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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.
ORIGINAL APPLICATION NO.114 OF 1994

Cuttack, this the 30th day of March, 1999

Sri Kedar 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,*

(Signature)
(G.NARASIMHAM)
MEMBER(JUDICIAL)

(Signature)
(SOMNATH SOM)
30.3.99
VICE-CHAIRMAN

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CORAM:

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

.....

Sri Kedar s/o late Bisi, aged about 45 years,
At/PO-Panchupalli, Retanga, Dist.PuriApplicant

Advocate for applicant - Mr.B.S.Tripathy

Vrs.

1. Union of India, represented through General Manager, South Eastern Railway, Garden Reach, Calcutta, West Bengal.
2. Divisional Railway Manager, S.E.Railway, Khurda Road Division, At/PO-Khurda Road (Jatni), District-Khurda.
3. Divisional Personnel Officer, S.E.Railway, Khurda Road, P.O-Jatni, District-Khurda.
4. Assistant Engineer, Bhubaneswar S.E.Railway, Bhubaneswar, Dist. Khurda..... Respondents

Advocate for respondents - Mr.D.N.Misra.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

S.Som.

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 5.1.1985 terminating his services with effect from 25.6.1984. There is also a prayer for a direction to the respondents to reinstate the applicant in service with full back wages and service benefits and for treating the period from 25.3.1984 to 22.6.1988 as leave according to Leave Rules. On the date of admission of this application on 15.3.1994 delay in filing the application was condoned and the application was admitted.

2. Facts of this case, according to the applicant, are that he joined as Casual Labourer in the Railways under Permanent Way Inspector, Baranga on 23.3.1971 and worked till 25.3.1984. He got temporary status and was getting CPC scale since 1976. Because of the strenuous work his nervous system and mental condition were badly affected. He remained under treatment of Assistant Professor of Psychiatry, S.C.B. Medical College & Hospital, Cuttack, from 25.3.1984 to 22.6.1988. He intimated the Railway authorities about his sickness. After recovery from mental feebleness the applicant came to know that his services were terminated on 5.1.1985 retrospectively from 25.6.1984 treating the period of absence as unauthorised without any notice or without initiating any enquiry against him. The order of termination is at Annexure-1. The applicant approached the Divisional Railway Manager to consider his case on the basis of medical certificate produced by him and to reinstate him in his former post. Copy of his representation dated 8.8.1988 is at Annexure-2. A further representation dated 7.2.1989 is at Annexure-3. As the applicant belongs to SC/ST community, the All India Scheduled Caste and Scheduled Tribe Railway Employees Association took up his case on 2.3.1991 in their letter at Annexure-4. The petitioner's case was apparently discussed in a meeting between Divisional Railway Manager and the Association and a decision was taken to put up the full facts of the case to Divisional Railway Manager for his personal perusal and examination. The minutes of this meeting held on 17.7.1991 is at Annexure-5. But no further action was taken even though the applicant approached the authorities several times and that is why he has come up in this petition with the prayers referred to earlier.

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3. The respondents in their counter have stated that the application is hopelessly barred by limitation as the applicant has come up after 10 years. The cause of action, if any, has arisen in 1984, but the applicant has approached the Tribunal only in 1994. The respondents have stated that the applicant was engaged in the Railways on 24.12.1970 as a Casual Labourer under P.W.I., Barang and had worked upto 24.3.1984 with frequent absence. From 25.3.1984 the applicant remained on unauthorised absence without any prior intimation to the authorities. Before this, in the year 1982 the applicant remained on unauthorised absence for 228 days, in 1983 for 173 days and in 1984 for 315 days. The report dated 31.12.1984 of P.W.I., Barang, indicating his unauthorised absence is at Annexure-R/1. The respondents have indicated that the applicant did not apply for leave nor did he submit any medical certificate. On 22.8.1984 the applicant reported before P.W.I, Barang, with a medical certificate from a private medical practitioner for taking him on duty after remaining on unauthorised absence for four months and 28 days. P.W.I., Baranga, was not the competent authority to take him on duty and the applicant was directed to appear before Assistant Engineer, Bhubaneswar. The Assistant Engineer, Bhubaneswar, referred the matter to Divisional Engineer-II, Khurda Road. The Divisional Engineer, after perusal of records, passed an order directing the Assistant Engineer, Bhubaneswar, to remove the applicant from service because of his absence for more than three months in accordance with Rule 732, copy of which is at Annexure-R/2. The Assistant Engineer accordingly terminated the services of the applicant taking that he is deemed to have resigned his appointment with effect from 25.6.1984. This order of removal is at Annexure-R/3. The termination order at Annexure-R/3 was served on the applicant. The petitioner on

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receipt of the order submitted an application dated 28.2.1985 (Annexure-R/4) noting that due to his unauthorised absence his services have been terminated and praying that his settlement dues, etc., should be paid to him quickly. As the applicant's services have been terminated and as he was a casual gangman he was not entitled to any pension. He was only entitled to Contributory Provident Fund and the amount was accordingly paid to him. The respondents have stated that the applicant is not entitled for any other dues. It is further stated that the applicant having accepted the termination order and having applied for settlement of his dues and having accepted the Contributory Provident Fund itself, cannot question the order of termination. The respondents have stated that under Rule 732 no disciplinary proceeding is required to be initiated against the applicant and the termination order has been issued rightly and strictly in accordance with the rules. In view of the above, the respondents have opposed the prayer of the applicant.

4. We have heard Shri B.S.Tripathy, the learned counsel for the petitioner and Shri D.N.Misra, the learned Additional Standing Counsel appearing for the respondents, and have also perused the records. At the time of hearing, the learned counsel for the petitioner wanted one week time to file written note of submission, but no written submission has been filed.

5. It has been submitted by the learned counsel for the petitioner that the petitioner fell ill and suffered from mental disturbance and was under the treatment of Assistant Professor, Psychiatry, S.C.B.Medical College & Hospital, Cuttack. Because of his illness, he remained absent from his duties from 25.3.1984 to 22.6.1988. The applicant has stated that he informed the Railway authorities about his illness. The respondents in their counter have stated that the applicant remained on

unauthorised absence from 25.3.1984 without giving intimation. The respondents have denied that any intimation was sent by the applicant. We are not inclined to accept the contention of the petitioner that he sent intimation to the departmental authorities because along with his O.A. he has not given any document showing that he had sent any intimation of his absence to the departmental authorities. In his O.A. also he has not made any specific averment as to when and how he had sent such intimation of his absence to the departmental authorities. As regards his treatment by the Assistant Professor, Psychiatry, S.C.B. Medical College & Hospital, no certificate has been produced along with the OA. The applicant has stated that he asked for reinstatement on the basis of medical certificate produced by him. The respondents ~~have~~ in their counter have stated that the applicant produced a medical certificate from a private medical practitioner. Because of this it is difficult to accept this contention that he was under the treatment of Assistant Professor of Psychiatry, SCB Medical College & Hospital, Cuttack. It is also to be noted that the applicant being a Railway servant could have easily approached the doctors in Railway Hospital at the first instance. But there is no evidence that he has done so. His contention that he had informed the Railway authorities about his absence is also not believable because he has neither produced any document in support of his contention nor has he made any specific averment as to when he sent such intimation and to whom. The respondents, on the other hand, have pointed out that the applicant remained on unauthorised absence for 228 days in 1982, 173 days in 1983 and 315 days in 1984. This is supported by the report dated 31.12.1984 of the P.W.I., Barang, at Annexure-R/I. From this, it is clear that the applicant was in the habit of remaining absent from his duties for long periods even before the date on which,

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according to him, he fell ill. Thus, it must be held that the applicant remained on unauthorised absence from 25.3.1984 without giving any intimation to his departmental superiors.

6. The next point urged by the learned counsel for the petitioner is that for such unauthorised absence departmental proceeding should have been drawn up against him and his service should not have been terminated straightaway in the order dated 5.1.1985 at Annexure-1. The respondents have justified the order on the basis of Rule 732, copy of which is at Annexure-R/II. This provides that except where otherwise provided in his contract, leave may be granted to any other Railway servant without a lien on a permanent post in the manner indicated below:

- (a) Extraordinary Leave - Three months at a time;
- (b) Provided he has completed one year total service, 10 days leave on full pay per calendar year subject to the condition that such leave may not be accumulated for more than 20 days.

Thus, from the above Rule, it is clear that extraordinary leave without leave salary can be granted for a period not exceeding three months, and for those who have completed one year total service 10 days leave on full pay can be sanctioned in a calendar year. Note 2 of Exception II under this Rule lays down that where a temporary Railway servant fails to resume duty on the expiry of the maximum period of extraordinary leave granted to him or where he is granted a lesser amount of extraordinary leave than the maximum amount admissible and remains absent from duty for period which together with the period of extraordinary leave granted exceeds the limit upto which he could have been granted such leave, he shall, unless the President in view of the exceptional circumstances of the case otherwise determines, be deemed to have resigned his appointment and shall accordingly cease to be in Railway employment. In

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other words, if the Railway servant has been granted extraordinary leave for some period not exceeding three months and if after the expiry of that leave, he fails to resume duties and his absence after the expiry of the leave together with the period of extraordinary leave exceeds the maximum amount admissible, i.e., three months he will be deemed to have resigned his appointment. In the instant case, the applicant was on unauthorised absence from 25.3.1984 till 5.1.1985 when the impugned order was passed. According to the applicant himself, he was absent from 25.3.1984 to 22.6.1988, i.e., for more than four years. In any case, as he was a temporary Railway servant, on expiry of three months, under the Rule he is deemed to have resigned from his appointment. Therefore, before passing the order dated 5.1.1985, initiation of departmental proceedings was not necessary. There are similar provisions of deemed resignation by the Government servant on the ground of long absence from duty in other Service Rules also. As under this Rule 732 the applicant is deemed to have resigned the appointment, there is no requirement of drawal of departmental proceeding against him. The order dated 5.1.1985 cannot be faulted on that ground. It is also to be noted that the applicant was in the habit of remaining on long absence in earlier years in 1982 and 1983. In view of this, we find no illegality in the order dated 5.1.1985 and the prayer for quashing this order is accordingly held to be without any merit and is rejected.

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7. The respondents in their counter have also raised the point of limitation. The impugned order was passed on 5.1.1985 and the applicant has filed this O.A. on 11.3.1994, i.e., after about ten years. The OA has also not been accompanied by a petition seeking condonation of delay.

As earlier noted, on 15.3.1994 the Tribunal condoned the delay and admitted the petition and issued notice to the respondents. The learned counsel for the petitioner has urged that as the Tribunal has already condoned the delay, it is not open for the respondents to raise this point at the time of hearing. We are unable to accept this contention. On 15.3.1994 delay was condoned without hearing the other side. The applicant had also not filed any petition for condonation of delay. Under these circumstances, it must be held that the delay has been condoned only for the purpose of admission of this application and the respondents are not debarred from raising this point in their counter. From the pleadings of the parties, it is clear that the applicant has not indicated any reason as to why he did not come to the Tribunal earlier. The respondents, on the other hand, have stated that after the impugned order dated 5.1.1985 was received by the applicant, he had applied in his letter dated 28.2.1985 at Annexure-R/IV for payment of his settlement dues and accordingly, Contributory Provident Fund amount was paid to him in full and final settlement of his dues. Obviously, at that stage, the applicant had accepted the order dated 5.1.1985 terminating his service on the ground that he had resigned his appointment. It is only later on that he had come up with the prayer for reinstatement. There is no averment as to why the applicant did not approach the Tribunal earlier. In view of this, we also decide the point of limitation against the applicant.

8. In consideration of all the above, 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
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