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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 768 OF 1994
Cuttack this the 4th day of October, 1999

K.S.Mony

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

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

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
N.10.99

4.10.99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 768 OF 1994
Cuttack this the 4th day of October, 1999

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE 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: Athigannoor, PO: Aralummoodu
P.S.: Nayyattinkara, Dist: Trivendum
at present working as Parcel Clerk
Railway Administration, Cuttack Railway
Station, Cuttack, residing at C/o.
M.Basantha Kumar, Staff Nurse, Unmarried
Qr.No.1, S.C.B.Medical College Campus
Cuttack

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By the Advocates	:	M/s.D.R.Patnayak K.C.Pradhan R.N.Nayak S.K.Mallick M.K.Khuntia
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Applicant

-Versus-

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

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Respondents

By the Advocates	:	Mr.R.C.Rath, Addl.Standing Counsel (Central)
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ORDER

MR.G.NARASIMHAM, MEMBER(JUDICIAL): Applicant, a Parcel Clerk, serving at Cuttack Railway Station under S.E.Railway, filed this application on 29.12.1994 for quashing the order of punishment dated 6.12.1994 (Annexure-3) passed by the disciplinary authority withholdng increment for six months.

2. There is no dispute that through Memo dated 27.10.1994, a minor charge was framed against him for detaining Mail/Express Train No.6003 for extra five minutes on 23.10.1994 and extra 10 minutes on 24.10.1994, in the process of loading and unloading (Annexure-1). In the memo containing the charge there is direction to the applicant to submit representation, if any, within 10 days of receipt of the memo. Punishment order dated 6.12.1994(Annexure-3) reveals that since no explanation had been received in response to charge dated 27.10.1994, the disciplinary authority held him guilty and imposed the impugned penalty.

The case of the applicant is that the charges are frivolous and he in fact sent representation dated 2-12-94
3-4-1994 explaining the stand. Yet without considering the representation and assuming that he had not submitted any representation, the disciplinary authority, without any application mind, passed this cryptic and mechanical order under Annexure-3 without any discussion over the charge.

3. In the counter the Department admitted that the charge memo dated 27.10.1994 was received by the applicant on 21.11.1994 and since no representation was

received within the time stipulated, the disciplinary authority passed the punishment order and that there is no legal infirmity in that order.

4. We have heard Shri D.R.Patnaik, learned counsel for the applicant and Shri R.C.Rath, learned Addl. Standing Counsel appearing for the Railway Administration. Also perused the records.

During hearing Shri Rath also raised point of maintainability inasmuch as the applicant without availing the statutory remedy of filing appeal, has straightforwardly approached the Tribunal and as such the application is not maintainable under Section 20 of the A.T.Act. This point has not been urged in the counter filed on 6.12.1995. It is not ~~although~~ this Tribunal has no inherent jurisdiction to entertain an application of this nature. What Section 20 envisages is that ordinarily under such circumstances Tribunal shall not entertain an application of that nature, which means, in appropriate cases this Tribunal is not precluded from entertaining an application, because in B.C.Tewary vs. Union of India decided by the Division Bench of C.A.T., Guwahati, reported in 1996(32) A.T.Cases 404 in para-46 it has been held that such an objection raised by the respondents at a belated stage has to be negatived. Since this point of maintainability has been raised only during arguments, we are not inclined to entertain the same.

This apart we find the impugned order under Annexure-3 passed by the disciplinary authority is cryptic and not based on any discussion. The relevant portion of the order which in a printed proforma is as follows :

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6.12.1994".... Having not received any explanation to the charge sheet issued to him under this Office Memorandum of even no. dated 27.12.1994 I have decided that you are guilty of charges of detaintion of Train No.6003 for five minutes on 23.10.1994 and 10 minutes on 24.10.1994".

Thus it is clear that this cryptic order, a portion of which ~~only~~ ^{only} mention in a printed proforma is without any discussion of the relevant facts. Submission of representation under Annexure-2 has not been denied in the counter. It is their admitted case that though the charge was framed and signed on 27.10.1994, service of the same could not be effected on the applicant before ~~the~~ ^{the} ~~way~~ ^{way} 21.11.1994. In other words the Department ~~itself~~ ^{was} ~~was~~ ⁱⁿ slack in taking steps for service of the charge sheet on the applicant. It is true that the applicant sent representation on 2.12.1994, i.e. on the 11thday of receipt of the charge. Therefore, this should not have been a ground for finalising the proceeding ~~ex parte~~, specially when the Department themselves, as earlier stated, are ~~slack~~ in effecting service of the charge sheet on the applicant. In the result we hold that the impugned penalty under Annexure-3 having without any discussion cannot be sustained and is accordingly quashed. The application is allowed, but without any order as to costs.

Somnath Som
 (SOMNATH SOM)
 VICE-CHAIRMAN
 N.10.99

B.K.SAHOO

4.12.99
 (G.NARASIMHAM)
 MEMBER(JUDICIAL)