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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

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ORIGINAL APPLICATION NO. 152 OF 1995
Cuttack, this the 19th day of March, 2001

Sri Purna Chandra Behera 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)

Sanjay Kumar
(SUNATH SONI)
VICE-CHAIRMAN
19.3.2001

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CORAM:

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

.....
Sri Purna Chandra Behera, son of late Sachidananda Behera,
Telephone Operator in the office of the Telephone Exchange,
Balasore, Sub-Divisional Officer, Telegraphs, Balasore, C/o
Sri Prakash Kumar Nayak, Advocate, At-New Rausapatna,
P.O-Buxi Bazar, District-Cuttack

..... Applicant
Advocate for respondents - Mr.P.K.Nayak

Vrs.

1. Union of India, represented through the General
Manager, Telecommunications, Orissa Circle,
At/PO/PS-Bhubaneswar, District-Khurda.
2. Telecom District Engineer, Department of
Telecommunication, Balasore.
3. Sub-Divisional Officer, Telecommunication, Balasore.
4. Director, Telecommunication, Office of CGMT,
Bhubaneswar.

...Respondents

Advocate for respondents - Mr.J.K.Nayak
ACGSC

O R D E R
SOMNATH SOM, VICE-CHAIRMAN

In this application the petitioner has
prayed for setting aside the order dated 9.10.1992
(Annexure-6) removing him from service. He has also prayed
for reinstatement and all arrear salary and consequential
service benefits.

2. The applicant's case is that from 1962
he was working as Telephone Operator in Balasore Telephone
Exchange under respondent no.2. He fell ill on 8.4.1980 and
applied for leave upto 17.4.1980 which was granted to him.

He was suffering from mental disease and was under treatment of Dr.A.B.Mohanty, a local reputed medical practitioner. After long treatment of two and half years he was advised treatment under a Specialist and he ^{was} rushed to Cuttack and admitted to SCB Medical College & Hospital, Cuttack, where he was under treatment of Dr.G.C.Kar, Assistant Professor of Mental Department. The applicant has stated that he was suffering from "Cyclic Depressive Psychosis", a type of illness in which the patient loses ability to think and becomes incapable of taking any responsibility. He recovered from illness on 13.10.1988. He was thus under medical treatment from 8.4.1980 to 31.8.1982 and again from 1.9.1982 to 12.10.1988 under Dr.A.B.Mohanty and Dr.G.C.Kar. At the initial stage he managed to send seven leave applications from time to time through certificate of posting. He has stated that the tutor of his children one Sarbeswar Das was helping the applicant in many ways and he was taking signature of the applicant on the leave applications and used to send the same. On 27.9.1980 he received a registered letter, but he was unable to reply to the same. On 1.12.1980 respondent no.3 initiated proceedings against him under Rule 16 of CCS (CCA) Rules for imposition of minor penalty on the ground of unauthorised absence from 18.4.1980 and disobedience of orders. Though the applicant was asked to submit his explanation within ten days, he was unable to submit his explanation. Taking into consideration the applicant's imbalance of mind, respondent no.3 dropped the proceedings on 7.3.1987. Again without considering the applicant's illness departmental proceeding under Rule 14 of CCS (CCA) Rules was initiated against him on 23.5.1987 for unauthorised absence from duty from 8.4.1980 and for

negligence in duty. The chargesheet is at Annexure-1. The applicant submitted his joining report (Annexure-2) on 14.10.1988 along with fitness certificate which is at Annexure-2, but he was not allowed to resume duty. The applicant came up before the Tribunal in OA No.502 of 1990 which was disposed of in order dated 15.7.1992 (Annexure-3). The Tribunal directed the petitioner to file a representation before the competent authority stating his grievance and the documents relied upon by him. The Tribunal further directed the competent authority to pass a reasoned order which would be subject to judicial review in future if occasion so arises. Accordingly, the petitioner submitted representation, but no order was passed on that. In order to establish that the leave availed by the applicant was authorised one, he submitted application on 27.11.1991 to the inquiring officer requesting him to call for his leave applications which were sent under certificate of posting. In this letter, which is at Annexure-4 he also stated that he may be allowed to produce his certificate of posting records in original in proof of his submission of leave applications on different dates as defence documents at the time of enquiry. On completion of the enquiry, the inquiring officer in his report at Annexure-5 held that the period of absence from 8.4.1980 to 13.8.1982 was intentional and the absence from 1.9.1982 to 12.10.1988 was unintentional. The applicant submitted representation to respondent no.2. But without application of mind and without considering his representation and ignoring the material evidence and statements of witnesses on record, respondent no.2 imposed the punishment of removal from service on the applicant in the order dated 9.12.1992 at Annexure-6. The applicant submitted an appeal

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on 13.11.1992 before respondent no.4 and he came to know later on that during the pendency of the case the appellate authority has disposed of the appeal on 6.10.1995 in his order at Annexure-7. It is necessary to note at this stage that this averment has been made by the applicant in this OA after the same has been amended in accordance with the order dated 30.7.1998. The appellate authority confirmed the punishment of removal from service. The applicant has stated that he had filed MA No. 598 of 1994 in OA No.502 of 1990 seeking direction to the appellate authority to dispose of his appeal. The order of the Tribunal dated 7.10.1994 permitting him to withdraw the MA is at Annexure-8. The applicant has made several averments challenging the findings of the inquiring officer as also the disciplinary authority and imposition of punishment and the order of the appellate authority. These will be referred to at the time of considering the submissions made by the learned counsel of both sides. In the context of the above facts, the applicant has come up with the prayers referred to earlier.

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3. Respondents have filed counter opposing the prayer of the applicant. They have stated that the applicant remained absent from duty from 8.4.1980 unauthorisedly without permission and continued to remain absent till 13.10.1988. In letter dated 27.9.1980 he was asked to submit explanation for his unauthorised absence. But the applicant neither reported for duty nor did he submit any explanation or any leave application. Accordingly, a disciplinary proceeding under Rule 16 of CCS (CCA) Rules was initiated against him and the chargesheet

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was issued on 1.10.1980 which was acknowledged by the applicant on 16.12.1980. The applicant did not submit any defence statement. Subsequently, the chargesheet issued under Rule 16 was dropped as the charges were held to be serious in nature and fresh charges were issued to him under Rule 14 of CCS (CCA) Rules. The applicant received the chargesheet on 15.7.1987 and submitted his defence statement on 15.7.1987 denying all the charges. The enquiry was held strictly following the rules and instructions. The inquiring officer submitted his report on 27.4.1992 holding that the plea of the applicant that he had submitted leave applications under certificate of posting on 18.4.1980, 1.10.1980, 1.1.1981, 1.4.1981, 1.9.1981, 1.1.1982 and 1.9.1982 is not acceptable as no documentary evidence was produced at any stage of the enquiry. The inquiring officer also held that the applicant was suffering from serious mental illness and was under treatment of Dr.G.C.Kar, Assistant Professor, Mental Department, S.C.B. Medical College from 1.9.1982 to 12.10.1988. Basing on the deposition of Dr.G.C.Kar, who was examined as a defence witness, the inquiring officer held that the period of absence of the applicant from duty from 1.9.1982 to 12.10.1988 was not intentional because it was due to serious mental disorder of the applicant. But the period of absence from 8.4.1980 to 31.8.1982 was intentional and the applicant was unauthorisedly absent from duty and absconded himself. The inquiring officer therefore held that the charge is proved. It further appears from the impugned order of punishment that a copy of the enquiry report was sent to the applicant on 9.6.1992 and the applicant submitted a representation on

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3.7.1992. Thereafter the disciplinary authority after due consideration of the report of the inquiring officer, passed a reasoned order imposing the punishment of removal from service on the applicant in his order dated 9.10.1992. The appeal filed by the applicant on 13.11.1992 was rejected by respondent no.4 after considering all aspects. The respondents have made various submissions with regard to the findings of the inquiring officer and the disciplinary authority. In the context of the above, they have opposed the prayer of the applicant.

4. In his rejoinder the applicant has reiterated his averments made earlier in the OA.

5. We have heard Shri P.K.Nayak, the learned counsel for the petitioner and Shri J.K.Nayak, the learned Additional Standing Counsel for the respondents. The learned counsel for the petitioner has filed xerox copy of the decision in the case of Nathoo Lal v. Durga Prasad, AIR 1954 SC 355, which has also been taken note of.

6. Before considering the various submissions made by the learned counsel of both sides it is necessary to note the charges which were issued to the applicant under Rule 14 of CCS (CCA) Rules. There is only one charge in which it has been alleged that the applicant while working as Telephone Operator, Balasore Telephone Exchange, remained absent from duty from 8.4.1980 unauthorisedly and continued to abscond from that date till the date of issuing of the charge, thereby contravening the provisions of the CCS (Conduct) Rules, 1964. In the statement of imputation it has been stated that in spite of issue of letter dated 27.9.1980 by Sub-Divisional Officer, Telegraphs, Balasore, through registered post, the

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applicant neither submitted any explanation or any leave paper to regularise the absence nor did he resume duty. The admitted position is that the applicant was away from duty from 8.4.1980 to 13.10.1988 when he gave his joining report which was not accepted. The inquiring officer in his report has noted that Defence Witness No.3 Dr.G.C.Kar, Assistant Professor, Mental Department, was examined. He exhibited his certificate dated 12.10.1988 and in his deposition Dr.Kar stated that the applicant was suffering from Cyclic Depressive Psychosis. He also stated that the applicant was under his treatment from 1.9.1982 to 12.10.1988 and had declared the applicant fit on 13.10.1988. In view of this, the inquiring officer has held that the period of absence from 1.9.1982 to 12.10.1988, during which he had lost his ability to think judiciously and was incapable of knowing his sufferings, was not intentional and it was due to serious mental disorder. As regards the period of absence from 8.4.1980 to 31.8.1982 the learned counsel for the petitioner has stated that even from the conduct of the respondents themselves it is clear that for the period from 8.4.1980 to 17.4.1980 the applicant had submitted his leave applications and the leave was also sanctioned. This is because in the initial chargesheet issued under Rule 16 the applicant was charged with unauthorised absence from 18.4.1980. This, according to the learned counsel for the petitioner, shows that he was allowed leave upto 17.4.1980. In paragraph 6(vii) of the OA the applicant has mentioned that in the chargesheet issued under Rule 16 he was charged for unauthorised absence from 18.4.1980. The respondents while dealing with this paragraph of the OA, in paragraph 9 of their counter have not denied that the original chargesheet was issued

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for unauthorised absence from 18.4.1980. The learned counsel for the petitioner has also relied on Nathoo Lal's case (supra) where the Hon'ble Supreme Court have laid down that what is admitted by a party to be true must be presumed to be true unless the contrary is shown. As the respondents have not denied that in the original chargesheet the applicant was charged for unauthorised absence from 18.4.1980, it must be held that he was granted leave from 8.4.1980 to 17.4.1980. This aspect becomes important in the context of the assertion made by the petitioner that from 18.4.1980 till 1.9.1982 he had sent seven leave applications under certificate of posting and in his petition before the inquiring officer he had requested the inquiring officer to call for the leave applications from the office of Sub-Divisional Officer, Telegraphs. He also sought for permission to produce his records regarding sending leave applications through certificate of posting. Before considering this aspect, it is to be noted that the law is well settled that in a departmental proceeding the Tribunal does not act as an appellate authority and cannot substitute its finding and judgment in place of finding and conclusion arrived at by the inquiring officer and the disciplinary authority. The Tribunal can interfere only when the finding is based on no evidence or is patently perverse or where reasonable opportunity has not been given to the delinquent officer or principles of natural justice have been violated. The rival claims of the two sides with regard to alleged submission of leave applications by the applicant have to be considered in the context of the above well settled position of law.

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7. We have earlier noted that from the conduct of the respondents themselves, it does appear that the applicant sent leave application seeking leave upto 17.4.1980. The inquiring officer has noted in his report that he requisitioned the leave application from the disciplinary authority. In reply the disciplinary authority had intimated in his letter dated 9.12.1991 that the leave applications do not appear to have been received at his end. In this context, the inquiring officer has recorded the following finding:

"It was not clearly stated by the disciplinary authority as to whether the S.P.S. had submitted the leave applications or not as requisitioned"

It is important to note that the applicant was a Telephone Operator and he was required to submit his leave applications to S.D.O.(T). When the disciplinary authority was requisitioned by the inquiring officer to submit the leave applications, he merely replied that the leave applications allegedly sent by the applicant had not been received at his end. He had not specifically mentioned that the leave applications had not been received by the S.D.O(T). From the prosecution side one Bidyadhar Behera was examined as P.W.1. During the period in question he was working as Section Supervisor in the office of S.D.O.(T), Balasore. He deposed that no such leave applications were submitted by the applicant on 18.4.1980, 1.10.1980, etc. He further deposited that he does not know that the applicant was on leave being ill. Thus the only evidence which has been considered by the inquiring officer with regard to non-submission of the leave applications is the evidence of Bidyadhar Behera (P.W.1).

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It is interesting to note that the evidence of P.W.1, as referred to by the inquiring officer in his report, speaks only of non-submission of leave application from 18.4.1980. and thereafter. But P.W.1 has not mentioned about leave application dated 8.4.1980 seeking leave upto 17.4.1980. Notwithstanding this, the inquiring officer has held that the period of absence from 8.4.1980 to 31.8.1982 is unauthorised. Obviously, he has not applied his mind with regard to the period from 8.4.1980 to 17.4.1980. The second aspect of the matter is that the applicant had filed a petition before the inquiring officer at Annexure-4 seeking permission to produce his records with regard to sending leave applications under certificate of posting. That is to say he wanted to introduce the certificate of posting records. The inquiring officer in his report has stated that no document was produced by the applicant or by D.W.1 who is the tutor of the applicant's children in support of the applicant's contention that leave applications were sent through certificate of posting. The inquiring officer has not mentioned in the report that he had allowed the applicant to produce the certificate of posting record and the same was not produced. The applicant in paragraph 6(xix) of the OA has stated that in spite of his specific request in Annexure-4 to the inquiring officer to permit him to produce documents relating to certificate of posting, his request was turned down on the plea that the same could be obtained from the office and later on it was alleged that he did not submit any documentary evidence. In their counter (page 15) the respondents have merely stated that the allegation regarding turning down of the request

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of the applicant in Annexure-4 to permit him to produce the documents relating to certificate of posting by the inquiring officer is incorrect. It has also been submitted by the learned Additional Standing Counsel in course of hearing that the petitioner in his application at Annexure-R/4 asked for Earned Leave on medical ground from 18.4.1980 to 13.10.1988. It is submitted that from this it is clear that he had not submitted leave applications earlier on different dates from 18.4.1980 till 1.9.1982, as alleged by him. The fact that the applicant had submitted application for Earned Leave as at Annexure-R/4 for the entire period from 18.4.1980 to 13.10.1988 would not by itself disprove his statement that leave applications were not submitted by him. All these points have been mentioned by us only to bring out the fact that in respect of non-submission of leave applications, the inquiring officer does not seem to have applied his mind. We have already discussed about the period from 8.4.1980 to 17.4.1980. Moreover, in view of the fact that the inquiring officer has noted that the disciplinary authority had indicated that the applications had not been received by him, the inquiring officer should have called for the leave applications not from the disciplinary authority but from the person to whom the leave applications were stated to have been submitted, i.e., from the Sub-Divisional Officer, Telegraphs, Balasore. He has also not recorded any reason as to why he has chosen to accept the evidence of P.W.1 and disbelieve the evidence of D.W.1. With regard to this finding of fact, it must be held that the inquiring officer has not applied his mind.

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8. As regards the period of absence of the applicant from 8.4.1980 to 13.10.1988 the applicant has stated that he was under the treatment of two doctors, Dr.A.B.Mohanty of Balasore till 31.8.1982 and under Dr.G.C.Kar from 1.9.1982 to 13.10.1988. Both these doctors were examined as D.Ws.2 and 3 respectively. Both of them have stated that the applicant was under their treatment for the respective periods. The inquiring officer has accepted the evidence of Dr.G.C.Kar and held that during his period of treatment from 1.9.1982 to 12.10.1988 the absence of the petitioner was not intentional. There is no discussion in the enquiry report as to why he chose to disbelieve the evidence of Dr.A.B.Mohanty with regard to the treatment of the applicant for the earlier period. The respondents have enclosed a certificate issued by Dr.A.B.Mohanty on 31.8.1982 certifying that the applicant was under his treatment for schizophrenia. In this certificate he has ^{not} mentioned for how long before 31.8.1982 the applicant was under his treatment. But the fact of the matter is that there is such a certificate and Dr.Mohanty had deposed that he had treated the applicant and later on 1.9.1982 he had recommended him for treatment by a Specialist. It is beyond our apprehension as to why the evidence of Dr.A.B.Mohanty was ignored or disbelieved whereas the evidence of Dr.Kar was accepted. It also stands to reason that as Dr.Mohanty had advised the applicant to consult a Specialist, he must have treated the applicant for sometimes before such advice. In view of this, the finding that the applicant intentionally stayed away from duty from 8.4.1980 till 31.8.1982 is obviously based on no evidence. It is admitted between the parties that the

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applicant was away from his duty from 8.4.1980 till 13.10.1988. In view of the fact that on the basis of evidence of Dr.Kar it has to be held that his absence from 1.9.1982 to 12.10.1988 was not intentional, there is no evidence to show that from 8.4.1980 till 31.8.1982 the applicant's absence was intentional. To state the point in another way, his absence from 18.4.1980 till 31.8.1982 is admitted by the applicant, but there is no evidence that this period of absence was intentional. This finding is accordingly held to be based on no evidence. In the light of the above discussion, we hold that the impugned order of punishment is liable to be set aside and we order accordingly.

9. The next question which arises is how the period of absence from 8.4.1980 is to be treated. The applicant has stated that after getting cured, he submitted a joining report dated 14.10.1988 at Annexure-2 along with medical certificates but he was not allowed to join. Thereafter he approached the Tribunal in OA No.502 of 1990 disposed of in order dated 15.7.1992. The Tribunal directed that the applicant should file a representation before the competent authority stating his grievance and documents relied upon by him, and the competent authority should pass a reasoned order which would be subject matter of judicial review in future if occasion so arises. The applicant has stated in paragraph 6(xii) of his OA that accordingly he submitted representation, but the departmental authorities did not consider the same. The respondents in paragraph 12 of their counter have stated that the applicant submitted his joining report on 13.10.1988 along with medical certificate of Dr.Kar declaring him fit to resume duty from

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13.10.1988. The respondents have stated that the applicant obtained a second medical certificate of fitness from Dr.A.B.Mohanty on 13.10.1988 in which Dr.Mohanty had mentioned that he is not fit to resume duty. This certificate of Dr.A.B.Mohanty is at Annexure-R/6. The applicant has stated that this certificate is in a printed form and by mistake the word "now" has been printed as "not". Later on Dr.Mohanty has issued a correction, but this has not been taken note of. This certificate of Dr.Mohanty is at Annexure-R/6 and the relevant portion of the certificate is quoted below:

".....I have carefully examined Sri Purna Chandra Bhera of the department Tel.Exchange, BLS, whose signature is given above and find that he has recovered from his illness and is not fit to resume his duties in Government service on 14.10.88."

Any reasonable person after going through the above certificate would obviously know that the word "not" is a typographical error because in the same sentence it has been mentioned that the applicant has recovered from his illness. It is also to be noted that the heading of this printed form clearly mentions the following:

"MEDICAL CERTIFICATE OF FITNESS TO RETURN
TO DUTY"

In view of this, the contention of the respondents in their counter that even though the certificate was later on corrected by Dr.Mohanty in a separate note, as the correction was not made in the body of the certificate the applicant could not be allowed to join, is rejected. The respondents have not made any averment with regard to the assertion of the applicant that no order was passed on his representation to join even though the Tribunal had

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directed in their order in OA No. 502 of 1990 for passing such an order on the applicant's representation. In view of this, it must be held that the departmental authorities wilfully and capriciously did not allow the applicant to join on 13.10.1988. It is also to be noted that the applicant had never been put under suspension and the order removing him from service came only on 9.10.1992. In view of this, for the period from 14.10.1988 till the date of his removal from service, the applicant is entitled to full wages. As regards his period of absence from 8.4.1980 we have already noted that the leave is presumed to have been sanctioned to him till 17.4.1980. The rest of his period of absence from 18.4.1980 till 13.10.1988 should be decided by granting him leave as available and Extraordinary Leave. The respondents are also directed to reinstate the applicant ins ervice within 30 (thirty) days from the date of receipt of copy of this order.

10. In the result, therefore, the Original Application is allowed in terms of our observation and direction above. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
19.3.2001
VICE-CHAIRMAN

19th March, 2001/AN/PS