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O.A. 35/98

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

for admission and
hearing.

Bench

ms
18/9/01

Order dt. 18.9.2001

Copy of order may
be given to both the
counsel.

20/9/2001

20/9/01

S. Som.

Order dated 7.9.2001

Heard both sides. Postponed to 18.9.2001, as agreed by both sides, for final disposal at the admission stage, even with absence of learned counsel from either side. No further time.

M.A. 766/01 filed for fixing a date of hearing is disposed off accordingly.

S. Som.
Vice-Chief Justice
Member (I)

Order dated 18.9.2001

Heard Shri D.K. Mishra (I), learned counsel for the petitioner and Shri B. Pal, learned senior counsel for the respondents and also perused the records.

In this Original Application the petitioner, who at the relevant time was working as Enquiry-cum-Reservation Clerk, at Cuttack Railway Station was proceeded against a minor penalty proceedings in which vide impugned order dated 27.8.1996 (Annexure-3) his basic pay was reduced by two stages from Rs. 1410/- to Rs. 1350/- for a period of two years without cumulative effect. The appeal filed by the applicant was rejected in order dated 31.12.1996 (Annexure-6) but as the applicant had not received copy of such rejection order, again under Annexure-5, he was communicated with the order of rejection of appeal. The applicant has approached the Tribunal impugning these two orders with a prayer for quashing the same. Respondents have filed

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their counter opposing the prayer of the applicant
No rejoinder has been filed.

Before considering the submissions made by
the learned counsel of both sides, it is to be
noted that in matters of disciplinary proceedings
the Tribunal does not act as an Appellate
Authority nor can ^{it} substitute its findings in
^{~ Jdm} place of the findings as arrived at by the
Disciplinary Authority and/or the Appellate
Authority. The Tribunal can only interfere if
reasonable opportunity has not been provided
to the delinquent to defend his case or ^{the of Jdm} principles of natural justice have been violated
and/or the findings are based on no evidence or
^{are} ^{potentially} [^] perverse. The submissions ~~to be~~ made by the
learned counsel for the petitioner will have to
be considered in the context of the above well
settled principles of law.

The charge, in the minor penalty
proceedings as levelled against the applicant
vide Annexure-1 is that while working as Enquiry-
cum-Reservation Clerk, Cuttack, he committed a
serious irregularity by changing the gender of
one Shri S.D.Sharma, Male-32 to Femals32 without
taking proper permission of the competent
authority. The applicant in his explanation
denied that he had not changed the gender of
S.D.Sharma from Male-32 to Female-32. His
explanation which is at Annexure-2 speaks that
in the computer recording name of S.D.Sharma
does not appear at all. From the imputation made
against the applicant ^{that the allegation is} it is clear ^{that he had} ^{Jdm} ~~not~~ changed the gender from Male to Female.

S.Dm.

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There is no charge that he has changed the name of the ticket holder who is admittedly S.D.Sharma. Applicant in his explanation has stated that in the computer recording there is no mention of a ticket holder - S.D.Sharma. The Disciplinary Authority, ~~has not~~, to our mind, has not at all considered the explanation of the applicant in his order under Annexure-3. He has also not dealt with the point with regard to computer ~~which~~ ^{which according to applicant} recording which ^{does not} at all contain the name of S.D.Sharma. ^{S.S.M.} There is also no discussion about the explanation given by the applicant and the reasons as to why his explanation is not acceptable. The Disciplinary Authority has merely stated that after going through the explanation of the applicant he has decided that the applicant is guilty of the charge. In this view of the matter, we have no hesitation in holding that the order of the Disciplinary Authority has been passed without application of mind and without taking into account the explanation submitted by the applicant as against the charge levelled against him. It is submitted by Shri Pal, the learned senior counsel that the minor penalty proceedings was initiated against the applicant on the basis of the report ^{of} ~~Anti Corruption~~ ^{produced} Squad in Cuttack Railway Station. He also ~~submitted~~ before us the records of the disciplinary proceedings in which the ^{has been} conclusion ^{arrived at} by the Disciplinary Authority as well as the Appellate Authority holding the applicant guilty. We find ^{is} that in the counter there ~~not~~ even a whisper that the disciplinary proceedings was initiated against the applicant at the instance of Anti Corruption Squad, in which the applicant's guilt was established nor in the order of the Disciplinary Authority, notwithstanding his denial of the charge. In view of this we decline the ~~xxxxxxxxx~~ offer, ^{if} extended by the

learned senior counsel for the respondents requiring us to go through the disciplinary proceedings file. Contemporaneous documents can be checked by the Tribunal only for the purpose of verifying assertions ^{of} ~~and~~ denials made in the pleadings. In the absence of any such assertion/ denial made in the pleadings with regard to points referred to above, it would not be correct for us to go through the disciplinary proceedings file when the applicant has no access to this. In view of the discussion held above, we hold that the orders of the disciplinary authority is not sustainable under the law and accordingly we quash the order dated 27.8.1996 and necessarily the order of the appellate authority dated 31.12.1996, upholding the order of the disciplinary authority.

In the result, O.A. is allowed, but without any order as to costs.

MEMBER (JUDICIAL)

Sumanth Varma
VICE-CHAIRMAN
18.9.2001