

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CU TTACK BENCH:CU TTACK.

ORIGINAL APPLICATION NO.156 OF 1999.
Cuttack, this the 08th day of August, 2000.

M. PUNAYYA.

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APPLICANT.

- Vrs.-

UNION OF INDIA & OTHERS.

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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 N^o - Central Administrative Tribunal or not?

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
8.8.2000

8-8-2000
(G. NARASIMHAM)
MEMBER(JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH; CUTTACK.

original Application No. 156 of 1999.

Cuttack, this the 08th day of August, 2000.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
A N D
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

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M. PUNAYYA,
Son of Late M. Appaswami,
Working as Fitter Gr.III,
S. E. Railway, W. F. Office,
At/Po:Bhadrak, Dist:Bhadrak-1.

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APPLICANT.

By legal practitioner: In person.

- VERSUS -

1. Union of India represented by the
General Manager, S. E. Railway,
Garden Reach, Calcutta-42.

2. The Divisional Railway Manager,
S. E. Railway, Khurda Road,
At/Po:Jatni, Dist:Khurda.

3. The Divisional Mechanical Engineer,
S. E. Railway, Khurda Road, At/Po:Jatni,
DIST:KHURDA.

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RESPONDENTS.

By legal practitioner: Mr. D. N. Mishra, Standing Counsel (Rlys.).

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O R D E R

MR. G. NARASIMHAM, MEMBER (JUDICIAL) :

Applicant, a fitter in Gr.III under S. E. Railway, Bhadrak was placed under suspension on 6.4.1989. On 18.8.1989, memo of charges were drawn up. This disciplinary proceedings ultimately ended in termination of his service. Applicant then preferred O. A. No. 169 of 1990 before this Tribunal stating that the Memo of charges were not served on him and disciplinary proceedings was decided ex parte. By judgment dated 7.1.1991, this Tribunal quashed the termination order. In the Tribunal itself, Memo of charges were served on the Applicant and the Tribunal

directed that the disciplinary proceedings shall be concluded within a period of 3 months even if the applicant would not co-operate. Applicant preferred CP 50/97 alleging that the Respondents have violated the direction of this Tribunal even by not concluding the enquiry. This was disposed of on 1.12.1997 with a direction to complete the enquiry within a period of three months from the date of receipt of a copy of this order, while observing that the charge being simple, in nature there is no reason why the enquiry should remain pending for such a long period. This fact was not in dispute.

2. The case of the applicant is that he received letter dated 4.11.1998 which was communicated to him by the Sr. Eng. (CSW) SE Rly., Bhadrak with an intimation that as per the orders of the DME/Khurda, the applicant's suspension order was revoked on 22.9.1998 and the applicant to resume duty in reduction of a lower grade for a period of one year (Annex.-3). Against this, the applicant preferred appeal to the Divisional Mech. Engineer, (Annexure-4) but without any response. Hence, this application on 8.4.1999 for quashing of the punishment order on the ground that he was denied reasonable opportunity in the enquiry to defend himself at all stages and inasmuch as copy of the enquiry report was not supplied to him.

3. The Department in their counter take the stand that the applicant had attended the enquiry held on 22-1-1997. On receipt of the enquiry report, the Disciplinary Authority communicated a copy of the enquiry report to the Applicant. In response to which, the applicant submitted his reply. While the matter stood thus, the applicant preferred CP No. 50/97. The Disciplinary Authority, after going through the enquiry report and providing opportunity to the applicant passed

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final order of punishment vide order dated 21.9.1998 reverting the applicant to the post of Khalasi Helper for a period of one year. The said punishment order was served on the applicant on 21.9.1998. In view of this, punishment order, suspension order was revoked w.e.f. 22.9.1998 (Annexure-3). Applicant was advised to resume duty w.e.f. 4.11.1998. Respondents denied that any appeal has been preferred by the applicant.

4. Applicant filed rejoinder reiterating his stand taken in the original Application.

5. Applicant prosecuted this application in person without assistance of any counsel. We have heard him and also Mr.D.N. Mishra, learned Standing Counsel appearing for the Respondents. In course of hearing, as per our direction, learned Standing Counsel submitted the concerned disciplinary proceedings' file i.e. File No. M/RS 17/51-GS-169/90 of Deptt. of Mech. Branch RS Section consisting of 227 papers which have serially been page marked in Red ink.

6. Annexure-3, dated 4.11.1998 is not the order of the Disciplinary Authority imposing punishment. It is a letter addressed to the applicant intimating that the punishment notice was issued to him on 21.9.1998 and as such, suspension order was revoked on 22.9.98 to resume to duty in the lower grade for a period of one year. As averment in the application indicates and the applicant also submitted during hearing that he has neither been served with any enquiry report nor the order of the disciplinary authority imposing punishment. If indeed, the punishment order dated 21.9.98 was communicated to the Applicant and if indeed the suspension order was revoked on 22.9.98, it is not understood why this letter dated 4.11.1998 was addressed to the applicant after one and half months of the

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punishment order directing him to resume duty in the lower grade for a period of one year. The order of punishment would be effective from the date it is imposed or the date on which it is communicated to the delinquent employee. We can not but entertain doubt that the punishment order was ~~not~~ really communicated to the applicant prior to the letter dated 4.11. 1998 under Annexure-R/3. The counter is not at all clear on which date the order of punishment was received by the applicant. Even the counter is conspicuously silent ^{regarding} the so called date on which the applicant said to have been received a copy of the enquiry report. When the applicant ^{comes} comes up with a clear averment that the copy of the enquiry report was not at all supplied to him, it was the boun~~den~~ duty of the Deptt. to specifically state in the counter the date on which the applicant had received the copy of such report in support of the averments that he ~~is yet to receive~~ ^{had} such copy. It is for this purpose, we have directed production of the relevant file for our perusal.

7. We are constraint to note that the file does not contain even a copy of the charge memo. However, the file reveals that the applicant attended the enquiry during early part of 1998. Page-175 of the file would reveal that Sh. ~~AC~~ Ghosh, SLI/KUR, who was appointed as I.O. in his report dt. 2.3.98 held that the charges levelled against the applicant could not be substantiated. The Disciplinary Authority on 8.6.98 after going through the report of the I.O. did not accept the findings of the I.O. and directed to conduct enquiry afresh from the stage of cross-examining the witnesses keeping the earlier proceedings made by the E.O. into mind and submit a fresh report to finalise the case. (Vide pages 172 and 180 of the file). Further page-199 of the file reveals that fresh

enquiry went ex parte (vide report dt. 17.9.98). This report further reveals that copy of the ex parte report of the IO was submitted to the Disciplinary Authority on that date. There is a note that since the applicant did not cooperate in the enquiry, there is no meaning even to supply the ex parte findings of the IO to the applicant at this stage. Still a copy of the IO report was ordered to be supplied along with punishment notice. The order of the Disciplinary Authority imposing punishment was passed on 19.9.98 vide page-200 of the file. The file does not contain any material or any paper indicating that a copy of the enquiry report was in fact supplied to the applicant. Even the punishment order dated 19.9.98 consisting of only two paragraphs and hardly covering half a sheet of paper does not even indicate that copy of the enquiry report was supplied to the applicant and that the applicant submitted his explanation/representation and that the same was considered. Thus, it comes to this that the disciplinary authority stationed at Khurda Road, received the enquiry report on 17.9.98 and passed the final order on 19.9.1998 i.e. two days thereafter. It is improbable that within two days the applicant, at Bhadrak would be able to receive a copy of the enquiry report and submit a representation on such report and such representation would be received by the Disciplinary Authority. The very fact that the order of the Disciplinary Authority dated 19.9.1998 is conspicuously silent about the representation, if any, having been received from the applicant would establish the version of the applicant that in fact he was not supplied with a copy of the enquiry report. On the other hand, pages 214 to 218 of the file would reveal that the applicant was addressed a letter dated 21.9.98 by the Disciplinary Authority wherein copies of

his order dt.19.9.98 and the report of the enquiry officer were enclosed and this letter was attempted to be served on the applicant on 22.9.98 but the applicant refused to receive the same.

8. Thus, it is clear from the papers of the Railway Authorities that before passing the punishment order, the Disciplinary Authority had not made any attempt to supply a copy of the enquiry report to the applicant. Principles of natural justice have been grossly violated and the order of the Disciplinary Authority is vitiated on this account as per the law enunciated by the Apex Court now and then.

9. In the result, we quash the order of the Disciplinary Authority awarding penalty of reduction to lower stage in the same time scale for a period of one year and consequential direction to the extent that the order dated 4.11.1998 under Annexure-3 is also quashed.

10. Before closing we can take note of the fact that the applicant was kept under suspension from 31.3.1989 onwards till his reinstatement in November, 1998. Yet the order of Disciplinary Authority is silent as to how this period of suspension would be treated. Be that as it may, since we have quashed the order of the Disciplinary Authority, the Department will pass necessary orders according to law on this matter within a period of 60 (sixty) days from the date of receipt of a copy of this order.

11. In normal course, we would have directed the Respondents to supply a copy of the enquiry report to the applicant and after receiving his representation to dispose of the proceedings according to law but having regard to the fact that the applicant was under suspension for more than nine

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years and having regard to the fact that the charge has nothing to do with the performance of his normal duties resulting any dissruption of the day to day work of the Railway Administration, no such direction is given.

12. In the result, with the observations and directions made above, the original Application is allowed. No costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
2/2/2000

8-8-2000
(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.