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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 67 OF 1998
Cuttack, this the 20th day of August, 2001

Sri Uma Shankar Padhi 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
20.8.2001

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 67 OF 1998
Cuttack, this the 20th day of August, 2001

CORAM:

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

.....

Shri Uma Shankar Padhi,
aged about 26 years,
son of late L.K.Padhi,
P.W.I(M) Spl./BHC, O/o Divisional Railway Manager,
Engineering Branch, Khurda Road,
District-Khurda....Applicant.

Advocates for applicant - M/s B.S.Tripathy
D.R.Roy
N.Sarkar
H.S.Sahoo
J.S.Sahoo

Vrs.

1. Union of India, represented through General Manager, S.E.Railway, 11 Garden Reach Road, Calcutta-43.
2. S.E.Railway, Garden Reach, Calcutta-43, represented by Chief Engineer.
3. Divisional Railway Manager, Engineering Branch, S.E.Railway, Khurda Road, Khurda.
4. Sr.Divisional Engineer (North), S.E.Railway, Khurda Road, Khurda..... Respondents

Advocate for respondents - Mr.R.Ch.Rath.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the petitioner has prayed for quashing the order of punishment dated 27.5.1996(Annexure-6) and the order dated 15.4.1997 (Annexure-9) of the appellate authority modifying the order of punishment. The respondents have filed counter opposing the prayer of the applicant. No rejoinder has been filed.

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2. The case of the applicant is that there was derailment of Train No. 2815-Down Puri-New Delhi Neelachal Express on 26.10.1995 between Byree-Dhanmandal. A joint fact finding enquiry committee of three Junior Administrative Grade officers enquired into the matter and prima facie found that the applicant is guilty of violation of safety rules. In pursuance of this, in memo dated 2.1.1996 (Annexure-1) major penalty proceedings were initiated against the applicant who was working as P.W.I-III at Dhanmandal on the ground that on that day he was supervising the field work in between Byree and Dhanmandal and he has been primarily held responsible by the fact finding committee for violation of the safety rules. The inquiring officer in his report held that the applicant is primarily responsible for violation of safety rules. Taking into consideration the representation of the applicant at Annexure-5 on the enquiry report, the disciplinary authority in his order dated 27.5.1996 (Annexure-6) enclosing the speaking order accepted the findings of the inquiring officer and imposed the punishment of removal from service on the applicant. The applicant has enclosed two appeal petitions dated 17.6.1993 at Annexure-7 and 13.2.1997 at Annexure-8. He has apparently filed another appeal petition dated 19.3.1997 referred to in paragraph 4 of his O.A., but he has not enclosed this appeal petition dated 19.3.1997. After considering his appeal petitions, the appellate authority in his

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order dated 15.4.1997 (Annexure-9) decided to reappoint the applicant as a fresh entrant as PWI-III, his earlier post in the pay scale of Rs.1400-2300/- with minimum pay of Rs.1400/- with an undertaking from him that he would have no claim or right for his past service benefits like pay protection, seniority, pensionary benefits, etc. It was also ordered that on reappointment he should be posted on a job not directly involved in the safety of train operation and should not be made independent incharge of permanent way maintenance. It was further ordered that his performance may be closely monitored by the controlling officers for a period of three years to consider him for other consequential benefits in the promotional aspect. Lastly it was ordered that on reappointment he should be deputed for refresher course in a suitable institute before utilising him for regular work. The applicant has stated that he had no other choice except to give the undertaking, as required. The applicant has come up with the prayers referred to earlier on various grounds which will be taken into account while considering the submissions made by the learned counsel of both sides.

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3. It is not necessary to refer to the various averments made by the respondents in their counter because these will also be taken note of at a later part of this order.

4. We have heard Shri B.S.Tripathy, the learned counsel for the petitioner and Shri R.C.Rasth, the learned Additional Standing Counsel for the respondents and have perused the pleadings.

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5. Before considering the submissions made by the learned counsel for both sides, it is to be noted that in disciplinary proceedings the Tribunal does not act as an appellate authority and cannot reassess evidence and substitute its findings in place of the findings arrived at by the inquiring officer and the disciplinary authority. The Tribunal can interfere only if principles of natural justice have been violated or there has been denial of reasonable opportunity, and if the findings are based on no evidence or are patently perverse. The grounds on which the applicant has challenged the actions of the departmental authorities have to be considered in the context of the above well settled position of law.

6. The first point urged by the learned counsel for the petitioner is that on receipt of the chargesheet dated 2.1.1996 he asked for supply of documents but these were not supplied to him. The respondents have mentioned in paragraph 7 of their counter that the applicant in his letter dated 10.1.1996 requested for supply of the report of the Joint Enquiry Committee and the statements of PWI, Cuttack. He was informed in letter dated 29.1.1996 to inspect these documents on a working day in the office of Divisional Railway Manager (Engineer), Khurda Road and subsequently copies of the relevant documents were supplied to the applicant on 10.2.1996. Therefore, it cannot be said that the applicant was denied access to the documents asked for by him. As a matter of fact the

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applicant himself has made the following averment in page 8 of the O.A.:

".....Upon receipt of the required documents the applicant has furnished his detailed written defence...."
In view of the above, the contention of the applicant that he was not supplied with relevant documents and thereby was denied reasonable opportunity is held to be without any merit and is rejected.

7. The second contention of the learned counsel for the petitioner is that the charge is vague and therefore the entire departmental proceeding is vitiated. There was only one article of charge and in this it was mentioned that 2815 DN PUI-NDLS Super Fast Express was derailed on 26.10.1995 between Byree and Dhanmandal. The applicant was then supervising the field work at TRT working between Byree and Dhanmandal on the above day. He has been primarily held responsible by the Joint Enquiry Committee for violation of the safety rules. In support of his contention, the learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of Sawai Singh v. State of Rajasthan, AIR 1986 SC 995. It is not necessary to go into the facts of that case. In the facts and circumstances of that case the Hon'ble Supreme Court came to the finding that the charges were vague and it was difficult to meet the charges by any accused. It was held that

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the evidence adduced was perfunctory and did not at all bring home the guilt of the accused. In the instant case, the applicant has been charged with violation of safety norms. He was also provided with the access to the report of the joint fact finding committee and therefore, it cannot be said that the applicant was not aware of the lapses with which he has been charged. The applicant has further stated in page 14 of his OA that assuming but not admitting that he has violated safety norms, mere violation of safety norms cannot be said to be violation of Rules 3(i),(ii) and (iii) of the Conduct Rules. We are unable to accept this contention that mere violation of safety norms would not amount to lack of devotion to duty. In the work the applicant was doing he was required to follow the safety norms and in case he had not followed the safety norms it would certainly be a case of lack of devotion to duty. This contention of the learned counsel for the petitioner is accordingly held to be without any merit and is rejected.

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8. The next contention of the learned counsel for the petitioner is that in this case the inquiring officer was appointed even before his explanation was received by the disciplinary authority and thereby his case has been prejudged. We are also unable to accept this contention because the chargesheet was issued on 2.1.1996 giving him ten days time to submit his explanation and the inquiring officer was appointed on 24.1.1996. As ~~earlier~~ mentioned earlier the

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applicant has not indicated in his petition when he submitted the explanation. He has also not enclosed a copy of the explanation. We find that the inquiring officer was appointed much after ten days from the date of issue of the chargesheet. The applicant has also not mentioned how he has been prejudiced thereby and therefore, this contention of the learned counsel for the petitioner is held to be without any merit and is rejected.

9. Coming to the facts of the case we find that the inquiring officer has dealt with the matter in a fair manner. This is borne out by the fact that even though the joint fact finding committee had mentioned in the report that the applicant was provided with all assistance like portable field telephone, walkee talkee sets, safety equipments for protection of track, lookoutman, etc., the inquiring officer at page 3 of the report has noted that the finding of the Joint Enquiry Committee is not correct. Obviously therefore these safety equipments had not been supplied to the applicant. The Joint Enquiry Committee held that there was indiscriminate removal of keys instead of removal of alternate keys. The inquiring officer held that the pattern of keys found in the rear of train No.2815 could not be established as the track was substantially damaged and therefore, this aspect of the lapse cannot be taken as authentic without definite evidence. The inquiring officer has also noted that the relevant portion of the track had been neglected for years together. It has been noted

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that destressing of LWR was last done in 1989 and the next destressing was due in 1990. But this was overdue for a long period of five years. From the above we find that the inquiring officer has submitted a fair and balanced report considering both sides of the incident. The factors which go in favour of the applicant have been duly taken note of. Ultimately, it boils down to the fact, as it reveals from the enquiry report, that he did not demand the safety equipments ever in writing and did not bring to the notice of the higher authorities that such safety equipments have not been provided to him. More importantly he failed to impose a speed restriction of 20 KM over the worksite through the field telephone which was provided to him at the site of the work on that particular day on 26.10.1996. The inquiring officer has noted that the applicant tried to slow down the incoming speedy trains by showing hand signal, but this was not adequate. From the above we find that the inquiring officer in his report has taken note of necessary facts. It is also not open for us to re-assess the evidence and in view of this, it cannot be held that the finding of the inquiring officer is based on no evidence.


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10. The disciplinary authority imposed the punishment of removal from service on the applicant. The applicant in his appeal petition dated 17.6.1996 at Annexure-7 had made several

caustic remarks stating that the speaking order of the disciplinary authority looks like an essay/story written in favour of a removal from service without basing on documents. He has also mentioned that he is not the only person responsible for the same and if he is to be held responsible, then all Rule Books, Manuals and Circulars should be thrown to the Bay of Bengal as having become obsolete. The appellate authority obviously taking note of the points in favour of the applicant has modified the order of punishment and imposed the punishment referred to above in consideration of the fact that the applicant has been found guilty of violating safety norms and this is one of the causes of derailment of a major super fast train which might have resulted in a major tragedy. We do not find anything illegal in the orders of the appellate authority.

11. In the result, therefore, we hold that the O.A. is without any merit and the same is rejected but without any order as to costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)


(SOMNATH SOM)
20 8 2001.
VICE-CHAIRMAN