

5

10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH.

Original Application No.456 of 1992.

Date of decision : February 16, 1994.

Rudra Ranjan Mishra ...

Applicant.


Versus


Union of India and others ...

Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters or not ? ~~no~~ yes
2. Whether it be circulated to all the Benches of the ~~no~~ Central Administrative Tribunals or not ?


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)
16 FEB 94


(K.P. ACHARYA)
VICE-CHAIRMAN.
16-2-94

6

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH; CUTTACK.

Original Application No.456 of 1992

Date of decision: February 16, 1994.

Rudra Ranjan Mishra ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... M/s. A.K. Misra,
S.K. Das,
S.B. Jena, Advocates.

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

C O R A M:

THE HON'BLE MR. K.P. ACHARYA, VICE-CHAIRMAN.

A N D

THE HON'BLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

O R D E R

K.P. ACHARYA, V.C., In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to quash the order of punishment passed against him removing ^{him} from service.

2. Shortly stated, the case of the applicant is that he was appointed as Diesel Assistant and was posted after completion of training under the Assistant Mechanical Engineer, South Eastern Railway, Nagpur. The applicant joined at Nagpur on 11.7.1988 as per the order of the Respondent No.2. On 18.1.1989 the applicant availed leave for 6 days and proceeded to his home town to Berhampur. Unfortunately, he fell ill and continued to remain absent from duty till 8.1.1991 and on 9.1.1991 the applicant

reported to duty after furnishing medical fitness certificate. Thereafter, a charge-sheet was delivered to the applicant on an allegation that the applicant had misconducted himself by remaining absent unauthorisedly from duty. An enquiry was conducted and ultimately the applicant was ordered to be removed from service. Appeal preferred by the applicant did not yield any fruitful result and hence this application has been filed with the aforesaid prayer.

3. In their counter, the respondents maintained that the applicant did not comply with the Rules by ~~not~~ furnishing leave applications within the prescribed period and therefore, rightly a disciplinary proceeding was initiated against him and rightly the applicant was removed from service. The case being devoid of merit is liable to be dismissed.

4. We have heard Mr. Aswini Kumar Misra, learned counsel for the applicant and Mr. Ashok Mohanty, learned Standing Counsel (Railways) for the respondents.

It was contended by Mr. Misra that the applicant has been seriously prejudiced by not furnishing to the applicant a copy of the documentary evidence on which the prosecution proposed to rely upon. On a perusal of the memorandum attached to the charge-sheet it is to be found in paragraph 2

of the memorandum intimating, Rudra Ranjan Mishra,

the applicant as follows:

" ... he can inspect and take extracts from the documents mentioned in the enclosed list of documents(Ann.III). "

From Annexure-3 it is found that the prosecution proposed to rely upon L.F./NGP's letter No.3/4/R.R.Mishra dated 26.11.1990. Vide Annexure-3 dated 17.1.1991 the applicant requested the Assistant Mechanical Engineer, S.E.Railway, Nagpur to supply a copy of L.F./NGP's letter No.3/4/R.R.Mishra dated 26.11.1990 in order to prepare his defence and submit his written statement of defence. This was admittedly not supplied to the applicant because from the counter at paragraph 6 it is to be found that non-service of a copy of the said letter does not at all prejudice the applicant because it has no relevance to the charges. This stand taken by the respondents is absurd. Once the prosecution seeks to rely upon a particular document it is its bounden duty to supply a copy of the same. Once, the prosecution proposes to rely upon such a document and it has actually been relied upon by the Enquiring Officer it is too late in the day for the respondents to maintain that such document has no relevance. In our opinion, this has seriously prejudiced the applicant for non-compliance of the principles of natural justice. Our view gains support from a judgment of the Hon'ble Supreme Court reported in 1986 SCC (L&S) 502(Kashinath Dikshita v. Union of India) in which ^{Hon'ble} Mr. Justice M.P.Thakkar, J., speaking for the Court was pleased to observe as follows:

When a government servant is facing a disciplinary

proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, how can the concerned employee prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible?"

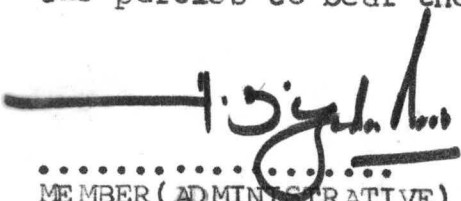
Applying the principles laid down by Their Lordships to the facts of the present case we would hold that there is no escape from the conclusion that the applicant has been seriously prejudiced.

5. From the records we find that the applicant has sent medical certificates along with the application intimating about his illness though some delay has been committed by the applicant. This is not such an irregularity so as to call for a charge-sheet and hold the applicant to have misconducted himself.


In the circumstances stated above, both on question of law and on question of fact, prosecution has signally failed to bring home the charge against the applicant and therefore, the impugned order of removal from service passed against the applicant is hereby quashed and the applicant stands exonerated from the charges. The applicant should be reinstated into service within 30(thirty) days from the date of receipt of a copy of the judgment and within 60(sixty) days from the date of receipt of a copy of the judgment the applicant should be paid all his back wages as he is deemed to be in service from the date of removal
by

from service.

6. Thus, this application stands allowed leaving the parties to bear their own costs.


.....
MEMBER (ADMINISTRATIVE)

16 FEB 94


16.2.94
.....
VICE-CHAIRMAN.

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
February 16, 1994/Saranghi, Sr.P.A.