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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH; CUTTACK.

ORIGINAL APPLICATION No. 5 OF 1995.
Cuttack, this the 29th November, 2000.

SHRI P. SUBBA RAO.

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APPLICANT.

VERSUS

UNION OF INDIA & ORS.

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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

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 05 OF 1995.

Cuttack, this the 29th day of November, 2000.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
AND
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

SHRI P. SUBBA RAO,
Sr. Goods Clerk, S. E. Railway,
Bamra now at Rourkela.

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APPLICANT.

By legal practitioner : M/s. M. Kanungo, P. K. Rath, L. Kanungo,
S. Nanda, Advocates.

- Versus -

1. Union of India represented by
Divisional Railway Manager,
Chakradharpur S. E. Railway,
PO; Chakradharpur, Dist; Singhbhum, BIHAR.
2. Senior Divisional Commercial Manager,
South Eastern Railway, Chakradharpur,
PO; Chakradharpur, Dist; Singhbhum, BIHAR.
3. Senior Divisional Personnel Officer (Commercial),
S. E. Railway, Chakradharpur, PO; Chakradharpur,
Dist; Singhbhum, BIHAR.
4. Divisional Commercial Manager,
S. E. Railway, Chakradharpur,
PO; Chakradharpur, Dist; Singhbhum, BIHAR.
5. Union of India represented through
General Manager, S. E. Railway, Garden Reach,
Calcutta, WEST BENGAL.

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RESPONDENTS.

By legal practitioner: M/s. B. Pal, O. N. Ghosh, Sr. Counsel.

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN;

In this Original Application, under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing the order dated 20-5-1994 at Annexure-5 imposing on him punishment of reduction of his pay by two stages from Rs.1680/- to Rs.1600/- in the scale of Rs.1200-2040 (RPS) with noncumulative effect for two years and the order dated 21.11.1994 at Annexure-1 of the Reviewing Authority enhancing the punishment to one of the reduction to the post of Goods clerk in the scale of Rs.975-1540/- (RPS) on pay Rs.1600/- for a period of five years with cumulative effect as a measure of penalty. Respondents have filed their counter opposing the prayers of the applicant.

2. Learned counsel for the Applicant and his associates are absent, without any request for adjournment. As this is a 1995 matter, it is not possible to drag on the matter indefinitely. We have, therefore, heard Mr. B. Pal, learned senior counsel appearing for the Respondents and have also perused the records.

3. For the purpose of considering this Original Application, 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 as Booking Clerk in Namara Railway Station on 17-12-1992 he was caught in a trap because of an allegation of having accepted a bribe of Rs.4/- from one Shri B. S. Choudhury. On conclusion of disciplinary proceedings against him, the disciplinary Authority imposed the punishment at Annexure-5. Thereafter in Annexure-6, the Sr. Divisional Commercial Manager, informed the applicant that the

CVO(T) GRC considers that the punishment imposed by the Disciplinary Authority is inadequate and advised the Sr. Divisional Commercial Manager to review the case by the next competent authority to impose befitting punishment as per the gravity of the offence committed by the applicant. Respondents have stated that in response to the letter at Annexure-6, applicant filed a representation on 18-11-1994. After considering which the enhance punishment at Annexure-1 was issued.

We have carefully gone through the records. Applicant's stand in the disciplinary proceedings is that the fare from Bamara to Howrah alongwith reservation charge came to Rs. 106/- and the decoy witness gave him Rs. 110/-. Before he could return the change of Rs. 4/- the vigilance people entered his office and assessed the cash and initiated the action against him resulting in disciplinary proceedings and the punishment. As the I.O. and the Disciplinary Authority have found that the allegations regarding demand and acceptance of illegal bribe of Rs. 4/- has been proved it is not open for the Tribunal to set aside this findings of fact. We also find from the records of the enquiry that one of the witnesses stated that he heard the applicant stating that only on payment of Rs. 110/- the ticket will be issued. There is some controversy with regard to the exact word uttered by the applicant while demanding Rs. 110/- but in any view of the matter, it can not be said that the findings of the I.O. and the Disciplinary Authority is based on no evidence. Considering the gravity of offence, we also find no illegality in the punishment imposed by the Disciplinary Authority by his order at Annexure-5.

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4. AS regards the order at Annexure-1, we find that the notice of enhancement of punishment has been issued to the Applicant within a period of six months from the date of the original order. Applicant was also given opportunity to present against the said enhancement of punishment and therefore, procedurally there is no irregularity in imposing the punishment but even then the punishment suffers from two illegalities ; firstly Annexure-6 makes it very clear that the Reviewing Authority has taken up the case of enhancement of punishment on being directed by his higher authority. The Reviewing Authority exercises statutory functions and in exercising of such statutory functions, he can not be guided by external direction. Exercise of power on the basis of external dictation came up before the Hon'ble Apex Court in the case of ANIRUDHSINHJI KARANSINHJI JADEJA AND ANOTHER - VRS. - STATE OF GUJARAT reported in AIR 1995 SUPREME COURT 2390. That was a case under the Terrorists and Disruptive Activities (Prevention) Act (28 of 1987). In that case the Hon'ble Supreme Court took note of the case of Commissioner of Police Vrs. Gordhandas Bhanji reported in AIR 1952 SC 16 wherein it has been held that the Commissioner was bound to bear his own independent and unfettered judgment and decide the matter for himself. In view of this, it is clear that the statutory powers can not be exercised on the basis of external dictation. The second ground of informity with regard to the order at Annexure-1 is that in this order the Reviewing Authority has imposed the punishment of reduction of the applicant from Sr. goods clerk to the post of Goods clerk in the scale of Rs. 975-1540/- on a pay of Rs. 1600/-. At the time of imposition

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of punishment the applicant was a Senior Goods Clerk getting the pay of Rs.1680/-. Thus, in effect, the applicant has been imposed with two punishments by the order at Annexure-1 by bringing him down to a lower scale where in the normal circumstances his pay could have been fixed,, as this punishment has been given effect to but at the same time a particular stage which is beyond the stage has been fixed as the pay of the applicant, on the above grounds we hold that the order of enhancement passed by the Review Authority is not sustainable and it is accordingly quashed. We however, maintain the order passed by the Disciplinary Authority.

5. In the result, the Original Application is partly allowed. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN
29.11.2000

KNM/ CM.