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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 483 OF 1998  
Cuttack, this the 12<sup>th</sup> day of February, 2004.

Arun Kumar Jena. .... Applicant.

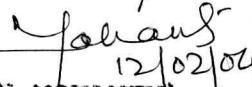
-Versus-

Union of India & Ors. .... 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? Yes

  
(B. N. SOM)  
VICE-CHAIRMAN

  
12/02/04  
(MANORANJAN MOHANTY)  
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 483 OF 1998  
Cuttack, this the 12th day of February, 2004

C O R A M:

THE HONOURABLE MR. B. N. SOM, VICE-CHAIRMAN

A N D

THE HON'BLE MR. M. R. MOHANTY, MEMBER (JUDICIAL)

....

ARUN KUMAR JENA,  
Aged about 40 years,  
S/o: Late K.C. Jena,  
At-Nuabandha,  
P/o: Jenapada,  
Via: Athagarh,  
Dist.Cuttack,  
working as Scientific Assistant 'C',  
Chemical Heavy Water Plant, Talcher,  
At/Po: Vikrampur,  
Dist. Anugul. .... .... Applicant.

By legal practitioner: M/s. S. K. Rath-I,  
B. K. Parida,  
M. K. Nayak,  
Mr. Ashok Mohanty,  
Advocates.

:Vrs:

1. Government of India, represented by its Secretary-Cum-Chairman, Department of Automatic Energy, C.S.M. Marg, Mumbai.
2. Chief Executive, Heavy Water Board, Department of Atomic Energy, Government of India, Vikram Sarabhai Bhawan, 4th floor, Anushakti Nagar, Mumbai-400 094.
3. General Manager, Heavy Water Plant, Atomic Energy, Government of India, At/Po: Vikrampur, Talcher, Dist. Anugul. ... Respondents.

By legal practitioner: Mr. A. K. Bese,  
Senior Standing Counsel.

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O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL):

Applicant, while working as Scientific Asst. 'D' in Heavy Water Plant at Talcher, on being proceeded against, in a disciplinary proceedings and having been awarded with the order of punishment (of reduction to the lower post of Scientific Assistant 'C' until found fit by the Competent Authority to be restored to the higher post of Scientific Assistant 'D' after the period of five years from the date of order) under Annexure-4 dated September 3, 1997, had preferred an appeal under Annexure-5 dated 05.11.1997. Having been unsuccessful in his appeal (under Annexure-6, dated 08.07.1998), the Applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 with prayer to quash the order of punishment under Annexure-4 dated 9.3.1997 and the order of the Appellate Authority under Annexure-5, dated 5.11.97 and to direct the Respondents to grant him all his service and financial benefits retrospectively.

While the matter stood thus, in this Tribunal by filing M.A. No. 1057/2002, the learned counsel for the Applicant has brought on record another order passed by the Disciplinary Authority on 20.10.1997 asking to treat the

period of unauthorised absence of Applicant (from 02.11.1993 to 06.02.1995) 'Dies non' and also asking that during the period of reduction (of Applicant, to the lower post of Scientific Assistant 'C'), the Applicant will draw pay at such rates as he would have drawn from time to time had he not been promoted from Scientific Assistant 'C' to Scientific Assistant 'D' with a prayer to treat the said order as a part of Annexure-4 (i.e. Annexure-4/1).

2. The fact of the case, in nut-shell, is that while he was on duty, on receipt message of illness of his mother, the Applicant went to his native village on 01.11.1993 handing over leave application to one of his colleague seeking headquarters leaving permission from 02.11.1993. While on leave, he suffered from peptic ulcer and due to aggravation, he was under medical treatment in the City Hospital, at Cuttack by sending telegrams/letters praying for sanction of leave but instead of sanctioning leave in his favour, when he joined his duty on 7.2.1995 alongwith medical certificate, he was served with a set of charge under Annexure-1 dated 05.01.1995 and after submission of reply to the charge and holding enquiry, the order of punishment was passed, without considering the plight of his, reasons of his absence and the letters/telegrams issued by him seeking leave/extension of leave. In the appeal preferred by

him, having been rejected, he filed this Original Application with the aforesaid prayer.

3. Respondents by filing counter, disclosed that, without any intimation, the Applicant stayed away from 02.11.1993, when he did not report, telegrams/letters were sent to him to his present as well as permanent addresses asking him to report to duty. Letters sent to his permanent address was received back undelivered with postal remarks that no such addressee in his quarters. The Applicant reported to duty on 07.02.1995 without medical fitness certificate. Hence it was decided by the competent authority to proceed against the Applicant under Rule-14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 for his misconduct; and, accordingly, after following due procedure of rule/law since the Applicant was found to be guilty of the charge, he was issued with the order of punishment. Appeal preferred by the Applicant having been found no merit, the same was also rejected with a well reasoned order.

4. Heard learned counsel for both sides and perused the materials placed on record. Law is well settled in a catena of judicial pronouncements of the Apex Court (as well as of various courts/Tribunals in the country) that in a disciplinary proceedings, interference of judiciary is very very limited; which is only possible, where the punishment is based on no evidence/record, or perverse. Such interference is also possible if the findings reached in the disciplinary proceedings by the

Inquiring Officer/Disciplinary Authority are perverse and no reasonable man can reach to such a findings and/or the punishment is disproportionate shocking to the judicial conscience.

5. Keeping in mind the above dictums of the various courts, it is to be examined, as to whether the present case is falling in any of the grounds for interference. It is evident from the report of the Inquiring Officer and from the orders of the Disciplinary authority that the Telegrams/Letters sent by the Applicant time and again and the medical certificate produced by him had not received due consideration of the authorities. They have also nowhere denied the same to have ~~been received~~ been received. It is seen that as per the Rules, the Inquiring Officer should have discussed the evidences/depositions/charges before recording his findings in the report. But without discussing anything, in each of the Article, he has opined and recorded his findings; which is not as per the rules. Rule-14 of the CCS(CCA) Rules, requires that there should be a thorough discussions in all the charges; whether the Applicant admits the charge or not. This fact has also not been taken note of by the Disciplinary Authority/Appellate Authority in his order. That apart looking to the order of punishment and the order of the Appellate Authority, it prima facie shows that the punishment has not been imposed, as per the codified manner and is an inaneous one and, to make good, the disciplinary authority has passed another order subsequently; which is also beyond his jurisdiction as per the Rules. Further more it is seen

that the order making the period of absence 'dies non' is without giving any opportunity to the Applicant. Neither the Inquiring Officer; nor the Disciplinary Authority/Appellate Authority have passed any order at first instance, in this regard. Therefore, without giving any opportunity to the Applicant before modifying the order of punishment under Annexure-4/1 or making the period as 'dies non', is violative of principles of natural justice/Article 14 of the Constitution of India. 'Dies non' of service period of an employee is a far reaching consequences; which ought not to have been ordered, without giving opportunity to a Government servant. This Bench of the Tribunal in O.A. No. 666 of 1996 (Rabindra Martha v. Union of India and others) have taken the same view and remanded the matter for re-consideration. We also find in this case that when an employee stayed away due to his illness, supported by medical evidences; which has been uncontroverted by his authorities; for not having been referred for second medical opinion, has been visited with the punishment of reduction in rank for five years and treating the period as dies non, without giving any opportunity; which shocks the judicial conscience being disproportionate to the allegations levelled against the Applicant. In the aforesaid circumstances, we quash the order of punishment under Annexures-4, 4/1 and 6 and remit the matter back to the Disciplinary Authority to

reconsider the order of punishment commensurate with the gravity of allegation. In the result, this Original Application succeeds to the above extent. No costs.

  
(B. N. SOM)  
VICE-CHAIRMAN

  
12/02/04  
(MANORANJAN MOHANTY)  
MEMBER (JUDICIAL)