clerk, J. Behera and he would be able to explain the cause for the detention. On 13.10.1993 he loaded 34 baskets of skin in the front brake van within the scheduled halt and there was no unloading in the brake van. After receipt of his explanation, the disciplinary authority found the explanation unsatisfactory and held that the applicant was guilty of detaining the train 6003 UP for ten minutes beyond the scheduled stoppage at Cuttack on 12.10.1993. The applicant's case is that without hearing and without verifying the documents the above punishment has been imposed without any application of mind. On the above grounds he has come up with the prayer referred to earlier.

S. Jam

3. Before noticing the averments made by the respondents in the counter it is to be noted that in the punishment order at Annexure-3 there is no finding regarding detention of the train beyond the scheduled period on 13.10.1993 and therefore it is not necessary to refer to this charge as the disciplinary authority did not

come to a finding against the applicant with regard to the detention of the train beyond the schedule period on 13.10.1993.

4. The respondents in their counter have stated that while the applicant was working as Parcel Clerk he was assigned duties of supervising the loading and unloading together with other relevant works. While he was working as such train No.6003 UP suffered detention on 12.10.1993 for ten minutes for loading and unloading of consignments mentioned in the charge. Accordingly, a minor penalty chargesheet was issued and after going through the explanation of the applicant the disciplinary authority passed the above order. It is stated that there was no necessity of giving any hearing to the applicant and there has been no violation of the principles of natural justice. It is also stated that the Assistant Commercial Manager is empowered to impose punishment on the applicant and the Senior Divisional Commercial Manager is the appellate authority. The respondents have stated that the punishment imposed is just and proper and on the above grounds they have opposed the prayer of the applicant.

5. We have heard Shri D.R.Patnaik, the learned counsel for the petitioner and Shri R.Ch.Rath, the learned panel counsel for the respondents and have perused the records. We had earlier directed the learned panel counsel for the Railways to produce the record of proceeding and this has also been filed and has been perused.

6. The applicant in his explanation has admitted that there was detention of the train on 12.10.1993 beyond the scheduled period. He has stated that it was not because of loading and unloading work done by him in the front brake van but it was because of loading

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and unloading work done by the other Parcel Clerk in the rear brake van for which, the applicant has stated, the other Parcel Clerk is responsible. From the proceedings file we find that the disciplinary authority did not check up the position with regard to the relevant records available at the Railway Station for detention of the train on 12.10.1993. In the punishment order as also in the proceedings file there has been no discussion of the explanation given by the applicant. At page 8 of the proceedings file after the explanation of the applicant was put up before the disciplinary authority, he has merely recorded, "Stop increment for six months (NC)". From this as also from the punishment order at Annexure-3 it is clear that the order has been passed without application of mind. Therefore, the order of punishment cannot be sustained. We therefore quash the order of punishment at Annexure-3. In case the punishment has already been worked out and the increment of the applicant raising his pay from Rs.1100/- to Rs.1125/- has been actually withheld for a period of six months because of this impugned order, then the applicant will be entitled to the increment amount withheld for a period of six months. This should be done within a period of 90 (ninety) days from the date of receipt of copy of this order. We would like to make it clear that against this applicant there has been a large number of proceedings in which similar punishment has been imposed. In case the same punishment has been upheld in some other case, then naturally no payment would be due to him.

7. In the result, therefore, the Original Application is allowed but without any order as to costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN
28.9.99