

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 216 OF 2000
Cuttack, this the 10th day of May 2001

Jabbar Mohammad

.....Applicant

Vrs.

Union of India & others

....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not?

2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? **No**

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Committim.
(COMMITTEE OF THE
VICE-CHAIRMAN)
10.5.2001

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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Cuttack, this the 10th day of May, 2001

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....
Jabbar Mohammad, aged about 57 years, son of late Tahar
Mahammad, Village-Haridamada, P.O-Arugul,
P.S-Jatni,District-Khurda... Applicant

Advocates for applicant - M/s

D.R.Pattanayak
S.R.Mohapatra
A.K.Routray
N.S.Panda
A.B.Choudhury

Vrs.

1. Union of India, represented by its General Manager,
South Eastern Railway, Garden Reach, Calcutta.
2. D.R.M.,S.E.Railway, Kharagpur, District-Medanapur
3. Asst.Mech.Engineer (P), S.E.Railway, Kharagpur,
District-Medanapur.

....

Respondents

Advocates for respondents - M/s D.N.Mishra
S.K.Panda
S.Swain

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application the petitioner has
prayed for quashing the order dated 16.3.1994 removing him
from service with immediate effect. The second prayer is
for a direction to the respondents to dispose of his
representation dated 9.3.1998 at Annexure-8, and the third
prayer is for a direction to the respondents to allow him
to voluntarily retire from service. The respondents have
filed counter opposing the prayers of the applicant. No
rejoinder has been filed.

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2. The applicant's case is that he joined Railways service on 9.10.1963 as a Loco Steam Man and continued in service till 1988 during which period he had rendered blameless service. Because of his illness he remained absent after giving intimation to the authorities from time to time. In order dated 25.10.1988 disciplinary proceedings under Rule 9 of Railway Servants (Discipline & Appeal) Rules, 1968 were initiated against him on the ground of his misconduct for being absent from duty from 6.6.1988 without any authority. The chargesheet is at Annexure-1. In notice dated 27.8.1991 at Annexure-2 he was directed to attend the enquiry on 20.9.1991. On 21.10.1991 the petitioner submitted an application (Annexure-3) to call for the files from the hospital where he was undergoing treatment. True copies of the doctor's certificates are at Annexure-4 series. The applicant's case is that in the impugned order dated 16.3.1994 he was removed from service as a measure of disciplinary action. He has stated that copy of the enquiry report was not furnished to him. It is also stated that the punishment is grossly disproportionate to the charge levelled against him. His appeal filed on 15.4.1994 at Annexure-7 has not been disposed of. As a last resort he filed a representation dated 9.3.1998 (Annexure-8) addressed to the General Manager, S.E.Railway, Garden Reach, Calcutta, but no action has been taken on his representation. In the context of the above, the applicant has come up in this petition with the prayers referred to earlier.

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3. It is not necessary to refer to the averments made by the respondents in their counter because

these will be taken into account while considering the submissions made by the learned counsel of both sides.

4. We have heard Shri D.R.Patnaik, the learned counsel for the petitioner and Shri D.N.Mishra, the learned Standing Counsel for the respondents. The learned counsel for the petitioner has relied on the decision of the Hon'ble High Court of Orissa in the case of Harekrishna Jena v. The Addl.Superintendent of Police and others, 1985(I) OLR 438. He has also relied on the decisions of the Hon'ble Supreme Court in the case of Union of India v. Mohd. Ramzan Khan, AIR 1991 SC 471, and the case of Managing Director, ECIL v. B.Karunakar, AIR 1994 SC 1071. We have gone through these decisions.

5. The learned Standing Counsel for the respondents has raised the point of limitation stating that the impugned order of punishment having been issued on 16.3.1994 and the applicant having approached the Tribunal only in 2000, the petition is barred by limitation. The learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in Harekrishna Jena's case (supra) in which their Lordships have held that delay in filing writ petition is not a rule of law but a rule of practice and there is no inviolable rule that wherever there is delay, the Court must refuse to entertain petition. That was also a case of dismissal from service. But that decision does not go to support the case of the petitioner because the powers of Hon'ble High Court in exercise of their extraordinary jurisdiction under Article 226 of the Constitution are of a totally different character from the powers of the Tribunal dealing with an application under Section 19 of

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the Administrative Tribunals Act, 1985. The Tribunal must necessarily be guided by the provisions of limitation under Section 21 of the Administrative Tribunals Act, 1985. There are also decisions of the Hon'ble Supreme Court that point of limitation must be strictly construed and there must be adequate justification for delay. Along with Original Application the petitioner has not filed an application for condonation of delay indicating the reasons for which he was unable to approach the Tribunal earlier. Therefore, the decision in Hare Krishna Jena's case (*supra*) does not go to support the case of the applicant on this point.

6. The learned counsel for the petitioner has urged another ground for getting over the problem with regard to limitation and also in support of his main prayer for quashing the punishment order. It has been stated that the report of the inquiring officer was not supplied to him and thereby following the decision of the Hon'ble Supreme Court in Mohd. Ramzan's case (*supra*), reasonable opportunity has been denied to him. The respondents have stated in their counter, which has not been denied by the applicant by filing any rejoinder, that the enquiry report was sent to the applicant in letter dated 23.11.1993 through the Postal Department and the letter was returned with the postal endorsement that the applicant refused to accept the registered letter. In view of this, the applicant cannot make a grievance that copy of the enquiry report was not supplied to him.

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7. Besides the above, the applicant has not urged any other ground stating that he was denied reasonable opportunity or that principles of natural

justice were violated. From the pleadings we find that the applicant remained absent from his duties from June 1988 till the chargesheet was issued to him in October 1988 and till the notice was issued to him in August 1991 (Annexure-2). The applicant has stated that he wrote in October 1991 (Annexure-3) requesting the departmental authorities to call for the records from the hospital regarding his illness as borne out by the certificates at Annexure-4 series. From one of the certificates we find that even going by the version of the applicant that he was under treatment of Department of Psychiatry, S.C.B.Medical College & Hospital, Cuttack, from October 1991 to November 1991, this certificate relates to a period much after the beginning of his period of unauthorised absence. The respondents have pointed out that in pursuance of the letter at Annexure-3, reference was made to the medical authorities in November 1991 for submission of medical certificates. But no medical certificate or medical report was received by the departmental authorities and therefore, consideration of the medical certificate does not arise. In view of the above, we find no illegality in the order of punishment.

8. As regards the appeal and subsequent representation in 1998 referred to by the applicant, the respondents have stated that the appeal petition or the representation has not been received. This has also not been denied by the applicant by filing a rejoinder.

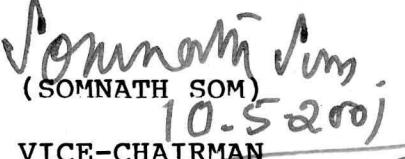
9. Before we part with the case, one aspect of the matter, however, has to be noted. The applicant joined the Railways in 1963 and he went on unauthorised absence in June 1988. He had thus put in

twentyfive years of service. The applicant has stated and this has not been denied by the respondents in their counter that he had rendered blameless service during this period of twentyfive years. In view of this, it appears to be unduly harsh on the part of the departmental authorities to deprive the applicant of the fruits of his service for twentyfive years by imposing the punishment of removal from service because removal from service results in forfeiture of all past service and the employee thereby becomes disentitled from getting any pension. In consideration of the above, while we reject the first prayer of the applicant to quash the order of punishment, we direct the appellate authority, Divisional Railway Manager, S.E.Railway, Kharagpur (respondent no.2) to consider if in the circumstances of this case the punishment of removal from service imposed against the applicant should not be modified to one of compulsory retirement with effect from the date of his removal from service. A view on this should be taken by respondent no.2 within a period of 120 (one hundred twenty) days from the date of receipt of copy of this order.

10. In the result, the Original Application is disposed of in terms of the observation and direction above but without any order as to costs.


(G.NARASIMHAM)

MEMBER (JUDICIAL)


(SOMNATH SOM)
10-5-2001
VICE-CHAIRMAN