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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

Transferred Application No.323/86 & Original Application 74/87
O.J.C. No. 2555 of 1983

Date of decision .. October 30, 1987.

B.Krishna, aged 30 years, son of late B.Asiryya of Rajabazar,
P.O/P.S.Jatni, Dist- Puri.

... Petitioner
Applicant.

Versus

1. Union of India, represented by the General Manager, S.E.Railway, At - Gardenreach, Calcutta-43.
2. The Divisional Railway Manager, S.E.Railway, Khurda Road, P.O/P.S.Jatni, Dist- Puri.
3. The Divisional Mechanical Engineer, S.E.Railway, Khurda Road, P.O/P.S.Jatni, Dist- Puri.
4. The Divisional Personnel Officer, S.E.Railway, Khurda Road, P.O/P.S.Jatni, Dist- Puri.
5. The Loco Foreman, S.E.Railway, Khurda Road, P.O/P.S-Jatni, District- Puri.
6. Asst. Mechanical Engineer, S.E.Railway, Khurda Road, P.O/P.S.Jatni, Dist- Puri.

... Opposite Parties
Respondents.

For Petitioner : M/s Banamali Sahu, A.K.Mohapatra &
P.K.Mohapatra, Advocates.

For Opposite Parties : Mr. B.Pal, Sr. Standing Counsel
(Railways) in T.A.323/86.

Mr.Ashok Mohanty, Standing Counsel
(Railways) in O.A.No.74 of 1987.

C O R A M :

THE HON'BLE MR. B.F. 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 ? No .
 3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.
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J U D G M E N T

K.P.ACHARYA , MEMBER (J), O.J.C.No. 2555 of 1983 filed by

Sri R.Krishna has been transferred under section 29 of the Administrative Tribunals Act, 1985 for disposal according to law and it has been re-numbered as Transferred Application No. 323 of 1986. In the said application under Article 226 of the Constitution , the petitioner prayed to issue a rule nisi in the nature of mandamus, commanding the respondents- opposite parties to pay the petitioner his salary with effect from 6.4.1983. The very same petitioner Sri P.Krishna has also filed an application under section 19 of the Administrative Tribunals Act, 1985 praying therein to quash the order of punishment passed against him in a disciplinary proceeding. Parties being same in both the applications and the relief sought by the petitioner in one application having some bearing in regard to the relief claimed in the other application, this common judgment would govern both the cases .

2. In Transferred Application No. 323 of 1986 , the case of the petitioner is that he was appointed as Shed Khalasi in the Carriage Department at Khurda Road. In course of time , the petitioner gained the promotional post of Junior Clerk and functioned at the same station. Further case of the petitioner is that oral orders were given to the petitioner to perform his duty as a booking clerk in the Booking Office and then again as fuel clerk in the Diesel Instalation Plant and then again

he was transferred to work as Junior clerk at Palasa Railway Station. According to the petitioner, no written orders having been delivered to the petitioner, the verbal orders were backed with malafide motives which were not carried out and therefore, the petitioner was placed under suspension with effect from 3.2.1983 and later the order of suspension was revoked on 6th April 1983. After revocation of the suspension order, the petitioner has not been paid his salary till the date of filing of this application under Article 226 of the Constitution and therefore it is prayed that the respondents- Opp. Parties should be commanded to pay the salary up-to-date.

3. In their counter, the Opposite Parties-respondents maintained that written orders were passed in regard to the transfer of the petitioner to different seats to different places and the petitioner in gross violation of the orders passed by his higher authorities didnot carry out the same which amounted to insubordination and therefore, a proceeding was drawn up against the petitioner and a departmental inquiry was initiated and in the meanwhile the petitioner has been removed from service and therefore he is not entitled to any salary.

4. So far as Original Application No.74 of 1987 is concerned, the petitioner challenges the order passed by the competent authority removing the petitioner from service (vide Annexure-5) resulting

from the disciplinary enquiry conducted against the petitioner about which reference has also been made above in connection with Transferred Application No. 323 of 1986. A word for further clarification is necessary in regard to the case in hand . Initially, a departmental proceeding was started against the petitioner for not having carried out the orders of his superior authorities in working in the fuel clerk which forms subject matter of Annexure-1. While this proceeding was pending , another proceeding was initiated against the petitioner ^{on an allegation} that he had indulged himself in illegal hunger strike in the Loco Shed on 1.9.1983 at 7 hours. Both the cases form subject matter of two different proceedings. For some reason or the other , the second proceeding which resulted in the removal of the petitioner from service marched ahead of the first proceeding and due to the order of removal of the petitioner from service in the second proceeding , the first proceeding was ordered to be dropped. In such circumstances , the order of removal contained in Annexure-5 is under challenge .

5. For the purpose of convenience, we propose to take up Original Application No. 74 of 1987 and give our decision because result of Transferred Application No. 323 of 1986 would dependent on the decision arrived at in O.A.No. 74 of 1987. Admittedly, the petitioner has been removed from service on an ex-parte inquiry. True it is , that an ex-parte inquiry can be conducted against a particular delinquent if he does not

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co-operate by attending the inquiry .Though it was not admitted by the petitioner but a case was sought to be made out on behalf of the Railway Administration that though charge-sheet was offered to the petitioner and the petitioner was asked to comply with the formalities and by submitting explanations by informing the disciplinary authority the relevant papers which he would like to peruse for defending himself, neither the petitioner accepted the charge-sheet nor made any attempt to state the papers he would like to peruse , so much so intentionally the petitioner did not participate in the inquiry and therefore , the Inquiring Officer had no option but to proceed ex-parte and equally the disciplinary authority had no alternative but to act on the ex-parte inquiry report . This contention put forward by Sri Ashok Mohanty, learned Standing Counsel for the Railway Administration was disputed on behalf of the petitioner, yet from the records produced by Mr. Mohanty, we find that the authorities have given endorsements stating that the petitioner did not accept the charge sheet and consequently we are of the view that the petitioner intentionally avoided to participate in the inquiry. We cannot but deprecate the attitude of the petitioner and we would further hold that there is considerable force in the contention of Mr. Mohanty that neither the disciplinary authority nor the Inquiring Officer had any other alternative but to proceed according to law . Even though this is our view but we feel that a major punishment having been passed against the petitioner, a fairplay should be adopted at least for

another occasion by giving an opportunity to the petitioner to defend himself in the inquiry and it was stated to us on behalf of the petitioner, by the learned counsel for the petitioner that if the case is remanded for a further hearing, the petitioner will participate in the inquiry and defend himself. At the risk of repetition, we may say that even though no illegality has been committed by the appropriate authorities in passing an ex-parte order but in view of the deterrent penalty imposed on the petitioner, we think it just and proper to give another opportunity to the petitioner as a last chance to defend himself. Therefore, we would direct that the order of removal of the petitioner from service, vide Annexure-5 is hereby set aside subject to the following conditions and the case is remanded to the disciplinary authority i.e, the Divisional Personnel Officer, Khurda Road for delivering copies of charge-sheet in both the departmental proceedings i.e, dis-obedience of order of transfer and indulgingⁱⁿ an illegal hunger strike and thereafter the formalities required under the law are to be complied with by the disciplinary authority and the delinquent officer. The petitioner is further directed to personally appear before the Divisional Personnel Officer, Khurda Road on 30th November 1987 at 11.00 A.M. and receive further orders from the Divisional Personnel Officer as to the date on which the charge-sheet would be delivered in both the cases to the petitioner if the charge-sheet is not ready by the said day^{for delivery}. In case the charge-sheets

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in both the cases are ready by the said day, charge-sheets should be delivered to the petitioner on the said day and thereafter the procedure prescribed under the rules are to be complied with both by the disciplinary authority and the Delinquent Officer (petitioner). In case the Divisional Personnel Officer is not present in his office on 30.11.1987 and is away on Government duty ^{or for any other reason,} it shall be the responsibility of the petitioner to visit the office of the Divisional Personnel Officer on each succeeding days and would take further orders from the Divisional Personnel Officer ^{on the day on which he is available} in the light of our observations made above. In case the petitioner fails to appear before the Divisional Personnel Officer on the date fixed and subsequent thereto, it would be deemed that removal of the petitioner from service vide Annexure-5 is not quashed and would remain in force. We would further direct that the transfer order passed by the competent authority in transferring the petitioner to Palasa (disobedience of which forms subject matter of the first inquiry proceeding) should be carried out by the petitioner within November 20, 1987 and the Divisional Personnel Officer is further directed to issue posting order and make necessary arrangement for the petitioner to take over charge at Palasa within 20th November 1987. We also do hereby quash the order passed by the competent authority dropping the first proceeding and we would direct that the said proceeding be restored for hearing along with the second proceeding resulting in the petitioner's removal from service which

we have quashed subject to the aforesaid conditions.

6. As regards Transferred Application No. 323 of 1986 , it is asserted by the petitioner that even though he had attended his duties from 6.4.1983, yet his salary hasnot been paid and in their counter the Opposite Parties maintained that the petitioner did not join duty and therefore he was not being paid . We are not in a position to express our definite opinion on this disputed question of fact especially because it was contended by the petitioner that even though he attended his duties but his superior authorities out of a vindictive attitude marked him absent in the Attendance Register. Be that as it may, we would direct that the days on which the petitioner has been marked as absent from duty in the Attendance Register, the petitioner cannot be deemed to have performed his duties on those days but the leave due to the credit of the petitioner on account of those days on which he was marked absent should be granted in his favour and he should be paid according to the leave rules. If no leave of any nature is due to the credit of the petitioner, then on the basis of the principle ' no work no pay ' , the petitioner would not be entitled to any salary . After the competent authorities allow leave due to the petitioner, the emoluments, if any, to which the petitioner would be entitled during the leave period should be paid to the petitioner within three months from the date of receipt of a copy of

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this judgment.

7. Thus, Transferred Application No. 323 of 1986 is accordingly disposed of leaving the parties to bear their own costs. Original Application No. 74 of 1987 is allowed subject to the conditions mentioned above leaving the parties to bear their own costs.

Sd/ K. P. Acharya
Member (Judicial)

B.R.PATEL

VICE CHAIRMAN , *gagne*



Sd/ B. R. Patel
Vice Chairman

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