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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

ORIGINAL APPLICATION No.60 of 1989.

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Date of decision : July 27, 1990.

P. A. Narayana : Applicant

- Versus -

Union of India and others : Respondents

For the applicant : Mr. Pradipta Mohanty, Advocate

For the respondents : Mr. B. Pal, learned Standing
Counsel for the Railway
Administration.

C O R A M :

THE HON'BLE MR. B.R. PATEL, VICE-CHAIRMAN

AND

THE HON'BLE MR. N. SENGUPTA, 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 Lordship's wish to see the fair copy of the judgment ? Yes.

J U D G M E N T

N. SENGUPTA, MEMBER (J), In this application challenge is made to the order dated 30.12.1988 passed by Additional General Manager, S.E. Railway.

2. The relevant facts, stated in brief, are as under. In the second week of January, 1981 there was a mass sick reporting by the running staff of Khurda Road, Division

of the S.E. Railway. The applicant in the night of 9.1.81 reported sick and filed a certificate from a Private medical practitioner. On 10.1.81 a notice was displayed in the Notice Board of the Loco Shed at Khurda Road advising all the staff reporting sick without valid medical certificate to resume their duties forthwith failing which they were liable to face certain consequences including disciplinary action. On 11.1.1981, the Divisional Railway Manager, Khurda Road passed an order of removal, resorting to Rule 14(ii) of the Railway Servants (Discipline & Appeal) Rules, 1968 stating that the applicant willfully abstained from duty and intimidated and prevented one L.C. Santra, a willing worker, from going to duty at 12.30 PM of 11.1.1981. Against this order of removal, a writ petition was filed in the Calcutta High Court and that Court directed the writ petitioners to exhaust the remedy of appeal provided under the D.A. Rules. An appeal was filed and after the disposal of that appeal the applicant and some others approached this Tribunal for quashing the order of the appellate authority, that was O.A. 37 of 1987. This Tribunal in O.A. No. 37/87 directed holding of an enquiry as observed by the Supreme Court in Tulsiram Patel and Satyavir Sing's cases and disposal afresh by the appellate authority.

3. After the case was remitted by this Tribunal for holding or causing an enquiry to be made, the appellate authority i.e. the Additional General Manager, S.E. Railway appointed an enquiry Officer. The Enquiry Officer treated the removal notice as Charge, examined two witnesses and referred to some documents. The Enquiry Officer found the

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applicant to have abstained from duty without a valid medical certificate and also to have intimidated loyal and willing workers. The appellate authority agreeing with the findings of the Enquiry Officer, rejected the appeal. This order of rejection of appeal is impugned alleging that there was no charge, hence the enquiry was vitiated from the very beginning there was denial of reasonable opportunity to defend and that there was no evidence to support the findings of the Enquiry Officer.

4. We have heard Mr. Pradipta Mohanty the learned Counsel for the Applicant and Mr. B. Pal learned Standing counsel for the Railway administration at great length. Mr. Mohanty for the applicant has contended that as there was no charge sheet, the whole of the enquiry was invalid. We have dealt with such a contention in similar other cases at some length, it is needless to state all those reasons over again, we would repeat that treating the removal notice as charge did not prejudice the applicant.

5. Mr. Mohanty for the applicant has urged that there was no evidence to support the findings arrived at by the Enquiry Officer and the appellate authority. Mr. Pal has contended that it is not open to this Tribunal to make a reassessment of the evidence adduced in the enquiry, it cannot disturb a finding even though it may be erroneous. We agree with Mr. Pal that this Tribunal is not to reassess the evidence but if the findings were based on inadmissible evidence, this Tribunal is not powerless to ignore the same and see if there is still any evidence, may be weak, to lend support to the

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finding. In the enquiry two witnesses were examined, one was M. Manikyal Rao who got the notice dated 10.1.1981 posted on the board and the other was on U.N. Panda who witnessed pasting of the removal notice on the board.

The applicant has filed the copies of the depositions of the two witnesses. The Enquiry Officer opined that the evidence adduced by the Department showed that the applicant prevented L.C. Santra and an other from joining duty. Neither L.C. Santra nor the other man said to have been obstructed was examined in the enquiry. Mr. M.M. Rao stated that to call Santra to duty, one Debraj Barisal was sent, this man was also not examined. Though in a disciplinary proceeding the standard of proof may not be that rigorous as in a Criminal case, yet a finding cannot be based on mere hearsay evidence. In this view it can safely be said that the finding relating to intimidating Santra is based on no evidence.

6. The Enquiry Officer while dealing with question of absence from duty without a valid medical certificate observed

"There is a well equipped Railway Hospital at Khurda Road within 2.5 K.M. from the Railway Colony".

About the distance of the Railway hospital from the residence of the applicant no evidence was adduced, so the observation forming the basis of the finding of the applicant remaining absent from duty, without a valid medical certificate can be said to be one without any supporting evidence.

7. From what has been stated above, it would be found that the findings were based on no evidence, hence cannot be sustained. The result is that the order of removal is quashed.

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We direct that if the applicant has not reached the age of superannuation, he be reinstated in service. Since from the date of removal of the applicant till this day more than 9 years have passed and the applicant did not admittedly perform any work in the Railways, we would direct that this period be treated as 'diesnon'. There shall be no order as to costs.

K. S. Sarangi
..... 27.7.90
VICE-CHAIRMAN

M. S. Gupta
..... 27.7.90
MEMBER (JUDICIAL)

Central Administrative Tribunal
Cuttack Bench, Cuttack.
July 27, 1990/S. Sarangi.

