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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.319 OF 1992
Cuttack this the 17th day of February, 1999

Somanath Sahu

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? No.

Somanath Som.
(SOMNATH SOM)
VICE-CHAIRMAN
17.2.99

17.2.99
(G.NARASIMHAM)
MEMBER(JUDICIAL)

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ORIGINAL APPLICATION NO.319 OF 1992
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CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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Sri Somanath Sahu,
aged about 51 years,
Son of Late Sitaram Sahu,
Vill: Khemesara,
P.O.: Barapalli,
Dist: Sambalpur - at present
Sub-Postmaster, Dhama, P.S. Dhama
Dist: Sambalpur

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Applicant

By the Advocates : M/s.S.Kr.Mohanty
S.P.Mohanty

-Versus-

1. Union of India represented by its
Secretary, Department of Posts,
Dak Bhawan, New Delhi
2. Chief Post Master General,
Bhubaneswar,
3. Director of Postal Services,
Sambalpur Region, Sambalpur
4. Senior Superintendent of Post Offices,
Sambalpur Division, Sambalpur

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Respondents

By the Advocates : Shri Ashok Mishra,
Senior Panel Counsel

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ORDER

MR.G.NARASIMHAM, MEMBER(JUDICIAL):Applicant, Somanath Sahu, while serving as a Postal Assistant, Barapalli Sub-Office was transferred to Deogarh Sub-Office and was relieved on 23.7.1990 from Barapalli. From 23.7.1990 to 30.10.1990 he was on leave on the ground of sickness and this leave was sanctioned. From 31.10.1990 till 31.12.1991 he did not resume duty. During this period he was communicated with an order of transfer from Deogarh S.O. to Brajarajnagar S.O. On 1.1.1992 he reported to duty at Brajarajnagar S.O. submitting a joining report along with a medical certificate covering the period from 31.10.1990 to 31.12.1991. He also submitted another certificate of fitness. Vide Annexure-1 through memo dated 13.1.1992 he was communicated as to the initiation of disciplinary proceedings under Rule-16 of CCA Rules with imputation that his absence from 31.10.1990 to 31.12.1991 was unauthorised and contravention of Rule-62 of P&T Manual Vo.III read with Rule-3 of CCS(Conduct) Rules, 1964. After receiving his representation under Annexure-2 in response to imputation, the disciplinary authority, viz., Senior Superintendent of Post Offices(Res.4) by his order dated 23.1.1992 passed punishment of stoppage of one increment for a period of three months from the date when it falls due with cumulative effect and treated the period of his unauthorised absence from 31.10.1990 to 31.12.1991 as dies non. The applicant then preferred appeal under Annexure-4 before the Director of Postal Services,

Sambalpur Region (Res.3), who through his order dated 29.4.1992(Annexure-4/1) enhanced the punishment with stoppage of one increment for a period of three years without cumulative effect and treated the period of absence as dies non.

These facts are not in controversy.

2. The applicant seeks to quash the orders of disciplinary authority and the appellate authority by averring that on 3.11.1990 he had intimated the authority by Under Certificate of Posting from Barapalli seeking extension of leave on the ground of illness. Without considering this prayer for extension of leave his entire period of absence was treated as unauthorised. In other words, according to him, there was no occasion for the department to initiate the proceeding against him. Moreover, the appellate authority, without any notice to him to show cause against enhancement of punishment could have not have enhanced the punishment by violating the principle of natural justice. C.C.S.(CCA)Rules nowhere empower the disciplinary thority or the appellate authority to treat the period of absence as dies non. In fact the Ministry of Communication in memorandum dated 25.7.1990 (Annexure-5) clarified this position and instructed the competent authority to decide the period of unauthorised absence as duty separately under Fundamental Rules and not under C.C.S.(CCA) Rules, 1965.

3. The stand of the department in the counter is that application seeking extension of leave said to have been posted on 3.11.1990 has not been received. On the other hand a post card dated 5.11.1990 (Annexure-R/4) was

received from the applicant within an intimation that he was still not cured and was unable to resume duty and that further extension of leave application would follow, but no such application for further extension of leave was received. However, representation dated 4.2.1991 (Annexure-R/5) was received from him that he would like to resume duty shortly and he should be posted at Barpalli. Through Annexure-R/6 dated 7.2.1991 he was intimated that his request in the representation dated 4.2.1991 cannot be acceded to and he should join his new place of posting; and that he should submit medical certificate with leave application for regularisation of his leave. Through memo dated 19.4.1991 (Annexure-R/7) he was transferred to Brajarajnagar which is nearer to Barapalli by way of relief to the applicant. Yet, in response to this transfer order he did not choose to join at Brajarajnagar. On 26.11.1991 (Annexure-R/8) the applicant was informed by the department as to his unauthorised absence from 31.10.1990 onwards and was directed either to submit leave application along with medical certificate or join his place of posting immediately. This was duly received by him on 9.12.1991. Still he neither submitted any application regularising his period of absence with any medical certificate nor resumed duty before 1.1.1992. In view of this background, proceedings have been initiated.

~~There are~~ no procedural lapses have been committed in the proceeding. The appellate authority under law has the power to enhance the penalty.

4. The facts averred in the counter have not been refuted by the applicant through any rejoinder.

£ We have heard the rival contentions of the learned counsels of both sides and perused the record.

5. Law is well settled that even an administrative order affecting the right of a party can not be passed without notice to him to hear his version in the matter. This being the position, a quasi judicial authority like appellate authority under C.C.S.(CCA) Rules is legally bound to issue notice in the matter of enhancement of punishment to the appellant before enhancing the punishment. Admittedly no such notice was issued. Hence that portion of the order of the appellate authority, viz. Director of Postal Services (Res.3) in enhancing the punishment of stoppage of one increment for a period of three years without cumulative effect cannot legally stand being violative of principles of natural justice.

Both the disciplinary authority and the appellate authority treated the period of absence from 31.10.1990 to 31.12.1991 as "dies non" while dealing with the matter under C.C.S.(CCA) Rules which admittedly do not contain ^{any} provision ^{for} ~~of~~ punishment to the effect. Moreover, Annexure-5 memorandum dated 27.5.1990 of the Ministry of Communications (Department of Posts) made it known to all concerned that declaration of the period of unauthorised absence from duty as dies non being not a punishment under C.C.A. Rules, cannot be made in a proceeding under C.C.S.(CCA) Rules. Hence that portion of the order of punishment declaring the unauthorised absence as dies non needs to be quashed. The concerned authority may deal with this aspect of the matter under the relevant

provisions of Fundamental Rules.

There is no dispute that the applicant was absent from duty from 31.10.1990 to 31.12.1991, i.e., for a period of one year two months without of the period of absence being sanctioned as leave. It is not the case of the applicant that on 3.11.1990 he sent leave application seeking leave upto 31.12.1991 on the ground of sickness. Even if he sent any application on that day, he could not have sought leave upto 31.12.1991 on the ground of sickness anticipating that the sickness would continue for one year two months more. Be that as it may, as earlier indicated that various intimations sent to the applicant from the department instructing for regularisation of the absence, submission of medical certificates and so on, have not been refuted by the applicant. Even the stand of the respondents that he did not respond in hearing these intimations stands un rebutted. Viewed from this background, we do not see any ^{any} ~~in~~firmity in the order of the disciplinary authority in imposing punishment of stoppage of one increment for three months with effect from the date it fell due with cumulative effect; more so when the proceeding finalised by the disciplinary authority without any procedural lapse affecting the principles of natural justice.

6. For the reasons discussd above, the order of the appellate authority vide Annexure-4 and that portion of the order of the disciplinary authority under Annexure-3 treating the period of unauthorised absence as dies non are hereby quashed. The order of punishment of stoppage

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of one increment for a period of three months with effect from the date it fell due passed as passed by the disciplinary authority is not interfered with.

7. In the result the application is partly allowed, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

B.K.SAHOO

17.2.98
(G.NARASIMHAM)
MEMBER(JUDICIAL)