

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK: BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 91 OF 1998.

Cuttack, this the 6th day of April, 1999.

SUDHANSU SEKHAR SAHOO.

....

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)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 91 OF 1998.

Cuttack this the 6th day of April, 1999.

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE- CHAIRMAN

AND

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

...

Sudhansu Sekhar Sahoo, aged about 36 years,
Son of Brundaban Sahoo, resident of Sasan,
Purusottampur, PO/PS.Barchana, Dist.Jajpur. ... Applicant.

By legal Practitioner :- M/s.Amiya Kumar Mishra & B.C.Panda,
Advocates.

-VERSUS-

1. Union of India represented through its
General Manager South Eastern Railway,
S.E. Head Office, Garden Reach, Calcutta.
2. The Divisional Railway Manager,
S.E. Railway, Khurda Road, At/Po.Jatni,
Dist.Khurda.
3. The Senior Divisional Engineer (Co-Ord.),
Cum The Disciplinary Authority, S.E.Rly,
Khurda Road, At/Po.Jatni, Dist.Khurda.
4. The Divisional Engineer (South),
Cum Enquiry Officer, SR Railway,
Khurda Road, At/Po.Jatni, Dist.Khurda. ... Respondents.

By legal Practitioner : M/s.D.N.Mishra, S.K.Panda,
Standing Counsel (Railways).

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application, u/s 19 of the
Administrative Tribunals Act, 1985, the applicant has prayed
for quashing the order dated 30-8-1995 removing the applicant
from service. He has also prayed for a direction to the

Respondents to take him back to service with all Service and consequential benefits.

2. Facts of this case, according to the Applicant, are that he completed A.M.I.E. in Civil Engineering Branch from Institution of Engineers India in the year 1986 and was selected to undergo Apprentice Training as Head Draftsman in the Office of the Chief Administrative Officer (Construction), South Eastern Railway, Visakhapatnam. In order dated 26-09-1988, he was offered appointment as Apprentice Head Draftsman. Accordingly, he joined on 01-11-1988. After one year, in order dated 10-05-1990 (Annexure-2), he was appointed as Head Draftsman w.e.f. 01-11-1988. Applicant worked sincerely and efficiently and in order dated 4-2-1992 (Annexure-3), he was given adhoc promotion to the post of Chief Draftsman. On 9-11-1993, applicant received a message of his father's illness and immediately, rushed to his village without taking prior permission of his higher authorities and because of his father's illness, he could not resume his duty. He forwarded his leave application from time to time. Inspite of his submission ^{of} leave applications, the Sr. Divisional Engineer, Co-ordination (Res. No. 3) initiated major penalty proceeding and issued charge-sheet to the applicant in his letter dated 23.8.1994. He was asked to submit his explanation within ten days of receipt of charge and accordingly, the applicant filed a statement of defence denying the charges levelled against him.

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Thereafter, the Divisional Engineer, South Eastern Rly. Khurda Road (Respondent No.4) was appointed as Inquiring Officer, who intimated the applicant, in his letter dated 22-09-1994 that the enquiry would be held on 03-10-1994 in the Office of the D.E.N(S), Khurda Road. This letter was received by the applicant on 06-10-1994 after the date of first sitting of the enquiry was over. The first sitting was held in the absence of the present Applicant on 03-10-1994 and two witnesses were examined. On receipt received of letter intimating him about the enquiry on 03-10-1994/ on 06-10-1994 by the applicant, he immediately filed a representation for fixing a next date of sitting and for giving him an opportunity of personal hearing. The Sr. Divisional Engineer, in his letter dated 04-01-1995 forwarded a copy of the ex parte enquiry report to the applicant asking him to file representation, if any, within 10(ten) days. This letter was received by the applicant on 19-01-1995 but due to seriousness of his father's health, he could not take any immediate step in the matter and could not file any representation. Respondent No.3, issued another letter on 21-02-1995 informing the applicant that before taking a final decision, a personal hearing would be given to the applicant on 01-03-1995 but due to some unavoidable circumstances, personal hearing was not held on 1-3-1995 and the next date of personal hearing was fixed to 13-03-1995, vide letter dated 07-03-1995. Copies of these letters are at Annexures-4 series and Annexure-5. According to the Applicant, being satisfied with his submission, during personal hearing held on 13-3-95, he was

allowed to join his duty but again his father fell ill and on 18-05-1995, he rushed to his village after submitting a leave application to Respondent No.3, who refused to allow Casual Leave any more. Therefore, he left his place of duty and sent leave application by post from time to time. The applicant submits that without considering his leave application and without any show cause, the punishment order dated 30-08-1995 at Annexure-6 was issued removing him from service. It is stated by the applicant that the order of punishment is in violation of principle of natural justice. Being aggrieved by the order of removal, the applicant approached the concerned authorities several times and prayed for recalling the order of removal but no action was taken. On 15-11-96, he made an application before the Appellate Authority but no action has been taken on his representation. In view of this, the petitioner has come up in this Original Application with the prayers referred to earlier.

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3. In this case, inspite of passage of one year, counter has not been filed by Respondents even though seven adjournments have been allowed. On 9.11.1998, time was allowed till 17.12.1998 to file counter, as a last chance. Thereafter, the matter was posted to 24-2-1999 for peremptory hearing with liberty to file counter, if any, in the meantime. On 24-2-99, counter was not filed and further time was asked for which was rejected. Accordingly, learned Counsels for both sides, were heard and hearing was closed. Learned counsels for both sides, wanted time to file written note of submission and this was allowed.

Accordingly, learned counsel for the petitioner and learned Standing Counsel appearing for the Respondents, have filed written note of submission with copy to each other which have been taken note of.

4. We have heard Shri Amiya Kumar Mishra, learned Counsel for the Petitioner and Shri D.N.Mishra, learned Standing Counsel appearing for the Respondents and have perused the records.

5. The first point is to be noted that the impugned order of punishment removing from service was issued to him in order dated 28-5-1995 at Annexure-6. Against this order, he did not file any appeal during the statutory period of limitation of 45 days. He has filed a representation on 15-11-1996 at Annexure-7, which is also not an appeal against the order of punishment. Therefore, it must be held that against the order of punishment, he has not filed any appeal before the Appellate Authority. On this ground alone, this application is liable to be rejected as not being maintainable.

6. As regards the enquiry, the applicant has stated that his father was suffering from High Blood Pressure, Diabetes and Rheumatism and hearing the message of his father's illness on 9.11.1993, he rushed to his village without taking prior permission of his authorities. He has stated that he sent leave application from time to time. The Inquiring Officer, in his report has specifically mentioned that the applicant left office on 9.11.93 and remained absent till 07-12-1994 on which date, the Inquiring Officer submitted his report. The I.O. had also noted that he did not submit

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any leave application during this period of absence of more than one year. The applicant's submission that he submitted leave application, from time to time, can not be believed because he has not enclosed any copy or proof in support of the above contention. The IO has noted that no leave application was submitted by him during the period of his absence from 9.11.93 till the date when the enquiry was completed. This enquiry report was sent to the applicant in letter dated 4.1.95 (Annexure-4) asking him to represent with regard to the enquiry report but he did not submit any representation on the report of the enquiry Officer. If it was a fact that he sent leave application from time to time, and the Inquiring Officer has ~~wrongly~~ taken a view that no leave application was sent, then he could have mentioned in his representation after receipt of the enquiry report. But as a matter of fact, he did not submit any representation at all. The applicant further stated that on getting the charge-sheet, he had submitted a representation which is a false averment because a copy of the representation has not been annexed to this application and also the Inquiring Officer, has specifically mentioned that no explanation/ representation was submitted by the applicant. It is also mentioned by the Inquiring Officer that the chargesheet was sent to him in his home address as given by the applicant and as recorded in his service sheet but the letter came back 'Undelivered' with the postal endorsement 'Addressee absent'. Ultimately, chargesheet was sent for second time through Regd. Post which has been received and acknowledged by the applicant on 8.9.93 but no explanation was submitted by him.

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From this recital of facts, it is crystal clear that the applicant did not submit any explanation/representation to the charges. The applicant has further stated that the first sitting of the enquiry was held on 3.10.94 and he got the notice of this enquiry on 6.10.94 after the date is over. This has also been dealt by the 10 in his report. The 10 has noted that even after getting the notice on 6.10.94, the applicant did not send any representation to the 10. for fixing another date. It is a fact that on 3.10.94, two witnesses were examined but if the applicant wanted, he could have applied for cross examination of the witnesses on another date but he did not do so even after getting the notice of the enquiry on 6.10.1994. After the enquiry report was sent to him, he failed to make representation against the enquiry report. Personal hearing was given to him on more than one occasion but he did not appear. Subsequently, he was given personal hearing on 13.4.95. The Disciplinary Authority has recorded that the applicant is not at all interested to work in the organisation and accordingly the impugned order of punishment has been passed. Learned counsel for the applicant has relied on a large number of decisions which are noted below:

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1. HARBANS LAL AROKA VRS. DIVISIONAL SUPDT. CENTRAL RAILWAY, JHANSI AND OTHERS -
Reported in AIR 1960 Allahabad 164.
2. NARENDRANATH MOHANTY VRS. UNION OF INDIA
Reported in AIR 1967 Orissa 171.
3. BRAHMA NAND VRS. STATE OF HARYANA AND OTHERS -
Reported in 1995(1) SLR 509.

4. GOVERNMENT OF TAMIL NADU & ANOTHER VRS.
K.RAJARAM APPASAMY - Reported in 1997(4)
Supreme 642.
5. SUB DIVISIONAL INSPECTOR (POSTAL) & OTHERS
VRS. K.K.PAVITHRAN - REPORTED in 1997(6)
Supreme 379.
6. DEPUTY INSPECTOR GENERAL CENTRAL INDUSTRIAL
SECURITY FORCE, EASTERN ZONE, GOVT. OF INDIA
AND OTHERS - VRS. SHIB KUMAR RAY - Reported
in 1995(1) SLR 133.

It is submitted by the learned counsel for the Petitioner that once the Respondents allowed the applicant to join, after personal hearing on 13.3.95, the Disciplinary Authority could not have issued the impugned order of punishment. In support of his contention, learned counsel for the petitioner has relied on Harbans Lal Arora (supra). The decision of Harbans Lal Arora (supra) does not support the contention of the learned counsel for the applicant. It is not necessary to record the facts of this case. In that case, the Hon'ble High Court of Allahabad held that, if the Respondents i.e. Divisional Supdt. Central Railway, Jhansi claim that they could remove the petitioner even after re-instatement, it would not be open to them to rely on the old proceedings which had already concluded in a final order of unconditional reinstatement. In the instant case, the applicant was not under suspension. By joining his duty, after personal hearing on 13.3.95, earlier proceeding had not been concluded and in conclusion of those proceedings, the impugned order of punishment has been passed. Therefore, Harbans Lal Arora's case does not provide any support to the contention of the learned counsel for the applicant which is rejected.

In Narendranath Mohanty's case (supra), Their Lordships of the Hon'ble High Court of Orissa decided that a declaration under Rule 2014 of the Railway Establishment

Code, declaring that a Railway servant ceases to be in Government service, if he continuously absents from duty for more than five years, in essence, amounts to removal of the Government servant and therefore, requirement of Art. 311(2) of the Constitution can not be dispensed with. In this case, the impugned order of removal from service was passed at the end of a departmental proceeding and not because the applicant's continuous absent for more than five years. In the present case, the impugned order was not issued under Rule 2014 of the Railway Establishment Code and therefore, the view taken in the Narendranath Mohanty's case does not support to the contention of the learned counsel for the applicant ~~and~~ which is rejected.

Brahma Nanda's case (supra) is with regard to the Punjab Police Rules, 1934. There it was held that opportunity is to show cause concerning wilful absence from duty/necessary before passing the order of discharge from service. In the instant case, full opportunity was given to the petitioner and therefore, this case is also not relevant to the case of the applicant.

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In the case of Government of Tamil Nadu and Another Vrs. K. Rajaram Appasamy (supra), the Respondent, who was working as a Doctor was removed from service as he was unauthorisedly absent from duty for five years. The Administrative Tribunal, Tamilnadu quashed the order of removal from service and directed payment of 50% of the backwages till the date of filing of the OA before them and full backwages from the date of filing of the Original Application till the date of reinstatement.

The Hon'ble Supreme Court admitted the SLP only on the point of the order of the Tribunal directing payment of back wages and the order of the Tribunal to that extent was quashed. This case is also of no relevance.

The case of Subdivisional Inspector (Postal) and others Vrs. K.K. Pavithran (supra) is again another case of payment of backwages and is not relevant for the present purpose.

In the case of Deputy Inspector General, Central Industrial Security Force Vrs. Shub Kumar Ray (supra), Their Lordships' of the Hon'ble Calcutta High Court held that in the facts and circumstances of the case, the punishment of removal from service because of unauthorised absence without leave/permission was disproportionate to the gravity of the charge. The Disciplinary Authority was directed in that case to impose some minor penalty. The facts of that case are quite different. The applicant was a L/NK in the Central Industrial Security force. After completion of Refresher Course, he did not join his duty and violated the order of directing him to report at Intelligence branch. He also remained absent from his duty w.e.f. 8.3.89. The Hon'ble High Court found in that case that during the relevant period, the applicant was injured and got injury on his left foot. He was shifted to Hospital and was hospitalised. Plastering was made on his foot and he was in the hospital. After getting relieved from hospital, he came back to the training centre and filed the unfit certificate. Considering the circumstances of that

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case, Their Lordship's held that punishment of removal from service was disproportionate to the gravity of the charge. In the instant case, the applicant has mentioned in his application that his father was suffering from High Blood Pressure, Diabetes and Rheumatism and on getting message about his father's illness, he left to his village on 9.11.93 without even asking for any leave. We have already held that the applicant's contention that he had sent his leave application from time to time is without any basis. When proceeding started against him, he did not file any explanation to the charges. Even after getting the notice of the enquiry on 6.10.94, he did not appear before the Inquiring Officer. After the enquiry report was sent to him, he did not file any representation/ explanation against the findings of the Inquiring Officer. He did appear at the personal hearing but that too after he was given more than one chance. After the impugned order of punishment was passed, he did not file any appeal during the statutory period of filing the appeal. From all these it is clear that the applicant has not been able to make out any case that principle of natural justice has been violated in his case.

7. In view of this, we hold that the applicant has not been able to make out a case for any of the reliefs claimed by him in this Original Application. The Original Application is held to be without any merit and is rejected. But in the circumstances, there shall be no order as to costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

SOMNATH SOM
VICE-CHAIRMAN
19.9.99