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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.666 OF 1996
Cuttack, this the 28th day of October, 2003

Rabindra Martha Applicant

Vrs.

Union of India & Others Respondent

FOR INSTRUCTIONS

5. Whether it be referred to the Reporters or not ? Yes
6. Whether it be circulated to all the Benches of the Central
Administrative Tribunal or not? No

Jabul- 28/10/03
(M.R. MOHANTY)
MEMBER (JUDICIAL)

[Signature]
(B.N. SOM)
VICE-CHAIRMAN

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CORAM:

HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN

&

HON'BLE SHRI M.R. MOHANTY, MEMBER(J)

Rabindra Martha, aged about 35 years, S/o Indramani Martha, at present working as Carpenter, S.E. Railway Carriage Repair Workshop, At-Mancheswar, Dist-Khurda.

.....Applicant(s)

By the Advocate(s)

.....M/s B.S. Tripathy

-Vrs-

1. Union of India, represented by its General Manager, South Eastern Railway, Garden Reach, Calcutta-43.
2. Chief Personnel Officer, S.E. Railway, Garden Reach, Calcutta-43.
3. Chief Mechanical Engineer, S.E. Railway, Garden Reach, Calcutta-43.
4. Chief Workshop Manager, Carriage Repair Workshop, S.E. Railway, At/Po-Mancheswar, Dist-Khurda.
5. Works Manager, Carriage Repair Workshop, S.E. Railway, At/Po-Mancheswar, Dist-Khurda.

.....Respondent(s)

By the Advocate(s)-

.....Mr. R.C. Rath.

O R D E R

SHRI B.N. SOM, VICE-CHAIRMAN:

This O.A. has been filed by Mr. Rabindra Martha, working as Carpenter, S.E. Railways challenging the order passed by Respondent No.4

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in Memo No.CRW/MCS/D&G/Vig./RM/3314 dt.26.07.1995 treating the period of absence from the date of his removal from service to the date of reinstatement as dies non.

2. The case in short is that Mr. Martha was charge sheeted by the Respondents for certain acts of misconduct. The charge sheet was issued to him on 31.01.1995. The disciplinary authority passed the punishment order of removal of the applicant from service with effect from 07.07.1995 vide his order dt. 06.01.1995 (Annexure-3). The applicant filed an appeal against this order before the appellate authority on 10.07.1995, which was disposed of by that authority on 26.10.1995 with the following order:-

"You are re-instated in the post of Carpenter Gr.II in scale Rs.1200-1800/- with pay at Rs.1200/- plus Rs.20/- as personal pay. The intervening period i.e. from the date of removal to the date of joining the duty will be treated as dies non."

3. It is against this order the applicant has approached this Tribunal, for an order quashing the same with a direction to the Respondents to treat the period as spent on duty.

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4. The Respondents have opposed the application. They have said that the reviewing authority CME/GRC after going through the revision petition dt. 06.09.1995 and in consideration of the entire record of service of the applicant as well as the modified order passed by the appellate authority found no reason to intervene further. The Respondents have submitted that the applicant is not entitled to any more relief and have prayed for dismissal of the same.

5. We have also heard the learned counsel of both the parties and have perused the records placed before us.

6. The main plea of the applicant is that the order of the competent authority to treat the intervening period (from the date of his removal from service to the date of reinstatement) as "dies non" will have a fatal effect on his service career as the service rendered by him before his reinstatement would be obliterated for the purpose of calculating his pension-able service. The Ld. Standing Counsel vehemently opposed the plea of the applicant and submitted that the applicant whose insubordination and rude behaviour towards his superiors, led to the issue of the charge sheet, has rightly been punished and that it would have a deleterious effect on office discipline if the relief prayed for by him is granted.

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7. After hearing both the parties and perusing the records we find that the applicant appears to have understood his fault and therefore in the prayer he has not sought any relief with regard to payment of back wages, but has only prayed for reconsideration of treatment of the intervening period of 19 days. As the official has already been punished by reduction in pay scale for three years imposing heavy financial loss on him, there appears to be a case for moderation in the order treating his period of absence as dies non. We have in this matter referred to Chapter-I of Railway Establishment Manual to ascertain the definition of dies non used by the Respondents Department and its effect on service career of an official. The definition is as follows:-


“Dies-non. It refers to the period which does not count for various purposes like leave, Pension etc.”

From the definition it is clear that imposition of dies-non will affect pension of the applicant as that period will not be counted for calculation of pensionable service. In other words, it will have long term effect on the applicant's career. When he will retire in the year 2020 he will not be entitled to full pensionary benefits although he would have rendered more than three decades of service. This will result in double jeopardy. Thus the order of punishment becomes shockingly disproportionate to the charge brought against him. In the circumstances we feel inclined to intervene in the matter and order that the period of absence of the applicant for 19 days

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should be regularized by treating the period as 'no work no pay' but not constituting any break in service. Accordingly, this O.A. succeeds. We ordered accordingly. No costs.


(M.R. MOHANTY)
MEMBER(JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

CAT/CTC
Kalpeswar