CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH,CUTTACK

O.A.NO. 327 OF 1999
Cuttack, this the 4 – 11 – 2004

Sri Jayadev Sarkar ..... Applicant

Vrs.

Union of India and others ..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? No

2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? Yes

04.11.2004

(M.R.MOHANTY)
MEMBER(JUDICIAL)

(B.N.SOM)
VICE-CHAIRMAN

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CORAM:
HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDL.)

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Sri Jayadev Sarkar, aged about 41 years, son of late K.C.Sarkar of Golpahadi (near Gul Factory), Tatanagar, Jamshedpur –2, District Singhbhumi, State-Bihar, at present working as Khalasi Helper (Group D)..... Applicant

Vrs.

1) Union of India, represented through General Manager, South Eastern Railway, Garden Reach, Calcutta 43.
2) Sr.Divisional Personnel Officer, South Eastern Railway, Chakradharpur, Bihar.
3) Sr.Divisional Electrical Engineer (TRS), Bondamunda, Dist.Sundargarh, Orissa

..... Respondents

Advocates for the applicant - M/s S..K.Nayak-1, S.Nayak, D.Nayak, B.K.Sahoo & M.S.Sahoo.

Advocates for the Respondents - M/s.S.Roy& A.A.Khan & Ashok Mohanty

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SHRI B.N.SOM, VICE-CHAIRMAN

This Original Application was filed on 13.7.1999 by Shri Jayadev Sarkar, a dismissed Khalasi-Helper employed under Senior Divisional Personnel Officer, S.E.Railway, Chakradharpur, challenging the order of dismissal dated1.9.1993(Annexure1) passed by the disciplinary authority

(Respondent No.3). The O.A. was, however, dismissed by this Tribunal on the ground that it was barred by limitation and therefore, not maintainable under Section 21 of the Administrative Tribunals Act, 1985. Being aggrieved, the applicant carried the matter in a writ petition to the Hon'ble High Court of Orissa in OJC No.10619 of 2001 and the Hon'ble Court was pleased to set aside the order dated 25.4.2001 of the Tribunal and directed to admit this O.A. and decide the same on merit according to law. It is in this background that we have heard the O.A. in extenso.

2. The case of the applicant is that after he h ad served the Department for 17 years, all of a sudden on 1.9.1993 the disciplinary authority served on him a charge memo on the allegation that he was absent from duty without permission. It was also urged that he used to remain absent frequently, a fact which he had also admitted. After enquiring into the matter, the disciplinary authority passed the order of removal from service. The grievance of the applicant is that the impugned order at Annexure 1 is a non-speaking order, that the punishment was imposed without any enquiry, and that the order has been passed arbitrarily without affording reasonable opportunity or the benefit of natural justice as enshrined under Article 311 (2) of the Constitution and disregarding the procedure of inflicting major punishment under Rule 9(1) & (2) of the Railway Servants (Discipline & Appeal) Rules, 1968. The disciplinary authority had also violated Rule 9(7) of the said Rules because the applicant was never supplied with a copy of the article of

charges or the statement of imputation of misconduct, the list of witnesses and documents by which each article of charge was proposed to be sustained. He has also alleged that the Inquiring Officer never served notice on him to appear before him for regular hearing. No Presenting Officer was appointed by the disciplinary authority in terms of Rule 10(5) of the said Rules. The applicant was mentally upset after receipt of the punishment order of dismissal from service and suffered mental disease from 20.2.1994 to 15.4.1999 and in support of his health problem he had produced a certificate from one Dr.S.K.Hazra, Consultant Psychiatrist, Mankundu Mental Hospital, Calcutta.

3. The Respondents have opposed the Original Application firstly on the ground of limitation and maintainability. They have stated that although the applicant was dismissed from service with effect from 1.9.1993, he never submitted any appeal to the appellate authority and thereby has not availed of the departmental remedies before approaching the Tribunal, and on this ground alone his Original Application is to be dismissed. Their plea is that after getting cured of his mental disease and on being certified to resume duties in 1999, he could have filed an appeal before the competent authority which he did not avail. The Respondents have reported that the applicant absented frequently from duty on the ground of which he was issued with a major penalty charge sheet dated 27.5.1993 . He had received the charge memo on 10.6.1993 and submitted his explanation on 6.7.1993 upon consideration of which the

disciplinary authority appointed the Chief Traction Foreman (Maintenance) as Inquiring Officer to enquire into the charges. It was after receipt of the enquiry report that the disciplinary authority decided that the applicant was not fit to be retained in service and accordingly, passed the order at Annexure R/1.

4. We have heard the learned counsel for the rival parties and have also perused the materials placed before us.

5. The applicant had filed rejoinder to the counter affidavit where he reiterated that the disciplinary authority did not follow the procedure laid down in the rules for imposition of major penalty nor was he given reasonable opportunity to defend himself.

6. We have carefully examined the rival contentions. We are conscious that the scope of judicial intervention in disciplinary matters is very limited and that this Tribunal cannot act as an appellate court in disciplinary matters. However, we are also conscious that in certain circumstances judicial scrutiny of disciplinary proceedings is available. The law regarding scope of judicial intervention has been laid down in the case of *B.C.Chaturvedi v. Union of India, AIR 1996 SC 484* and we quote the same as follows:

> "Judicial Review is not an appeal from a decision, but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry

> was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that findings must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry of where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

This being the scope of judicial review, we would look into the grievance of the applicant in this case within the parameters set by the Hon'ble Apex Court, as quoted above.

7. We would like to observe here, following the ratio of the judgment of the Principal Bench of this Tribunal in the case of *Om Prakash v. Union of India and others*, OA No.600/PB/1990, decided on 6.6.1997, that punishment of removal from service is like a death sentence for a holder of civil post and for the negligence and breach of the order, which has not caused pecuniary loss, the delinquent deserves a lower penalty than the removal.

8. The applicant has made specific allegation that he was not afforded reasonable opportunity to defend his case and that he was not supplied with copy of the enquiry report before the disciplinary authority decided to impose on him the punishment of dismissal from service. In the counter the Respondents have not answered any of these allegations in a forthright manner excepting to state that the charge memo was actually served on the applicant, which he had received on 10.6.1993 and that he had submitted explanation to the charge memo by letter dated 6.7.1993. Other than this, there is no answer to any of the allegations of denial of reasonable opportunity to the applicant. On the other hand, it has been admitted in the counter that the Inquiring Officer closed his enquiry on the basis of the explanation that the applicant had submitted on 6.7.1993 in reply to the charge sheet and came to the conclusion that the charges are proved. In his explanation, the applicant had given the reasons as to why he was found absent from duty without prior permission. He had submitted that the reason for his absence without permission was beyond his control as he was commuting daily from Tatanagar to Bondamunda and train service was erratic, he having not been provided with railway quarters, and that as it was not possible for him to live in rented quarters at Tatanagar, he was not able to maintain punctuality in office attendance. He, however, submitted that his absence without permission was not intentional and that he had kept his Section in-charge apprised of his difficulties.

9. We have perused the enquiry report and the order passed by the disciplinary authority. Perusal of the enquiry report reveals that it is not a report as prescribed under Railway Servants (Discipline & Appeal) Rules,1968. A quasi judicial function was carried out in a routine manner and the so called report was nothing but a note submitted by Chief Traction Foreman (Maintenance) on 31.8.1993 to the Assistant Executive Engineer-I. The Assistant Executive Engineer in his note appended below the note submitted by Chief Traction Foreman (Maintenance) passed the order:

> "He is dismissed from Railway service with effect from 1.9.1993".

The said order was communicated formally to the applicant on 1.9.1993 (Annexure R/2).

10. From the above narration of the decision making process, it is clear that the Respondents never carried out any enquiry under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968. The principles of natural justice were not followed and therefore, the question of providing reasonable opportunity to the applicant was surely a far cry. It was more in the nature of summary dismissal of a civil servant than dismissing a civil servant after following the due process of law. We have no hesitation to hold that the Constitutional protection enjoyed by the civil servant was violated lock, stock, and barrel in this case. It is a case of total non-application of mind and it is unthinkable that a major penalty of dismissal from service could be

handed out without giving reasons or without following the due process and considering the difficulties faced by the applicant, as pointed out by him in his letter dated 6.7.1993.

11. We have looked into the facts and circumstances of the case. We have also relied on the judgment of this Tribunal in *Ratiram and others v. Union of India*, 1990 (2) ATJ 27, where removal from service ordered without holding enquiry in accordance with the Discipline and Appeal Rules and on the ground of non-application of mind on the part of the authorities was set aside and the applicants were ordered to be reinstated without back wages. There are also a catena of decisions regarding removal from service on the ground of unauthorized absence from duty where the Tribunal has not upheld the punishment order if that was passed without following the due procedure of enquiry and without affording reasonable opportunity to the delinquent to defend his case or if there was clear case of non-application of mind on the part of the disciplinary/appellate authority. In this case also, we have no doubt that the allegation against the applicant was not so grave as to render him liable to the stern punishment not definitely when no enquiry was made into the alleged misconduct or without affording any opportunity to him to defend his case. The lack of judiciousness in the decision making process is writ large in this case and therefore, the order of dismissal dated 1.9.1993 passed by the disciplinary authority vide Annexure R/2 must be quashed and we order accordingly. The

Respondents are also directed to reinstate the applicant in service and treat the period from 20.2.1994 to 15.5.1999 as medical leave on the strength of medical certificate submitted by the applicant and the remaining period till the date of his reinstatement as leave, as due and admissible. The Respondents shall comply with this order within thirty days from the date of receipt of copy of this order.

12. In the result, the Original Application is allowed. No costs.

04.11.2004

(M.R.MOHANTY)
MEMBER (JUDICIAL)

(B.N.SOM)
VICE-CHAIRMAN

AN/PS