

V

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

ORIGINAL APPLICATION No.89 OF 1986 .

Date of decision .. November 30, 1987.

Sri Nageswar Tiwari, son of Sri Deonarayan Tiwari,
Asst. Station Master, Bamra, Railway Quarters No.C/2/1,
C/o- S.S.BMB, P.O.Bamra, Dist- Sambalpur, Orissa.

.... Applicant.

Versus

1. Union of India,
represented through the General Manager, S.E.Railway,
Calcutta, West Bengal.
2. Divisional Railway Manager, Chakradharpur S.E.Railway,
Dist-Singhbhum, Bihar .
3. Senior Divisional Operating Superintendent, Chakradharpur
South Eastern Railway, Dist-Singhbhum, Bihar.
4. Divisional Operating Superintendent, Chakradharpur
South Eastern Railway, Dist-Singhbhum, Bihar .
5. Sri P.V.K.Rao, Senior Divisional Transportation
Inspector, Jharsuguda South Eastern Railway,
Dist- Sambalpur.

.... Respondents.

M/s J.K.Misra & N.C.Mishra, Advocates.... For Applicant.

Mr. Ashok Mohanty, Standing Counsel
Railway (Administration) For Respondents.

C O R A M :

THE HON'BLE MR. B.R. PATEL, VICE CHAIRMAN
A N D

THE HON'BLE MR. K.P.ACHARYA, MEMBER (JUDICIAL)

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1. Whether reporters of local papers may be allowed to see the judgment ? Yes .
 2. To be referred to the Reporters or not ? *kd*
 3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

JUDGMENT

K.P.ACHARYA, MEMBER (J), In this application under section 19 of the Administrative Tribunals Act, 1985 , the order passed by the competent authority removing the applicant from service , vide Annexure-9 is under challenge.

2. Shortly stated , the case of the applicant is that his last posting was at Bamra Railway Station functioning as the Assistant Station Master. It was alleged against the applicant that he un-authorisedly remained absent from duty from 26.11.1982 till the date of removal from service i.e, 4.9.1985- the date on which the order of removal was given effect to . Being aggrieved by this order of removal, the applicant has invoked the jurisdiction of this Bench for quashing the same.

3. In their counter , the respondents maintained that the order of removal of the applicant from service is perfectly legal and more so the applicant having intentionally remained absent and having intentionally not participated in the enquiry proceeding, the Enquiring Officer had no other option but to proceed ex parte and the the evidence being very tight against the applicant ,the disciplinary authority concurred with the findings of the Enquiring Officer and imposed appropriate penalty over the applicant . Hence according to the respondents the application being devoid of merit, the same is liable to be dismissed .

4. We have heard Mr. J.K.Misra, learned counsel

for the applicant and Mr. Ashok Mohanty, learned Standing Counsel for the Railway Administration at some length.. we do not like to express any opinion on the merits of the case because of the final order which we propose to pass . Even though Mr. Misra vehemently urged that the applicant did not intentionally remain absent from the enquiry, we also do not propose to express any opinion on his submission because we feel that a major penalty having been imposed on the petitioner, another chance should be given to the petitioner to defend himself. In the circumstances stated above, we would set aside the order of removal passed under Annexure-9 and we would direct that the petitioner should be allowed to defend himself in the inquiry which should be started afresh. We were told that the petitioner has already received a copy of the charge sheet. It was further told to us by Mr. Misra that the petitioner not having been supplied with copies of documents which were prayed for by the petitioner contained in Annexure-6, he could not file his explanation .We would therefore direct that the petitioner would appear before the disciplinary authority i.e, the Divisional Operating Superintendent, South Eastern Railway, Chakradharpur and renew his prayer for supply of copies of documents (as per Annexure-6) to effectively defend himself. The Divisional Operating Superintendent would decide the relevance of the documents and in case he finds the documents to be relevant , copies of those documents should be supplied to the

petitioner within 10th January , 1988. In case the disciplinary authority finds any of those documents or all the documents to be irrelevant, he would be at liberty to reject the petition with a reasoned order. The petitioner after receipt of copies of the documents, if any, or if his application is rejected, he should file his explanation by 25th January 1988 and within seven days therefrom the disciplinary authority should decide as to whether an enquiry should be started against the petitioner or if his explanation appears to be satisfactory to the disciplinary authority , no further action need be taken against the petitioner. In case the disciplinary authority decides to hold an inquiry, an Enquiring Officer should be appointed by 30th January 1988 and the petitioner should appear personally before the disciplinary authority and receive in writing from him name of the Enquiring Officer and ~~therefore~~ the petitioner should appear before the Enquiring Officer on 7.2.1988 to receive the date on which the inquiry would commence . The petitioner should appear personally before the Enquiring Officer on the very day to which the inquiry would be fixed for commencement and also he should appear on the dates fixed by the Enquiring Officer to hold the enquiry from time to time. In case the petitioner remains absent for a single day,(except on grounds of vis- major) the Enquiring Officer would be at liberty to proceed with the inquiry ex parte and then submit his findings to the disciplinary authority who would pass final orders

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on the report submitted by the Enquiring Officer. However, we would like to say that the entire proceeding should be disposed of by 31.5.1988. By this we mean that the disciplinary authority should pass final orders by 31.5.1988. In case any of the dates fixed falls on a public holiday the petitioner should appear on the very next working day before the appropriate authorities mentioned above. We would further direct that the petitioner would not be entitled for the present to any emoluments during the alleged period of absence and it is left to the discretion of the disciplinary authority to pass orders on this matter according to law, while finally disposing of the proceeding.

5. Thus, the application is accordingly disposed of leaving the parties to bear their own costs.



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30.11.87
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Member (Judicial)

B.R. PATEL, VICE CHAIRMAN,

9 agree

Arvind
30.11.87
.....
Vice Chairman.

Central Administrative Tribunal,
Cuttack Bench.
November 30, 1987/Roy SPA.