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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 770 OF 1994
Cuttack, this the 18th day of November, 1999

Sri K.S.Mony 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

18-11-99

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 770 OF 1994
CUTTACK, this the 18th day of November, 1999

CORAM:

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

.....
Shri K.S.Mony, aged about 49 years, son of K.S.Shivasankar Nair of village Athiganoor, 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 Kumar, Staff Nurse, Qr.No.1, SCB Medical College Campus, Cuttack ... Applicant

Advocates for applicant - M/s D.R.Patnaik
K.C.Pradhan
S.k.Mallick
R.N.Nayak
M.K.Khuntia

Vrs.

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

Advocate for respondents - Mr.R.Ch.Rath

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order of punishment at Annexure-3.

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2. For the purpose of considering this petition it is not necessary to go into too many facts of this case. It is only necessary to note that while the applicant was working Junior Parcel Clerk, Cuttack

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Railway Station, departmental proceedings were initiated against him on the charge that because of his negligence in duty in loading/unloading goods from the brake van, Train No. 8045 was detained by seven minutes beyond the schedule time of halt on 25.7.1994 as the applicant took time to get loaded 590 packages of fish spawn. The applicant was asked to submit his explanation within ten days from the date of receipt of the memorandum of charge. The applicant in his explanation dated 11.8.1994 (Annexure-2) denied the charge issued to him in letter dated 26.7.1994 by stating that on 25.7.1994 he attended the rear brake van of Train No.8045-UP from which he had only unloaded 15 packets of newspapers and loaded 3 packets of newspapers. He also stated that he loaded 58 tins of fish spawn and did not take any extra time for this purpose. He stated that the other brake van was attended to by Shri U.C.Dash, Senior Parcel Clerk. He also stated that the train was not detained for any extra time. The Assistant Station Master's diary shows the arrival of the train at 19 30 hours and departure at 19 40 hours showing that there was no extra detention. He also stated that the loading figure of 590 packages of fish spawn is false and he wanted to get an enquiry conducted. The applicant's case is that his explanation was not taken into account and by the impugned order at Annexure-3 the punishment was imposed on him withholding his increment raising his pay from Rs.1100/- to Rs.1125/- for one year without cumulative effect. The applicant has stated that there has been no application of mind and no enquiry has been conducted even though asked for by him, and on the above grounds he has come up in this

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petition with the prayer referred to earlier.

3. The respondents in their counter have stated that while the applicant was working as Parcel Clerk at Cuttack Railway Station he was assigned the work of loading and unloading of the Parcel Office. On 25.7.1994 Train No. 8045 suffered detention because of applicant's negligence in loading and unloading. In view of this, minor penalty proceeding was initiated against him on 26.7.1994. The applicant submitted his explanation and prayed for conducting an enquiry. In the enquiry report the applicant was found responsible. This was accepted by the disciplinary authority and the impugned order of punishment was passed. It is stated that C.I., Khurda, was deputed to conduct the enquiry. He found that the applicant was responsible for detention of the train as a V.P. directly sealed Ex-Howrah to BZA (Vijayawada) was opened enroute which should not have been done. The respondents have stated that the Assistant Commercial Manager, who is the disciplinary authority, has issued the order and the applicant has been rightly found guilty and the punishment has been rightly imposed. On the above grounds, the respondents have opposed the prayer of the applicant.

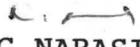
S. Jam 4. We have heard Shri D.R.Patnaik, the learned counsel for the petitioner and Shri R.C.Rath, the learned panel counsel for the respondents. We had directed the learned panel counsel for the respondents to produce the records of disciplinary proceeding. Accordingly, the disciplinary proceeding ^{file} relating to this O.A. has been produced and has also been perused.

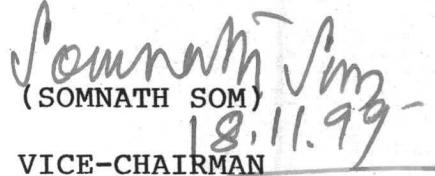
5. On perusal of the proceedings file it is seen that the applicant was charged for delaying the Train No. 8045 on 25.7.1994 for seven minutes beyond the schedule time of halt for loading 590 packages of fish spawn. The petitioner in his explanation has denied that the train was delayed by 7 minutes. He has also denied that he had loaded 590 packages of fish spawn. The report of enquiry is at 11/c of the proceedings file. The inquiring officer has given the clear finding that there was no loading of 590 packages of fish spawn in Train No. 8045 on that day. Therefore, this charge obviously has not been sustained in the enquiry report. The inquiring officer has found that the applicant attended the rear brake van and unloaded 15 newspaper packets from the Guard's lobby and loaded 61 packages, 58 packages of fish spawn and 3 packages of newspapers. The inquiring officer has noted that as per rules a V.P. directly sealed Ex-Howrah to Vijayawada should not be opened enroute and to that extent the Parcel Clerk and the Deputy Station Superintendent were held responsible. The inquiring officer has held that in this case both the Parcel Clerks are held responsible since the front brake was attended by Shri G.C. Das and the message after loading in the V.P. was issued by the applicant. We are unable to accept the above logic. In departmental proceedings the charge has to be specific and in this case the specific charge is that because of delay in loading 590 packages of fish spawn by the applicant in the rear brake van, the train was delayed by seven minutes. The inquiring officer has found that there was no loading of 590 packages of fish spawn. Against this

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finding of the inquiring officer, the disciplinary authority has found the applicant guilty. We have no hesitation in holding that the finding of the disciplinary authority is based on no evidence when the charge of delay in loading 590 packages of fish spawn has been held as not proved. In view of this, the impugned order of punishment cannot be sustained. We hereby quash the order of punishment (Annexure-3). In case the punishment has been given effect to already, then with such quashing of the order of punishment, the petitioner will be entitled to certain arrear financial benefits which should be paid to him within a period of 120 (one hundred twenty) days from the date of receipt of copy of this order.

6. In the result, therefore, the Original Application is allowed in terms of our observation and direction above but without any order as to costs.


(G. NARASIMHAM)
MEMBER (JUDICIAL)


(SOMNATH SOM)
18.11.99
VICE-CHAIRMAN

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