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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 12 OF 2000

Cuttack, this the 23rd day of February, 2001

Raghunath Panda

Applicant

Vrs.

Union of India and others...

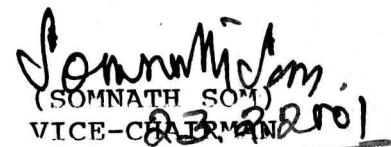
Respondents

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)


(SOMNATH SOMA)
VICE-CHAIRMAN
23/2/2001

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CORAM:

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

.....
Raghunath Panda, aged about 43 years, son of Naba Kishore Panda, Village & P.O-Ada, District-Balasore-756 134, and at present working as A.S.M, Keonjhar Jajpur Road Railway Station, S.E.Railway, At/PO-Jajpur Road, Dist.Jajpur

..... **Applicant**

Advocates for applicant - M/s

R.B.Mohapatra
N.R.Routray
M.M.Satpathy
R.N.Mohanty
R.Mishra
S.K.Behera

Vrs.

1. Union of India, represented through the General Manager, S.E.Railway, Garden Reach, Calcutta-43, West Bengal.
2. Senior Divisional Operation Manager, S.E.Railway, Khurda Division, At-Khurda Road, P.O-Jatni, District-Khurda.
3. Divisional Railway Manager, S.E.Railway, Khurda Division, At-Khurda Road, P.O-Jatni, District-Khurda.
4. Divisional Operating Manager, S.E.Railway, Khurda Division, At-Khurda Road, P.O-Jatni, District-Khurda.
5. Senior Divisional Personnel Officer, Khurda Division, South Eastern Railway, At-Khurda Road, P.O-Jatni, District-Khurda

.... **Respondents**

Advocate for respondents-Mr.S.R.Patnaik
Railway Advocate

SOMNATH SOM, VICE-CHAIRMAN **O R D E R**

In this Application the petitioner has
prayed for quashing the order of punishment dated 14.2.1997
(Annexure-9) and the order dated 6.10.1999 (Annexure-13)

enhancing the punishment. The respondents have filed counter opposing the prayers of the applicant, and the applicant has filed a rejoinder. We have heard Shri R.B.Mohapatra, the learned counsel for the petitioner and Shri S.R.Patnaik, the learned Railway Advocate appearing for the respondents. The learned counsel for the petitioner relied on the decisions in the case of P.Rajaram v. Director, Postal Services, Hyderabad and another, 1989(1) AISLJ (CAT) 289, and the case of Jamuna v. Union of India and others, (1991) 15 ATC 99. These decisions have also been perused.

2. The admitted position between the parties is that while the applicant was working as Station Master, Paradeep Railway Station, he was placed under suspension and departmental proceeding was initiated against him on the charge that on 18.9.1994 he committed grave misconduct by collecting Rs.10/- in excess over and above the actual fare from K.P.Das, Watcher of Vigilance Wing for granting reservation in Sleeper Class from Paradeep to Allahabad. The inquiring officer in his report dated 22.8.1996 (Annexure-7) held that the charge is proved. The disciplinary authority, Divisional Operation Manager, Khurda Road, after considering the representation of the applicant against the report of the inquiring officer, imposed the punishment of stoppage of increment for a period of six months with cumulative effect. This order of punishment is dated 14.2.1997 (Annexure-9). It is also the admitted position that against this order of punishment the applicant did not file any statutory appeal which was required to be filed within a period of forty-five days from the date of receipt of the order of punishment, as mentioned in Rule 20

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of Railway Servants (Discipline & Appeal) Rules, 1968 (hereinafter referred to as "Discipline & Appeal Rules"). The applicant filed a revision petition dated 15.3.1998, i.e., more than one year after the order of punishment was passed. This revision petition at Annexure-10 is addressed to Divisional Railway Manager. It is also to be noted that in this revision petition the applicant has mentioned in the first sentence that the revision petition is filed under Rule 25(2)(ii) of Discipline & Appeal Rules. In the order dated 14.9.1998 (Annexure-11) Senior Divisional Operations Manager issued notice to the applicant inter alia stating that he had gone through the appeal preferred by the applicant under Rule 20 against the penalty awarded by the disciplinary authority. It is further stated that the punishment imposed by the disciplinary authority is inadequate and Senior Divisional Operations Manager has provisionally taken the view that the applicant should be reverted to the post of Assistant Station Master for a period of two years. In this letter the applicant has been asked to show cause against the proposed enhancement of penalty within fifteen days from the date of receipt of the notice. In his representation dated 5.10.1998 (Annexure-12) the applicant had taken the stand that in terms of Rule 25(5)(b) of Discipline & Appeal Rules, an order of punishment cannot be enhanced after a lapse of six months from the date of imposition of the punishment and has stated that as the order of penalty was issued on 14.2.1997, any order of enhancement of punishment after 14.8.1997 will be contrary to the provisions of Rule 25 of the Discipline & Appeal Rules. The Sr.D.O.M., after considering the representation of the applicant, has enhanced the penalty of stoppage of one year with cumulative effect in

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his order dated 6.10.1999 (Annexure-13). In the context of the above admitted facts, the prayers made by the applicant have to be considered.

3. From the above recital of admitted facts, it is clear that against the punishment order dated 14.2.1997(Annexure-9) the applicant did not prefer any appeal. The applicant has also mentioned in his representation dated 11.10.1999 (Annexure-14) that no appeal was submitted by him against the punishment within the stipulated time period. The applicant has stated that he had filed a revision petition which is at Annexure-10. This revision petition was addressed to the revisional authorityt who is the Divisional Railway Manager. On receipt of this, the appellate authority, Sr.D.O.M. issued showcause notice to the applicant at Annexure-11 in which he has stated that the revision petition dated 15.3.1998 filed by the applicant at Annexure-10 is an appeal preferred under Rule 20 against the penalty awarded by the disciplinary authority. As the applicant has addressed his revision petition to the revisional authority and has not filed any appeal against the order of the disciplinary authority, it must be held that the applicant has accepted the order of the disciplinary authority and therefore, in this O.A. he cannotbe permitted to challenge the punishment order of the disciplinary authority at Annexure-9. In view of this, the prayer of the applicant to quash the order of punishment passed by the disciplinary authority is held to be without any merit and is rejected.

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4. As regards the order of enhancement of penalty passed by the appellate authority in purported exercise of his revisionall power, the first point to be noted is that the applicant has specifically mentioned in his petition at Annexure-10 that he is filing the revision petition udner Rule 25 and this is also addressed to the revisional authority. The appellate authority in his showcause notice dated 15.9.1998 at Annexure-11 has referred to the revision petition dated 15.3.1998 and has mentioned that he has gone through the appeal preferred by the applicant under Rule 20. The rspondents in page 3 of the counter have stated that after the punishment order of the disciplinary authority was sent to the Vigilance Branch, the Chief Vigilance Officer considered the punishment to be inadequate and moved for revising thecase in his letter at Annexure-R/1. The respondents have furtherstated that before the case was put up to the reviewing authority, the appllicant preferred an appeal to Sr.D.O.M. against the punishment order. The applicant has made specific averment that he did not file any appeal. The respondents have not mentioned the date of the appeal nor have they furnished a copy of the appeal petition. In view of this it is not possible to accept the stand of the respondents that against the punishment order the applicant did file an appeal to the appellate authority. The appellate authority no doubt had the power to revise the punishment by enhancing or reducing it on his own motion. But under the Rule, such action for enhancing the punishment cannot be initiated more than six months after the date of the order sought to be revised. The

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relevant proviso to Rule 25(1) of Discipline & Appeal Rules is quoted below:

"Provided further that no action under this rule; shall be initiated by (a) an appellate authority other than the President or (b) the revising authorities mentioned in item (v) of sub-rule (1)-

(i) more than six months after the date of the order to be revised in cases where it is proposed to impose or enhance a penalty, or modify the order to the detriment of the Railway servant; or"

In the instant case, the punishment order has been issued on 14.2.1997 and the showcause notice for enhancement of penalty has been issued by the appellate authority on 15.9.1998. This being after passage of more than six months from the date of the order of punishment, it was not open for the appellate authority to initiate action for enhancing the penalty. The action in this regard by the appellate authority is, therefore, not in accordance with rules and is liable to be quashed.

5. The respondents have stated that against the order of the appellate authority enhancing the punishment the applicant has not filed a further appeal which he could have done under the Rules. This has been mentioned by the respondents in paragraph 3 of the counter. This cannot be accepted because the applicant has stated that against the order of the appellate authority enhancing the punishment, the applicant filed a further appeal to the Divisional Railway Manager on 11.10.1999 and copy of this appeal has been enclosed by him at Annexure-14. The respondents have not stated that the appeal at Annexure-14 has not been received by them. They have merely made a bland assertion that against the order of enhancement of penalty, no appeal has been filed.

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6. In consideration of the above, while we reject the prayer of the applicant to quash the order of punishment passed by the disciplinary authority, we have no hesitation in quashing the order of enhancement of punishment passed by the appellate authority on 6.10.1999 at Annexure-13.

7. In the result, therefore, the Original Application is allowed in part. No costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

Sumnath Som
SOMNATH SOM
23.2.2001
VICE-CHAIRMAN

February 23, 2001/AN/PS