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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO 742 OF 1994

Cuttack, this the 9th day of November, 2000

Bishnu Pradhan

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)

VICE-CHAIRMAN

9.11.2000

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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.. 742 OF 1994
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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI GNARASIMHAM, MEMBER(JUDICIAL)

.....
Bishnu Pradhan, aged about 50 years, son of late Brajabandhu Pradhan, at present working as Gatekeeper, Sambalpur Railway Station, S.E.Railway, SambalpurApplicant

Advocates for applicant - M/s.R.N.Naik
A.Deo
B.S.Tripathy
P.K.Mishra

Vrs.

1. Union of India, represented by its General Manager, South Eastern Railway, Garden Reach, Calcutta.
2. Divisional Railway Manager,
South Eastern Railway, Sambalpur.
3. Divisional Traffic Manager, South Eastern Railway,
Sambalpur.

....Respondents

Advocate for respondents - Mr.B.Pal

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the petitioner has prayed for quashing the orders of punishment passed by the disciplinary authority and the appellate authority at Annexures 2 and 4.

2. The case of the applicant is that while he was working as Gatekeeper at Sambalpur Railway Station at Sambalpur, disciplinary proceedings were initiated against him with the allegation that while he was functioning as Gatekeeper

at L.C.Gate at KM 653/1, during his duty hours on 29.7.1993 from 16 00 hours to 00 00 hours (12 midnight) he committed serious misconduct by deputing his son to work in his place instead of working himself. An enquiry was conducted and the disciplinary authority after considering the enquiry report imposed upon him the punishment of removal from service in his order dated 8.11.1993 at Annexure-2. On the applicant filing an appeal, the appellate authority modified the order of punishment to reduction to the bottom of his existing grade for a period of three years. The applicant has challenged these two orders on various grounds. The respondents have filed counter opposing the prayer of the applicant. It is not necessary to refer to the averments made by the parties in their pleadings as these will be considered while discussing the submissions made by the learned counsel for both sides. The record of the disciplinary proceedings against the applicant has been filed by the learned Senior Panel Counsel (Railways) appearing for the respondents and we have gone through the same.

3. We have heard Shri B.S.Tripathy, the learned counsel for the petitioner and Shri B.Pal, the learned Senior Panel Counsel for the respondents and have also perused the records.

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6. The law is well settled that in a disciplinary proceeding the Tribunal does not act as appellate authority and cannot reappraise evidence and substitute its findings in place of the findings arrived at by the inquiring officer and the disciplinary authority. The Tribunal can interfere only if there has been any violation of principles of natural justice, or if reasonable opportunity has not been given to the delinquent officer to defend himself, and if the

findings are based on no evidence or are patently perverse. The submissions made by the learned counsel for the petitioner have to be considered in the context of the above well settled position of law.

7. It is submitted by the learned counsel for the petitioner that the applicant was actually working till 12 midnight and one of the witnesses has said that he was talking to the applicant till 12 midnight and therefore it has been wrongly held by the inquiring officer that the applicant has deserted his post. We have gone through the proceedings file carefully and we find that in his explanation dated 8.9.1993 replying to the charge the applicant has admitted that while on duty he was suddenly attacked by stomach pain and vomitting at about 10.30 P.m. and when his son came at 11.00 P.M. with his meal, the applicant had to go with him for medical aid leaving his duty. But he had forgotten to inform the Station Superintendent on duty about his sudden serious illness. He also admitted that he sent the Gate Key through his son to hand over to the reliever. From this it is clear that in his explanation the applicant has admitted to have left his post during duty hours. Therefore, this contention of the learned counsel for the petitioner is held to be without any merit.

8. While going through the departmental proceedings, we find that the order of the disciplinary authority suffers from two serious illegalities. Firstly, after the enquiry report was submitted, a copy of the enquiry report was not sent to the applicant, and secondly the order imposing the punishment of removal from service at Annexure-2 is a non-speaking order. It is merely stated in this order that the disciplinary authority is convinced that the applicant is guilty of the charge mentioned in the order. In

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view of this, the order of the disciplinary authority is prima facie not sustainable. But this point need not be pursued further because this order is no longer in existence, and the appellate authority has already modified the punishment of removal from service to that of reduction to the bottom of the existing scale for a period of three years. In view of the above, the first prayer of the applicant to quash the order of the disciplinary authority has become infructuous.

9. As regards the second prayer for quashing the order of the appellate authority, we find that the charge against the applicant is of very grave nature. The applicant was manning a Railway Check Gate and he had deserted his post during his duty hours. Instances are not infrequent in Indian Railways about tragic accidents at the Check Gates resulting in loss of life. In the instant case, the applicant has no doubt mentioned and it has also come out in the enquiry report that at that time no train was due to pass through that Check Gate. But even then the lapse of the applicant in deserting his post must be held to be serious misconduct. It has also been brought out in the enquiry report that the applicant did not inform the Station Superintendent and call upon his reliever to come so that he could go for medical aid.

2 Jan. In consideration of all the above, we do not feel that this is a case which calls for interference by the Tribunal. Moreover, as the applicant has admitted his lapse in his explanation, it cannot be said that by non-supply of the report of enquiry any serious prejudice has been caused to him.

10. In the result, therefore, we hold that the

O.A. 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

9/11/2000

November 9, 2000/AN/PS