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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 15 OF 1999.
Cuttack, this the 27th day of January, 2000.

S. AHMED. ... APPLICANT.

VERSUS,

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.

(G. NARASIMHAM)
MEMBER (JUDICIAL)



Commishn.
S. NATH SON
VICE-CHAIRMAN
27.1.2000

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH; CUTTACK.

ORIGINAL APPLICATION NO.15 OF 1999.

Cuttack, this the 27th day of January, 2000.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
AND

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDL.) .

..

S. Ahmed,

Aged about 54 years,

S/o .late Noor Md. Ansani,

At present Office Supdt. Gr. II,

Office of the AEN(East),

S.E. Railway, Khurda Road,

DIST: KHURDA. ...

... APPLICANT.

By legal practitioner: M/s. P.V. Ramdas,
P.V.B. Rao,
Advocates.

- VERSUS -

1. Union of India represented through its General Manager, South Eastern Railway, Garden Reach, Calcutta-43.
2. Additional Divisional Railway Manager, South Eastern Railway, Khurda Road, Dist. Khurda.
3. Senior Divisional Engineer, (Co-ordination), S.E. Railway, Khurda Road, Dist: Khurda.

... RESPONDENTS.

By legal practitioners: M/s. R. SIKDAR, A. Sikdar, S. Ghose, Learned
Additional Standing Counsel (Railways).

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(O R A L)

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application, under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing the order dated 09.06.1997, at Annexure-5 imposing punishment of compulsory retirement on the applicant w.e.f. 31.1.1999. The second prayer is for a direction to grant consequential service benefits to the petitioner. For the purpose of considering this Original Application, it is not necessary to go into too many facts of this case but before even doing that, it is necessary to note that in this case no counter has been filed by the Respondents, in spite of several adjournments. On 13.5.99, counsel for the Respondents had submitted that counter will be filed within two weeks after serving copy thereof on the other side. Thereafter, four adjournments were given but no counter was filed. Ultimately, in order dated 24.12.1999, the prayer for further time for filing counter was rejected and learned counsel for both sides were heard in part. We also directed the learned Additional Standing Counsel to produce the proceedings file for our perusal. Accordingly, the proceedings file have been produced and learned Additional Standing Counsel has filed written note of submission. These have also been perused..

2. Applicant's case is that he joined the Railways in 1965 as Junior Clerk and was working till August, 1996 as Office Superintendent, Grade-I in the Office of the Assistant Engineer, Khurda Road. As Office Superintendent,



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Grade-I in that office, he was also incharge of Office Stores. On 20.8.1996, he was served with a transfer order to another post in the same station. He wanted seven days time to complete the pending work and to hand over the charge to his successor but time was not allowed and he was made to join the new place of posting on the very next day i.e. on 21.8.96. Even his oral request to the Sr. Divisional Engineer, to defer his relief by seven days was not acceded to. Under these circumstances, according to applicant, he joined his new place of posting without handing over the charge of his earlier post. One Shri B.C. Sethi, joined in his place. According to applicant, sometime later, stock verification was conducted and the Stock verifier Shri S.K. Mohanty, with the assistance of Shri BC Sethi conducted the stock verification. Petitioner was not noticed to remain present during the stock verification. Ultimately, stock verification was concluded and Shri BC Sethi obtained the signature of the petitioner on the stock verification report. Disciplinary proceedings were initiated against him vide at Annexure-1. Applicant submitted his written statement denying the charge. One Shri B. Mohapatra, AEN (South) Khurda Road, was appointed as Inquiring Officer. It is submitted that one Shri B.C. Sethi was examined as the witness even though in the list of witnesses enclosed to the charge, the name of SK Mohanty stock verifier had only been mentioned. No notice had been given to the applicant by the Disciplinary Authority or by the Inquiring Officer that Shri Sethi will be examined. The Inquiring Officer in a Cryptic order found the charge



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proved. The Enquiry Report is at Annexure-3. On being supplied with a copy of the enquiry report, applicant filed a representation against the findings of the IO which is at Annexure-4 but without considering the points raised in his representation, the Disciplinary Authority in his impugned order at Annexure-5 directed that the applicant is held guilty of the charges and is compulsorily retired from Railway service w.e.f. 31.1.1.1999. The appeal filed by the petitioner on 2.1.99 (Annexure-6) has not been disposed of. In the context of the above facts, applicant has come up with the prayers referred to earlier.

3. On the date of admission of this Original Application on 19.1.1999, by way of interim relief, it was ordered that the Respondents should not disturb the occupation of the Railway quarters by the application in case he is under possession of a Railway quarters during the pendency of this Original Application.

4. As earlier noted, counter has not been filed in this case and we have gone through the proceedings file as also the written note of submission filed by learned Additional Standing Counsel (Railways).

5. From a bare perusal of the report of the Inquiring Officer, it is clear that the Inquiring Officer had not considered the points raised by applicant in his written submission in response to the charge. From the report of the IO it appears that he took into consideration certain documents like stock sheets sent by him later and the handing over and taking over the stores and his transfer



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and posting order and on that basis the IO came to the finding that the applicant did not submit any explanation for the shortage of stores shown in the stock sheet and on that basis, he found him guilty of the negligence. Applicant had taken the stand that he was not given time to hand over the charge and was made to join his new place of posting on the very next day. In course of the enquiry, during which the applicant was examined, we find from the ^{statement} ~~state~~ of the applicant recorded by the IO that applicant took the stand that he was prepared and willing to explain the discrepancies in the stock and for that he had asked for certain documents like office challan etc. which have not been made available to him. All these aspects have not even been considered by the IO. This is not to say that the stand taken by the applicant with regard to the shortages are prima facie, acceptable but once a stand has been taken by the applicant, it is necessary for the IO to examine and either to reject or accept the same. In this case, there has been no application of mind at all. In consideration of this, prima facie the report of the IO can not be said to have been passed on proper application of mind. The second point is that even though the stock verifier one SK Mohanty was cited as witness he was not examined during the enquiry. The reason why he was not examined during enquiry does not also appear from the proceedings file. Instead of SK Mohanty, the successor of applicant Shri BC Sethi was examined. Departmental instructions provide that along with the charge sheet, the applicant has to be supplied with a list of witnesses and list of documents through which

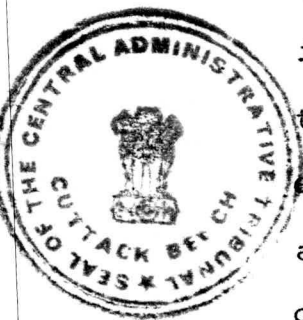


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the charge is proposed to be proved. Even though in this case list of documents was supplied, the list of witnesses has been supplied, the person actually examined is different. To our mind, this has resulted in prejudice to the applicant, more so the person examined, ^{as none} ~~one~~ else than the person who has succeeded the applicant and he has become responsible for the stores after him. As regards the order of the Disciplinary Authority, we find that it is an one line cryptic order merely stating that the applicant is held guilty of the charge. Different points raised by the applicant with regard to the findings of the IO after a copy of the IO was supplied to him has not even been touched. In matters such as this, where a major punishment is being imposed on a railway servant, it is incumbent on the part of the Disciplinary Authority to examine the explanation given by the Railway Servant and either to accept or reject the same. Negligence in not even considering the submissions made by the delinquent will render the final order liable to be quashed. In consideration of the above and in the light of the discussions made above, we quash the order dated 23.12.1998 at Annexure-5 imposing the punishment of retiring the applicant compulsorily in service. While so doing we do not however, exonerate the applicant from the charges. The Disciplinary proceedings are remitted back to the Disciplinary Authority who should get the charges enquired into a fresh ^{as none} according to law and take further action in the matter. This process of fresh enquiry should be completed within a period of 120 days from the date of receipt of a copy



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of this order. Applicant is directed to co-operate in the enquiry. It is, however, made clear that in case the applicant without just and sufficient cause refuses to co-operate in the enquiry then the enquiry should be completed by the Disciplinary Authority within the period aforesaid even exparte.

6. As regards the consequential benefits, we are not inclined to order backwages at this stage.

Consideration of payment of backwages from the date of compulsory retirement of the applicant to the date of he is being taken back in service will depend upon the final result of the Disciplinary Proceedings.

7. With the above directions and observations the Original Application is allowed. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
8.7.12

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Section Officer,
Central Administrative Tribunal,
Cuttack Bench, Cuttack