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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 422 OF 1998
Cuttack, this the 24th day of July, 2001

L.Laxman Rao

...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? No .

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
24.7.2001

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ORIGINAL APPLICATION NO. 422 OF 1998
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CORAM:

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

.....
L.Laxman Rao, aged about 52 years, son of late Damodar Rao,
At/PO-Bondamunda, District-Sundargarh, Qr.No.55, Sector B,
Railway Colony Applicant

Advocates for applicant - M/s D.S.Mishra
S.N.Biswal
S.Behera

Vrs.

1. Union of India, represented through the Secretary,
Railway Board, Rail Bhawan, New Delhi.
2. General Manager, South Eastern Railway, Garden Reach,
Calcutta-47, West Bengal.
3. Divisional Railway Manager, South Eastern Railway,
Chakradharpur Division, At/PO-Chakradharpur,
District-Singhbhum, Bihar.
4. Divisional Personnel Officer, South Eastern Railway,
Chakradharpur Division, At/PO-Chakradharpur,
District-Singhbhum, Bihar.
5. Divisional Medical Officer, South Eastern Railway,
Chakradharpur Division, At/PO-Chakradharpur,
District-Singhbhum, Bihar

....

Respondents

Advocates for respondents - M/s D.N.Mishra
S.K.Panda

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

J Som
In this O.A. the petitioner has prayed for
quashing the order of punishment dated 31.10.1995 at
Annexure-3 and for declaring that the whole proceedings
initiated against him are false and have been initiated mala
fide.

2. The case of the applicant is that he was
appointed as Driver in 1964 in the office of Electrical

Foreman, Bondamunda and on 5.1.1993 was transferred to Bondamunda Hospital and was promoted to the post of Grade-II Motor Vehicle Driver. On 4.9.1995 minor penalty proceeding was initiated against him in memo at Annexure-1 for misappropriation of 129 litres of diesel oil. The applicant submitted his reply on 16.9.1995 (Annexure-2) denying the charge and in order dated 31.10.1995 (Annexure-3) he was held responsible along with one B.D.Rout, Driver Grade-III for shortage of 119 litres of diesel oil and was directed to pay the cost of half of the quantity, i.e., 59½ litres of diesel oil amounting to Rs.458.75. The applicant has urged various grounds challenging the above punishment order as also the initiation of the minor penalty proceeding. In the context of the above he has come up with the prayers referred to earlier.

3. Respondents have stated in their counter that against the order of the disciplinary authority the applicant has not filed any appeal and as he has not exhausted the statutory remedy the O.A. is not maintainable. It is further stated that on a complaint lodged by Ambulance Driver Grade-I a check of Log Book and ledger of diesel oil in the stock of Railway Hospital, Bondamunda, was conducted by Senior Divisional Medical Officer, Bondamunda. Shortage of 129 litres of diesel oil was noticed and minor penalty chargesheet was issued against the applicant and another Ambulance Driver. After considering the explanation of the applicant denying the charge and taking into account that the store of diesel oil was handled by the applicant and the other driver during the period from 22.2.1994 to 18.3.1995, they were held responsible and half of the cost of 119 litres of diesel oil was ordered to be recovered from the applicant in the punishment order. The respondents have

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stated that reasonable opportunity was given to the applicant to reply to the imputation of misconduct and the punishment order has been enforced legally.

4. We have heard Shri D.S.Mishra, the learned counsel for the petitioner and Shri D.N.Mishra, the learned Standing Counsel (Railways) for the respondents.

5. It has been submitted by the learned counsel for the petitioner that as the chargesheet was without any basis there was no material on the basis of which the applicant could have filed an appeal against the order of punishment. This contention cannot be accepted because admittedly in the order dated 31.10.1995 (Annexure-3) the punishment of recovery of the cost of 59½ litres of diesel oil from the applicant has been imposed. This punishment order was received by the applicant and therefore, it is not possible for him to argue that there was no basis on which the applicant could have filed an appeal. In view of his failure to file an appeal against the punishment order, it is held that the Original Application is not maintainable.

6. Even then we have looked into the case of the applicant on merits. It has been submitted by the learned counsel for the petitioner that no enquiry was conducted in this case and under the law an enquiry should have been conducted. In support of his above contention the learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of B.D.Gupta v. State of Haryana, AIR 1972 SC 2472. The procedure for imposing minor penalty has been laid down in Rule 11 of Railway Servants (Discipline & Appeal) Rules,

1968. Under this Rule, for imposing minor penalty, the Railway servant has to be intimated in writing of the proposal to take action against him and of the imputation of misconduct and he should be given a reasonable opportunity to make a representation. Sub-rule (1)(b) of Rule 11 provides that where the disciplinary authority is of the opinion that a detailed enquiry is necessary, then an enquiry, as is conducted in the case of major penalty proceeding under Rule 9, should be held. In this case the applicant in his explanation did not ask for holding a detailed enquiry and the disciplinary authority did not consider that a detailed enquiry, as in the case of major penalty proceeding, is necessary. In view of this, it cannot be said that a detailed enquiry should have been held in this case. We have gone through the decision of the Hon'ble Supreme Court in B.D.Gupta's case(supra). It has been submitted by the learned counsel for the petitioner that in that case in paragraph 16 of the judgment the Hon'ble Supreme Court have held that if an order affects an employee financially, then it must be passed "after an objective consideration and assessment of all relevant facts and circumstances and after giving the person concerned full opportunity to make out his own case about that order". This decision does not provide any support to the contention of the learned counsel for the petitioner that even in the case of minor penalty proceeding a detailed enquiry is necessary. In any case, facts of B.D.Gupta's case (supra) are widely different. It is not necessary to refer to the detailed facts of that case. It is only necessary to note that in that case the petitioner was under suspension for long period and after several years he was reinstated and the entire enquiry was withdrawn. For the purpose of dealing

with the period of suspension, a showcause notice was issued against him and on receipt of his explanation he was censured. The facts of the above case are completely different from the case before us. In this case the applicant along with another was in charge of diesel oil during the relevant period, as mentioned by us earlier. On verification of the stock by higher authorities shortage of 119 litres of diesel oil was found. The minor penalty proceeding was initiated against the applicant and the other driver. The explanation of the applicant was considered and the disciplinary authority has imposed the above punishment. It is well known that in disciplinary cases the Tribunal cannot act as an appellate authority. The Tribunal can only interfere if there has been denial of reasonable opportunity or if the findings are based on no evidence. In this case the shortage of diesel oil has been proved for the period when the applicant, along with another, was in charge of the stock of diesel oil. He has also been given opportunity to submit his explanation. In view of this, we hold that no detailed enquiry was necessary in this case moreso when the applicant did not ask for the same. There was also no denial of reasonable opportunity.

7. In the result, therefore, we hold that the application is without any merit and the same is rejected. No costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

CAT/CB/24-7-2001/AN/PS

Somnath Jom
(SOMNATH JOM)
24.7.2001
VICE-CHAIRMAN