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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 270 OF 1996.

Cuttack this the 21st day of September, 1998.

P.ERAKAYYA.

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APPLICANT.

- VERSUS -

ASSTT.COMMERCIAL MANAGER(CATG.)
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

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

21.9.98

G.Narashimham
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 270 OF 1996.

Cuttack this the 21st day of September, 1996.

C O R A M:-

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

A N D

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

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P. Erakayya, aged about 52 years,
S/O. P. Das, resident of Village
Ambasuali, PS. Kasibaga, Srikukulam
(A.P.) at present working as a
Cook, South Eastern Railway Catering,
Bhubaneswar.

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APPLICANT.

By legal practitioner:- Mr. (Dr.) D. B. Mishra, Mr. N. C. Mishra,
Advocates.

-Versus-

1). The Asstt. Commercial Manager(Catering),
South Eastern Railway, Khurda Road,
Khurda.

2) The Chief Commercial(Catering) Manager,
South Eastern Railway, 14 Strand Road,
Calcutta.

3) Catering Manager, South Eastern Railway,
Bhubaneswar.

4) The Senior Divisional Commercial Manager,
South Eastern Railway, Khurda Road, Khurda.

5) The Divisional Railway Manager, South
Eastern Railway, Khurda Road, PO. Jatni,
Khurda-50.

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RESPONDENTS.

By legal practitioner :- Mr. R. C. Rath, Additional Standing
Counsel (Central).

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O R D E R

MR. G. NARASIMHAM, MEMBER(JUDICIAL) :-

Applicant, a catering cook of South Eastern Railway, serving at Bhubaneswar was absent on duty from headquarters on two occasions i.e. from 8-7-95 to 10-8-1995 and 1-12-1995 to 7-1-1996. Two proceedings have been initiated against him under Annexures-A/5 & A/6 for these periods of unauthorised absence, under the Railway Servants (Disciplinary & Appeal) Rules, 1968.

Respondent No.1 i.e. Asst. Commercial Manager(Catering), Khurda Road ultimately withheld one year increment in each case (Annexures-A/8 and A/9 respectively). According to the applicant, he preferred appeal under Annexure-A/10, before the D.R.M., S.E. Railway, Khurda Road, Respondent No.5. During the pendency of this appeal, this application has been filed. Since this application has been admitted on 3.4.96 i.e. on the date of filing of the application sub section-4

under section- 19 1 of the Administrative Tribunals

Act, 1985, the appeal abates and even if any order has been passed in the meanwhile, that order has no legal

sanctity.

2. Two contentions were advanced by Dr. D. B. Mishra, learned counsel for the Applicant challenging the entire proceeding. The first contention of the learned counsel for the applicant is that unauthorised absence from duty, will not amount to mis-conduct to be punished under the relevant disciplinary proceedings Rules and the other point urged by him is that the orders of punishment, under Annexures- A/8 and A/9 will indicate that the Disciplinary Authority had not applied his mind and passed a mechanical non-speaking order.

3. There is no dispute regarding the facts and the periods of unauthorised absence from duty as well as headquarters. The version of the applicant is that he was made to over work and on account of which, he fell ill and had to go to his native place for treatment and in fact was under treatment of a qualified medical practitioner whose certificates (xerox copies), he annexed in this Application as Annexures-Al to A/3 in support of his illness.

4. The main point at issue, is whether the punishment orders can be quashed ?. In support of the contention that unauthorised absence will not amount to mis-conduct to attract the disciplinary proceeding learned counsel for the applicant, relied on the decision of the Punjab and Harayan High Court in STATE OF PUNJAB AND ANOTHER - VRS. ACHHAR SINGH - reported in 1991 (4) SLR 539. We have carefully gone through this judgment and can not accept the contention advanced by the learned Counsel for the Petitioner. What has been observed in this decision is mere absence from duty for a few days does not amount to an act of gravest misconduct the cumulative effect of which may go to prove incorrigibility and complete unfitness of the employee for police service and dismissal from service on such a charge can not be upheld. In other words, this decision lays down that mere absence from duty for a few days can not come under the gravest misconduct entailing dismissal from service. It nowhere lays down that absence from duty is not a misconduct.

5. We find there is some force in regard to the other contention. Applicant was served with notices under Annexure-A/5 & A/6 to show cause. The admitted case is that in response to these, he filed representation explaining his case (Annexure-A/7). Yet the impugned orders at Annexures-A/8 and A/9 did not at all indicate that his representation was considered. The orders are cryptic and relevant facts forming the charges have been incorporated in the blank spaces in a cyclostyled paper containing format. Excepting the period of absence and the date, Annexures/A/8 and A/9 are identical. It is worthwhile to quote the relevant portion of Annexure-A/8 hereunder:

* NOTICE
No. Sr.DCM/Catg/D&A /246

DRM Office, Khurda
Dt. 6-2-96.

To
Shri P. Erakayya, Cook (RR/BBS),
through Catering Manager/BBS.

After considering/having not received your explanation dt.1.2.96 to the charge sheet issued to you under this office letter of even No. Sr.DCM/Catg/D&A/264, dt.14.2.93, I have decided that you are guilty of the charges of remaining unauthorised absence from duty for the period from 8.7.95 to 10.8.95.

Your next increment raising your pay from Rs. 1070 to Rs. 1090/- shall be withheld for a period of one year with effect from the

date when it will otherwise due to you.
stoppage of increment for

The period of punishment for a period of
one year shall/shall not operate to postpone
future increment, on the expiry of the punishment.

You are to acknowledge receipt of the notice.

Sd/- 7.2.96
Asst. Commercial Manager (Catg.)
S. E. Railway, KUR and WAT Divn.
(Signature of authority)
competent to inflict the penalty."

6. It is clear that the order does not indicate
that the Disciplinary Authority had in fact considered
the representation. Had he considered, the portion
'having not received your explanation' would have been
struck off. Even if the representation was considered
the Disciplinary Authority was legally bound to say as
to how the facts mentioned in the representation can
not be accepted or if accepted, would not exonerate him
from the imputations. The order is a typical case of
non-application of mind and incorporating an order
mechanically in a cyclostyled format. Law is well settled
that even an executive authority passing administrative
orders affecting rights of a person against whom that
order is passed shall have to mention atleast in brief

the reason for passing such order. The responsibility of a Disciplinary Authority is definitely much more in this regard. He is a quasi judicial authority. He has to pass orders as per Rules which lays down that the order of penalty, if any passed, must be a speaking order with reference to the representation or show cause if any.

7. In the result, the orders in Annexures A/8 and A/9 imposing minor penalty are contrary to law. We accordingly quashed these orders i.e. order dated 6.2.96 and order dated 7.2.96 in Annexures-A/8 and A/9 respectively.

8. The Original Application is allowed but there is no order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
21.9.96

21.9.96
(G. NARASIMHAM)
MEMBER(JUDICIAL)