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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 227 OF 1998

Cuttack, this the 8th day of January, 2001

Shri Shyam Sundar Mohanty Applicant

Vrs.

Union of India and another ... 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
(G. NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
8.1.2001
VICE-CHAIRMAN

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CORAM:

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

.....
Shri Shyam Sundar Mohanty,
retired Assistant General Manager (C&C),
office of the Chief General Manager
Telecommunications, Orissa Circle,
now at Samantarapur,
Bhubaneswar-2.....
....Applicant

Advocate for applicant - Mr.Antaryami Rath

Vrs.

1. Union of India, represented through its Secretary of the Ministry of Communications, Government of India, Department of Telecommunications, West Block No.I, Wing No.2, Ground Floor, R.K.Puram, New Delhi-66.
2. Chief General Manager, Telecommunications, Orissa Circle, Bhubaneswar-1

.... Respondents

Advocate for respondents-Mr.B.K.Nayak
ACGSC

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application the petitioner has prayed for quashing the order of punishment dated 20.2.1998 at Annexure-1 reducing the monthly pension of the applicant by 15% for a period of two years.

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2. The applicant's case is that he was posted as Telecom District Engineer (TDE), Dhenkanal, on 30.7.1990. Prior to his joining, the General Manager, Telecom (Planning), Orissa Circle, Bhubaneswar, issued orders on 25.5.1990 to all TDEs to dispose of all

unserviceable telecom stores material lying in sub-divisional godowns for pretty long time unnecessarily occupying space which could be utilised for keeping new and more useful stores. The orders of the General Manager, Telecom (Planning) were that such unserviceable items should be disposed of within a period of two months either by public auction or by inviting sealed tenders. After his joining the applicant found that no action had been taken on the above order of the General Manager, Telecom (Planning). In his anxiety to complete the work without wasting further time, the applicant immediately issued orders to Sub-Divisional Officers, Dhenkanal, Keonjhar and Angul under him and they prepared lists of such type of disposable unserviceable stores and submitted proposals in the form prescribed by the Department. The applicant has stated that he came to know that TDE, Tirupati Division, Andhra Pradesh, had invited tenders for disposal of such unserviceable items and approved the rates on 10.10.1988 of one contractor N.Koteswar Rao of Tenali. The rates approved by the Tirupati Division were found to have been adopted by the TDE, Kurnool Division on 17.7.1989. The applicant also learnt that the same rates approved by TDEs, Tirupati and Kurnool, had been adopted by TDE, Bhubaneswar Division and he had disposed of unserviceable items of his Division in August 1990. The applicant has stated that taking the advice of the Internal Financial Advisor of his Divisional Office, the proposals submitted by Sub-Divisional Officers were approved by him and the unserviceable stores were sold to the same contractor N.Koteswar Rao who deposited an amount of Rs.4,38,691.80. After the stores were disposed

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of, there was some criticism in the local press and also a draft audit para was raised against the disposal of the unserviceable stores without inviting fresh tender or holding public auction. The matter was enquired into by the officers of the office of Chief General Manager, Telecom, Orissa Circle, Bhubaneswar, who observed that the rates at which the stores were disposed of were quite reasonable and fair. Notwithstanding this, major penalty disciplinary proceedings were initiated against the applicant on 21.4.1994 in which the charge was that the applicant had passed orders for sale of unserviceable stores material to N.Koteswar Rao of Tenali (Andhra Pradesh) without inviting sealed tenders or holding public auction in clear violation of the specific orders of the General Manager (Planning) and thereby caused a loss of Rs.4,38,691.80. The applicant retired from Government service on 30.4.1994. The disciplinary proceedings were continued under Rule 9 of Central Civil Services (Pension) Rules 1972. On the petitioner denying the charge, enquiry was held and the inquiring officer came to the finding that although there has been no loss caused to the Department, the rest part of the charge that the applicant had violated the orders of the General Manager (Planning) has been proved. The applicant submitted his representation on getting the copy of the enquiry report and the matter was referred to Union Public Service Commission (UPSC). On the advice of UPSC, under orders of the President, the impugned order of punishment was issued against him. In the context of the above facts, the applicant has come up with the prayers referred to earlier.

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3. The respondents in their counter have stated that on the basis of investigation by Central Bureau of Investigation some irregularities committed by the applicant in the matter of disposal of unserviceable stores material, were noticed and the chargesheet was issued. They have mentioned about holding of enquiry and imposition of punishment in consultation with UPSC and have stated that in the proceedings the applicant has been provided with all reasonable opportunity. It is furtherstated that the period of time of two months mentioned in the order dated 25.5.1990 of General Manager (Planning), Orissa Telecom Circle, Bhubaneswar, was over by the time the applicant had joined as TDE, Dhenkanal on 30.7.1990. He did not seek any extension from General Manager (Planning) but proceeded in the matter and passed orders for sale of unserviceable stores material to a particular contractor without following the conditions of public auction or obtaining sealed tenders as directed by the superior officer. It is stated that he adopted the rates officially approved by TDE, Tirupati Division which was also approved by TDE, Kurnool on 17.7.1989. The respondents have stated that there is no provision under the rules to adopt the rates of one Division by another Division for making any purchase or disposal of stores material. Moreover, the rates approved by TDE, Kurnool, were not operative at all when these rates were adopted by the applicant as TDE,Dhenkanal, on 30.8.1990. The respondents have stated that the applicant might have obtained the advice of the Internal Financial Advisor but the responsibility for disposal of the unserviceable

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stores material in this manner, which is not in accordance with the rules, rests on the applicant. The respondents have admitted in paragraph 5 of the counter that in reply to the draft audit paragraph it has been mentioned that by accepting the rates approved by TDE, Kurnool, the Department has not suffered any loss. But this method of disposal of the unserviceable stores material without holding public auction or by inviting sealed tenders deprived the Department of getting more competitive rates. The respondents have further stated in paragraph 7 of the counter that loss of Rs.4,38,691.80, as alleged in the chargesheet, could not be substantiated and it could not be proved during the enquiry that the applicant had caused any loss to the Department. But the applicant has been punished for not following the prescribed procedure and this justifies imposition of punishment which has been done after consulting UPSC.

4. In his rejoinder the applicant has stated that huge quantity of unserviceable stores material were lying with the Department. These were being pilfered. The applicant has stated that TDE, Sambalpur, Mr.P.K.Hota disposed of such materials lying in his Division on the approved quotation of N.Koteswar Rao of Tenali, Andhra Pradesh. The other submissions made by the applicant in his rejoinder are repetitions of his earlier averments. We have also not referred to certain averments which are mostly in nature of arguments made by the parties in their pleadings because these will be referred to at the time of considering the submissions.

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5. We have heard Shri A.Rath, the learned counsel for the petitioner and Shri B.K.Nayak, the learned Additional Standing Consel for the respondents. The learned Additional Standing Counsel Shri B.k.Nayak wanted and he was granted time for filinig memo of citations. But even after granting an adjournment such memo of citations was not filed. The learned counsel for thepetitioner Shri Rath has referred to the following decisions:

- (i) K.G.Samnotra v. Union of India, 447. Swamy's CL Digest 1993;
- (ii) Narendra Kishore Roy v. Union of India and others, 361. Swamy's CL Digest 1994/2; and
- (iii) K.V.Subramaniam v. Assistant Director (Establishment), Post Master General's Office, Madras and two others, 1987(3) SLJ (CAT) 125.

These decisions have been taken note of.

6. The learned counsel for the petitioner has not challenged the findings of the inquiring officer on the ground that the findings are based on no evidence or are patently perverse. It is also not his case that in course of enquiry and the disciplinary proceedings, reasonable opportunity was not given to the applicant or there was any violation of principles of natural justice. In any case the charge against the applicant was only one consisting of two elements. The first element was that he had disposed of the unserviceable stores material by accepting the rates which were approved and adopted in certain other Divisions and thereby violated the instructions of the General Manager (Planning). The second

aspect of the charge is that in the process he has caused a loss of Rs.4,38,691.80 to the Department. The inquiring officer has held that the second element of charge has not been proved against the applicant and this finding has also been accepted by the disciplinary authority. Thus the only element of charge is that in disposing of the stores material in the manner he has done, the applicant has violated the instructions of his superior officer to dispose of the stores material by public auction or by inviting sealed tenders. The submissions made by the learned counsel for the petitioner have to be considered in the context of the above admitted position.

7. The first ground urged by the learned counsel for the petitioner is that after having been absolved of the charge of causing loss to the Department, the first element of the charge relating to his alleged violation of the instructions of the superior officer is not a grave misconduct or negligence. It is submitted that sub-rule (1) of Rule 9 of Central Civil Services (Pension) Rules, 1972 inter alia provides that the President has the right of withholding pension or gratuity, or both, either in full or in part, whether permanently or for a specified period, if in a departmental proceeding the pensioner is found guilty of grave misconduct or negligence during the period of service. It is submitted that non-observance of the instructions of the General Manager, Telecom (Planning), under the circumstances indicated by the applicant, would not amount to grave misconduct and therefore the impugned order of punishment is not sustainable. The second ground

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urged by the learned counsel for the petitioner is that recovery from pension of a pensioner can be ordered only in respect of any pecuniary loss caused to the Government. But as in this case there is no pecuniary loss to the Government, the order of punishment of reduction of pension by 15% for two years is not sustainable. These submissions are discussed in seriatim.

8. The second submission of the learned counsel for the petitioner is taken up first. It has been submitted that under sub-rule (1) of Rule 9 of the Pension Rules, recovery from pension can be done only if in the departmental proceedings it is proved that the petitioner is guilty of causing pecuniary loss to the Government and as in this case the finding is that no pecuniary loss has been caused, the impugned order is not sustainable. The first point to be noted in this connection is that the impugned order of punishment is not one involving recovery from the pensioner of any pecuniary loss caused by him to the Government. The impugned order of punishment is for reducing his pension by 15% for a period of two years. This comes under first part of sub-rule (1) of Rule 9 by which the President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, whether permanently or for a specified period. In view of this, it is clear that the President has the right to reduce pension for a specified period as has been done in this case even if such misconduct does not involve any pecuniary loss to the Government. The order of recovery from pension can, however, be passed only if there is pecuniary loss to the Government by the action of the pensioner. But that is not the case here. In support of his contention the learned counsel for the petitioner

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has referred to K.V.Subramaniam's case (supra), in which the Madras Bench of the Tribunal has referred to a decision of the Division Bench of the Hon'ble Madras High Court reported in 1984 WLR 469, Narayanaswami v. Government of India, in which the Hon'ble Madras High Court have held that if disciplinary action is to be taken against an employee it must be taken before he retires from service and if the disciplinary inquiry cannot be completed in one initiated already, the only course open to the Government is to pass an order of suspension and refuse to permit the concerned Government servant to retire and permit him to continue in service till final orders are passed thereon. This decision has apparently been pronounced in 1984 or sometime earlier. This position is no longer obtaining because sub-rule (1) of Rule 9 of CSS (Pension) Rules,1972 has been substituted in 1991 and brought into force with effect from 7.9.1991. Sub-rule (1) read with sub-rule (2) of Rule 9 clearly provides that in case of disciplinary proceedings initiated against a Government servant before his superannuation, the proceedings can be continued even after he has superannuated and therefore, this decision is not applicable to the facts of this case.

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9. In support of his first contention, the learned counsel for the petitioner has referred to K.G.Samnotra's case (supra) in which a pensioner was proceeded against in connection with certain actions taken for purchase of drugs by Malaria Cell of the Ministry of Health & Family Welfare. The Tribunal held that for the purpose of purchase of drugs and sanction of expenditure,

the file went to different levels and the petitioner before them gave his opinion at one stage. The Tribunal held that where there is a hierarchy of officers who were involved in processing the case of purchase of medicines, it is unfair and unjust to fix the responsibility solely on the petitioner. The Tribunal also held that assuming that there was an error of judgment on the part of the petitioner, he cannot be held guilty of grave misconduct or negligence. The Tribunal also noted that there is no finding of grave misconduct or negligence on the part of the petitioner. It has been submitted by the learned counsel for the petitioner that in this case he had obtained the advice of the Internal Financial Adviser of his office. His subordinate Sub-Divisional Officers have prepared the lists of unserviceable stores material and therefore, it is not fair to fix the responsibility on him alone. In the instant case, by his action the applicant has not caused any loss to the Government. Before passing the order for disposal of unserviceable items he has obtained the advice of the Internal Financial Adviser. The lists of unserviceable items have been submitted to him by his subordinate Sub-Divisional Officers. It is also seen that Union Public Service Commission in their opinion at Annexure-1 have noted that prior to 27.11.1990 no procedure had been prescribed for sale of unserviceable stores. In the instant case, the order of disposal has been passed by the applicant prior to 27.11.1990. Thus, the only lapse of the applicant is that instead of disposing of the unserviceable items by public auction or by inviting sealed tenders, he has accepted the rates which have been adopted by two other Divisions in Andhra Pradesh and also by the Telecom District Engineer,

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Bhubaneswar. This lapse on the part of the applicant, under the circumstances of the case, cannot be said by any stretch of imagination as a grave misconduct within the meaning of sub-rule (1) of Rule 9 of CCS (Pension) Rules, 1972. In Narendra Kishore Roy's case (*supra*), it was held by the Tribunal that the applicant was on unauthorised absence without just cause and applied for leave on personal grounds even though the enquiry report indicated that he was at that time working in foreign assignment. The Tribunal noted that the order of the President, however, does not indicate that the President was satisfied that the applicant was found guilty of grave misconduct or negligence. They noted that under Rule 9 of the Pension Rules, before any order withholding the pension either in full or part on permanent basis or for a specified period is passed, the pensioner has to be found guilty of gross misconduct or negligence during his service period, and until and unless the competent authority, i.e., the President, makes such a finding, his pension cannot be withheld. In the instant case the Presidential order dated 20.2.1998 is at Annexure-1. We have carefully gone through this order. The order of punishment in the case of the applicant does not indicate that the first element of the charge, which has been held proved against the applicant, involves grave misconduct or negligence. In the operative portion of the order at paragraph 6 it has been mentioned that the President has accepted the advice tendered by the U.P.S.C. Going by the decision in Narendra Kishore Roy's case (*supra*), it has been argued by the learned counsel for the petitioner that in the absence of a specific finding of the President that

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the charge held proved against the applicant involves grave misconduct or negligence, the impugned order of punishment of reduction of pension is not sustainable. On a reference to sub-rule (1) of Rule 9 of CCS (Pension) Rules, 1972, it is clear that under this rule the President inter alia reserves to himself the right of withholding or withdrawing a pension in full or in part, for a specified period, if, in any departmental proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service. In a normal departmental proceeding it is adequate if the disciplinary authority records his finding with regard to the charge either holding it as proved or not proved. But in case of departmental proceedings under sub-rule (1) of Rule 9, withholding of part of pension even for a specified period, as in the instant case, can be done only when the pensioner is found guilty of grave misconduct or negligence. In the overall context of the rule, it must be held that not only the misconduct should be grave, but negligence should also be grave. It would be illogical to hold that while pension can be withheld for proven grave misconduct, it can also be withheld in case of proved act of negligence which may be minor in nature. In view of this, it must be held that in case of negligence also, it has to be a case of grave negligence. In this case, there is no finding of the President that the applicant is guilty of grave misconduct. He has no doubt been guilty of negligence. But in the context of the fact that by his action no loss has been caused to the Department, his action in disposing of unserviceable items, as he has done, can be only taken to be a case of negligence arising

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out of procedural irregularity. Such negligence cannot be taken to be grave misconduct or negligence, and in view of this the order of punishment cannot be said to be in conformity with sub-rule (1) of Rule 9. In Narendra Kishore Roy's case (supra), where the Tribunal held that a specific finding by the President that the charge proved involves grave misconduct or negligence is necessary, the matter was remanded back to the President for reconsideration. In the instant case, the applicant retired from service on 30.4.1994 and remanding the matter back to the appropriate authority for a fresh consideration if the proved charge of negligence is one of grave misconduct or negligence would further prolong the matter. In view of this, we quash the punishment order dated 20.2.1998 at Annexure-1.

10. The Original Application is accordingly allowed. No costs.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

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SOMNATH SOW
VICE-CHAIRMAN
8.1.2001

January 8 , 2001/AN/PS