

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 238 OF 1998
Cuttack this the 1st day of November/2000

Mukunda Behera

...

Applicant(s)

-versus-

Union of India & Others ...

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? No

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 238 OF 1998
Cuttack this the 1st day of November/2000

CORAM:

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

...

Mukunda Behera, Son of Gobinda Behera,
At present working as Divisional Store Clerk,
South Eastern Railway, Cuttack

...

Applicant

By the Advocates

M/s.P.V. Ramdas
D.K. Das

-VERSUS-

1. Union of India represented through it's General Manager, S.E.Railway, Garden Reach Calcutta-43.
2. Senior Divisional Engineer (Coordination) Khurda Road, PO: Khurda Road, Dist-Khurda
3. Senior Divisional Engineer (North) South Eastern Railway, Khurda Road, At/PO:Khurda Road, Dist: Khurda

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Respondents

By the Advocates

Mr.D.N. Mishra
Standing Counsel
(Central)

O R D E R

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MR. SOMNATH SOM, VICE-CHAIRMAN: In this Original Application the petitioner has prayed for quashing the three charges issued against him in Memos dated 26.10.1995, 19.12.1995 and 20.12.1995 vide Annexures-2, 3 and 4, respectively. The Respondents (Department) have filed their counter opposing the prayer of the applicant. We have heard Shri P.V.Ramdas, the learned counsel for the applicant and Shri D.N.Mishra, the learned Standing Counsel for the Respondents (Railways) and also perused the records. Learned counsel for the petitioner has filed note of submission with copy to other side and has relied upon a circular of the Railway Board, gist of which has been printed at Page - 37 of Bahri Book of Railway Servants (Discipline & Appeal) Rules (6th Edition). These have also been perused.

2. For the purpose of considering this Application it is not necessary to go into too many facts of this Case. Admittedly at the relevant time the applicant was working as Divisional Store Clerk under S.E.Railway, Cuttack. It is also the admitted position that a criminal case was started against him along with others in the matter of unauthorisedly carrying 895 pieces of M.S. tie bars. This criminal case ended in acquittal vide judgment dated 29.11.1997 of the learned J.M.F.C., Dhenkanal under Annexure-1. The charge dated 26.10.1995 relates to this incident. Apparently, after this incident came to light, the applicant was transferred from that post and he had challenged that transfer earlier in Original Application No.88/98, disposed of by this Bench in order dated 10.12.1998. The second charge dated 19.12.1995 relates to his alleged lapse in refusing to hand over the charge of the Store Depo at Cuttack to his successor one Shri P.K.Agarwal. Apparently at a later date the charge of the store was handed over and a special stock verification was conducted. Respondents have stated that during verification it was found that while the applicant was functioning as Divisional Store Clerk, he had illegally deducted 50,000 nos. of metal liner 52 kgs. from the book balance mentioning in the stock register that these 50,000 have been transferred to Page 278. But in Page-278 these 50000 nos. of metal liners had not been taken into account and thereby a shortage of 50,000 nos. metal liners have been manipulated costing to Rs.2,50,000/-. The last item is the subject matter of charge dated 20.12.1995. The first point urged by the learned counsel for the petitioner is that these three charges are inter-related and ~~one~~ the applicant having been acquitted on the same charges by the

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Trial Court, there is no justification in continuing the proceedings departmentally. Therefore, the charges should be dropped. We have considered the above submissions. From the recital of the admitted position as above, it is clear that that the 2nd and the 3rd charge against the petitioner have ^{whatsoever} ~~in the~~ nothing to do with the first charge. The first charge is for unauthorisedly carrying 895 pieces of M.S. tie bars from Cuttack Depo, which was caught by the R.P.F. authorities somewhere near Dhenkanal and this was the subject matter of the criminal case, which ended in acquittal. The second charge relates to refusal of the applicant to hand over the charge to his successor once he was transferred from that post. Similarly, the third charge relates to lapse in maintainence of accounts and shortage to the extent of 50,000 nos. of metal liner. In view of this we hold that the 2nd and 3rd charge are not corelated to the criminal case and therefore, the contention of the learned counsel for the petitioner in this regard is held to be without any merit and the same is rejected. So far as the 1st charge sheet issued in Memo dated 26.10.1995, it is clear from the perusal of the said charge that this relates to the applicant's unauthorisedly carrying 895 pcs. of tie bars in a private truck with a bogus road permit, which was the subject matter of the Criminal case. Therefore, the point for determination is whether on the acquittal of the applicant in the criminal case charges are liable to be quashed.

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3. In the criminal case the accused persons including the applicant were acquitted for various reasons, one of which is that the I.O., who had physically verified the stock was not examined. The defence had taken the plea that old tie bars

had broken in course of transit and thereby at the time of check more number of tie bars were found. In the departmental proceedings the charge is that the applicant had issued a bogus truck permit. In view of this it cannot be said that because of this acquittal in the criminal case charge No.1 should be withdrawn. This submission of the learned counsel for the petitioner is held to be without any merit and the same is, therefore, rejected.

4. The second ground urged by the learned counsel for the petitioner relying on the circular of the Rly. Board, referred to by us earlier is that according to instructions of the Railway Board in case of theft and loss of railway property, an inquiry should be made and responsibility should be fixed. But in this case no such enquiry has been made. Obviously, this contention has no application with respect to Charge No.2, which relates to refusal of the applicant to handover the charge to his successor. As regards charge No.3 it has been submitted by Shri D.N.Mishra, the learned Standing Counsel that from the charge itself in the third proceeding it appears that physical verification was made and the quantum of loss in pecuniary term was also determined and this has also been mentioned in the charge. In view of this we hold that this contention is also without any merit and the same is, therefore, rejected. It has also to be noted that earlier the applicant had approached this Tribunal in O.A. 88/98, in which he had prayed for quashing the departmental proceedings initiated against him. In order dated 10.12.1998, while disposing of that O.A. we had noted that the petitioner had not given any details of the disciplinary proceedings. He also did not press his prayer for quashing three

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departmental proceedings, which had been initiated by the time O.A.88/98 was filed. In view of this prayer for quashing the three departmental proceedings was rejected. Therefore, the applicant cannot be allowed to approach the Tribunal for again quashing the three departmental proceedings/in this Original Application. We also note that the applicant has not made any specific averment that earlier proceedings were taken out by him with regard to these three proceedings in the present Original Application. He has merely stated that no proceedings are pending before the Tribunal about the three charges. This is also one more ground to reject his Application.

In the result, we hold that the applicant is not entitled to any of the reliefs prayed for. The application is held to be without any merit and the same is rejected, but without any order as to costs.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//

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(SOMNATH SOM)
VICE-CHAIRMAN