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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

ORIGINAL APPLICATION No. 267 OF 1987.

Date of decision .. April 6, 1988.

L.K. Misra, son of late Basudev Misra, Shed Khalasi,
Wagon Foreman's Office, Khurda Road, Dist- Puri.
At present- Gangadharapeta, B.P.O. Polavaram, Via-Post-Tekkali,
Srikakulam district, A.P.

.. Applicant.

Versus

UNION OF INDIA, through the

1. General Manager, S.E.Railway, Calcutta-43.
2. Divisional Railway Manager, S.E.Railway, Khurda Road,
Dist- Puri.

.. Respondents.

M/s S. Misra (1) and
S. N. Misra, Advocates ..

For Applicant.

Mr. B. Pal, Sr. 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)

1. Whether reporters of local papers have been permitted to see the judgment ? Yes .
2. To be referred to the Reporters or not ? No
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 prayer of the petitioner is to command the respondents to treat the absence of the petitioner from duty as on medical grounds and reinstate the petitioner with effect from 25.3.1983.

2. Shortly stated, the case of the petitioner is that he was appointed as a Shed Khalasi on 19.9.1963 and worked as such at Khurda Road under the Carriage Foreman redesignated as Wagon Foreman. On 25.3.1983 the petitioner is said to have fallen sick and applied for leave on medical ground granted by a private practitioner. According to the petitioner, he was applying for extension of leave intermittently and was submitting his progress report though some of the progress reports were received by the authorities concerned and some were returned as undelivered. Due to the alleged unauthorised absence of the petitioner, a charge-sheet was submitted against the petitioner, vide covering letter dated 9.4.1984 and soon thereafter, the petitioner had received a copy of the charge-sheet over which he submitted his explanation on 24.4.1984. The allegation of the petitioner is that though he had submitted his explanation and had received intimation, vide Annexure-3 dated 5.6.1984 fixing the date for commencement of the inquiry - such date being fixed to 20.6.1984, yet subsequent dates of inquiry were not intimated to the petitioner and therefore he could not attend the inquiry and an ex parte inquiry was conducted for finding the petitioner guilty of the

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charge and ultimately order of removal from service was passed by the disciplinary authority, a copy of which was not delivered to him and subsequently he could know ^{about} the order of removal when he was asked to vacate the quarters allotted to him. In such circumstances, an application has been filed with the aforesaid prayers.

3. In their counter, the respondents maintained that the petitioner intentionally avoided to attend the inquiry though he was served with a notice by registered post intimating the date/ dates for the inquiry and therefore, due to the absence of the petitioner, the Inquiring Officer had no other choice but to proceed with the inquiry ex-parte and found the petitioner guilty with which the disciplinary authority concurred and passed order of removal from service which is the appropriate order and it should not be interfered with by this Bench.

4. We have heard Mr. S.N. Misra (1), learned counsel for the petitioner and Mr. B. Pal, learned sr. Standing Counsel for the Railway Administration at some length. Mr. Pal vehemently contended before us that the order of removal passed by the competent authority not having been challenged in this application, there cannot be any scope for this Bench to direct reinstatement of the petitioner and treat his absence as leave on medical grounds. Mr. Misra, on the other hand, contended that even though specifically there is no prayer made in the application to set aside the order of removal, yet impliedly it should be taken that the order of removal is being sought to be set aside leading to

reinstatement. We do not like to express any opinion on the merits of the case and the question of reinstatement of the petitioner or setting aside the order of removal of the petitioner from service because admittedly the petitioner has not preferred any appeal against the order of removal as copy of the order of removal has not been received by the petitioner. Therefore in all fitness of things, we feel that one forum should not be overlooked for whatever reason it may be. We would, therefore, direct the Assistant Mechanical Engineer, S.E.Railway, Khurda Road to prepare a copy of the order of removal and send to the learned Sr. Standing Counsel Mr. Pal ^{Within three weeks from date of receipt of copy of this judgment} _{who in his turn would serve the same} on Mr. S. Misra (1), learned counsel for the petitioner and Mr. Misra on his turn would deliver it to the petitioner who may prefer an appeal, if so advised, and after disposal of the appeal, if the petitioner feels aggrieved, liberty is given to him to approach this Bench. Delay occasioned in not preferring any appeal to the appropriate authority is hereby condoned because of the reasons stated above. A copy of this judgment be sent to the Assistant Mechanical Engineer, S.E.Railway, Khurda Road for his information and necessary action. Appeal, if any, should be preferred within one month from the date of receipt of a copy of the removal order by Mr. S. Misra (1), learned counsel for the petitioner.

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

B.R. PATEL, VICE CHAIRMAN,
Central Admin. Tribunal, Cuttack.
April 6, 1988/Roy, SPA.

9 agree.

Kevaldas Patel
.....
6.4.88
Member (Judicial)

Arshad
.....
6.4.88
Vice Chairman