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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 552 OF 1995.
Cuttack, this the 03rd day of April, 2002.

SMT. SAROJINI PATRA.

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APPLICANT.

VRS.

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? Yes

Manoranjan Mohanty
(MANORANJAN MOHANTY) 03/04/2002
MEMBER (JUDICIAL)

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ORIGINAL APPLICATION NO. 552 OF 1995.
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C O R A M:

THE HONOURABLE MR. MANORANJAN MOHANTY, MEMBER (JUDL.).

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SMT. SAROJINI PATRA,
W/o. Late Dhirendra Nath Patra,
At. Main Road Chatrapur,
Po: Chhatrapur, Dist. Ganjam. Applicant.

By legal practitioner: Mr. D. P. Das, Advocate.

- Versus -

1. Union of India represented by its Secretary, Department of Railways, New Delhi.
2. General Manager, South Eastern Railway, Garden Reach, Calcutta, West Bengal.
3. Chief Administrative Officer (Projects), South Eastern Railway, Project Complex, At/Po: Chandrasekharpur, Town-Bhubaneswar, Dist. Khurda (Formerly designated as Chief Engineer, Construction, S. E. Railway, Garden Reach, Calcutta-43).
4. Senior Project Manager, HQ, South Eastern Railway Project Complex, At/Po: Chandrasekharpur, Bhubaneswar, Dist. Khurda (Formerly designated as Chief Engineer, Construction, S. E. Railway, Cuttack).
5. Deputy Chief Personnel Officer, South Eastern Railway, Project Complex, At/Po: Chandrasekharpur, Bhubaneswar, Dist. Khurda (Formerly designated as Deputy Chief Engineer Construction, S. E. Railway, Cuttack).

.... Respondents.

By legal practitioner: Mr. Ashok Mohanty,
Senior Counsel for the Railways.

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O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL) :

This Original Application, under section 19 of the Administrative Tribunals Act, 1985 was filed during 1995 by one Dhirendranath Patra. The said Dhirendranath Patra, had entered into Railway services (as a Jr. Clerk) on 05-10-1953, while working as Office Superintendent (Stores) Gr-I in the Office of the Respondent No. 4, he faced superannuation from said services (on attaining the age of retirement) on 31-08-1990. When all other service benefits were given to him, one increment w.e.f. 01-07-1983, personal pay of Rs. 60/- p.m. and the gratuity amounting to Rs. 40,400/- were not paid to him. Despite several representations, he received no fruitful result. Hence this Original Application was filed for redressal of the grievances. In this Original Application it has been prayed for a direction to the Respondents to release his incremental benefits etc. and the entire outstanding retirement benefits, i.e. gratuity, with interest within a stipulated period and allow this Original Application with costs. Said Dhirendranath Patra (the retired Railway employee) has expired during the pendency of this Original Application and his widow (Smt. Sarojini Patra) has been allowed by this Tribunal (vide order dated 11-03-1998) to prosecute this Original Application.

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2. In the counter filed by the Respondents, the actions of the Respondents have been stated to be just. It

It has been submitted in the counter that said Dhirendranath Patra, at the time of retirement, had not submitted the imprest accounts of Rs. 23,230/- taken by him for repair of the vehicle etc. from the Cash imprest of the erstwhile Dist. Engineer(Construction), S. E. Railway, Cuttack; that there was shortage of stores article to the tune of Rs. 18,022/- when he was in-charge of the stores and that keeping in view the above irregularities, the Respondents have withheld a sum of Rs. 40,000/- from the DCRG dues of the Applicant as per the provisions of the Railway Manual. It has been alleged in the counter that even though the successor of Dhirendranath Patra was directed to take charge in time and he was about to take charge, but on the request of Dhirendranath the successor did not take the charge; as a result of which the posting order was modified and one Shri M.K. Rao was directed to take over charge from the Railway servant (Dhirendranath Patra) within 12 days in advance (of the date of retirement on superannuation) i.e. 20.8.1990.

Further more, it has been stated in the counter that since said Dhirendranath Patra, the Railway servant, did not vacate the railway quarters even after eight months of his retirement, he has been saddled with damage rent for unauthorised retention of the Railway quarters beyond the permissible period.

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It has however, been stated in (para-6, at page-2) of the counter that the *Respondents are taking steps to see that the incremental benefits, if any, the Applicant is entitled to be disbursed at the earliest*.

3. During the course of hearing it has been stated by Mr. D. P. Das, learned counsel for the Applicant that before reaching a conclusion to withhold certain amount from the gratuity, no notice was even put to the Railway employee to have his say in the matter. It has also been stated by him that even there was no enquiry whatsoever to fix the responsibility on the Railway employee (Dhirendranath Patra) and to withhold or recover any amount from his gratuity and, as such, it is not only a clear case of violation of the principles of natural justice, but the entire action of the Respondents were in gross disregard to Article 14 of the Constitution of India.

On the other hand, it has been stated by Mr. Ashok Mohanty, learned Senior counsel appearing for the Respondents/Railways that no notice was required to be given for withholding the gratuity, for the reason of the irregularities committed, and that, as per the Railway Manual, the same has been withheld from the D.C.R.G. amount of the retired Railway employee, and it has been further submitted by Mr. Mohanty that rightly the Respondents-Railways have withheld the amount and no illegality has been committed by the Respondents in this regard; as statutorily powers are vested to withhold the gratuity in part or in full.

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With regard to incremental benefits etc. it has, however, been stated by Mr. Mohanty, learned Sr. Counsel appearing for the Railways, that the Respondents are taking steps to pay the same, if it has not already been paid in the meantime.

In support of his contention, Mr. Das, learned counsel for the Applicant, has relied upon a decision of the Hon'ble Supreme Court of India in the case of K.I. SHEPHARD AND OTHERS VRS. UNION OF INDIA AND OTHERS reported in AIR 1988 SC 686 wherein it has been held as follows:

It must be held that even when a state agency acts administratively, rules of natural justice would apply. As stated, natural justice generally requires that persons liable to be directly affected by proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed so that they may be in a position (a) to make representations on their own behalf; (b) or to appear at a hearing or enquiry (if one is held); and (c) effectively to prepare their own case and to answer the case (if any) they have to meet.

It has further been submitted by learned counsel for the Applicant that before filing of the counter (disclosing therein about the unauthorised occupation of the quarters) damage rents have been recovered unilaterally even without stating/intimating as to what amount has been recovered for this purpose and no notice was given to the alleged unauthorised occupants. Not a single whisper has also been made in the counter with regard to the notice, if any, given to the employee concerned in this regard. In the said premises, it has been submitted by Mr. D. P. Das, learned counsel for the Applicant, that such action of the Respondents is



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highly illegal and against all canons of justice, equity and fairplay. In support of his said contention, Mr. Das, relied upon another decision of the Hon'ble supreme Court of India in the case of GORAKHPUR UNIVERSITY AND OTHERS VRS. SHITLA PRASAD NAGENDRA AND OTHERS reported in AIR 2001 SC 2433. In the said case, their Lordships of the Hon'ble Supreme Court of India have been pleased to observe as follows:

"The lethargy shown by the authorities in not taking any action according to law to enforce their right to recover possession of the quarters from the respondents or fix liability or determine the so called penal rent after giving prior show cause notice or any opportunity to him before even proceeding to recover the same from the respondent renders the claim for penal rent not only a seriously disputed or contested claim but the University cannot be allowed to recover summarily the alleged dues according to its whims in a vindictive manner by adopting different and discriminatory standards. The facts disclosed also show that it is almost one year after the vacation of the quarter and that too on the basis of certain subsequent orders increasing the rates of penal rent, the applicability of which to the employee itself was again seriously disputed and to some extent justifiably too, the University cannot be held to be entitled to recover by way of adjustment such disputed sums or claims against the pension, gratuity and provident fund amounts indisputably due and unquestionably payable to the employee".

(emphasis supplied).

4. Fair play is a part of the public policy and is a guarantee for justice to citizens. In our system of rule of law every Government/Governmental organisation/agency conferred with power are required to act fairly so that social action would be just and there would be furtherance of the well-being of citizens. The rules of natural justice Civilisation and the content thereof is have developed with the growth of often considered as a proper measure of the level of civilisation and rule of law

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prevailing in community. Man within the social frame has struggled for centuries to bring into the community the concept of fairness and it has taken years for the rules of natural justice to conceptually enter into the field of social activities and is now part of Indian Constitution in Article 14. In the facts of the present case there is no justification to hold that rules of natural justice have been ousted by necessary implication on account of any statutory requirement. On the other hand, may be the statute has provided powers with the Railway Authorities for withholding gratuity in part or in full and opportunities to impose penal rent for unauthorised occupation of a quarters; but such powers are always subject to the universal principle of natural justice. Therefore, before withholding the part of gratuity or imposing penal rent, the authorities were under obligation to give natural justice to the Railway employee; which, in the present case, they did not give. In the said premises, the contentions of the Counsel for the Railways (that imposition of "withholding of part of gratuity" and "Recovery of Penal Rent" on the Railway Employee to be just and proper) are hereby overruled.

5. In the aforesaid premises, this Original Application is allowed. In ordinary course, the entire matter would have been remitted back to the Respondents to give due notice/ show cause to the Railway employee to comply with the principles of natural justice but since during the pendency of this Original Application, he has expired, there are no other alternative except to direct the Respondents to release



the withheld D.C.R.G. amount of (Dhirendranath Patra) to his widow/legal heirs. The Respondents, are, hereby directed to release the withheld amount of the gratuity of Dhirendranath Patra, within a period of 30 (thirty) days from the date of receipt of a copy of this order, to his widow/legal heirs. The recovered penal house rent should also be refunded (to the widow/legal heirs of Dhirendranath Patra) by the Respondents within the said period; for which they are hereby directed. With regard to incremental benefits etc. the Respondents are hereby directed that in case the differential amount, as due and admissible to late Dhirendranath Patra, has not been paid as yet, the same be calculated and paid to his widow/legal heirs within a period of 30 (thirty) days from the date of receipt of a copy of this order. Since the Respondents, virtually imposed penalties in gross violation of the principles of natural justice/in gross disregard to the provisions of Article 14 of the Constitution of India, a cost of Rs.1000/- is imposed on the Respondents to be paid to the widow of late Dhirendranath Patra, within 30 (thirty) days hence.

Manoranjan Mohanty
(MANORANJAN MOHANTY) 03/04/2002
MEMBER (JUDICIAL)

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