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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 652 OF 1999
Cuttack, this the 20th day of July, 2001

Judhistir Sahoo

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)

S. N. S. S. S.
VICE-CHAIRMAN
20.7.2001

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 652 OF 1999
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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G. NARASIMHAM, MEMBER (JUDICIAL)

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Judhistir Sahoo, aged about 30 years, son of Udayanath Sahoo, Village-Bachhera, PO/PS-Jatni, District-Khurda, presently working as TTE, Khurda Road, South Eastern Railway, Jatni Applicant

Advocates for applicant - M/s S. Patnaik
C. Choudhury
B. Mohanty
S. Mohanty
S. K. Satpathy
S. Sahoo

Vrs.

1. Union of India; represented through the General Manager, South Eastern Railway, Garden Reach, Calcutta.
2. Assistant Commercial Manager, South Eastern Railway, Khurda Road, Jatni, District-Khurda.
3. Divisional Commercial Manager, South Eastern Railway, Khurda Road, P.O/P.S-Jatni, District-Khurda.
4. Divisional Railway Manager, South Eastern Railway, Khurda Road, P.O/P.S.-Jatni, District-Khurda.

..... Respondents

Advocates for respondents-M/s R. Sikdar
A. Sikdar
S. Ghosh

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ORDER

SOMNATH SOM, VICE-CHAIRMAN

In this Original Application the

petitioner has prayed for quashing the order of punishment dated 1.7.1997 of the disciplinary authority at Annexure-3 and the order dated 31.5.1999 (Annexure-7) of the reviewing authority enhancing the punishment. Before proceeding further it is to be noted that the disciplinary authority imposed on the applicant the punishment of

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withholding his increment raising his pay from Rs.1230/- to Rs.1260/- for a period of six months with the stipulation that such stoppage of increment for six months shall not operate to postpone future increments of the applicant. The enhanced punishment is for withholding the increment from Rs.1230/- to rs.1260/- for a period of one year without any future effect. The respondents have filed counter opposing the prayer of the applicant. No rejoinder has been filed.

2. The applicant is a T.T.E. in the S.E.Railway and his case is that while he was on duty in Train No.8477 from Puri to Kharagpur and manning Coaches S/7 and S/8, he did not comply with the illegal demand of a passenger to change the sitting arrangement for which the concerned passenger lodged a fictitious complaint against the applicant stating that the applicant has allowed some outsiders inside the Compartment and thereby caused inconvenience to the bona fide passengers. In memorandum dated 30.5.1997 (Annexure-1) a minor penalty chargesheet was issued against the applicant alleging that because of his neglect in duty unauthorised persons entered Coach Nos.S/7 and S/8 causing inconvenience to the bona fide passengers. The applicant submitted his explanation on 12.6.1997 (Annexure-2) denying the charges. He has stated that because of his refusal to change the berth of a passenger the fictitious complaint was made against him. He stated that Coach No.S/7 is a road-side coach and as such he had to open the door of Coach No.S/7 to accommodate passengers in different stations. Coach No.S/8 was a coach which was full. No authorised person, according to the applicant, travelled in these two coaches and these were not overcrowded. Assistant Commercial

Manager, S.E.Railway, Khurda Road, the disciplinary authority imposed the punishment in his order referred to above (Annexure-3). Against the punishment the applicant filed a representation dated 16.7.1997 (Annexure-4) praying for exoneration from the punishment. In memorandum dated 13.3.1999 (Annexure-5) the Divisional Railway Manager, Khurda Road, provisionally decided to enhance the punishment to withholding of increment for one year without any future effect and called upon the applicant to show cause as to why the proposed enhanced punishment should not be imposed. The applicant filed his representation which is at Annexure-6 and after considering the representation, the punishment was enhanced in the order at Annexure-7. In the context of the above facts, the applicant has come up with the prayer referred to earlier.

3. We have heard Shri S.Patnaik, the learned counsel for the petitioner and Shri^V R.Sikdar, the learned Additional Standing Counsel for the respondents and have perused the records.

4. The first point urged by the learned counsel for the petitioner is that the disciplinary authority issued the order of punishment on 1.7.1997 and the Divisional Railway Manager, the revisional authority issued the notice of enhancement of punishment on 13.3.1999, more than one and half years thereafter. It has been submitted by the learned counsel for the petitioner that under the rule the notice for enhancement of punishment cannot be issued after expiry of six months from the date of the order of punishment. It is submitted by the learned Additional Standing Counsel for the

respondents that Rule 25(1)(v)(b) of the Railway Servants (Discipline & Appeal) Rules, 1968 (hereinafter referred to as "Discipline & Appeal Rules"), authorises the revisional authority to confirm, reduce, enhance or set aside the penalty, or impose any penalty where no penalty has been imposed. We have considered the above submissions carefully. From the counter of the respondents it appears that after the punishment was imposed by the disciplinary authority, the matter was referred to Additional General Manager, S.E.Railway, as Director of Grievances, who ordered that the punishment imposed on the applicant is not commensurate with the gravity of the offence committed and the matter should be reviewed by the Divisional Railway Manager, S.E.Railway, Khurda Road. Accordingly, the Divisional Railway Manager in his order dated 13.3.1999 issued notice for enhancement of the punishment and in order dated 31.5.1999 imposed the enhanced penalty. From the order dated 31.5.1999 (Annexure-7) it appears that this punishment has been imposed by the Divisional Railway Manager exercising his power as revisional authority, as has been mentioned in the order itself. Under Rule 25 of the Discipline & Appeal Rules, the revisional authority has power to enhance the punishment. Third proviso to Rule 25(1) of the Discipline & Appeal Rules lays down that no action under this rule shall be initiated by an appellate authority other than the President or the reviewing authorities mentioned in item (v) of sub-rule (1) after more than six months from the date of the order sought to be reviewed in cases where it is proposed to enhance a penalty and after more than one year where it is proposed to reduce or cancel the penalty.

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As in the instant case the order of enhancement of punishment has been issued by the Divisional Railway Manager in exercise of revisional power and as in the showcause notice dated 13.3.1999 it has been mentioned that this action is being taken under Rule 25 of the Discipline & Appeal Rules, it is clear that such action of enhancement of penalty could not have been initiated after expiry of six months from the date of the order of punishment, i.e., 1.7.1997. The order of enhancement of penalty (Annexure-7) is, therefore, held to be not sustainable and is accordingly quashed.

5. The learned counsel for the petitioner has also prayed for quashing the order of punishment at Annexure-3. The applicant has not mentioned in his O.A. that against the order of punishment passed by the disciplinary authority, he had filed an appeal. He has stated that he had filed the representation dated 16.7.1997 at Annexure-4. In this representation he has made a reference to the memorandum dated 30.5.1997 initiating the minor penalty proceedings against him. He has made no reference to the punishment order dated 1.7.1997. He has merely stated that even though he had submitted his explanation on 12.6.1997 (wrongly mentioned as 12.8.1997) the punishment was imposed by the Assistant Commercial Manager. He has, therefore, prayed in this representation dated 16.7.1997 that he be exonerated from the punishment. The point for consideration is whether this representation (Annexure-4) can be treated as an appeal. The appeal is a statutory right given to railway employee for approaching the appellate authority against any punishment imposed by the disciplinary authority. This

representation lat Annexure-4 has not been styled as an appeal. The learned counsel for the petitioner has also submitted during hearing that no appeal has been filed by the applicant against the order of the disciplinary authority. As the applicant has not filed an appeal, the statutory remedy has not been exhausted by him and therefore, his prayer for quashing the order of the disciplinary authority is not maintainable and is accordingly rejected.

6. In the result, therefore, the Original Application is partly allowed in terms of our observation and direction above. No costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

CAT/CB/20-7-2001/AN/PS

P. Somnath Som
(SOMNATH SOM)
20.7.2001
VICE-CHAIRMAN