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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 120 OF 2008

Cuttack, this the 10th day of September, 2009

September,

Khirod Chandra Mishra Applicant
Vs.

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?

(C. R. MOHAPATRA)
ADMINISTRATIVE MEMBER

(K. THANKAPPAN)
JUDICIAL MEMBER

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CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 120 OF 2008

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CORAM:

September,

Hon'ble Mr. Justice K. Thankappan, Member (J)
Hon'ble Mr. C.R. Mohapatra, Member (A)

.....
Khirod Chandra Mishra aged about 49 years, S/o-late Arjun
Mishra At-Alarpur, PO-Salegaon, PS-Choudwar, Dist-Cuttack
at present working as Sr. Goods Clerk under the Station
Manager, Cuttack, East Coast Railway.

..... **Applicant**

By the Advocate(s) M/s. U.K. Sahoo,
..... S.P.Dhal,
..... Vs.

1. Senior Divisional Personal Officer, East Coast Railway, Khurda
Road, Jatni.
2. Divisional Commercial Manager cum Disciplinary Authority,
East Coast Railway, Khurda Road, Jatni.
3. Senior Divisional Commercial Manager cum Appellate
Authority, East Coast Railway, Khurda Road, Jatni.

..... **Respondents**

By the Advocate(s) Ms. S.L. Patnaik

ORDER

HON'BLE MR. JUSTICE K. THANKAPPAN, MEMBER(J)

Challenging a major penalty order passed by the
Disciplinary Authority, and confirmed by the Appellate
Authority, this O.A. has been filed by the applicant. The few

facts which are necessary for decision taken in this O.A. are as follows.

2. While the applicant working as Goods Supervisor at Cuttack Railway Station was entrusted with the duties of maintaining proper accounts of rakes received at Cuttack Goods including realization of Railway dues. However, while he was working in that capacity on account of detection of certain irregularities by the vigilance wing of the Railways, he was served with a charge Memo on 11.09.02 (Annexure-1) on the allegations that the applicant had manipulated the removal timings of a rice consignment from a rake of 40 BCN wagons ex UMB/ROP and unloaded at CTC at 11.00 hours on 24.04.2000 and had shown the consignment removed on the same day, i.e., 24.04.2000 under Gate Pass Nos.472950, 472951 and 472952 willfully causing loss of Railway revenue due to non-realisation of due wharfage charges even though the consignment was removed on 24.04.2000, 25.04.2000 and 26.04.2000. Further, it was alleged that the applicant had also manipulated the removal timings of salt consignment from a rake of 30 BOXC wagons received ex

NAC and unloaded at CTC at 15.00 hours on 12.03.2000 having shown the consignment removed on the same day, i.e. on 12.03.2000 under Gate pass Nos.472654,472655 and thereby 472656 willfully caused loss of Railway revenue due to non-realisation of wharfage charges though the consignment was removed on 14.03.2000. It has been attributed that by the above omissions and commissions the applicant had committed misconduct and had shown lack of integrity and devotion to duty and acted in a manner unbecoming of a Railway servant and thereby violated Rule 3.1 (i), (ii) & (iii) of Railway Services (Conduct) Rules, 1966. In reply to the said Memorandum of charges, the applicant as per Annexure-A/2 dated 17.09.2002 requested the Disciplinary Authority for supplying the copies of the relied upon documents to enable him to prepare his explanation. However, an inquiry has been conducted on the above allegations and the Inquiry Officer submitted its report dated 03.11.06 holding the charges against the applicant proved. The applicant on being asked submitted his written statement of defence to the inquiry report, whereafter the Disciplinary Authority in consideration of the

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inquiry report and the written statement of defence, issued order of punishment as per Annexure-A/9 dated 06.08.07 reducing the existing pay of the applicant by two stages for a period of two years in the Scale of Rs.4000-6000/-(RSRP) with cumulative effect. It was also indicated that the imposed penalty would have the effect of postponing future increments of pay. Against the punishment order dated 06.08.07, the applicant preferred an appeal before the Appellate Authority. However, the Appellate Authority having confirmed the order issued by the Disciplinary Authority, the applicant has filed this O.A. seeking the following relief:-

- “(i) To admit and allow this Original Application;
- “(ii) To set aside the impugned order of Major Punishment as passed against this applicant under Annexure-A/11 by the Appellate Authority in the interest of justice;
- “(iii) To pass any other appropriate Order(s)/Direction(s)/Relief(s) as may be deemed fit and proper in the facts and circumstances of the case.

3. This O.A. has been admitted and notice issued to the Respondents. In response to the notice, a counter reply

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has been filed for and on behalf of the Respondents, opposing the prayer of the applicant.

4. We have heard the Ld. Counsel for the parties and perused the records placed before us.

5. The Ld. Counsel for the applicant has challenged the legality and validity of the impugned order mainly on the following grounds.

Firstly, there is no finding entered by the Inquiry Officer regarding the absolute responsibility of the applicant in the light of the charge framed against him. As the allegations in the Memorandum of charges clearly show that the management of Goods shed at Cuttack is of collective responsibility and maintained by various staff, the applicant could not be found fault with even if any default is foundout. The further case of the applicant is that the report submitted by the Vigilance Wing of the Railway Board itself shows that the applicant is one among the officials working in the Goods shed and unless it is established by evidence that the applicant is solely responsible to keep the records relating to timings or gate

passes, the liability fixed on him is not sustainable. Secondly, the applicant has not been given adequate opportunity to prove his case inasmuch as the management had not examined any of the witnesses cited in the charge memo. As the witnesses whose names appeared in the charge memo were not examined, the applicant has been deprived of opportunity to cross-examine them. Further, the Inquiry Officer concluded the inquiry without giving him a chance for examining any witness whose names were preferred by the applicant to prove his innocence. If so, the findings arrived at by the Inquiry Officer are without any evidence. Thirdly, if there is no evidence before the Inquiry Officer to come to a conclusion that the applicant had committed misconduct as alleged, the penalty imposed by the Disciplinary Authority is non est in the eye of law. There is no finding entered by the Disciplinary Authority that the findings of the Inquiry Officer are based on any evidence or on certain documents produced before the Inquiry Officer copies of which were also supplied to the applicant in compliance with the principles of natural justice. Finally, the

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Appellate Authority also did not consider the appeal nor deal it in detail.

In support of his contentions, the Ld. Counsel for the applicant has placed reliance on the following judgements of the Hon'ble Apex Court:-

- (i) AIR 1986 SC 1173,
- (ii) AIR 1986 SC 995,
- (iii) AIR 1993 SC 1197,
- (iv) 2006 AIR SCW 2096,
- (v) 2009 AIR SCW 809.

6. To the above arguments, the Ld. Counsel for the Respondents relying on the counter submitted that the arguments put forward by the Ld. Counsel for the applicant are not tenable in view of evidence adduced before the Inquiry Officer. He submitted that the applicant had been served with all the copies of the documents relied on by the prosecution. That apart, the delivery book and other documents kept in the Goods shed would show that the applicant, one of the said staff working in the Goods shed is responsible for manipulating the documents in question. Further, the Ld. Counsel for the



day i.e. 24.04.2000 under Gate Pass Nos. 472950; 472951 and 472952 willfully, causing loss of Railway revenue due to non-realisation of wharfage charges, even though the consignment was physically removed on 24.04.2000, 25.04.2000 & 26.04.2000.

ARTICLE-2

He has also manipulated the removal timings of salt consignment from a rake of 30 BOXC received ex NAC and unloaded at CTC at 15.00 hours on 12.03.2000. He had shown the consignment as removed on the same day i.e., 12.03.2000 under Gate Pass Nos. 472654, 472655 and 472656 willfully, causing loss of Railway revenue due to non-realisation of due wharfage charges, even though the consignment was physically removed on 14.03.2000.

8. Reading of the above charges would show that the applicant alone has been attributed to have manipulated for removal of timings of Rice consignment from a rake of 40 BCN and also salt consignment from a rake of 30 BOXC on 24.04.2000 and 12.03.2000. Further, the statement of imputations of charges leveled against the applicant reads as under:-

"A rake of 40 BCNs containing Rice was received ex-UMB/ROP and arrived at Cuttack on 23.04.2000 and unloaded on 24.04.2000 at 11.00 hours. The consignment was delivered under Gate Pass Nos. 472950, 472951 &

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Respondents submitted that when the vigilance inquiry had been conducted the vigilance officers had physically verified the documents and found the delivery book and other documents were kept blank without noting anything regarding the removal of the consignment. Further, the applicant being one among the staff working in the Goods shed cannot escape from his responsibility. Hence, the Ld. Counsel submitted that the findings entered by the Inquiry Officer regarding the alleged misconduct against the applicant are enough to conclude that the charges have been proved.

7. We have considered the arguments of the Ld. Counsel for the parties and perused all the documents produced in the O.A. Before considering the arguments of the Ld. Counsel appearing for the parties, it is worthwhile to extract hereunder the charge memo as per Annexure-A/1:-

"ARTICLE-1

Shri K.C. Mishra has manipulated the removal timings of Rice consignment from a rake of 40 BCN received ex UMB/ROP and unloaded at CTC at 11.00 hours on 24.04.2000. He had shown the consignment as removed on the same



472952 on 24.04.2000. The removal of this consignment was shown on the same day on the strength of concerned Gate Pass, with an entry by the RPF staff who manned the exit gate on the reverse of the gate pass that the consignment was removed on the same day. The basic records like delivery book, etc. that has a proper column for showing the date and time of unloading and physical removal of goods were willfully kept blank to cover up the manipulation in violation of extant Rules.

It was the duty of the said Sh. Mishra to mark the date and time of unloading and physical removal of goods in the delivery book and unloading book, as and when it takes place and raise and collect the due wharfage charges. The free time for removal of goods is only 12 working hours from the time of unloading of goods. The free time for the removal in this case had expired at 7.00 hours on 25.03.2000. After expiry of free time, wharfage charges are recoverable at the prescribed rate. Since the consignment was not fully removed within the free time, wharfage charges were due and should have been raised and realized.

The exit gate of Cuttack goods is manned by only RPF staff, who maintain a gate checking register, in which physical removal of goods are marked with details like truck number and number of bags etc. The physical removal of goods relating to the consignment under above gate pass was marked as such by the on duty RPF staff correctly, which shows that the consignment was actually removed partly on 24,25 and 26 April, 2000.

However, in the one hand register maintained at the goods shed. Cuttack it was

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clearly mentioned that the said consignment was unloaded and removed on the same day i.e., 24.04.2000. Further, the on duty RPF staff was instructed to give a remark on the reverse of the gate pass to the effect that the consignment was removed on the same day. This was with the clear intention to manipulate the physical removal of goods so as to save the due wharfage charges.

Thus, the said Shri K.C. Misra had willfully manipulated the removal of the consignment as 24.04.2000, even though it was actually removed on 24,25 & 26th April, 2000 and thus caused loss of approximately Rs.36,000/- to Railway revenue due to non-realisation of wharfage charges on this single consignment.

A rake of 30 BOXCs containing salt was received ex NAC and arrived at Cuttack on 12.03.2000 and unloaded on the same day at 15.00 hours. The consignment was delivered under Gate Pass Nos. 472654, 472655 & 472656 on 12.03.2000. An entry was made by the RPF staff, who manned the exit gate, on the reverse of the concerned gate pass that the consignment was removed on the same day. The basic records like delivery book etc. that has a proper column for showing the date and time of unloading and physical removal of goods were willfully kept blank to cover up the manipulation.

It was the duty of the said Sh. Mishra to mark the date and time of unloading and physical removal of goods as and when it takes place in the delivery book and unloading book and raise and collect the due wharfage charges. The free time for removal of goods is only 12 working hours from the time of unloading of goods. Free time for removal of this consignment had expired at 11.00 hours on 13.03.2000. Since the



consignment was not removed within this free time, but removed only on 14.03.2000 wharfage charges were due and should have been raised and realised.

The exit gate of Cuttack goods is manned by only RPF staff, who maintain a gate checking register, in which physical removal of goods are marked with details like truck number and number of bags etc. The actual removal of goods relating to the consignment under above gate pass was marked as such by the on duty RPF staff correctly, which shows that the consignment was actually removed on 14th March, 2000.

However, in the on hand register maintained at the goods shed, Cuttack it was clearly mentioned that the said consignment was unloaded and removed partly on the same day i.e., 12.03.2000 and on 13.03.2000. Further, the on duty RPF staff was instructed to give the remark on the reverse of the gate pass to the effect that the consignment was removed on the same day i.e. on 12.03.2000. Even though RPF staff on duty had initially mentioned removal on 14.03.2000. Which was altered to 12.03.2000. This was with the clear intention to manipulate the physical removal of goods in order to save the due wharfage charges.

Thus, the said Shri Mishra had willfully manipulated the removal of the consignment as 12.03.2000, even though it was actually removed on 14.03.2000 and thus caused a loss of approximately Rs.83,000 to Railway revenue due to non-realisation of wharfage charges on this single consignment."



9. A harmonious reading of the above imputations of charge and charge memo would show that the Department have only charged the applicant for the misconduct. However, when the imputations of allegations are read together with the evidence as adduced before the Inquiry Officer, it would show that the responsibility of the applicant as Sr. Goods Clerk in the Goods shed is of joint nature with other staff of the goods shed. In this context, *prima-facie*, we see that the conclusions arrived at by the Inquiry Officer are not based on any material even though at this stage this Tribunal is not expected to go through it. It is to be noted that the Inquiry Officer, without considering the defence statement of the applicant that he was not responsible on the ground that there was no sufficient staff due to super cyclone, in para-5.3 of its report held that applicant guilty by drawing an inference that there were intentional irregularities being committed during the relevant period in reference to receipt and removal of consignments of salt, rice and other consignments on the dates in question i.e. 12.03.2000, 13.03.2000 and 14.03.2000; 24.04.2000, 25.04.2000 and 26.04.2000 by the Goods shed staff



who worked in the Goods shed, Cuttack. Having worked during that period, the CO, Sri K.C. Mishra cannot escape from his responsibility on the flimsy grounds. This finding cannot be sustained unless it is specifically alleged with duty records to show that the applicant has committed irregularity being the sole custodian of all the records kept in the Goods shed. This finding is also having importance when we read the specific charges leveled against the applicant, which does not show that the applicant has got a joint liability. If so, it should be proved by documents that the applicant was having onerous responsibility in keeping all the records of the Goods shed in his custody. If so, this finding itself is based on no evidence and even it can be construed a finding based on a vague charge. It is further to be noted that in Paragraph 5.4, the Inquiry Officer has made a mention that the CO, Sri K.C. Mishra himself in his defence brief at para 7.33 had stated that he had supervised unloading of 24 wagons of 40 BXN wagons on route No.14 of CTC Goods shed at 15 Hrs. on 24.04.2000. But the findings entered by the Inquiry Officer that "as such to the extent of 24 wagons of 40 BXN wagons having dealt with



unloading the CO Sri K.C. Mishra cannot shirk his responsibility from irregular, improper and illegal dealings in reference to maintaining the records of Goods shed such as delivery book, unloading tally book register etc." by itself give no delicate hints that the applicant has committed negligence. It is also to be noted that in Paragraph 5.9 the Inquiry Officer had relied on the Delivery Book which was left blank and the findings entered by him would show that the Goods shed staff including the CO were required to maintain the books regularly and duly filling the columns wherever necessary. The conclusion arrived at by the Inquiry Officer is that the applicant was responsible for the irregularity seen in the Delivery Book and thereby committed negligence, insincerity and lack of devotion to duty. Further, it could be seen that as per the finding entered as Paragraph 5.12 that the applicant failed to discharge his duties efficiently and without any laches. But to come to such a conclusion, the first point to be proved is that the applicant is responsible for keeping the books in his custody whereas the facts now proved before the Inquiry Officer would show that the liabilities on the staff of the Goods



shed are joint in nature. If so, the finding entered against the applicant that he was solely responsible for all the irregularities is travesty of truth. That apart, even though the officers of the vigilance wings named as witness for the prosecution had not turned up for examination, yet their statement was acted upon notwithstanding the fact that they had not visited the Goods shed to witness the physical removal. In this context, it is worthwhile to quote as to what the Inquiry Officer observed in para-5 of its report while analyzing the report as under:-

"Inspite of several notices for appearance, the prosecution witnesses did not turn up for the enquiry for examination and cross-examination. Keeping in view of their non-appearance and having finalization of the proceedings been delayed and it has been decided during the inquiry that the proceedings be finalized ex-parte and based on the documents indicated in the annexure III to the charges of memorandum which have been taken on record during the inquiry, the present proceedings are drawn out."

Thus, it would show that the conclusions arrived at by the Inquiry Officer are not based on any evidence. If any conclusion is based without any evidence, it has no standing in the eye of law. As per the principles laid down by the Hon'ble Apex Court in the judgement reported in AIR 1986 SC 995



(E.S. Venkataramiah and Sabyasachi Mukharji) the inquiry based on a vague charge is not acceptable and therefore the inquiry itself is vitiated. The Hon'ble Apex Court in Paragraph 14 and 15 of the said judgement has held as under:-

"14. Quite apart from that fact, it appears to us that the charges were vague and it was difficult to meet the charges fairly by any accused. Evidence adduced was perfunctory and did not at all bring home the guilt of the accused.

15. Shri B.D. Sharma, Ld. Advocate for the respondent, contended that no allegations have been made before the enquiry officer or before the High Court, that the charges were vague. In fact the appellant had participated in the inquiry. That does not by itself exonerate the department to bring home the charges."

Apart from the above, the other contentions regarding the non supply of the documents and the non examination of defence witness also make the inquiry report vulnerable. It is clear that the applicant had filed a representation at Annexure-A/2, in which he specifically asked for supply of copies of the documents relied upon by the prosecution. To ascertain the veracity of those documents being supplied to the applicant, we had perused the Inquiry file which does not throw any light of those documents to have been

supplied to the applicant, if any, before the inquiry could be commenced or during the course of inquiry.

10. In the above circumstances, we hold that the findings arrived at by the Inquiry Officer are based on no evidence and for that matter the inquiry report being vitiated, it cannot be said that the decision making process is flawless or not fraught with any infirmity. Consequently, the orders passed by the Disciplinary Authority is not tenable in the eye of law and in effect the order passed by the appellate authority is also not sustainable.

11. For the reasons discussed above the orders passed by the Disciplinary Authority as well as the Appellate Authority are quashed. In the result, the O.A. is allowed to the extent indicated above. No costs.

Chapati
(C. R. MOHAPATRA)
ADMINISTRATIVE MEMBER

Chappan
(K. THANKAPPAN)
JUDICIAL MEMBER