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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 721 OF 1996
Cuttack, this the 19th day of June, 2003.

SRI ARAKHITA MOHARANA, APPLICANT.

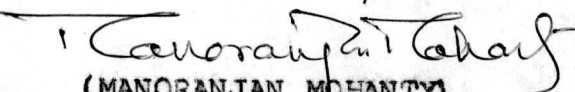
:VERSUS:

UNION OF INDIA & ORS. RESPONDENTS.

FOR INSTRUCTIONS

1. whether it is referred to the reporters or not? Yes.
2. whether it be circulated to all the Benches of the Central Administrative Tribunal or not? Yes.


(B.N. SOM)
VICE-CHAIRMAN


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 721 of 1996
cuttack, this the 19th day of June, 2003.

C O R A M

THE HONOURABLE MR. B.N. SOM, VICE-CHAIRMAN

A N D

THE HON'BLE MR. M. R. MOHANTY, MEMBER (JUDICIAL)

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SRI ARAKHITA MOHARANA,
Aged about 34 years,
S/o. Late Somnath Moharana,
Village-Kamalpur, Post: Golabandha,
District-Ganjam(O), Orissa-52.

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APPLICANT.

By legal practitioner: Mr. P.K. Padhi,
Advocate.

:VERSUS:

1. Union of India, represented by its
Secretary, Ministry of Defence,
Sansad Marg, New Delhi-110 001.
2. Chief Engineer, Central Command (MES),
Lucknow Zone, Lucknow (UP)-226 002.
3. Superintending Engineer,
Commander Works Engineer,
Ranchi, Dipatoli Canntt., Bihar.
4. Garrison Engineer,
Gopalpur on Sea,
At/PO: Golabandha,
District-Ganjam-761 052.

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RESPONDENTS.

By legal practitioner: Mr. U.B. Mohapatra,

Addl. Standing Counsel (Central).

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O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL) :

Pursuant to the requisition made by the Garrison Engineer (Respondent No.4) to the Employment Exchange, at Berhampur in the district of Ganjam of Orissa, the name of the Applicant was sponsored, along with other candidates for appearing in the interview/selection for the post of Carpenter. On being found suitable, the Applicant was issued with the offer of appointment by the said Garrison Engineer under Annexure-3 dated 21.03.1987. Consequently, the Applicant joined the post of Carpenter and, while continuing as such, he was removed from service under Annexure-4 dated 31st October, 1988. Against the said order of removal, the Applicant preferred an Appeal and, the said Appeal, having been dismissed under Annexure-5 dated 10.01.1989, the Applicant moved this Tribunal in an earlier O.A.No.472 of 1989 and, by order dated 2nd January, 1991 rendered in the said O.A. No.472 of 1989, this Tribunal quashed the removal order dated 31.10.1988 of the Applicant, on the ground of non-compliance of the principles of natural justice and, pursuant to the said direction of this Tribunal, the Applicant was re-instated in service. While the matter stood thus, the Applicant was again, placed under suspension, under Annexure-6 dated 04-08-1993, in exercise of the powers said to be conferred under Rule-10(1) of the Central Civil Services

2

(Classification, control and Appeal) Rules, 1965. Charges under Rule-14 of the CCS (CCA) Rules, 1965 were served on the Applicant under Annexure-7 dated 24.09.1993 and, day-to-day enquiry into the matter were also conducted. Later, under Annexure-10 dated 24.06.1995, the Disciplinary Authority (in exercise of the powers conferred by Rule 19(i) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, passed an order of removal (of the Applicant from service) w.e.f. 01.06.1995. Thereafter, the Applicant, on 19.07.1995, preferred an appeal and, since the said Appeal was not considered, the Applicant moved this Tribunal again, in another O.A.No.3 of 1996 seeking for a direction (to the Respondents to dispose of his appeal) and this Tribunal (vide order dated 04.01.1996) disposed of the said O.A.No.3 of 1996, at the stage of admission, with a direction (to the Appellate Authority) to dispose of the Appeal of the Applicant within a period of 45 days. Instead of disposing of the said Appeal within the stipulated period of 45 days, the Respondents filed a Miscellaneous Application No.238 of 1996 in this Tribunal (in the said disposed of Original Application No.3 of 1996) seeking three months more time for disposal of the said appeal; which was also granted vide order dated 14.03.1996. Thereafter, the Appellate Authority rejected the Appeal of the Applicant and communicated the result thereof, under Annexure-11 dated 24.05.1996. In the said premises, the Applicant has made his third journey to this Tribunal in the present Original Application (under section 19 of the Administrative Tribunals Act, 1985) praying therein; (a) to quash the punitive order

under Annexure-10 and, Appellate Order Annexure-11 and (b) has also prayed for a further direction (to the Respondents) to grant him all consequential (service and financial) benefits.

2. A counter has been filed by the Respondents disclosing at page-2 (in reply to para 1-iv of the O.A.) thereof that "the Applicant was appointed as a Carpenter on the strength of his educational qualification and experience. xx xx xx. The Applicant was appointed on the recommendation of the Board of Officers on the basis of the I.T.I. certificate which is pre-requisite qualification for the trade as per recruitment rules". Simultaneously, in reply to para 4(ix) of the O.A. (at page-3 of the counter) it has been stated by the Respondents that "no requisite qualification has been mentioned vide Memo No. 1223/162 (El C(2) dated 31.03.1987. The Applicant has got the appointment without having pre-requisite qualification i.e. ITI certificate at the time of interview. Subsequently, during February, 1988 he had produced the ITI certificate issued by the ITI, Kankinada; which, on the examination, has been found to be a false/fake certificate. The Applicant did not possess nor produced the ITI certificate at the time of interview". With regard to the allegation of non-supply of enquiry report to the Applicant, before imposition of penalty, it has been pointed out by the Respondents at page-4 (in reply to para 4-xiv to xv of the OA) of the counter to the following effect:-

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"it is correct that oral inquiry report conducted by the inquiry officer in the disciplinary proceedings initiated vide GE-Gopalpur-on-Sea Order No. C/5/AM/12/ELC dated 18.11.1993 have not been supplied to Shri A. Moharana, Carpenter/Charged Officer and his version obtained before the penalty order was passed by the disciplinary Authority. This is a technical error admitted and, therefore, the Respondents plead to permit withdrawal of the penalty order and proceeding de novo on the disciplinary case from the stage of serving the inquiry report to the charged officer".

(emphasis supplied)

3. We have heard Mr. P.K. Padhi, Learned Counsel appearing for the Applicant and Mr. U.B. Mohapatra, Learned Additional St. Counsel appearing for the Respondents and perused the materials placed on record.

4. In support of his contention, learned Counsel for the Applicant has submitted that the order of punishment is a nullity in the eyes of the settled principles of law enunciated by the Hon'ble Supreme Court of India in the case of Mhd. Ramzan Khan Vrs. Union of India and others (reported in AIR 1991 SC 471) and the one rendered in the case of Managing Director, ECIL Vrs. B. Karunakar (reported in AIR 1994 SC 1974); wherein it has been held that nonsupply of the report of the enquiry to the Applicant (before the disciplinary Authority takes its decision on the charges) to have his say in the matter, amounts to denial of reasonable opportunity to the employee / a breach of the principles of natural justice.

5. In the instant case, admittedly, before the order of punishment of removal/dismissal was imposed on the Applicant under Annexure-19, no copy of the enquiry report was supplied

to the Applicant; nor any opportunity was given to him to have his say in the matter and, therefore, we are of the opinion that the impugned order of removal/dismissal (under Annexure-10) is definitely not sustainable. That apart, the punishment of removal/dismissal having been given retrospective effect, the same was also bad.

6. Again, neither the order of punishment passed by the Disciplinary Authority, under Annexure-10 dated 24.6.1995 nor the order of rejection of his appeal under Annexure-11 dated 24.05.1996 passed by the Appellate Authority disclosed any reason. The relevant portion of the order passed by the Appellate Authority reads as under:-

"AND WHEREAS, the undersigned, after carefully considering the appeal of the said Shri Arakhita Moharana, Carpenter and relevant records, has come to the conclusion that the punishment awarded is proper".

Thus, the Appellate Authority, while rejecting the appeal of the Applicant, passed a cryptic and bald order without meeting the points raised by the Applicant in his appeal Memo and as such, these orders are not sustainable.

Before taking this view, we have been fortified by the judgment of the Hon'ble Supreme Court of India rendered in the case of RAMCHANDER VRS. UNION OF INDIA AND OTHERS (reported in AIR 1986 SC 1173); wherein Their Lordships held as follows:-

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"xxx xxx xxx. The Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. Reasoned decision xxx xxx will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fairplay and justice also require that such a personal hearing should be given".

7. Next, it has been argued by the Applicant's counsel that copy of the report of the enquiry officer was not only withheld from the Applicant but the disciplinary Authority also, did not communicate the proposed tentative punishment (to be imposed on the Applicant) to the Applicant before imposition of the actual punishment. Applicant has further alleged that neither the preliminary enquiry report (even though asked for); nor the documents (which were vital for the purpose of defending his case) were supplied to him during the course of enquiry and, thereby, he was denied the adequate opportunity to defend his case effectively; not only during the enquiry but also before imposition of punishment.

8. We have been fortified by the language of the judgment of the Hon'ble Apex Court of India rendered in the case of RAMCHANDER (supra) and in the case of Y. D. BAGDE VRS. STATE OF MAHARASTRA (reported in AIR 1999 SC 3734); wherein non-supply of the tentative view of the disciplinary Authority relating to punishment to be imposed (before actual imposition of punishment) has, virtually, been held to be

8

bad. That apart non-supply of materials (on which the allegations in the charge sheet are based) to a delinquent employee (the Applicant in this case) amounts to denial of natural justice in a disciplinary proceedings. In the present case, on the facts of the matter and the law, the punishment of removal from service is not sustainable.

9. It has been further argued by the learned counsel for the Applicant that the order of punishment under Annexure-10 cannot be sustained in the eyes of law in view of the fact that though the Applicant was proceeded under Rule-14 of the CCS(CCA) Rules, 1965; but while awarding punishment, the same has been imposed under Rule-19(a) of CCS(CCA) Rules; which was not available to be done; as the same is only available to be imposed on a Govt. servant following to his conviction in a Criminal Court. This shows the non-application of mind of the Authorities/Respondents, while dealing with the case of the Applicant.

10. In the counter it has been admitted that before passing of the penalty order, inquiry Officer's report was not supplied to the Applicant and that the same being a technical error, the Respondents prayed to permit them for withdrawal of the penalty order. But for the reasons of discussions made in the following paragraphs, such a prayer of the Respondents are not available to be allowed; especially, because this is the third journey of the Applicant to this Tribunal.

11. Having taken a firm view that the punishment imposed on the Applicant to be not sustainable, we now proceed to examine

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the matter on merit; because of the long history of litigation. Before examining the merit of the matter, it is worthwhile to quote the only charge/allegation made against the Applicant which runs thus:-

***ARTICLE:**

1. Shri Arakhita Maharana was appointed in the post of Carpenter vide GE(P) (I) Gopalpur, Dist. Ganjam appointment letter No.1223/162/ELC, dated 31.3.1987.
2. The said Shri Arakhita Maharana has got the appointment without having requisite qualification i.e. ITI Certificate at the time of interview. Subsequently, during February, 1988 he had produced the ITI certificate issued by the Industrial Training Institute, Kakinada which on examination has been found false/fake certificate.
3. By his above acts, the said Shri Arakhita Maharana committed a grave misconduct in contravention to Rule-3 of CCS (Conduct) Rules, 1964.

Thus, it has been alleged that although the Applicant is not a ITI certificate holder, he produced a fake/false certificate. However, it has been correctly pointed out by the learned counsel for the Applicant that neither in the requisition made to the Employment Exchange, nor at the time of interview or in the order of appointment, the Respondents intimated that ITI Certificate is a pre-requisite condition and, as such, there was no question of furnishing any ITI Certificate in the year 1987/1988 by the Applicant. At the same time, the Respondents' stand is that the Applicant did not produce any such certificate at the time of recruitment and, that he produced the same on a later date. No materials were, however, produced during the enquiry to show that he was asked to produce such certificate at any point of time. No such materials have also been produced before us (in the present proceeding, in this Tribunal) to show that the Applicant ever produced an ITI certificate

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before the Respondents. The learned Counsel for the Applicant submitted, at the time of hearing, that in order to harass the Applicant and to put him into trouble/mental torture, a certificate has been planted by some one else with some ulterior motive.

12. It is to be noted here that in the counter at page-2 (in reply to para 1(iv) of the OA) it has been stated by the Respondents that the Applicant was appointed (basing on the recommendation of the Board of Officers) on the basis of the ITI certificate; which is a pre-requisite qualification for the trade as per the recruitment rules and, on the other hand, it has also been disclosed by the Respondents that proceedings in question was initiated against the Applicant on the basis of the allegation that he did not submit the said ITI certificate (which is stated to be the pre-requisite qualification for being appointed) and, that he submitted the same, subsequently, in the year 1988 and, that, on verification the same was found to be a fake one. After taking a long adjournment, Mr. Mohapatra, learned Additional Standing Counsel appearing for the Respondents has produced some materials with intention to show that qualification required for the post in question was ITI Certificate (which however, do not show conclusively that the post, for which the Applicant ^{faced} ^{recruitment} was recruited/held required ITI certificate as a must) but he placed no materials (although he was repeatedly asked to do so) to show that the Applicant had really submitted any ITI certificate at any point of time.

It appears, experience in technical job with required educational qualification up to a certain standard was sufficient to undertake the job in question. That apart, nothing has been placed before us to show that during one and half years of service, the Applicant failed to discharge his duties, because of no I.T.I. certificate.

13. A plain reading of the averments made in the counter, the requisition made to the Employment Exchange, (in which I.T.I. qualification was not shown to be an essential requirement), the offer of appointment, the Article of charge (together with the note-sheet of the regular enquiry) as well as the order of punishment and the order of rejection of the appeal of the Applicant; non-production of any material to show as to when the Applicant produced the I.T.I. certificate (especially when, the stand of the Applicant is that he had no I.T.I. qualification) and the manner in which the disciplinary proceedings was initiated, it is crystal clear that the Respondents deliberately and with ulterior motive (in order to victimise the Applicant) have attempted to make out a case in vacuum and really victimised him. It appears, the officers (a) who requisitioned personnel from the Employment Exchange; and (b) who were associated in the recruitment process, failed in their duty to recruit I.T.I. qualified persons and, later, they have foisted a case on the selected persons in order to wriggle out themselves from the jaws of proceedings.

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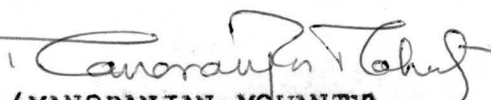
14. Having heard the rival submissions of the Learned Counsel for both sides and on perusal of the entire records, it is ^{our} ~~an~~ considered opinion that this is nothing but a ceaseless effort of the Respondents to make impossible possible and to make the water flow against the directives of the nature. Non-supply of the preliminary enquiry report (basing on which charges were framed); non-supply of the documents asked for by the Applicant and non-supply of final enquiry report to the Applicant are nothing but denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice. Apart from these technical defects, we have also found out no merit on the merits of the allegations levelled against the Applicant; especially when the Respondents have miserably failed to substantiate that the Applicant ever produced any I.T.I. certificate.

15. Now, finally, we are inclined to say that the Respondents ought not to have passed orders so casually; when they were going to impose a heavy punishment (of dismissal/removal) depriving the livelihood of not only the Applicant but also his entire family; which warrants, in our considered view, to set aside the orders of punishment imposed by the disciplinary Authority and confirmed by the Appellate Authority. We are conscious that the scope of interference of this Tribunal in the matter of disciplinary proceedings, is very limited. But, undoubtedly, as it seems to be a rarest of the rare case, having a checkered career and, therefore, without remitting the matter back to the

Disciplinary Authority any further, we are of the firm opinion that the allegations/charges as levelled against the Applicant having not been proved, the disciplinary proceedings initiated against the Applicant are liable to be quashed (being baseless, unfounded and patently perverse) and, according, we hereby quash the entire proceedings.

16. As a consequence (of quashing the proceedings) the orders flown therefrom are, accordingly, held to be not existing in the eye of law and, resultantly, the Applicant is entitled to be reinstated with all service and financial benefits (by treating him to be in service all through) as per the judicial pronouncement of the Hon'ble Apex Court of India rendered in the case of UNION OF INDIA VAS.K. V. JANKIRAMAN (reported in AIR 1991 SC 2010). While allowing this case, we, however, impose no costs.


(B.N. SOM)
VICE-CHAIRMAN


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

KNM/CM.