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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 647 OF 1996
Cuttack, this the 15th day of March, 2000

Shri 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? *Mo*

15.3.2000
(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Soni,
(SOMNATH SON)
VICE-CHAIRMAN
15.3.2000

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CORAM:

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

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Sri K.S.Mony, aged about 51 years, son of K.B.Shivasankar Nair of village Athiganner, PO-Aralummoodu, P.S-Nayyattinkara, Dist.Trivandrum, at present working as Parcel Clerk, J.K.Road, At/PO-Jajpur Road, District-Jajpur, c/o M.Basantha Kumari Staff Nurse, r.No.1, SCB Medical College Campus, Cuttack
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Applicant

Advocates for applicant- M/s D.R.Pattnaik
K.C.Pradhan
M.K.Khuntia.

vrs.

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

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Respondents

O R D E R
SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the applicant has prayed for quashing the order dated 14.6.1996 (Annexure-5) of the disciplinary authority imposing the punishment of stoppage of one increment raising his pay from rs.1100/- to Rs.1125/- for a period of 12 months without cumulative effect as also the order of the appellate authority dated 12.8.1996 at Annexure-5 rejecting his appeal.

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2. The applicant's case is that in order dated 25.3.1996 at Annexure-1 minor penalty proceedings were initiated against him and a statement of imputation was given to him at Annexure-1/1. This indicated that while the applicant was working as Junior Booking Clerk at Jajpur-Keonjhar Road on 17.11.1996 in course of a preventive check at Booking Office it was found that one superfast 2nd M/E Card Ticket No.14108 from J.K.Road to Cuttack was lying at the foot of the ticket tube without cancelling it by the applicant. The second allegation is that at the time of check of the cash an amount of Rs.13/- was found short against the book balance of Rs.16813/-. The applicant had physically Rs.16800/- in his counter. He was asked to submit this explanation within ten days of receipt of the statement of imputations. The applicant in his explanation dated 13.4.1996 at Annexure-2 denied the charge and submitted that the first charge is without any evidence and the second charge about shortage of cash is unfounded and he prayed that rechecking of the cash accounts for the day should be made before taking any final decision. But the disciplinary authority in the impugned order had imposed the punishment referred to earlier and his appeal dated 18.7.1996 at Annexure-4 was also rejected by the order of the appellate authority at Annexure-5. In the context of the above facts the applicant has come up with the prayers referred to earlier.

3. Respondents in their counter have stated that while the applicant was working as Junior Booking Clerk a preventive vigilance check was conducted and one

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second class Mail/Express was lying below the ticket tube without entering into non-issue statement of DTC Book. There was also shortage of cash to the extent of Rs.13/-. The respondents have stated that the statement in respect of the refund was neither recorded in the DTC Book nor on the face of the ticket. The respondents have stated that there was every possibility of reselling the said refunded ticket and because of this minor penalty proceedings were initiated. The respondents have stated that the punishment has been rightly imposed after observing all procedure and the appellate authority has also rightly rejected the appeal and therefore the respondents have opposed the prayers of the applicant.

4. We have heard Shri D.R.Patnaik, the learned counsel for the petitioner and Shri R.Ch.Rath, the learned counsel for the respondents and have also perused the records.

5. With regard to the first charge the applicant in his explanation has stated that the particular ticket was sold to a passenger for Train No. 2816 of that date. But the holder of the ticket failed to carry out the journey and subsequently approached the counter for refund at the last moment. ~~while he was about to go for lunch~~ Accordingly the applicant refunded the value of the ticket minus cancellation charges and kept the ticket at the bottom of the tube for endorsement in the NI Register and as well as the DTC Book. At the time of refund the applicant was about to go for lunch. He came back after 10 minutes after finishing his lunch. At that time two Vigilance Inspectors entered the booking office

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and picked up the ticket and did not allow him to make necessary endorsement on the ticket and other records.

They issued a memo showing that they have seized the ticket for investigation. But the applicant put his remark on the copy of the memo that endorsement could not be made due to lack of time. The applicant has stated that if he had an ill-motive of re-using the ticket, then he would have hidden the ticket and not kept it at the bottom of the tube where Non-Issue Tickets are kept. As regards the second charge the applicant explained that the Vigilance Inspectors compelled him to close the cash at a time when there was huge rush at the counter for purchase of tickets for 2 other trains. The waiting crowd was in an agitating mood and therefore the cash was closed hurriedly and Rs.13/- was found short. The applicant immediately deposited Rs.13/- as per advice of the Vigilance Inspectors. Later on he checked up the DTC once again at the time of handing over of the cash to his reliever at the close of his duty and he found that an amount of Rs.19/- was wrongly brought forward and was wrongly accounted for while closing the cash in the presence of the vigilance staff. That particular ticket costing Rs.19/- was sold on 15.11.1996, i.e., not on the day of the check. Therefore, the applicant claimed that the allegation that there was shortage of cash to the tune of Rs.13/- is incorrect. He therefore prayed to the disciplinary authority to get the accounts verified once again before passing any final order on this. However, the disciplinary authority taking into consideration the explanation passed the impugned order of punishment.

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6. It has been submitted by the applicant that the Assistant Commercial Manager was not the disciplinary authority. The Senior Divisional Commercial Manager is the disciplinary authority and therefore the order of punishment passed by the Assistant Commercial Manager is illegal. The respondents in their counter have stated that under the rules the Assistant Commercial Manager was empowered for imposing minor penalty. In view of the above, this contention of the learned counsel for the petitioner is held to be without any merit and is rejected.

7. The second ground urged by the learned counsel for the petitioner is that the applicant was booked in a large number of minor penalty proceedings because of extraneous reasons and he has challenged all these proceedings by filing different Original Applications in the Tribunal and most of these cases have been allowed setting aside the punishments. It is stated that the present proceedings have also been initiated because of extraneous consideration. Initiation of other proceedings against the applicant has no bearing so far as the present proceeding is concerned.

S. J. D. Those proceedings are apparently based on other facts. Moreover, it is seen that the proceedings in this case were initiated on the basis of check by the Vigilance Inspectors and therefore it cannot be said that the proceedings were initiated on extraneous consideration. This contention is therefore held to be without any merit and is rejected.

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8. We however find from the order of the disciplinary authority that he has not considered the explanation submitted by the applicant. We have already dealt with the explanation of the applicant in detail. The disciplinary authority has merely stated in his order that after careful consideration of the explanation he has come to the conclusion that the applicant is guilty of the charges levelled against him. The disciplinary authority has not considered the explanation given by the applicant with regard to either of the charges. We are not expressing any opinion whether the explanation given by the applicant with regard to the first charge is acceptable or not. But it was incumbent on the disciplinary authority to consider the explanation and either to accept it or reject it outright by giving reasons. But he has not done so. As regards the second charge the applicant has urged that there was actually no shortage in cash and he had sought for reverification of the cash accounts. This aspect has also not been dealt with in the order of the disciplinary authority. In view of this, we hold that the order of the disciplinary authority imposing the punishment has been passed without application of mind and the same cannot be sustained. From the order of the appellate authority we find that even though the applicant in his appeal at Annexure-4 has mentioned that he had prayed for rechecking of the cash accounts, this aspect has not been considered by the appellate authority who has merely stated that he had gone through the appeal. He has further stated that as the punishment imposed is adequate, he has decided to uphold the decision of the disciplinary authority and by

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implication, reject the appeal. Here also the appellate authority has not considered the submissions made by the applicant in his appeal. Therefore, this appellate order is also an example of non-application of mind. In view of the above, we quash the orders of the disciplinary authority and the appellate authority at Annexures 3 and 5. In case the order of punishment has already been given effect to and the applicant's increment has been withheld for one year, then with our quashing of the order of punishment and the appellate order the applicant will be entitled to get some financial benefits. We also direct the respondents to work out and pay the same to the applicant within a period of 90 (ninety) days from the date of receipt of copy of this order.

9. In the result therefore the Original Application is allowed but without any order as to costs.

15.3.2000
(G.NARASIMHAM)

MEMBER (JUDICIAL)

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(SOMNATH SOM)

15.3.2000
VICE-CHAIRMAN

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