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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH,CUTTACK.

O.A.NOS. 648 AND 649 OF 2001 & 1038 OF 2002
Cutack, this the 5th day of January 2004

Shri Y.Ajay Kumar, etc.. ..... Applicants

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

05/01/04
(M.R.MOHANTY)
MEMBER(JUDICIAL)

(B.N.SOM)
VICE-CHAIRMAN

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CORAM:

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

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In OA 648/2001

Shri Y.Ajay Kumar,agedabout 34 years, son of Sri Y.K Rao, C/o Wakil Choudhury, At-B.Sector,Main Road, Bandhamunda, Dist.Sundargarh, Orissa
..... Applicant

In OA No. 649/2001

Sri N.Janardan Rao,aged about 34 years, son of N.Venkat Rao, Qr.No.A/61, P.O.-Bandhamunda, Dist.Sundargarh (Orissa)..... Applicant

In OA No. 1038/2002

Sri Y.Ajay Kumar, aged about 34 years, son of Sri Y.K.Rao,C/o Wakil Choudhury, At B.Sector,Main Road, Bandhamunda, Dist.Sundargarh, Orissa
..... Applicant

Vrs.

In OAs 648/2001,649/2001 and 1038/2002

1. Union of India, represented through General Manager, S.E.Railway, Garden Reach, Calcutta 43.
2. Divisional Railway Manager, S.E.Railway, At/PO Chakradharpur, Dist.Singhbhum, Bihar.
3. Divisional Operation Manager, S.E.Railway, Chakradharpur, Dist.Singhbhum, Bihar.
4. Senior Divisional Operation Manager (Sr.DOM), S.E.Railway, Chakradhapur, Dist. Singhbhum, Bihar.
5. D.P.Pandey, Enquiry Officer, S.E.Railway, Garden Reach, Calcutta 43

..... Respondents.

Advocates for applicants - M/s.A.Kanungo,S.R.Misra, M.K.Biswal, S.K.Mishra, S.Mallik.

Advocates for Respondents - Mr.D.N.Misra (OA Nos.648&649/2001)
Mr.S.R.Patnaik(OA No.1038/2002)

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ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

Original Application Nos. 648 of 2001 and 1038 of 2002 have been filed by Shri Y.Ajay Kumar and Original Application No. 649 of 2001 has been filed by Shri N.Janardan Rao praying for quashing the disciplinary proceedings, the inquiry reports, the punishment orders and the appellate orders passed against them. Both the applicants were working as Substitute Token Porters under the Respondent-Railways. On conclusion of the disciplinary proceedings against them, the disciplinary authority imposed on them the punishment of removal from service which was confirmed by the appellate authority in the appeals. The disciplinary proceedings were initiated by the Railway-Respondent on the allegation that the both the applicants had produced false/forged Service Certificates to get employment of casual nature in the Railways. Both the applicants have made similar averments and submissions in the Original Applications. The Respondent-Railways have filed identical counters contesting the Original Applications. Since all the three Original Applications raise common questions of fact and law for our determination, we are proceeding to dispose of the same by this common order. However, for the sake of convenience and appreciation of the facts of the case and the points of law, we are referring to the pleadings made in Original Application No. 648 of 2001.

2. In O.A.No. 648 of 2001, it is the case of the applicant that he was working as a Substitute Token Porter in S.E.Railway from the year 1988, posted at Bandhamunda under Chakradharpur Division. After about 11 years of his dedicated service, Respondent No.3 served on him a major penalty charge memo dated 12.5.1999 (Annexure 1) under Rule 9 of the Railway Servants (Discipline and Appeal) Rules,1968 (hereinafter referred to as "Discipline and Appeal Rules"). The charges were formulated under two heads:

> "(i) producing false/forged service certificate for seeking employment of casual nature. Subsequently on vigilance verification the said service certificate has been found as false; and
>
> (iii) wilfully misleading the Rly. administration to base its decision to offer casual employment on the basis of forged/false service certificate."

An Inquiry Officer (in short, "I.O.") was appointed to investigate into the charges. The I.O. submitted his report on 29.5.2001. The I.O. in his report admitted that the charge of producing fake certificate was not either proved or disproved. But on the basis of preponderance of probability of evidence, he concluded that the certificate is found to be false and thus the charge stood proved. The said inquiry report was communicated to the applicant on 27.6.2001 giving him opportunity to submit representation. The applicant submitted a detailed defence on 14.7.2001

stating inter alia that the inquiry has been conducted in gross violation of the principles of natural justice and the findings were made purely on assumption and presumption and there was no trace of positive findings with respect to the allegation and charges. Notwithstanding these objections of the applicant, the disciplinary authority imposed the punishment of removal from service vide his order dated 27/31.7.2001. It is further submitted by the applicant that the said order of punishment had not been served on the applicant either through messenger or through post, but he came to know about the order when the same was put in the Notice Board. Being aggrieved by the order of removal, he preferred an appeal on 6.8.2001 before Respondent No.4, but he received no relief. The applicant has also alleged that 10 more employees like him, against whom the very same findings have been recorded by the I.O. are continuing in employment and no punishment has been inflicted on them thus showing this partial and discriminatory attitude towards the applicant. Assailing the inquiry report being contradictory and bereft of reality and the punishment of removal from service being illegal, arbitrary and disproportionate to the alleged misconduct, the applicant has approached this Tribunal with a prayer to quash the disciplinary proceedings, the inquiry report dated 27.6.2001 and the order of punishment of removal from service dated 27/31.7.2001. In O.A.No.1038 of 2002 the applicant, while repeating his prayer as made in OA No. 648 of 2001, has sought for quashing the order passed by the appellate authority rejecting his appeal preferred against the order of punishment passed by the disciplinary authority.

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3. The Respondents have contested the Original Application by filing counter. They have reiterated their allegations that the applicant had obtained employment of casual labourer by producing false/forged certificate of casual employment purported to have been issued by one Shri S.C.Ghose, Permanent Way Inspector (Construction), Bondamunda. They have further submitted that a vigilance verification was carried out to check the service certificates of officials in casual employment. As the applicant could not establish the authenticity of the certificate produced by him at the time of getting employment as Substitute Token Porter, he was found to have committed misconduct as per Rule 3(i),(ii) and (iii) of the Railway Servants (Conduct) Rules,1966. They have submitted that the inquiry was conducted on the basis of the documents available with the Railway administration and all opportunities were given to him. They have stated that there was no question of assuming guilt of the applicant because he was served with lists of documents and witnesses along with the charge memo and the charges were duly inquired into by the I.O.

4. We have heard Shri A.Kanungo, the learned counsel for the applicant and Shri D.N.Mishra, the learned Standing Counsel (Railways) appearing for the Respondents. We have also perused the records placed before us. The learned counsel for the applicant has submitted a written submission by affidavit under Section 22(3)© of the A.T.Act, 1985 read with Chapter XIV of the C.A.T.Rules

of Practice, 1993. He has also cited the following case laws in support of his submission:

(i) AIR 1978 SC 1277, Nandakishore v. State of Bihar;

(ii) 1980(3) SLR 64, Satya Prakah v. Union of India;

(iii) 1974(2) SLR 226, Sri Gian Singh v. State of Himachal Pradesh

(iv) AIR 1994 SC 591, Government of A.P. v. K.C.Venkata Reddy;

(v) AIR 1970 SC 679,State of A.P. v. O.P.Gupta;

(vi) AIR 1963 SC 375, State of Mysore v. Shivbasappa,

(vii) 1980 SCC (L&S) 453, Managing Director, U.P.Warehousing Corporation v. Vijay Narayan Vajpayee; and

(viii) 1981(2) SLR 182, J.K.Mishra v. D.G.Police, CRPF.

5. The main thrust of the argument of the learned counsel for the applicant is that the prosecution at the time of inquiry had been changing witnesses repeatedly. The first witness, C.C.Sarkar, OS II, could not be produced because he had expired on 20.10.1999. The second witness, Shri Ratnam, Head Clerk refused to participate on the ground that he was not aware of the case, and ultimately the prosecution could produce only one witness, Shri G.D.Bindhani, who deposed that he could not say anything about the genuineness of the service certificate issued on 25.6.1981 by the Permanent Way Inspector (Construction),Bandamunda. He also stated that the genuineness of the service certificate could be verified only with reference to the original one because he

could not be taken as an expert to certify genuineness of handwriting of a person. The applicant has also alleged that the original service certificate, which was submitted by him for seeking employment, was never produced by the prosecution in spite of repeated opportunities being given by the I.O., and finally Shri S.C.Ghosh, Permanent Way Inspector (Construction),Bandamunda, who had issued the service certificate, could not be made available on the ground that he had already retired and the Presenting Officer had no information about him . The I.O. admits as follows:

> "At that juncture the said document was not given cognizance because of non-availability of the said PWI".

The learned counsel for the applicant, referring to paragraphs 6.1 to 6.3 of the inquiry report, submitted that the Inquiring Officer had imported his personal knowledge to prove the allegations and had stated in the concluding portion of the report that he found the charge as proved on the basis of preponderance of probability. The learned counsel, relying on he judgment of the Apex Court in *Nandkishroe's case (supra)*, submitted that even in a domestic inquiry the I.O. should arrive at his conclusion on the basis of some evidence with some degree of definiteness which may point to the guilt of the delinquent and that some suspicion cannot be allowed to take the place of proof even in domestic inquiry.

The learned counsel has further submitted that in this case, the Respondents have thrown out the principle that in punishing the guilty, scrupulous care must be taken to see that an innocent is not punished.

6. We have very anxiously considered the contentions of the rival parties and have given our best thoughts to the issues raised by the learned counsel for the applicant bringing out the deficiencies in the inquiry process. The allegation against the applicant is that he had produced a fake certificate of engagement as casual labourer, on the strength of which he was given job as a Substitute Token Porter and that he wilfully mislead the Railway administration to base its decision to offer casual employment on the basis of a forged/false service certificate. It has also been admitted by the Respondents that Permanent Way Inspector (Construction) had denied the authenticity of the document when he was confronted with the document in a vigilance inquiry into the matter which became the basis of issue of the charge memo against the applicant. This Permanent Way Inspector (Construction),Bandamunda, was a vital witness in this case and the documentary proof was in possession of the Respondents which was not exhibited. They failed to produce the key witness, i.e., the P.W.I., Bandamunda and the only prosecution witness that the Respondents could produce during the inquiry pleaded his ignorance in all respects about the matter and expressed his inability to certify the genuineness of the certificate. In the circumstances, the

option before the prosecution was either to produce the live casual register to show that the applicant was not engaged as casual labourer or to produce Shri S.C.Ghosh, the then Permanent Way Inspector (Construction),Bandamunda, to testify that the document bearing his signature produced by the applicant was not genuine. No explanation is available in the inquiry report as to why the live casual register could not be produced. The explanation available in the inquiry report is that the then Permanent Way Inspector (Construction),Bandamunda, could not be produced during the inquiry because he had already retired at that time and that the presenting officer had no information about him. We are not impressed by this argument of the Respondents. In this view of the matter, we hold that the Respondents have miserably failed to bring home the charge against the applicant. We have, therefore, no hesitation to accept the submission of the learned counsel for the applicant that he inquiry report was based more on suspicion rather than on material proof. We also agree that the I.O. could not have imported his personal knowledge to substitute the requirement of concrete evidence. In view of the observations made above and in view of the fact that the applicant was denied reasonable opportunity to prove the authenticity of the service certificate produced by him, we remand the case to the disciplinary authority to start de novo inquiry into the matter from the inquiry stage. We, however, direct that this inquiry will be limited to the examination of Shri

S.C.Ghosh, the then Permanent Way Inspector (Construction),Bandamunda, to prove his signature on the document produced by the applicant as service certificate issued by the said Shri Ghosh and to the production of the Live Casual Register, Bandamunda, where the name of the applicant would be available. Pending finalization of the inquiry and the disciplinary proceeding, the applicant is ordered to be reinstated in service.

7. With the above observation and direction, all the three Original Application Nos. 648 of 2001 and 1038 of 2002 and OA No. 649 of 2001 are allowed. No costs.

05/01/04

(M.R.MOHANTY)
MEMBER(JUDICIAL)

(B.N.SOM)
VICE-CHAIRMAN

An/ps