

5

9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 76 OF 1995.

Cuttack, this the 29th day of November, 2000.

NITA @ NITYANANDA DEHURY. .... APPLICANT.

VRS.

UNION OF INDIA & 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 2000

(10)

6

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 76 OF 1995,  
Cuttack, this the 29th day of November, 2000.

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

..

SHRI NITA @ NITYANANDA DEHURY,  
Aged about 51 years,  
S/o. Late Khageswar Dehury (Khaga),  
Vill. Odapada, P. IL Hindol Road,  
DISTRICT-DHENKANAL.

...

APPLICANT.

By legal practitioner : Mr. A. S. Nandy, Advocate.

-Versus-

1. Union of India represented through its General Manager, South Eastern Railway, Garden Reach, Calcutta-43.
2. The Divisional Railways Manager, South Eastern Railway, Khurda Road, PO: Jatni, Dist: Khurda.
3. The Divisional Engineer (Central), South Eastern Railway, Khurda Road,
4. The Assistant Engineer, South Eastern Railway, Bhubaneswar Railway Station, Bhubaneswar.
5. The Permanent Way Inspector, South Eastern Railway, Dhenkanal Railway Station, At/PO/Dist. Dhenkanal.

....

RESPONDENTS.

*J. B. M.* By legal practitioner : M/s. B. Pal, O. N. Ghosh, Sr. Counsel.

...

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN;

In this Original Application, under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for a declaration that the so called disciplinary proceedings are void and inoperative and that the applicant is deemed to be continuing in service from 7-10-1992. By way of interim relief, he has prayed for a direction to the Authorities to permit the applicant to resume his duties forthwith and pay him all his arrear salary and consequential benefits w.e.f. 7-10-1992 within a stipulated period. On the date of admission of this Original application on 7-2-1995 as ad-interim measure, it was directed that the applicant be admitted to duties and his services be utilised in the normal way as was the case prior to 15.9.1992. It was also ordered that the eventual service interests of the applicant shall be subject to the final outcome of this case.

2. Respondents have filed their counter opposing the prayers of the applicant.

3. For the purpose of considering this Original Application it is not necessary to refer to all the averments made by the parties in their pleadings.

4. Briefly stated, the applicant's case is that he was absent from duty due to illness from 15-9-1992 to 6-10-1992 and was under the medical treatment. When he reported to duty on 7-10-1992 alongwith medical certificate, no work was allotted to him and he was informed that papers relating to his illness should be submitted to the Assistant Engineer, Respondent no. 4.

On 24.10.1992, applicant received the punishment order withholding his increment for a period of two years without commulative effect on the ground that he is found guilty of unauthorised absence. Applicant has stated that he has filed representation against the penalty. Applicant has further stated that he was not allowed to resume his duty and he has been kept out of work. Thereafter on 14-12-1992 another chargesheet for major punishment has been issued to him but according to the applicant the same has not been received by him. Applicant has stated that surprisingly after seven days on 30-8-1993, another fresh chargesheet has been issued alleging that the applicant remained absent from 15-9-1992 unauthorisedly. Applicant disputed the allegations and asked for inspection of records and permission to represent through a legal counsel. But no orders have been passed on this. Applicant has stated that as a minor penalty has been imposed on him, on the same ground a major penalty proceedings can not be started. In the context of the above, he has come up with the prayers referred to earlier.

5. Respondents in their counter have stated and this has not been denied by the applicant by filing rejoinder that the applicant is in habit of remaining unauthorised absence for long period. In page-3 of the counter they have mentioned that every year from 1978 to 1991, applicant has remained unauthorised absence for long period ranging between minimum 107 days in 1981 to maximum 330 days in 1988. Respondents have stated that because of his unauthorised absence from 21.3.92 to 6.6.1992 he was charge-sheeted on 11.8.1992 and was given all reasonable opportunity. Applicant did not submit any show cause and ultimately, punishment of stoppage of increment for two

9

13

-4-

years without commulative effect was imposed on the applicant. No appeal against the order has been filed by the applicant. Respondents have stated that the applicant remain on further unauthorised absence from 15-9-1992 to 4-12-1992. On 5.12.92 he came up with a certificate from a private medical practitioner after 2 and  $\frac{1}{2}$  months of unauthorised absence. Again another charge-sheet was issued to him under the major penalty proceedings and all opportunity was given to him. Applicant appeared during the enquiry and all opportunity was afforded to him. Report of the I.O. was ordered to be supplied to him but this report could not be served on him because he again remained on unauthorised absence and approached this Tribunal in this O.A. Respondents have stated that the applicant has remained unauthorised absence through out his service career and therefore, proceedings have been rightly initiated against him. On the above grounds the Respondents have opposed the prayers of the applicant.

6. Learned counsel for the applicant is absent. No request has also been made on his behalf seeking adjournment. As this is a 1995 matter where pleadings have been completed long ago, it can not be dragged on indefinitely. In view of this we have heard Mr. B. Pal, Id. Sr. counsel for the Respondents and have perused the records.

7. From the averments of the parties it appears that the applicant has been habitually absent from duty. Respondents have given specific period of unauthorised absence of the applicant for 14 years from 1978 to 1992 including the number of days in each year when the applicant was <sup>on</sup> unauthorised

absent. This specific averments h

absence. This specific averment have not been denied by the applicant. On a conclusion of the disciplinary proceedings in respect of one such unauthorised absence, he has been <sup>with</sup> imposed ~~of~~ punishment of with-holding of increment. The further proceedings which applicant seeks to get quashed is with regard to a further period of unauthorised absence. The only ground urged by the applicant for quashing the disciplinary proceedings is that for his unauthorised absence he has already been imposed with a punishment of stoppage of increment and therefore, further proceedings is illegal. This contention is wholly without any merit because the next proceedings are with regard to another period of unauthorised absence and the disciplinary Authorities are within their power to initiate disciplinary proceedings against him for fresh period of unauthorised absence. It further appears from the counter, not denied by the applicant by filing any rejoinder that in course of the proceedings, the applicant participated in the enquiry and the enquiry was concluded but the report of the I.O. could not be served on the applicant. In view of this we hold that the prayer of the applicant to quash the disciplinary proceedings is without any merit and the same is rejected.

8. As regards his prayer for accepting his joining report, it is submitted by learned Sr. Counsel for the Respondents that in pursuance of the interim order of this Tribunal, the

applicant was allowed to join but he has no instruction whether the applicant is still continue and discharging his duties. As the applicant has already been allowed to join his second prayer seeking a direction to allow him to join has already been granted by the Departmental Authorities in pursuance of the Interim order. No separate order needs to be passed in respect of this prayer.

9. In the result, therefore, the Original Application is disposed of in terms of the observations and directions made above. No costs.

Interim order passed on 7-2-1995 stands vacated.

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN

KNM/CM.