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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

O.A. NO.18 OF 2004
Cuttack, this the 10th day of November, 2005.

SURJIT KUMAR PANDA

APPLICANT

VERSUS

UNION OF INDIA & ORS.

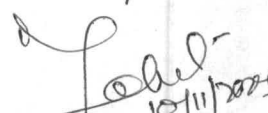
RESPONDENTS.

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *Yes.*

1. Whether it be circulated to all the Benches of CAT? *Yes.*


(B.N.SOM)
VICE-CHAIRMAN


(M.R.MOHANTY)
MEMBER (JUDICIAL)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

**ORIGINAL APPLICATION NO. 18 OF 2004
Cuttack, this the 18th day of November, 2005**

C O R A M:-

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

SRI SURJIT KUMAR PANDA, Aged about 50 years, Son of Late
Baikunthanath Panda, At: Baudpur, Po: Madhab Nagar, Dist.Bhadrak.

..... APPLICANT.

By legal practitioner: M/s. B.S.Tripathy, M.K.Rath, J.Pati, Advocates.

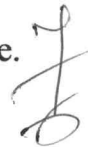
VERSUS

1. Union of India, represented through the General Manager,
E.C.Rly., At/Po: Chandrasekharapur, Bhubaneswar, Khurda.
2. Divisional Railway Manager, E.Co.Railway, At/Po: Jatni, Khurda.
3. Senior Divisional Commercial Manager, E.Co. Railway, Khurda
Road, At/Po: Jatni, Dist. Khurda.

..... RESPONDENTS.

By legal practitioner:

Mr.B.K.Bal, Advocate.



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O R D E R

MR.M.R.MOHANTY, MEMBER(JUDICIAL):-

Applicant while performing his duty as Senior T.C. at
Cuttack Railway Station was issued with the following charges under
Annexure-A/1 dated 28.06.1996:-

Article:- That Shri S.K.Panda while his duty as Sr.
T.C.in CTC sqd. On 10-01-1996
misbehaved and manhandled Shri
J.C.Mishra SM/Balangir and was not haing
his name badge and uniform;

Article-II:- That Shri S.K.Panda was irregular in
attending the ticket checking programme;

Article-III:-That Shri S.K.Panda remained unauthorized
absent from duty on and from 11.1.1996 and
failed to submit his PMC for his sickness
within the stipulated period;

Article-IV:-That Shri S.K.Panda failed to achieve the
ticket checking target set by this division
vide this office letter NO.G147/TKT-
checking/94 dtd.05.12.1994;

Article-V:- That Shri S.K.Panda failed to submit his
monthly TTE's EFTs returns for the
months from May, 1995 till date.

That Shri S.K.Panda Sr. TC (Sqd.)
CTC failed to maintain absolute integrity
and devotion to duty and acted in a manner
unbecoming of a Railway Servant in
contravention of Rule 3.1(i), (ii) and (iii) of

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Railway Servants Conduct Rules, 1966 as amended from time to time.

As is seen from the records, applicant having failed to submit his show cause reply, the matter was enquired into by appointing IO and as the Applicant did not attend the enquiry, despite due notice, the enquiry was concluded exparte and the IO submitted a report under Annexure-4 dated 29-08-2000; wherein the following discussions (on each article of charges) were made:-

DISCUSSION OF ARTICLE OF CHARGES:-

On Article-I:- Shri S.K. Panda, Sr. TC/CTC has misbehaved & manhandled Shri J. C. Mishra, SM/BLGR on 10.1.1996 at CTC. Shri J.C. Mishra has reported the matter to Sr. DCM/KUR on 11.1.1996 apart from lodging FIR with officer I/c- GRPS/CTC on 11.1.1996 and lodging Complaint at CTC on Folio No. 23 on 10.1.1996. Shri J.C. Mishra has mentioned that Shri S.K. Panda, Sr. TC was not wearing uniform or name badge. In the event of contradiction, Shri S.K. Panda should have submitted a written statement within ten days of receipt of the charge-sheet. Though Shri S.K. Panda acknowledge the charge sheet ;on 11.12.1996, he has failed to submit his written statement to his defence as specified in para 5 of SF-5.

On Article-II:- Shri S.K. Panda, Sr. TC/CTC while working at CTC was irregular in attending his duties and his unit Incharge, i.e. CTI/CTC has given a report on 18.01.1996 stating that Shri S.K. Panda remained absent from

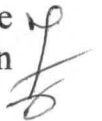
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1.12.1995 to 3.12.1995, 6.12.1995, 9.12.1995, 8.12.1995 to 11.12.1995, 13.12.1995, 16.12.1995 to 18.12.1995, 20.12.1995, 21.12.1995, 23.12.1995 to 25.12.1995 & 28.12.1995 to 31.12.1995 in December, 1995 alone. Shri D.C.Barik, CTI/CTC while attending D&A Enquiry on 25.7.2000 has stated in writing that he agrees to what he has reported on 18.1.1996.

On Article-III :- Shri S.K.Panda, Sr. TC/CTC did not turn up for his duty on and from 11.1.1996. He has failed to inform the office about the cause of such absence. It was only on 16.1.1996 i.e. after a period of six days he sent his medical (unfit) Certificate, that too from a Private Medical Practitioner. Sr. CTI I/C/KUR has reported this matter vide his office letter No. KUR/E/7 Dated 16.5.1996. The delay in informing about his sickness is well beyond the prescribed time limit for submitting unfit certificate.

On Article-IV:- An instruction vide Sr. DCM/KUR's Letter No.G.147/Ticket Checking/94 dated 5.12.1994 was issued wherein it was advised that all ticket checking staff working in different squads have to make out eight penalty cases per man day but Shri S.K. Panda failed to achieve the target. As informed by CTI I/C/KUR Shri S.K. Panda's performance during May'95 to December, 1995, June'95, July'95, Aug'95, Sept.'95, Oct.'95, Nov.'95 & Dec'95 respectively even when he worked for 27, 18, 25, 25, 21, 15, 2 & 14 days in those months respectively, CTI/KUR letter dated 25.06.1996 in this regard is available (at F-12).

On Article-V:- TTE's were instructed to submit their monthly return



by seventh of the following month (vide CTI I/C/KUR's letter dated 9.7.1991) but Shri S.K.Panda, Sr. TC failed to comply this instruction & and is found to be regularly defaulting on this count. As informed by Sr. CTI (I/C)/KUR vide his office letter dated 27.6.2000 (F-16) that returns of Jan.95 were submitted by Shri S.K.Panda on 20.2.1995 and likewise for February'95 on 10.4.1995, March'95 on 10.4.1995, Apr.'95 on 28.8.1995 and for May'95 onwards were not submitted even after one year.

All the documents quoted above were made available to Shri S.K.Panda along with the charge sheet and have been listed in Annexure-III of the said charge sheet acknowledged by Shri Panda on 11.12.1996.

Even after receiving all the relevant documents by Shri S.K.Panda, he has not submitted his explanation and he has failed to attend the Enquiry despite being given sufficient opportunity.

In the light of the details furnished above the enquiry is conducted ex.parte and it is concluded that all the five charges framed against Shri S.K.Panda, Sr. TC/CTC Sqd.(in this charge sheet bearing No. Sr. DCM/Staff/D&A/SKP/CTC dated 28.6.1996) are proved."

As the Applicant failed to submit any representation to the report of the enquiry officer (sent to him under Annexure-4 dated 4/12th September, 2000) the Disciplinary Authority passed the following order under Annexure-A/5 dated 03-04-2001; relevant portion of which is extracted below:-

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I have gone through the enquiry report of Shri M.A. Haque, the then ACM/KUR, evidence adduced during the course of enquiry and other relevant information on record. The enquiry has been completed exparte due to nonattendance of Shri Panda despite having been given several opportunities to attend the enquiry. The enquiry report clearly indicates that 8 sittings of the enquiry were fixed, but the party did not turn up despite advance intimation of the same. Therefore, there is no doubt that sufficient opportunity has been given to the delinquent staff for putting across his defence but in vain. The enquiry officer had no other alternative, but to complete the enquiry exparte.

From the available documents and depositions given by various witnesses, it had been clearly established that Shri Panda had misbehaved and manhandled one Shri J.C.Mishra, ASM/Bolangir on 10.1.1996 at Cuttack itself. This is evident from the FIR lodged with GRPS/CTC, which was acknowledged by GRPS/CTC on 11.1.96. From the complaint submitted by Shri J.C.Mishra, ASM/Bolangir, it is evident that Shri Panda though working as Sr. TC was not wearing uniform or name bade. Shri S.K. Panda though received the charge sheet on 11.12.1996, did to submit any representation/explanation in his defence to contradict the charges brought against him. Therefore, I tend to agree with the findings of the enquiry officer that this part of the charge is fully established.

Regarding his irregular working as Sr. TC at CTC, it is evident from the report submitted by Unit in-

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charge CTI/CTC dated 18.1.1996, that he was frequently remaining absent. This has been confirmed during the course of enquiry by the Prosecution Witness, Shri Barik, the then CTI/CTC on 27.10.2000. Thus, the allegation of irregular working is also established. Shri Panda remained unauthorized absent on and from 11.1.1996 continuously and submitted the PMC after a period of almost six months, which is extremely irregular. The Railway servant is duty bound to inform, in the event of sickness, within 48 hours to the Controlling Officer, otherwise the period of absence will be treated as unauthorized. In this case, Shri Panda has not complied with the extant instructions. Instructions exist that in the event of sickness, the employee is expected to submit the progress of his treatment periodically to the Railway Administration for proper appreciation. As far as Shri Panda is concerned, there was no such report. In fact, his whereabouts were not known for a long time. Thus, Shri Panda has remained unauthorisedly absent on and from 11.1.1996.

Regarding the other 2 charges i.e. his failure to achieve ticket checking target fixed by the Sr. DCM and his failure to submit regular reports to the Administration, are evident from the records and the enquiry officer was right in concluding that these two charges are also established beyond reasonable doubt.

After having gone through every aspect of the case, I am convinced that Shri S.K. Panda has been very careless in his work and all the charges brought against him have been proved.

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To meet the ends of justice and to set an example to others, I therefore, order for dismissal of Shri S.K. Panda, Sr. TC/CTC from Railway service with immediate effect."

2. Applicant has stated in this Original Application filed under section 19 of the Administrative Tribunals Act, 1985 that he had submitted an appeal within the reasonable time and the same having not been attended to, he brought the matter to the notice of the Chairman of the Railway Board. In the counter, filed in this case, the Respondents/Railways, have denied such fact (of filing of an appeal) and have stated that it was only on 14.4.2003, the Applicant made an application to the Railway Board challenging the order of punishment of dismissal. They have stated in the counter that the Applicant is not a fit person to continue in Railways; as, in a CBI case, he has been convicted on 25-04-1997 and sentenced to undergo rigorous imprisonment for a period of two and half years with fine of Rs. 5000/- (along with others) by the Additional Chief Judicial Magistrate of Bhubaneswar in SPE Case No. 25 of 1985 under section 406/120(B) of the Indian Penal Code. The Applicant in this Original Application under section 19 of the Administrative Tribunals Act, 1985, has challenged the impugned order of punishment imposed on him under Annexure-A/5 dated 03.04.2001.

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3. Mr. B.S. Tripathy, Learned Counsel appearing for the Applicant and Mr. B.K. Bal, learned Additional Standing Counsel appearing for the Respondents- Railways, during the hearing, have reiterated the respective stands taken in their pleadings.

4. As no rejoinder has been filed by the Applicant it is not known as to what further action were taken by the Applicant as against the order (of conviction and sentences) passed by the Addl. Chief Judicial Magistrate at Bhubaneswar. However, as the order imposing punishment of dismissal has been imposed on the Applicant, basing on some of his alleged misconduct, this Tribunal can examine as to whether the same is legal, justified and/or has been passed according to Rules/judge made laws. However, further, it appears from the facts and submissions made by the parties, it is not in dispute that the Applicant did not put up any reply/written-statement of defence to the charge-sheet; did not attend the enquiry (for which the enquiry had to be concluded exparte); did not furnish any representation even challenging the enquiry report; nor preferred any appeal challenging punishment of dismissal. As such, the Applicant has left no scope before this Tribunal to interfere with the order of dismissal.

5. It appears, however, that the Applicant preferred a representation to the Chairman of the Railway Board; which, as it

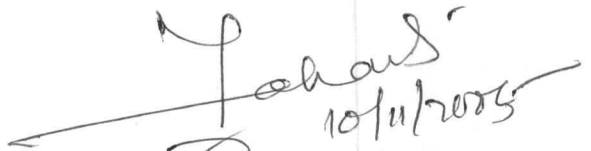
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appears, has not yet been attended to. As stated at page 10 of the counter filed by the Railways, the said (representation dated 14.04.2003) ought to have been taken up as a Revision/Review Petition. In all fairness of things, the Competent Authority in Railways need Review the Disciplinary proceedings matter, in question. While doing so, the Authority need give an opportunity of personal hearing to the Applicant. The entire exercise on the said count need be completed by the Railways/Respondents within a period of six months. With these observations and directions this Original Application is disposed of. No costs.


(B.N.SOM)

VICE-CHAIRMAN


(M.R. MOHANTY)

MEMBER(JUDICIAL)