

IN THE CENTRAL AD MINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 650 OF 1995.
Cuttack, this the 29th day of August, 2002.

G. SIMADRI.

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APPLICANT.

VRS.

UNION OF INDIA & ORS.

....

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.

V. Srikantan
(V. SRIKANTAN)
MEMBER (ADMIN.)

Manoranjan Mohanty
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

29/08/2002

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 650 OF 1995.
Cuttack, this the 29th day of August, 2002.

C O R A M:-

THE HONOURABLE SRI **M. SRIKANTAN**, MEMBER (ADMINISTRATIVE)

A N D

THE HONOURABLE SRI **MANORANJAN MOHANTY**, MEMBER (JUDICIAL).

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G. SIMADRI,
Aged about 51 years,
S/o. G. M. Lingam, At: Loco Colony,
Qrs. No. A/31, PO: Jatni, Dist: Puri. APPLICANT.

By legal practitioner: M/s. G. C. Mohapatra,
A. R. Mohapatra,
N. M. Mohanty,
A. K. Jena,
Miss. B. L. Tripathy,
ADVOCATES.

:VERSUS:

1. Union of India represented by the
General Manager, S. E. Railway,
Garden Reach, Calcutta-43.
2. Senior Divisional Mechanical Engineer,
South Eastern Railway, Khurda Road,
PO: Khurda Road, Dist: Khurda.
3. Divisional Railway Manager,
South Eastern Railways, Garden Reach,
Calcutta-43. RESPONDENTS.

By legal practitioner: Mr. D. N. Mishra,
Standing Counsel (Railways). *Y*

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O R D E R

MR. M. R. MOHANTY, MEMBER (JUDICIAL) :

Applicant, a Railway Engine Driver, having faced with an order of removal from service under Annexure-A/6 dated 11.10.1994, preferred an appeal under Annexure-A/7 dated 18.10.1994 and the said appeal having been dismissed under Annexure-A/8 dated 9.1.1995, he has come up in this Original Application under Section 19 of the Administrative Tribunals Act, 1985, seeking quashing of Annexure-A/6 dated 11.10.1994 and Annexure-A/8 dated 9.1.1995.

2. The Applicant faced with a disciplinary proceedings under Annexure-A/1 dated 10/12.1.1994; to which he submitted an explanation under Annexure-A/2 dated 22.1.1994. He also submitted a defence statement before the Inquiring Officer during the course of enquiry under Annexure-A/3 dated 27.4.1994. The Inquiring Officer submitted the enquiry report, which was communicated to the Applicant under Annexure-A/4, dated 6/7.7.1994 by giving an opportunity to offer his comments/defence on the said report of the Inquiring Officer. Accordingly, the Applicant submitted a representation under Annexure-A/5 dated 1.8.1994. Finally, under Annexure-A/6 dated 11.10.1994, penalty of removal from service was imposed on the Applicant; as against which he submitted a representation under Annexure-A/7 dated 18.10.1994. Ultimately under Annexure-A/8 dated 9.1.1995 the appeal preferred by the Applicant was dismissed. Hence this Original Application with the aforesaid prayers.

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3. Shri G.C. Mohapatra, the learned counsel for the Applicant raised a point during hearing on 22.8.2002 that the I.O. having been appointed under Annexure-A/1 dated 10/12.1.1994 (the charge-sheet), the entire disciplinary proceedings was vitiated. In reply to the same Shri D.N. Mishra, the learned Standing Counsel for the Railways/ Respondents pointed out that the Applicant, as a Driver, neglected in discharging his duties; for which a train was derailed and in the said premises, a major departmental proceedings was initiated against him and that in the said premises, such a proceedings could not have been terminated without an enquiry. Law is well settled that appointment of I.O. in the charge-sheet itself, *prima facie*, shows a pre-judged mind of the authorities. By keeping this in kind, we proceeded to examine the case in hand.

4. Despite the fact that the I.O. was appointed in the charge-sheet itself (Annexure-A/1 dated 10/12.1.1994), the Applicant did not raise any objection at any point of time. He did not raise any objection about that in his first explanation submitted under Annexure-A/2 dated 22.1.1994. He also did not whisper anything about that in his defence statement submitted under Annexure-A/3 dated 27.4.1994. While submitting his representation (directed against the enquiry report) under Annexure-A/5 dated 1.8.1994, he also raised no grievance about the appointment of I.I. in the charge-sheet itself. We have also looked to the appeal memo submitted by the Applicant under Annexure-A/9 dated 18.10.1994; wherein the Applicant also did not raise any



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grievance with regarding to appointment of the I.O. in the charge-sheet itself. In the said circumstances, the grounds taken by the Applicant (who participated in the enquiry, without any objection) for the first time in this Original Application pertaining to the appointment of the I.O. in the charge-sheet itself, is not sustainable; because the Applicant had not pointed out (even in the O.A. itself) as to how he was prejudiced by the appointment of the I.O. in the charge-sheet itself. Law is well settled by the Hon'ble Supreme Court of India in the case of STATE BANK PATIALA & OTHERS - VRS- S.K.SHARMA (reported in AIR 1996 SC 1669) that violation of any and every procedural provisions cannot be said to automatically vitiate the enquiry held or orders passed. Their Lordships of the Hon'ble Supreme Court of India, in the said case, observed that in each case it should be examined as to whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. The Hon'ble Supreme Court have proceeded further to say (in the said case) that "if it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the orders of punishment". The Hon'ble Supreme Court have proceeded to say that "if no prejudice is established to have resulted therefrom, it is obvious no interference is called for". The relevant portion of the judgment of the Hon'ble Supreme Court in the said case of State Bank of Patiala (Supra) J

reads as under:

* In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint if violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for*.

5. The Advocate for the Applicant had pointed out at the hearing that the punishment imposed on the Applicant was disproportionate and the Appellate Authority did not consider that aspect of the matter. In order to come to a conclusion in respect of this stand taken in favour of the Applicant, we examined the appellate order under Annexure-A/8 dated 9.1.1995. This appellate order is a cryptic one. Without any discussion, the Appellate Authority recorded a finding that "the punishment imposed by the disciplinary Authority stands good". In the appeal memo one of the grounds was urged as follows :

That I am working as driver for the last 2 years. But my total service is 27 years to the entire satisfaction of my superiors under your kind control.

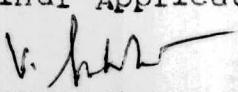
As it appears, the Appellate Authority did not look to the submission of the Applicant that he had rendered

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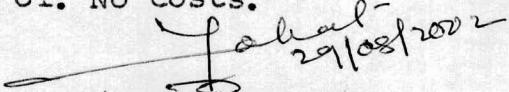
27th years of service which was unblemish, excepting one which was the subject matter of the disciplinary proceedings. It is the submission of the Advocate for the Applicant that had the Appellate Authority given due consideration to the unblemish service career of more than 27 years, then instead of imposing the extreme punishment of "removal" from service, he should have converted it to compulsory retirement. To this, Shri D.N.Mishra, the learned Standing Counsel for the Railways wanted to record his vehement objection. It is the case of Shri Mishra that huge loss to the Railways being attributable to the Applicant, no pensionary benefits could have been allowed to him by granting compulsory retirement from service.

6. Without expressing any opinion on the above submissions of the rival parties, we hereby set aside the Appellate order under Annexure-A/3 dated 9.1.1995 (for the appellate order is a cryptic one, without any discussion and without any reasoning) and remit the matter back to the appeal stage and, as a consequence, the Divisional Railway Manager, S. E. Railway, Khurda Road should give a fresh look to the appeal made by the Applicant under Annexure-A/7 dated 13.10.1994, by giving a special consideration to the points urged by the Applicant and pass necessary orders within a period of 60(sixty) days from the date of receipt of copies of this order.

7. With the aforesaid observations and directions, this Original Application is disposed of. No costs.


(V. SRIKANTAN)
MEMBER (ADMINISTRATIVE)

KNM/CM.


(M. R. MOHANTY)
MEMBER (JUDICIAL)