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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

ORIGINAL APPLICATION NO. 531 OF 1994
Cuttack this the 27th day of April, 2000

Ajit Kumar Sarangi

Applicant(s)

-versus-

Union of India & Others

Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? 25-
2. Whether it be circulated to all the Benches of the N.C. Central Administrative Tribunal or not ?

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

27.4.2000
(G. NARASTHAM)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.531 OF 1994
Cuttack this the 27th day of April, 2000

CORAM:

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

...

Ajit Kumar Sarangi
aged 42 years
S/o. Abanikanta Sarangi
Puruna Vasti
PO: Chakradharpur
Dist: Singhbhum Bihar
Ex-Khalasi (Carriage & Wagon Deptt)
South Eastern Railway
Rourkela

...

Applicant

By the Advocates : M/s.S.C.Samantray
N.C.Sahoo

-Versus-

1. Union of India
represented by the General Manager
South Eastern Railway
Garden Reach
Calcutta-700 043
2. Senior Divisional Mechanical Engineer
South Eastern Railway,
At/Po: Chakradharpur
Bihar
3. Asst.Mechanical Engineer
South Eastern Railway
At/Po: Chakradharpur
Bihar

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Respondents

By the Advocates : Mr.D.N.Mishra
Standing Counsel
(Railways)

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ORDER

17
MR.G.NARASTMHAM MEMBER(JUDICIAL): While in Railway service at Rourkela as Khalasi under the Carriage and Wagon Department the applicant was removed from service by Respondent No.3 in his order dated 24.11.1992 passed in ^{the} disciplinary proceedings. The said order was communicated to him on 12.1.1993. The applicant seeks quashing of that order and for his consequent reinstatement with all service benefits.

2. The charge against the applicant was unauthorised absence from 21.1.1988. The case of the applicant is that this removal order was passed without following the principle of natural justice inasmuch the charge memo dated 7.10.1988 was never served on him and the enquiry was conducted behind ^{his} back and that enquiry report was not made available to him. He preferred departmental appeal on 15.2.1993 under Annexure-A/2 which is still subjudice.

3. In the counter the Department take the stand that the charge memo was duly served on the applicant on 27.8.1988 and that the applicant did not submit any explanation. The Inquiring Officer on being appointed issued notice to the applicant fixing the inquiry on 20.8.1990. This notice was received by the applicant on 20.7.1990. The applicant represented on 16.8.1990 expressing his inability to attend the inquiry on 20.8.1990 on the ground of his illness. The inquiry was then adjourned to 23.10.1990 under intimation to the applicant, a notice of which received by him on 8.10.1990. But the inquiry could not be taken up on that day and was adjourned to 30.10.1990 under intimation to

the applicant. As the applicant did not turn up on that date it was adjourned to 27.12.1990 and again to 14.1.1991. The applicant did not even attend on those two dates. Then another opportunity was given to the applicant fixing the date of inquiry on 21.1.1991 and this notice of inquiry was received by the applicant on 15.1.1991. On that date he attended the inquiry and inquiry was completed. All the documents wanted by the applicant were supplied to him. The inquiry report dated 25.3.1991 was sent to the applicant through Carriage Foreman Rourkela under whom he was serving. He was also communicated through Regd. Post of the inquiry report and also pasted on the Notice Board. As there was no response from the applicant the disciplinary authority after perusing the inquiry report passed the impugned order. No departmental appeal has been received from the applicant by the appellate authority.

No rejoinder has been filed by the applicant.

4. We have heard Shri S.C.Samantray learned counsel for the applicant and Shri D.N.Mishra learned Standing Counsel appearing for the Railway Administration. Also perused the records.

5. As already stated the applicant seeks quashing of the impugned order mainly on ~~three~~ grounds viz. non service of charge memo on him, conducting inquiry behind his back and non supply of inquiry report. In the counter the Department take a specific stand that the applicant was served with charge memo on 27.10.1988 and this has been duly acknowledged by him under Annexure-R/l. This has not been refuted by the applicant through any rejoinder. It is also the specific stand of

9

the Department that after receiving notice of inquiry the applicant attended the inquiry on 21.1.1991 on which day the inquiry was completed after supplying all the documents required by the applicant. This has also not been contradicted by the applicant through any rejoinder. As to supply of copy of the enquiry report it is the case of the Department that a copy of the enquiry report was sent to him through Carriage Foreman Rourkela under whom the applicant was working. Another copy was also sent through Regd. Post and yet another was pasted on the Notice Board. It is true that there is no specific averment in regard to the date on which the applicant had received copy of that report. Still we are not inclined to disbelieve the stand of the Department simply because the applicant denied receipt of such report because the applicant as would be evident already misled this Tribunal by making false averment as to non supply of charge memo and inquiry having been conducted behind his back. We are therefore not inclined to believe the version of the applicant that copy of the enquiry report was not received by him.

It is specifically denied in the counter about any departmental appeal having been filed by the applicant and that no appeal memo as under Annexure-R/2 was ever received by the respondents. It is not clear from the pleading of the applicant as to how he sent that appeal memo under Annexure-A/2. It is not his case that he sent that appeal memo by Regd. Post or personally delivered before the appellate authority. Annexure-A/2 is also not clear in this regard. Since there is specific denial in the counter as to receipt of any appeal memo

under Annexure-A/2 and since there is no mention in the pleadings as to the mode of sending the appeal memo we are not inclined to accept the version of the applicant that he in fact did submit such an appeal memo. Hence filing of this Original Application without preferring appeal is not maintainable under Section 20 of the Administrative Tribunals Act 1985.

Even assuming the applicant preferred appeal dated 15.2.1993 there is still ~~the~~ hurdle of limitation. The impugned order was passed on 24.11.1992. Under Section 21 of the A.T. Act this order should have been challenged at least by one year i.e. 24.11.1993 and not later than that date. Even if his version that he had preferred appeal on 15.2.1993 he could have waited till six months thereafter and file this application by 14.8.1993. At any rate he was to have filed the Original Application latest by 24.11.1993. But this Original Application was filed on 7.9.1994 without explaining the delay or without any application seeking condonation of delay as required under Rule 8(4) of the C.A.T.(Procedure) Rules 1987. Hence on this ground also the application fails.

We are aware during hearing a point was raised by the learned counsel for the applicant that unauthorised absence as such would not amount to misconduct. We are not inclined to accept this submission. As has been held by the Apex Court in **Union of India vs. B. Dev** reported in 1998 AIR SCW 2758 unauthorised absence amounts to grave misconduct.

In the result we find no merit in this application which is accordingly dismissed but no order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

27-4-2001
(G.NARASIMHAM)
MEMBER (JUDICIAL)