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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.82 of 1987.

Date of decision : April 29, 1988.

Sri Himangsu Sekhar Mukherjee,
s/o late Kalipada Mukherjee,
Resident of village Nilkutidanga,
P.O.Purlia, Dist-Purlia, WestBengal.

At present working as Deputy Station
Superintendent, Birmitrapur Railway Station,
P.O.Damdapara, Dist.Sundargarh. ...

Applicant.

Versus

1. Union of India, represented through
General Manager, South Eastern Railway,
At/P.O.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 Personnel Officer,
Chakradharpur, South Eastern Railway,
Dist.Singhbhum, Bihar.

5. Senior Divisional Transportation
Inspector, Jharsuguda,
South Eastern Railway,
Dist.Sambalpur. ..

Respondents.

For the applicant ... M/s.J.K.Misra,&
N.C.Misra, Advocates.

For the respondents ... Mr.Ashok Mohanty, Standing Counsel
(Railways)

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.

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)

J U D G M E N T

K.P.ACHARYA, MEMBER (J) In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant challenges the order of suspension passed against the applicant before initiation of a disciplinary proceeding and further challenges the order passed by the competent authority to treat the period of suspension as such resulting from disciplinary enquiry forming subject matter of T/40/OM/23/83.

2. Shorn of details, it may be stated that the applicant was a Station Master at Garposh and he was transferred to Patasahi Railway Station which he did not carry out as a result of which the applicant was not only suspended but a disciplinary enquiry for imposition of minor penalty was initiated against the applicant and before the termination of the disciplinary enquiry the order of suspension was revoked and hence the applicant remained under suspension from 8.5.1983 to 3.10.1983. The disciplinary authority while disposing of the disciplinary enquiry ordered that the period of suspension should be treated as such. Being aggrieved by this order the applicant has approached this Bench for necessary relief as stated above.

3. In their counter, the respondents maintained that

the disciplinary authority had rightly ordered the period of suspension to be treated as such and therefore, it should not be interfered with.

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. It was told to us by Mr.Misra that soon after the applicant offered himself to carry out the orders of transfer, the suspension order was revoked and the applicant joined his duties and therefore, the competent authority was not justified in ordering that the period of suspension should be treated as such. On the other hand, it was strenuously argued by Mr.Ashok Mohanty, learned Standing Counsel for the Railway Administration that any interference with this order by the Bench would lead to an administrative chaos and ultimately the employees would become indisciplined. The order of suspension was legal and was revoked only when the applicant was willing to join his duties. According to Mr.Mohanty, the disciplinary authority has taken a lenient view over the applicant and therefore, the order should not be interfered with. We have given our anxious consideration to the arguments advanced at the Bar and in no circumstances we could appreciate the conduct of the applicant in not carrying out the order of transfer passed by the competent authority. We also do not find any illegality committed by the disciplinary authority in suspending the applicant. However, the extenuating circumstance appearing in this case *lenient* persuades us to take a lenient view of the matter. It was

told to us that the applicant would shortly retire and furthermore he has been a cardiac patient and on his request the competent authority having taken a liberal view ^{to him} ~~to~~ has posted the applicant at Birmitrapur. All these circumstances taken into consideration, gives us an impression that the competent authority has all along taken a liberal view over the applicant. Therefore, considering the aforesaid extenuating circumstance we thought, for the ends of justice, a little more liberal view could be taken over the applicant so that during the last period of his service under the Railway Administration ^{he} ~~we~~ would give him a peaceful time to serve. In such circumstances, we would set aside the order of the disciplinary authority treating the period of suspension as such and we would direct that the said period be treated as on duty and emoluments to which the applicant would be entitled as per Rules be paid to the applicant within three months from the date of receipt of a copy of this judgment.

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

B.R.PATEL, VICE-CHAIRMAN,

9 agree.



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29.4.88
Member (Judicial)

Arnold
29.4.88
Vice-Chairman