

ORIGINAL APPLICATION NO.594 OF 1999
Cuttack this the 8th day of July 2004

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-VERSUS-

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FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *no*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *no*

(M.R. MOHANTY)
MEMBER (JUDICIAL)

(B.N. SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.594 OF 1999
Cuttack this the 8th day of July, 2004

CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R.MOHANTY, MEMBER (JUDICIAL)

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Shri Jagannath Das, aged about 42 years,
S/o. Late Santosh Charan Das, at present
working as Guard, South Eastern Railway,
Cuttack Railway Station, PO/Dest-Cuttack

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By the Advocates

Applicant

M/s.Sanjeev Udgata
P.K.Nayak

- VERSUS -

1. Senior Divisional Operations Manager,
South Eastern Railway, At-Khurda Road,
PO-Jatni, District - Puri
2. Divisional Operation Manager(SPL),
South Eastern Railway, At-Khurda Road,
PO-Jatni, District-Puri
3. Additional Divisional Railway Manager,
South Eastern Railway, At-Khurda Road,
PO-Jatni, District-Puri

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By the Advocates

Respondents

Mr.R.C.Rath, S.C.

O R D E R

MR.B.N.SOM, VICE-CHAIRMAN : In this Original Application under Section 19 of the Administrative Tribunals Act, 1985, the applicant(Sri Jagannath Das), at present working as Guard under the S.E.Railway, Cuttack has prayed for quashing the impugned memorandum dated 16.6.1997(Annexure-3 series), inquiry report (Annexure-4), order of punishment(Annexure-6) and the appellate order (Annexure-8).

2. The case of the applicant is that although he has been ~~punished~~ for derailment/an accident which took place at Haridaspur Railway Station on 16.4.1997,

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during the course of shunting operation, he was not at all to be held responsible for that. He had repeatedly tried to place before the authorities the facts of the matter, but everyone turned a deaf ear to his plea. The applicant has urged that he could not have been held responsible for the accident in the absence of "any shunting authority requiring to supervise the shunting of the engine, which caused derailment". The fact of the matter is that he had gone out of station area after obtaining due permission of the Station Master and that the shunting operation took place in his absence. In fact the said shunting authority was issued by the Station Master to the Driver of the train without the knowledge of the applicant. He has also lamented that the other delinquent employees directly responsible for the lapse were let off without any punishment. He has also alleged that the Station Master had neither issued the OP/T-79 to the Driver through the applicant nor withdrew/cancelled/pasted in the record foil the OP/T-79 after the occurrence of the accident. He, however, has admitted that he had signed a duplicate of the said OP/T-79 putting the time at 3.30 AM, but he did so under pressure of the Committee member of the Joint Inquiry ^{Committee set up for the purpose} after the occurrence of the accident. Relying on the provisions of Safety Regulation, he has submitted that as he had gone out of the station with due permission of the station master, it was the Station Master who is to be held responsible for the ^{mishap in} shunting operation during the legitimate absence of the guard.

3. The Respondents have filed a detailed counter.

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They have stoutly submitted that the guard of the train, i.e., the applicant, was all along present in the spot and was supervising the shunting operation, that the fact finding enquiry has been conducted as per the rules and the committee in their report had fixed responsibility for the accident on the applicant for violation of the rules which caused accident. The applicant was given ample opportunity to defend his case when action was being initiated under D.A. Rules, 1968. The inquiring officer had found the applicant guilty of dereliction of duty. The disciplinary authority, after due consideration of the submission made by the applicant and the report of the inquiring officer, imposed on him one of the statutory penalties prescribed under the rules and the said order was confirmed by the appellate authority. As the applicant had been given full opportunity and his negligence was proved beyond doubt as per the Safety Regulations 5.14.05(a), there is no merit in this Original Application, which is liable to be dismissed.

4. We have heard the learned counsel of both the sides and perused the materials available on record.

The stand taken by the applicant is that he was not present during the shunting operation, because, he had obtained permission of the Station Master to leave the place to take meals and to prove his innocence he wanted the shunting register to be produced before this Court to establish that the Station master had not issued shunting authority to the driver through him and therefore, he could not be held responsible.

5. We had accordingly directed the Respondents to

produce before this Court the shunting register. However, the learned Standing Counsel submitted before us that the shunting register of the year 1997 was no longer available and therefore, expressed his inability to make the same available for our perusal. With displeasure we are to note that although the matter was subjudice, the Respondents did not think it necessary to preserve the shunting register till the disposal of this case and on this ground alone, the applicant could be given relief. However, going through the records of the case, we notice that the joint committee enquiring into the cause of accident had found and noted that the guard who should supervise the movement of the engine had failed to observe the duties properly which led to derailment. We also find that the applicant had given a signed statement before this committee, which reads as under:

"An Engineering Spl. arrived on R/1 at HDS at 22.20 hrs. As per the shunting authority the load was dropped on A/1 and the power was detached at 23.00 hrs. Light Engine allowed to the top point at JEN and by the exhibiting green signal by the N/C SWM the lock bar and point was correctly set while engine was moved from R/1 to Top at Again the power was allowed from Top point to R/4. The Point No.8 was normalised as point No.13 also set and lock bar was also given but lock bar No.7 not set properly by the N/C SWM by giving green signal by the SWM/N/C on seeing the green signal exhibited by the North cabin SWM the power was allowed to pass the point. While passing the point No.8 an unusual sound was observed by me then I told the driver to stop the power, on verification I found the rear 3 wheel was derailed, at 23.20 hrs, the matter was inform to the SM on duty".

Further, we find from the report of the inquiry officer who was appointed by the disciplinary authority to enquire into the charges framed against the applicant under

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Rule-9 of the R.S.(D&A) Rules, 1968, that one Shri S. Parasayya, SM/HDS(P.W.1) in reply to question No. 15 had stated that "the guard of the train was found coming from the station side with a torch in hand". The applicant had deposed before the inquiry officer in replying to a question that the statement that he had given before the inquiry committee was under pressure of DIT and to avoid an unpleasant situation. He also submitted that he had signed OP/T-79 under pressure. The inquiry officer in his finding has accepted that the applicant had gone out of station with the permission of Station Master on duty for taking his dinner. However, the applicant, in his defence statement during inquiry had stated that he had gone out for a cup of tea, because the rainy weather tempted him to get some hot tea. The inquiry officer had found the Station Master to have told lies before him and then found the applicant guilty of not complying with the safety regulation 5.14.05(a). The disciplinary authority has found the behaviour of the guard as one of the negligence and of sheer carelessness and it is on that ground he imposed on him the punishment of reduction in one stage for four years.

6. We have given our anxious thoughts to the whole proceedings. We are shocked to find that the applicant after giving his signed statement about the incident that had taken place on 16.4.1997 is trying to back track by saying that that statement he had given under duress in order to avoid unpleasantness on the spot. This type of statement imbibes nothing but an afterthought to obtain the benefits of doubt. We are also unable to see why DTI should pressurise him and why did he succumb to sign the

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statement, even if pressurised without protest. The finding of the I.O. also lacks in logic and credence. No Court can take cognizance of such a statement as made by the applicant that under duress he had to make a statement as stated above. In the final analysis, we see lot of force in the findings of the disciplinary authority with regard to the behaviour of the applicant on duty that he was one carelessness and recklessness and for such indifferent behaviour one can not escape from the rigour of the disciplinary action.

7. For the foregoing, we see no reason to interfere in the matter and accordingly, this O.A. is dismissed, leaving the parties to bear their own costs.

(M.R. MOHANTY)
MEMBER (JUDICIAL)

(B.N. SOM)
VICE-CHAIRMAN

BJY