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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.88 OF 1998

Cuttack, this the 10th day of December, 1998

Sri Mukunda Behera

.....

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)

VICE-CHAIRMAN

*Somnath Som
10.12.98*

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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Sri Mukunda Behera,
aged about 44 years,
son of Gobinda Behera,
at present working as Divisional Store Clerk,
South Eastern Railway,Cuttack..... Applicant

By the Advocates - M/s D.K.Das &
S.K.Mohapatra.

Vrs.

1. Union of India, represented through its General Manager, South Eastern Railway, Garden Reach, Calcutta.
2. Divisional Railway Manager (Engineering), Khurda Road,P.O-Khurda Road, District-Khurda.
3. Senior Divisional Personnel Officer, South Eastern Railway, Khurda Road, At/PO-Khurda Road,Dist.Khurda..... Respondents

By the Advocate - Mr.D.N.Misra,

Standing Counsel (Railways)

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985 the petitioner has prayed for quashing his transfer order dated 19.6.1996 at Annexure-6 transferring him in his existing capacity and grade to the office of Senior Divisional Personnel Officer(Co-ordination), Khurda Road, on administrative interest. The second prayer is

for quashing the departmental proceedings initiated against him and also for a direction to the respondents to pay the applicant his arrear salary in consequence of lifting of suspension order vide office order dated 20.6.1996.

2. The case of the applicant is that he was working as Divisional Store Clerk at Cuttack. He was placed under suspension in order 31.3.1995. Later on in order dated 20.6.1996 the suspension order was revoked. The applicant was transferred from Cuttack to Khurda Road in order dated 19.6.1996. According to the applicant, the transfer order was passed because he was falsely involved in a criminal case, 2(c) C Case No.30/95 in the court of Judicial Magistrate, First Class, Dhenkanal. The order of transfer was challenged by the applicant in OA No.603/96 which was disposed of at the stage of admission in order dated 19.8.1996 directing the Senior Divisional Personnel Officer to dispose of his representation dated 25.7.1996 within a period of three weeks from the date of receipt of copy of that order. The transfer order dated 19.6.1996 was stayed. The Senior Divisional personnel Officer in his order dated 18.9.1996 (Annexure-2) rejected the representation of the applicant and directed him to carry out the transfer order dated 19.6.1996. In this order, it was mentioned that considering the applicant's involvement in criminal case and considering the charges levelled against him, it is not advisable to give him independent charge at Cuttack. His work can be better mentioned at Divisional Office. In view of this, the earlier transfer order was confirmed. Against this order dated 18.9.1996 the applicant came up in another OA No.776 of 1996 which was disposed of in order dated 30.10.1996 (Annexure-3). The Tribunal after considering the entire matter held that that was not a fit case for admission and so the

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application was dismissed at the admission stage. The applicant's case is that his transfer from Cuttack to Khurda Road was on account of his involvement in the criminal case which was disposed of in judgment dated 29.11.1997 (Annexure-4). In this judgment the applicant has been acquitted of the charge. In view of this, the applicant has stated that it would not be correct that on the same charges he should be proceeded against departmentally and because of this, he has prayed for quashing the departmental proceedings. His second point is that he is on leave on medical ground from 21.9.1996. His leave is not being sanctioned. Because of non-receipt of salary, he is not able to attend his illness. It is also stated that he is a cardiac patient. It is also submitted that as the transfer order is because of the criminal case in which he has been acquitted, the transfer order should be quashed.

3. The respondents in their counter have stated that Crime Branch of Railway Protection Force arrested the applicant on 26.3.1995 while carrying 895 nos. of unserviceable tie-bars loaded at Hindol Road in a private truck. Subsequently, Inspector, R.P.F., Talcher, reported that a case has been registered under Section 3(a) of Railway Property Unauthorised Possession Act against the applicant and two others. In view of this and also in view of the fact that the applicant had not taken prior permission for transporting unserviceable tie-bars from P.W.I, Dhenkanal, he was placed under suspension from 1.4.1995. The applicant was also directed to associate in the stock verification which he refused. The respondents have stated that the applicant filed a representation before Minister, Revenue & Transport, Government of Orissa and the order of suspension was revoked in order dated 19.6.1996. The respondents have further stated that during stock verification,

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huge shortage of Railway materials worth Rs.37,86,429/- was detected and the applicant was issued with major penalty chargesheet in order dated 19.12.1995. This was in addition to disciplinary proceeding against the applicant for his involvement in the case of unauthorised possession and transportation of 895 nos. of tie-bars using private truck. This chargesheet was issued in order dated 26.10.1995. Subsequently, another case of misappropriation of 50,000 nos. of metal lines was detected and another proceeding has been started against the applicant in letter dated 30.12.1995. The respondents have stated that the suspension order was revoked at the request of the applicant. But in view of the serious charges against him, it was not considered fit to keep ^{him} in an independent charge and that is how he has been transferred from Cuttack to Khurda Road by order dated 19.6.1996. Against this order, the applicant had filed OA No.505/96 which was dismissed. Thereafter he filed another OA No.603 of 1996 which was disposed of in order dated 19.8.1996. Thereafter the applicant approached the Tribunal in OA No.776 of 1996 and that was also dismissed by the Tribunal. In consideration of this, the respondents have opposed the prayers of the applicant regarding quashing of his transfer order and the disciplinary proceedings against him. The respondents have also stated that because of the educational session of his children, the applicant was allowed to retain the quarter at Cuttack for eight months. As regards his medical problems, the respondents have stated that medical facilities are available at Divisional Railway Hospital at Khurda Road. The applicant has been sending medical certificates. Even though the applicant has been directed from time to time to appear before the Railway Medical Officer at Cuttack, he has chosen not to do so. That is why the respondents have opposed the prayers of the petitioner.

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4. The applicant in his rejoinder has denied that he did not co-operate in the stock verification and that huge shortage was found. He has also stated that the transfer order has been passed mala fide and due procedure was not followed in the matter of handing over charge of store, and the allegation of misappropriation of stock is not correct.

5. We have heard Shri D.K.Das, the learned counsel for the petitioner and Shri D.N.Misra, the learned Standing Counsel (Railways) for the respondents, and have also perused the records.

6. The first prayer of the applicant is for quashing transfer order dated 19.6.1996. Against this order he had come up before the Tribunal in OA No.603 of 1996 which was disposed of in order dated 19.8.1996 directing the Senior Divisional Personnel Officer to dispose of his representation and his transfer order dated 19.6.1996 was stayed. His representation was rejected in order dated 18.9.1996 at Annexure-2. Against that order he had come up before the Tribunal in OA No.776/96 which was dismissed in order dated 30.10.1996. Therefore, it is not open for the petitioner to once again challenge his transfer order dated 19.6.1996 and the order dated 18.9.1996 rejecting his representation against the transfer order. This matter has been already heard by the Tribunal and his O.A.No.776/96 was rejected. The learned counsel for the petitioner has stated that he has been transferred because of the pendency of the criminal case. But as he has been acquitted in the criminal case, he should be allowed to remain at Cuttack. This contention is absolutely without any merit because the respondents have pointed out that the applicant was in charge of store and stock verification was taken up. The applicant was asked to associate himself in the stock verification, but he refused to comply with the order.

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After verification large misappropriations in stock have been found and three proceedings have been initiated against him. During pendency of the proceedings, the departmental authorities have felt that he should not be kept in independent charge of the store. From the above it is clear that his transfer and the order rejecting his representation are not only because of the criminal case which was then pending against him, but also because of large misappropriations which have come to notice. In view of this, the applicant cannot claim that just because he has been acquitted in the criminal case, he should be allowed to continue in his previous post at Cuttack notwithstanding initiation of departmental proceedings against him.

7. His second prayer is about quashing of the departmental proceedings. Either in the Original Application or in his Rejoinder the applicant has not indicated when the departmental proceedings were started against him, what were the charges, and why the same should be quashed. The learned counsel for the petitioner did not also press for this prayer. In view of this, we hold that the prayer for quashing the departmental proceedings is without any merit and the same is rejected.

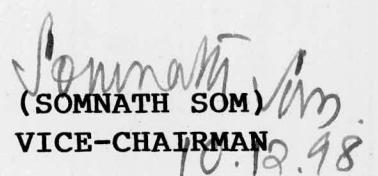
8. The third prayer of the applicant is to give him his arrear salary and other allowances. In his O.A. he has mentioned that he is on leave from 21.9.1996. But his leave is not being sanctioned and he is not getting his leave salary. In paragraph 5 of the O.A., the applicant has stated that he has not been disbursed arrear salary consequent upon lifting of his suspension order in order dated 26.6.1996. As regards sanction of leave, the respondents in their counter have pointed out that the applicant has submitted medical certificates which are doubtful and he has been asked

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to appear before Railway doctor for examination. He has to appear before Railway doctor for getting a sick certificate for the purpose of getting his leave sanctioned. As he has not done the same, he cannot claim that his leave should be sanctioned without any examination whatsoever. The other aspect of this prayer is sanction of his arrear salary from the date of his reinstatement till 21.9.1996 when he went on leave. This prayer is disposed of with a direction to the respondents that in case the applicant has worked in any duty post after revocation of his suspension till his proceeding on medical leave from 21.9.1996, then for the period salary due to him should be disbursed to him, if not already done, strictly in accordance with rules, within a period of 30 (thirty) days from the date of receipt of copy of this order.

9. In the result, therefore, subject to our observation in paragraph 8 above, the Original Application is rejected but without any order as to costs.


(G.NARASIMHAM)
MEMBER(JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN
10.12.98