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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 66 OF 1998.  
Cuttack, this the 21<sup>st</sup> day of December, 2001.

SARAT CHANDRA JENA.

....

APPLICANT

: VRS :

UNION OF INDIA & ORS.

....

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

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
*21.12.2001*

*Nityananda Prusty*  
(NITYANANDA PRUSTY)  
MEMBER ( JUDICIAL )

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.66 OF 1998.  
Cuttack, this the 24<sup>th</sup> day of December, 2001.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN  
A N D  
THE HONOURABLE MR. NITYANANDA PRUSTY, MEMBER (JUDL.).

SARAT CHANDRA JENA, Aged about 37 years,  
Son of late Maheswar Jena, At-Mata Baj  
Sanasasan, Po: Manjuri Road, Dist. Bhadrak. ... Applicant.

By legal practitioner: Mr. Niranjan Panda, Advocate.

: Versus :

1. Union of India represented by General Manager,  
South Eastern Railway, Garden Reach, Calcutta.
2. Divisional Railway Manager (Optg.), South Eastern  
Railway, Khurda Road, District - Khurda.
3. Divisional Operation Manager (D.O.M.),  
South Eastern Railway, Khurda Road,  
District - Khurda.
4. Chief Divisional Traffic Inspector, S.E.Railway,  
Cuttack, At/Po/Dist: - Cuttack.

... Respondents.

By legal practitioner: M/s. D.N. Mishra, S.K. Panda, Standing Counsel.

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O R D E R

MR. NITYANANDA PRUSTY, MEMBER (JUDICIAL) :-

The applicant was working as a Junior Train Number Clerk under the Respondents at Paradeep and thereafter at Cuttack, has filed the present Original Application for quashing the order dated 11-9-1996 passed by the Divisional Railway Manager (Optg.), vide Annexure-2 and for a direction to reinstate him with full backwages on the ground that the impugned order of termination of

service of the applicant by way of imposing major penalty on the allegation that he had subleted the Railway Qrs.

No.25/A at Paradeep, is an exparte order ,no notice has been issued to the applicant to defend himself and as such, reasonable opportunity for defending himself has not been given to him.

2. The brief fact of the case is that prior to the impugned order of punishment, on 20.10.1992 the applicant was removed from service due to prolonged absent unauthorisedly. It is submitted by the applicant that while working at Paradeep, a major penalty chargesheet dated 19.11.1990 was issued to him because of his unauthorised absent and disciplinary authority after going through the report of the enquiry officer,passed an order dated 13.10. 1992 removing the applicant from service with effect from 22-10-1992. On receipt of the said punishment order, applicant preferred an appeal to the Appellate Authority and the Appellate Authority,after giving a personal hearing to the applicant, passed an order of reinstatement dated 4-3-1993. After the above said order of reinstatement, the applicant was posted as Junior Train Number Clerk at Cuttack. Prior to the removal from service, the applicant was allotted a Railway Qrs. No.25/A,Type-1 at Paradeep and he did not vacate the said quarters, after removal from service and also even after his reinstatement and posting at Cuttack. On the basis of the report from the Station Superintendent, Paradeep, to the effect that the applicant has subleted the said qrs, a fact finding enquiry was conducted by the D.T.I., Paradeep, Inspector of Works, Paradeep and Officer-incharge, Railway

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Protection Force, Paradeep. In the said enquiry, it was found that the applicant is not staying in the said quarters and has subletted the quarters to an out-sider namely Shri Rabi Swain. On receipt of the said fact finding enquiry report, the applicant was requested to vacate the said quarters at Paradeep within fifteen days from the date of receipt of the letter dated 19-10-1993 but the said letter returned undelivered with a postal remark that the addressee gone on duty so returned to sender. Thereafter, another letter dated 19/24-11-1993 was issued requesting the applicant to vacate the said quarters which was received by the applicant on 30-11-1993. Since inspite of the receipt of the above said letter, the applicant did not vacate the quarters, again reminders were issued on 4-3-1994 and 12-4-1994 but inspite of the said reminders, also the applicant did not vacate the Railway quarters at Paradeep. Hence, a major penalty chargesheet dated 4-3-1993 was issued to the applicant and the same was received by the applicant on 14-4-1994. In the said chargesheet, the applicant was given ten days time for submitting his explanation/reply. But even though copy of the chargesheet was received by the applicant, the applicant did not submit any explanation to the said charges. Hence another reminder was sent to the applicant on 3-5-1994 for submission of explanation. But instead of submitting explanation to the said charges, the applicant submitted an application dated 8-5-1994 making a request for extension of time for vacating the Railway quarters. Since no explanation to the charges was filed by the applicant, within the time stipulated in the notice, Inquiring Officer was appointed and the Inquiring Officer fixed the first

sitting of the enquiry on 19.1.1995 and the applicant did not bother to attend the first sitting of the enquiry. Thereafter, another notice was issued to him on 6-2-1995 fixing the date to 27-2-1995. Thereafter, on 23-3-1995, the Inquiring Officer issued another notice fixing the date of enquiry to 18.4.1995. The said letter was sent to the applicant in his residential address by Registered Post and the same was received by the applicant on 10.4.1995. Even though the applicant received the above said notice dated 23.3.1995, he did not appear before the I.O. on the date fixed for enquiry i.e. on 18-4-1995. Since the applicant did not appear before the I.O. on the date fixed, the I.O. closed the enquiry and submitted his report to the Disciplinary Authority. The Disciplinary Authority, after going through the report of the enquiry officer, communicated the same to the applicant by Registered Post in his home address calling for his explanation to the report and findings of the Inquiring Officer and since the applicant was absent, without any intimation to the Authority, the said letter could not be delivered on him. Thereafter, the Disciplinary Authority also given opportunity of personal hearing to the applicant vide his letter dated 12/15-4-1996 followed by a reminder dated 19-6-1996 but the applicant did not avail the said opportunity. Since no explanation was submitted by the applicant to the report of the enquiry officer and the applicant did not appear for a personal hearing, the Disciplinary Authority on going through the records, passed the impugned order of punishment of removal of the applicant from service and the said order of removal from service was sent to the applicant in his home

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address by Registered Post. The said order of punishment was received by the applicant on 22-9-1996.

3. The applicant after receiving the order of punishment, did not also choose to avail the Departmental remedies available to him by preferring appeal before the Appellate Authority but filed the present Original Application on 3rd of February, 1998 on the ground that the termination order was an *ex parte* order and no notice has been given, no opportunity has been afforded to him to defend his case properly.

4. Respondents in this case filed their reply *inter alia* stating therein that reasonable opportunity to defend himself was afforded to the applicant and inspite of receipt of notice from the enquiry officer, during the course of enquiry and also notice from the Disciplinary Authority to submit explanation to the enquiry report and to appear for personal hearing, the applicant did not respond the same and thereafter the impugned order of punishment was passed. Hence no illegality has been committed by the Inquiring Officer as well as the Disciplinary Authority. Further the Respondents, in their reply have categorically taken the ground that since the applicant has not exhausted the Departmental remedies available to him by way of filing appeal, the present application is premature and hence is liable to be dismissed.

5. No rejoinder has been filed by the applicant controverting the submissions made by the Respondents in their reply. In Col. 6 of the Original Application, the applicant has mentioned that the applicant declares that

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they have availed of all remedies available to them under the relevant service rules. But no such copy of the appeal has been enclosed to the Original Application.

6. In support of the contentions made by the applicant, he has cited the decision of the Hon'ble High Court of Orissa passed in OJC NO.995 of 1978, ~~on~~ 13th May, 1986 in the case of DHANESWAR NAYAK VRS. STATE OF ORISSA AND OTHERS - reported in 1986(II) OLR- 113. After going through the above said decision of the Hon'ble High Court of Orissa, we are of the considered opinion that the point of law settled in that case is not applicable to the present case in view of the fact that in the above said case, the applicant who was a teacher, of an aided school allowed to go for training by the Managing Committee and after completion of the course, he was not allowed to join his former post. The Hon'ble High Court of Orissa, in the above said case, has been pleased to hold that the service of a teacher can not be terminated simpliciter without the prior approval of the Inspector of Schools and it was open to the Managing Committee to proceed departmentally against the teacher concerned and impose suitable punishment upon following the procedures prescribed under the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974. Further the Hon'ble Court observed that not allowing a teacher to join back his former post after training amounts to termination of service, and hence the procedure for such termination has to be followed by the Managing Committee, as per the prescribed Rules. It was further held that the termination of service of the petitioner plainly was without jurisdiction and on the face of it, <sup>is</sup> void. No useful purpose would have been

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served by compelling the petitioner to go before the alternate forum. A writ petition is maintainable without exhausting the statutory remedy where the act complained of is prima facie without jurisdiction.  
(emphasis supplied)

7. We have heard learned counsel for the parties and gone through the pleadings of the respective parties and the citation relied on by the learned counsel for the applicant.

8. After going through the decision relied upon by the learned counsel for the applicant, we are of the considered opinion that the above said citation relied upon by the learned counsel for the applicant is not applicable to the case at hand in view of the fact that the facts and circumstances of both the cases are completely different and distinct. It is a settled position that each case has to be adjudicated on its own merit. In the case relied upon by the learned counsel for the applicant, the Hon'ble High Court have been pleased to entertain the Writ petition on the backdrop of the case that in the said case the concerned teacher's service was terminated without allowing him to join in the post after completion of training which was also without the prior approval of the competent authority, without following the procedure prescribed under the Rules and also without giving reasonable opportunity to the applicant before such action was taken by the Management though the said action amounts to termination of service. But in the instant case, the applicant was given ample opportunities to defend his case at each stage of the proceedings but he did not choose to avail the same.

9. In the instant case all the procedures having been followed by the Department starting from the date of initiation of the Departmental Proceedings till the impugned order of punishment was passed, the applicant ought to have exhausted the alternate remedies available to him under the Rules by way of preferring an appeal to the Appellate Authority. More so, the applicant has given a false averment in his Original Application in Col. No. 6 that he has availed of all the remedies available to him under the relevant service Rules.

Further more, even though the impugned order was passed on 11-9-1996 at Annexure-2 and the same was served on the applicant on 22-9-1996, instead of preferring an appeal to the Appellate Authority, he slept over the matter for a quite long time and filed the present Original application on 3rd February, 1998, which is also after the period of limitation.

10. In view of the discussions made above, we are not inclined to interfere in the impugned order dated 11-9-1996 at Annexure-2 and hence the Original Application is dismissed on the facts <sup>and</sup> also on the point of limitation.

No costs.

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
*Q.C. HARAOI*

KNM/CM.

*N. Prusty*  
(NITYANANDA PRUSTY)  
MEMBER (JUDICIAL)