

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 194 OF 1993

Cuttack, this the 17th day of September, 1999

Sripati Mohan Biswas

.....

Applicant

Vrs.

Union of India and others

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not?

Yes.

2. Whether it be circulated to all the Benches of the
Central Administrative Tribunal or not?

No.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
17.9.99
VICE-CHAIRMAN

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Sripati Mohan Biswas, aged about 40 years, son of late Khagapati Biswas, at present Clerk Grade-I, Programme Secretary, All India Radio, Jeypore, District-Koraput (Orissa)..... Applicant

Advocates for applicant - M/s P.C.Kar
J.Gupta.

Vrs.

1. Union of India, represented by the Secretary, Information & Broadcasting, New Delhi-1.
2. Director General, All India Radio, Akasvani Bhawan, Parliament Road, New Delhi.-1
3. Station Director, All India Radio, At/PO/PS/Dist.Cuttack (Orissa) 753 001...
..... Respondents

Advocate for respondents - Mr.B.K.Nayak
A.C.G.S.C.

O R D E R

S.S.M.
SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 25.11.1987 (Annexure-1) imposing on him the penalty of dismissal from service, the

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order at Annexure-2 asking him to receive the order dated 2.1.1989 and the order dated 5.10.1991 at Annexure-5 in which the order dated 27.9.1991 of Director General, All India Radio, the appellate authority was communicated to him.

2. Before proceeding further, it is to be noted that the punishment of dismissal from service imposed on the applicant in order dated 25.11.1987 (Annexure-1) is no longer in existence because the appellate authority in his order dated 2.1.1989 modified the penalty of dismissal to that of reduction of pay by three stages for a period of two years from 25.11.1987 with cumulative effect. In view of this, the prayer of the applicant must be understood to mean a prayer for quashing the order dated 2.1.1989 which was communicated to him in order dated 12.1.1989 (Annexure-2) quashing of which has been prayed for. So far as Annexure-5 is concerned this is only a letter communicating the order dated 27.9.1991 from the Director General, All India Radio. The applicant has not enclosed this order dated 27.9.1991.

3. Facts of this case are that when the applicant was working as Clerk Grade-II at All India Radio, Cuttack, he was placed under suspension and charges were framed against him and ultimately he was dismissed from service in order at Annexure-1. On his filing an appeal, the order of dismissal was modified by infliction of the penalty of reduction of pay by three stages for a period of two years with cumulative effect. It was also ordered that the period from the date of dismissal till his joining would be treated as dies non. In his representation at Annexure-3 the applicant had again prayed for quashing the disciplinary proceedings and treating his period of absence and exonerating him fully from the charge and the

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punishment. Respondent no. 2 in his letter dated 20.3.1990 at Annexure-4 issued showcause notice to the applicant indicating that the period of suspension will be treated as such and during the period of suspension from 8.11.1986 to 24.11.1987 the pay and allowances will be restricted to the subsistence allowance paid to him. The applicant filed a representation, which is at Annexure-6 and prayed for setting aside the order of dismissal and for allowing all service benefits.

4. Respondents in their counter have stated that the application is grossly barred by limitation because the order of penalty of reduction of pay has been passed on 2.1.1989 and the applicant has come up only in 1993. It is stated that there were twelve charges against the applicant of which ten charges were proved and the disciplinary authority imposed the penalty of dismissal from service which was modified by the appellate authority as noted earlier. It is further stated that the appellate authority issued showcause notice to the applicant giving him an opportunity of making representation with regard to pay and allowances proposed to be paid to him during the period of suspension, but the applicant failed to submit any representation. The respondents have further stated that considering the charges which have been held proved against the applicant, the punishment cannot be held to be disproportionate. It has also been submitted that there has been no violation of principles of natural justice or denial of reasonable opportunity to the applicant in course of disciplinary proceedings. On the above grounds the respondents have opposed the prayer of the applicant.

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5. We have heard Shri P.C.Kar, the learned counsel for the petitioner and Shri B.K.Nayak, the

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learned Additional Standing Counsel for the respondents and have also perused the records.

6. It has been submitted by the learned counsel for the petitioner that the applicant was not supplied with the copy of the enquiry report before imposition of penalty of dismissal from service and therefore he has been denied reasonable opportunity and also there has been violation of the principles of natural justice. The respondents have pointed out and to our mind rightly that in this case the punishment was imposed on 25.11.1987 and at that time the instruction of Government of India for supplying a copy of the enquiry report to the charged official to enable him to make representation had not come into force. It is also to be noted that the direction of the Hon'ble Supreme Court in **Mohd. Ramzan Khan's case** came into force in 1990 and therefore in 1987 before the imposition of the punishment by the disciplinary authority there was no obligation to supply a copy of the enquiry report to the applicant. In view of the above, this contention of the learned counsel for the petitioner is held to be without any merit and is rejected.

7. The learned counsel for the petitioner has taken us through the charges. The applicant has not enclosed a copy of the charges. But from the order of the disciplinary authority as also the order of the appellate authority the nature of charges can be found. The inquiring officer in his report copy of which is also not in the pleadings has held that charge nos. 2 and 10 have not been proved. Therefore, it is not necessary to refer to these two charges. The other ten charges are mentioned in brief. Charge no.1 is that on 1.12.1986 the applicant left the headquarters and remained absent without authority. Charge no.3 is that he was arrested by Jeypore

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police on 1.12.1986 at 12.15 P.M. and was released on bail, but he failed to intimate this fact to the office. The fourth charge is that he misbehaved with his colleagues and manhandled the Administrative Officer at All India Radio, Cuttack and disobeyed the orders of the Head of Office. Charge No.5 is that he manhandled the Security Guard and the Studio Attendant and tried to enter the premises forcibly. The sixth charge is that he neglected to perform his duties properly and refused to accept the official communication tendered to him through the office peon. The seventh charge is that he was asked to intimate his residential address at Cuttack, but in spite of repeated notices he failed to do so. The eighth charge is that during his period of suspension he was not available at Cuttack which was his headquarters and therefore official communication could not be served on him. The 9th charge is that he falsely claimed grant of monetary benefit for undergoing family planning operation of his wife when such benefit has been availed of by his wife from her department, i.e., Executive Engineer, Division No.I, Jeypore. The eleventh charge is that during his period of suspension when his headquarters were fixed at Cuttack where he was working prior to suspension, he unauthorisedly left headquarters and went to Jeypore on 22.1.1987 and was found moving frequently at Jeypore. The last charge is that he was directed to report to the disciplinary authority twice in a week at 10.30 A.M. on Tuesday and Friday, but he failed to do so. From the above it is clear that the charges which have been held proved, are serious in nature. In departmental proceedings the Tribunal does not act as an appellate authority and cannot interfere with the findings of the disciplinary authority and the appellate authority. In view of this, it cannot be held that the findings of the

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inquiring officer and the disciplinary authority are based on no evidence or are patently perverse. The appellate authority had taken a lenient view and modified the punishment of dismissal from service to that of reduction of pay by three stages for two years. Considering the charges held to have been proved against the applicant, this modified punishment cannot be termed as excessive.

8. The last contention of the learned counsel for the petitioner is that the applicant was not given a personal hearing. The applicant has not enclosed any document showing that he asked for a personal hearing to be given by the disciplinary authority and in view of this, the contention of the learned counsel for the petitioner is also without any merit.

9. In the result, the Original Application is held to be without any merit and is rejected but, under the circumstances, without any order as to costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

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(SOMNATH SOM)

VICE-CHAIRMAN

17.9.99