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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 505 OF 1999.
Cuttack, this the 22nd day of August, 2001.

DILLIP KUMAR SWAIN.

APPLICANT.

VRS.

UNION OF INDIA & 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
23/8/2001

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 505 of 1999.

Cuttack, this the 23rd day of August, 2001.

CORAM:

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

SHRI DILLIP KUMAR SWAIN,
DDA/Loco Cuttack,
S/o. Durjabar Swain,
Aged about 33 years,
Vill: Anandapur, Po: Nalibar,
Via: Ps/Dist: Jagatsinghpur,
PIN Code No. 754 104.

..... APPLICANT*

By legal practitioner : M/s. Dr. V. Prithviraj, S. R. Jena,
Mr. S. Patnaik, Advocates.

: VERSUS :

Union of India represented through
the General Manager, South Eastern
Railway, Garden Reach, Calcutta-43.

1. Senior Divisional Mechanical Engineer,
South Eastern Railway, Khurda Road.
2. The Chairman, Railway Board,
Ministry of Railway, s Rail Bhawan,
New Delhi.
3. Crew Controller incharge of Loco Foreman,
Loco Shed, South Eastern Railway, Cuttack.
4. Divisional Railway Manager, SE Railway,
Khurda Road Division, Jatni.

: Respondents.

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By legal practitioner : Mr. S. R. Patnaik, Additional Standing
Counsel (Railways.)

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:-

In this Original Application, the applicant has prayed for quashing the Disciplinary Proceedings and the speaking order dated 22.4.1996 at Annexure-17 dismissing him from service and the punishment notice dated 13.5.1996 at Annexure-15. He has also prayed for reinstatement in service with consequential service benefits.

2. Respondents have filed counter opposing the prayer of applicant and the applicant has filed rejoinder. For the purpose of considering the petition it is not necessary to record all the averments made by the parties in their pleadings. We have perused the same and have heard Dr. V. Prithviraj, learned counsel for the applicant and Mr. S. R. Patnaik, learned Additional Standing Counsel appearing for the Respondents. At our direction, learned Additional Standing Counsel has filed the proceedings file in a sealed cover and we have gone through the same. Learned counsel for the applicant has relied on the following decisions:

AIR 2001 SC 24 - Kummaun Mandal Vikas Nigam Ltd. vrs. Girija Shankar Pant and others.

(1991) 1 SCC 588 - Union of India vrs. Mohd. Ramzan Khan; AIR 1991 SC 471;

(1982) 1 SCC 271; AIR 1982 SC 710 - A. K. Roy - vrs. Union of India and others;

(1981) 1 SCC 664; AIR 1981 SC 813 - Swadeshi Cotton Mills vrs. Union of India and others.

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(1984) 3 SCC 465; AIR 1984 SC 1271 -Liberty Oil Mills and others vrs. Union of India and others;

(1993) 4 SCC 727 ; AIR 1994 SC 1074 -M.D., ECIL, Hyderabad and others vrs B.Karunakar and others;

(1984) 1 SCC 43; AIR 1984 SC 273 -K.L.Tripathy vrs. State Bank of India;

(1973) 1 SCC 805 ; AIR 1973 SC 1260 -Hiranath Mishra vrs. Rajendra Medical College;

(1994) 4 SCC 422; SCC (L&S) 1994 - 885 -Krishna Lal vrs. State of J & K;

1996(1) ATJ 664 - State Bank of Patiala vrs. S.K. Sharma;

AIR 1997 SC 1201 - Union Territory, Chandigarh vrs. Mohinder Singh.

These have also been perused alongwith the written note of submission submitted by the learned counsel for the applicant.

3. The case of the applicant is that he joined as Diesel Assistant on 23.10.1990 and had worked till 14.8.1993. It is stated that even though he was available for duty on certain occasions, crew controller in charge of Loco foreman Loco shed, Respondent No. 4 marked him as absent. He has further stated that according to the practice in the office of the Respondent No. 4, Call Book register is sent to the Diesel Assistant for their signature but the call book Register was not sent to him for about 46 days even though he was present in the office and no duty was allotted to him. Applicant represented on 14.8.93, 16.8.1993 and 18.8.1993 for allotment of duty but without any result. Ultimately, on 2.10.1993, the applicant was allowed to join his duty after a lapse of 46 days. Applicant has made averments with regard to deputing him for promotional cum conversational training but we are not concerned with regard to that aspect in the present Original Application.

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He has also referred to the earlier Original Application No.89 of 1995 filed by him and the M.As and the CP filed by him. Applicant has stated that in order dated 21.3.1996, at Annexure-12, applicant was asked to submit his representation against an enquiry report. He has stated that he was not served with a copy of the charge-sheet, he was not given any opportunity to submit his reply, the date of enquiry was not intimated to him and behind his back an ex parte enquiry was completed. He has also stated that even though alongwith Annexure-12, enquiry report was allegedly sent it was not actually enclesed and the copy of the enquiry report was also not received by him. In the context of the above, he has come up in this Original Application with the prayer referred to earlier.

Respondents have taken the stand that all reasonable opportunity was provided to the applicant, in course of the enquiry and principles of natural justice were observed. Order of dismissal has been passed legally and the applicant has not filed any appeal against the order of dismissal and therefore, the Original Application is not maintainable as the applicant has not exhausted the alternative remedy. It has been submitted by learned counsel for the applicant that the punishment order was not served on him. Respondents have mentioned in page-6 of their counter that the punishment order was sent to his home address through Regd. post and it was reported by the postal authority that the applicant was absent at his address on 14.5.1996 & 15.5.1996 and because of his continued absence, after 7 days the punishment notice was returned undelivered on 24.5.1996. Again the punishment order was sent to the applicant through Regd. post on 31.5.96 and this order was received by the applicant on 7.6.1996.

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Applicant in his rejoinder has not denied that the punishment order was received by him on 7.6.1996. He has also enclosed alongwith his original Application the punishment order.

Therefore, it can not be said that the punishment order was not served on him. Respondents have stated that against the order of punishment applicant did not file any appeal.

Applicant has stated that he filed appeal on 10.6.1996 at Annexure-18. Copy of this was also sent to General Manager and Chairman Railway Board. It is further mentioned by the applicant in his rejoinder that this communication of the applicant dated 10.6.1996 sent by Regd. post was refused by the Sr. Divisional Mechanical Engineer and at Annexure-19 he has filed the postal endorsement of refusal that the addressee has refused to receive the letter. In view of this, it is stated that the applicant has filed appeal. We are unable to accept the above proposition because the Sr.

Divisional Mechanical Engineer is the Disciplinary Authority who has issued the order of punishment. Against that order appeal would lie to the Divisional Railway Manager but the letter dated 10.6.1996 is addressed to the Disciplinary Authority i.e. the Senior Divisional Mechanical Engineer. Thus, it can not be said that this is an appeal filed before the Appellate Authority. It is submitted by learned counsel for the applicant that he sent his appeal on 10.6.1996 through proper channel and that is why it was addressed to the Senior Divisional Mechanical Engineer, who is the Disciplinary Authority. This, contention is also not acceptable because the prayer in this petition addressed to the Senior Divisional Mechanical Engineer is to set aside the impugned order of the Inquiring Officer and the speaking order of punishment notice. From this it is clear that this is not an appeal filed before the Appellate

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Authority against the order of punishment. Copies sent to the General Manager and Chairman, Railway Board are not of any relevance because these authorities are not the Appellate Authority so far as the applicant is concerned. In view of this it is clear that against the order of punishment, the applicant has not filed any appeal and therefore, the Original Application is not maintainable. Even though we have looked into the main point urged by the learned counsel for the applicant that in course of enquiry reasonable opportunity was not given to him. Applicant has stated that the chargesheet was not given to him. Respondents have stated that loco foreman, Cuttack tried to serve major penalty chargesheet but the applicant refused to accept the same. Then the Loco Foreman, Cuttack displayed the chargesheet on the notice Board in his office in presence of three witnesses on 28.6.1995. During the personal interview with the Disciplinary Authority, the applicant agreed that the chargesheet when served on him by Loco Foreman, Cuttack was not accepted by him. In the presence of two witnesses, he again refused to take the chargesheet that it was not being served through proper channel. Again these averments have not been denied by the applicant in his rejoinder. Therefore, it is clear that when the chargesheet was sent to him through the Loco Foreman i.e. through proper channel he refused to accept the same and when in the office of the Disciplinary Authority it was sought to be served on him he refused to accept this on the ground that it is not being served through proper channel. In consideration of the above we hold that the applicant wilfully and deliberately avoided to receive the charge sheet and the disciplinary

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proceedings can not be said to have been vitiated because of this. The enquiry was fixed on 19.3.1996 and intimation was sent to the applicant through Registered post. Postal Authorities reported that the applicant was absent on 5, 7, 8, 9, 10 and 13th of March, 1996 and 14.6.1996 applicant refused to take delivery of the letter intimating the date of the enquiry. As regards furnishing of a copy of the enquiry report, Respondents have stated that alongwith the letter at Annexure-12, the copy of the enquiry report was actually enclosed and they have denied the averments of the applicant that enquiry report was not enclosed. Respondents have stated that enquiry report was again sent to him by Regd. Letter dated 3.4.1996 but the applicant again avoided to take delivery of the same. From the above recital of the fact it appears that the applicant deliberately refused to take delivery of the chargesheet, the letter intimating him of the date of enquiry as also the enquiry report. In consideration of this he can not make a grievance now that the documents were not given to him. As a matter of fact ~~chargesheet~~ was received by him on 7.6.1996. Coming to the findings of the I.O. it must be noted that law is well settled that the Tribunal can not re-assess the evidence and come to a finding different to the finding arrived at by the Inquiring Officer and Disciplinary Authority. Tribunal can only interfere if the findings are based on no evidence or are patently perverse. On a perusal of the enquiry report and the punishment order it can not be said that the findings arrived at that the applicant was unauthorised absence is based on no evidence. In view of this we find no reason to quash the disciplinary proceedings and the order of punishment. Respondents have pointed out in their counter that from 21.5.1991 to 19.1.1995 i.e. for a period of three years and



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and seven months, the applicant had worked only for 136 days. He was on leave for 84 days. He was on sick list for 1056 days and was absent for 63 days. From this it can not be said that the punishment is disproportionate to the lapses held proved against the applicant. Respondents have also denied about the marking of attendance as mentioned by applicant at para 4.6. of the Original Application. They have stated that no other staff working under the Respondent No. 4 have ever made any complaint that they are being marked absent even when they are present. Coming to the decisions relied upon by the learned counsel for the applicant, these decisions deal with observance of principles of natural justice in course of departmental enquiry. Law is well settled that in course of departmental enquiry, the delinquent official must be given reasonable opportunity to present his case and principles of natural justice must be observed. In view of this it is not necessary to refer to the facts of all these cases relied on by the learned counsel for the applicant. In view of our discussions made above, we hold that principles of natural justice have not been violated in this case and the applicant has been given all reasonable opportunity to defend his case. Decisions in the case of Ramzan Khan and B. Karunakar (supra) deal with regard to supplying of copy of the enquiry report. This has also been taken note of by us in our above discussions.

4. In consideration of all the above we hold that the applicant is not entitled to the reliefs claimed by him in this Original Application which is accordingly rejected. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.

SOMNATH SOMY
VICE-CHAIRMAN
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