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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 80 OF 1993

Cuttack, this the 13th day of September, 1999

Bhabani Shankar Pattanaik 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*

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(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)

VICE-CHAIRMAN

13.9.99

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CORAM:

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

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Bhabani Sankar Patnaik, son of late Hari Charan Patnaik, Skilled Worker, Gr.II, S.I.S.I., Workshop, Madhupatna, Cuttack-10 Applicant

Advocates for applicant - M/s K.C.Kanungo
S.Mohanty

Vrs.

1. Union of India, represented through its Secretary, Ministry of Industry, Department of Industrial Development, Udyog Bhawan, New Delhi-1.
2. The Director, S.I.S.I., Vikash Sadan, College Square, Cuttack-3. Respondents

Advocate for respondents - Mr.A.K.Bose,
Sr.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order of the disciplinary authority at Annexure-2 and the order at Annexure-3 regularising his period of absence. The next prayer is for a direction to respondent no.2 to treat the entire period as on duty or in the alternative to treat the period from 29.10.1979 to 31.10.1979, 17.12.1979 to 20.12.1979, 12.3.1980 to 31.3.1980, 15.4.1981 to 4.7.1982 and 3.9.1986 to 18.10.1990 as on duty and the rest period be treated as leave due and leave not due and Extraordinary Leave.

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2. Facts of this case, according to the applicant, are that he was working as Skilled Worker, Grade-II in S.I.S.I. Workshop at Industrial Estate, Khapuria. He states that he was allegedly transferred to Branch S.I.S.I. at Rourkela in order dated 11.3.1980, but the order was not communicated to him. He submitted an application for leave on 12.3.1980 and proceeded on leave on account of his illness. On return from leave on 14.4.1981 he submitted his joining report along with medical certificate. The then Director, S.I.S.I. allowed the petitioner to join. The petitioner applied for voluntary retirement on 23.12.1981 and remained absent due to his illness. His period of absence was treated as unauthorised absence and departmental proceedings were initiated against him. The applicant has stated that due opportunity was not given to him in the departmental proceedings. Copy of the enquiry report was also not given to him and the enquiry was conducted behind his back. On 3.9.1986 the applicant represented to allow him to join his duties and on 8.8.1989 he submitted a representation to withdraw his application for voluntary retirement. Ultimately respondent no.2 in his order dated 12.10.1990 allowed the applicant to join the post of Skilled Worker Grade-II at S.I.S.I., Khapuria, without prejudice to the disciplinary proceedings against him. Accordingly, he joined on 18.10.1990. The proceedings were finalised in order dated 28.8.1991 at Annexure-2. In this order the disciplinary proceedings were concluded by imposing the minor penalty of "Censure" and the intervening period was ordered to be regularised subject to availability of regular leave at his credit and as admissible to him. He was also granted leave not due as admissible for the period for

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which medical certificate was to be submitted subject to a maximum of 360 days, Extraordinary Leave for a period not exceeding 300 days on production of medical certificate and the rest of the period as dies non. In pursuance of the order of the disciplinary authority, at Annexure-3 the period of absence from 29.10.1979 to 14.4.1981 was regularised by granting him Commuted Leave for 3 days, Earned Leave in two spells for 4 days and 16 days, Half Pay Leave for 30 days, Leave not due for 100 days, Extraordinary Leave for 253 days with Medical Certificate and the balance period from 15.4.1981 to 18.10.1990, i.e., a period of 9 years 6 months and 4 days was treated as dies non. On the above grounds the applicant has come up with the prayers referred to earlier.

3. The respondents in their counter have stated that the applicant was transferred from SISI Workshop at Khapuria to Branch SISI at Rourkela. A copy of the transfer order was issued to the Workshop-in-charge for service on the applicant. When the applicant came to know about that order, he did not come to the office. The order was sent to his residence through Peon but he refused to receive the order. The transfer order was sent by Registered Post with AD twice to the applicant, but the order was returned undelivered as he declined to receive the order from the postal authorities. The respondents have not admitted that after one year of his absence from 12.3.1980 to 14.4.1981 he was verbally ordered to join. It is further stated that even though the applicant submitted an application to join 15.4.1981 he did not come to the office for a single day or attended to his job at Workshop, Khapuria. The respondents have stated that the petitioner came to office only on 3.9.1986, but

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after that he did not come on a single day to know the fate of his application. Ultimately, he turned up on 18.10.1990 and joined his duty and has been attending duty from that day. It is also stated that the applicant submitted his application for voluntary retirement on 23.12.1981. But as he had not completed twenty years of service, his notice for voluntary retirement was not accepted and thereafter he started taking leave unauthorisedly. For his unauthorised absence departmental proceedings were initiated against him. The applicant denied all the charges. An enquiry was conducted by a Senior Class I Officer. After conclusion of the enquiry, the impugned order at Annexure-2 was passed. On the above grounds, the respondents have opposed the prayers of the applicant.

4. The applicant in his rejoinder has made several averments with regard to illegalities in the departmental proceedings and these will be referred to in our discussion.

5. We have heard the learned counsels for both sides. The learned counsel for the petitioner has filed written note of submission which has been taken note of.

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6. The inquiring officer has found that charge no.1 against the applicant has not been proved. It has also been held that Article III of the charge was not proved. The inquiring officer has held that the charges in Article II, Article IV and para-2 regarding refusal to receive the memo dated 22.11.1982 were proved. The findings of the inquiring officer were placed before the disciplinary authority who gave observations on the enquiry report but did not pass any

final order. Ultimately, the disciplinary authority in his order dated 28.8.1991 noted that the applicant has been persistently pursuing his case and showing his inclination to attend duty since 1981. Considering all this the disciplinary authority took a lenient view and imposed the penalty of "Censure" and ordered the period of absence to be regularised in the manner referred to earlier. The learned counsel for the petitioner in his written note of submission has challenged the findings of the inquiring officer. A copy of the enquiry report has not been enclosed by the applicant. The respondent at page 2 of their counter have indicated that the applicant was issued with the findings of the inquiring officer. We have gone through the pleadings of the parties carefully and we see that immediately after the applicant was transferred from Khapuria to Rourkela, he went on leave. According to him, he fell ill. He went away on leave by applying for the same on 12.3.1980 and turned up more than one year later on 14.4.1981 with a Medical Certificate. A Government servant cannot simply apply for leave and remain absent and turn up after more than a year to join. The applicant's statement that he has been allowed to join has been contested by the respondents. The applicant himself has averred at page 3 of the OA that on 23.12.1981 he applied for voluntary retirement and remained absent due to his illness. It is only on 8.8.1989 that the petitioner submitted a representation to withdraw his earlier application for voluntary retirement and prayed for allowing him to join. From this it is clear that for his prolonged absence the applicant is squarely responsible and considering this and the findings of the inquiring officer the penalty of "Censure" cannot by any stretch of imagination be considered as unwarranted and severe.

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The prayer for quashing the punishment of "Censure" in Annexure-2 is therefore held to be without any merit and is rejected.

7. As regards regularisation of the period of absence, from the order at Annexure-3 we find that the departmental authorities have shown him extraordinary degree of accommodation. After covering the absence by Commuted Leave, Earned Leave and Half Pay Leave, the applicant has been granted Leave Not Due for a period of 100 days. Under the rules Leave Not Due is granted against future accrual of Earned Leave. Thereafter for another period of 253 days he has been granted Extraordinary Leave with Medical Certificate. This period will also count towards his pension. Even after covering all these periods as above, another period of absence from 15.4.1981 to 18.10.1990 has remained uncovered and the respondents have rightly treated this period as "dies non". The applicant's prayer is that this period should be treated as on duty. He has himself admitted that he gave a notice for voluntary retirement on 23.12.1981 and thereafter remained absent, according to him, because of his illness. It is only on 8.8.1989 after eight years that he made representation for withdrawing his application for voluntary retirement. From this it is clear that after giving notice for voluntary retirement, he did not join duties and the period of absence has been rightly treated as "dies non". It has been submitted by the learned counsel for the petitioner that because of treating the period as dies non the applicant will be deprived of getting any pension. Minimum pensionable service is for ten years. There is no averment in the petition that because of the order at Annexure-3 the

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minimum pensionable service of the applicant has become less than ten years. In any case, the period of Earned Leave, Half Pay Leave, Commuted Leave and Extraordinary Leave with Medical Certificate sanctioned to him would count towards his pension. In the absence of any such averment in the petition, it cannot be held that because a period of over nine years has been treated as dies non, the applicant will be deprived of pension.

8. In the result, we hold that the Application is without any merit and the same is rejected but under the circumstances without any order as to costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

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(SOMNATH SOM)
VICE-CHAIRMAN
13.9.99.

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