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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO. 416 OF 2000
Cuttack, this the 14th day of October, 2003


Sri Chaturbhuja Swain Applicant

Vs.

Union of India and another 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? Yes


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

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CUTTACK BENCH, CUTTACK

O.A.NO. 416 OF 2000
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CORAM:

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

.....
Shri Chaturbhuja Swain, aged about 52 years, son of late dhruba Charan Swain, of village Chuaria, P.O.Jignipur, P.S. Salipur, Disst.Cuttack, at present residing At/PO Nischintakoili (Routsahi), P.S.Salipur, Dist. Cutback, Orissa
..... Applicant

Vs.

1. Union of India, represented through the General Manager, South Eastern Railway, Garden Reach, Calcutta 700 043.
2. The Divisional Railway Manager (Electrical), Khurda Road, P.O.Jatni, Dist.Khurda, Orissa..... Respondents.

Advocates for the applicant - M/s B.Samantray & P.K.Rout

Advocate for the Respondents - Mr.Ashok Mohanty

Advocate appearing in amicus curiae - Mr.D.P.Dhalsamant
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ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

This Original Application has been filed by Shri Chaturbhuja Swain, formerly working as DE Driver Grade II/DNKL under Respondent No.2, challenging the order dated 30.8.1999 (Annexure 1) passed by Respondent No.2 removing him from service.

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2. The case of the applicant is that while working as DE Driver Grade II/DNKL, he was absent from duty from 29.7.1997 to 29.12.1997 as he was undergoing treatment at his native place. He had produced a certificate of illness from his attending physician when he reported for duty on 30.12.1997. It is the grievance of the applicant that his controlling officer/disciplinary authority, while taking him back to duty, initiated a disciplinary proceedings against him with mala fide intention, did not give him any opportunity of showing cause before removing him from service. The applicant has further submitted that he being the sole earning member in his family, the punishment imposed on him has seriously affected his family economically as he has been left with no means to maintain his family. In the circumstances, he has approached the Tribunal praying for quashing the order passed by Respondent No.2 on 30.8.1999 removing him from service, to reinstate him and to release salary to him as admissible.

3. The Respondents, by filing counter, have submitted that before imposing the punishment of removal from service, the applicant was served with a major penalty charge memo No.P/SDEE/D&A/04/CS/30, dated 12.3.1998 and the charges were duly enquired into and the applicant was given full opportunity to defend his case. But he had failed

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to avail of the opportunity by not submitting any written statement on receipt of the charge memo and also failed to submit any written statement to the inquiring officer at the conclusion of the inquiry. They have further submitted that the applicant did not submit appeal to the appellate authority, to which he was entitled. They have also submitted that the applicant was a habitual absentee and was given ample scope to rectify his habit of remaining absent without leave, but he never improved his behaviour. In the charge memo, two articles of charges were brought against him which were as follows:

"Article I: That Sri C.Swain, D.E.Driver Gr. II/DNKL committed gross misconduct and negligence in duty in as much as he is very irregular in his attendance in between 1.1.96 to 28.7.97. He remained absent for 370 days took CL 18 days and LAP 04 days totaling 392 days.

Article II: Shri C.Swain, DED/Gr.II/DNKL remained unauthorized absent from 29.7.97 to 29.12.97 without any intimation to his Supervisor and also he is a habitual offender in this respect."

Both the charges were found proved in the inquiry. Accordingly, the disciplinary authority passed the punishment order removing the applicant from service.

4. The applicant, by submitting a rejoinder, has stated that the allegation in the charge memo that he was absent for over four months was not denied by him, because he was absent actually but only on

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account of his illness for which he produced medical certificate. The applicant has stated that he has not been insincere in rendering service and that is why in the year 1982 he had received a certificate from the General Manager and monetary award was also given to him. Secondly, he stated that the punishment of removal from service for his absence on account of illness has been shockingly disproportionate to the gravity of the charge. Relying on the decision of the Apex Court in Civil Appeal No. 9997 of 1995(*State of U.P. and others vrs. Ashok Kumar Singh and another*), he submitted that the Respondents could have imposed one of the minor penalties on him keeping in view his record of service.

5. We have heard Shri B.Samantray, the learned counsel for the applicant, Shri Ashok Mohanty, the learned Senior Panel Counsel (Railways) and Shri D.P.Dhalasamanta, Advocate, who was appointed by the Court as amicus curiae and have also perused the records placed before us.

6. The main issue in this Original Application is, whether the penalty of removal from service on account of unauthorized absence for four months is shockingly disproportionate to the gravity of the offence. The inquiring officer, in his report, has found that the applicant had unauthorizedly remained absent without any intimation to his Supervisor

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and that the allegation brought against him was correct. The inquiring officer, however, suggested that the applicant should be counseled to be more careful in discharge of his duties and should not be absent without authority, and he did not recommend imposition of 'major punishment'. The disciplinary authority, after going through the charge memo, the disciplinary proceedings, and the findings of the inquiring officer, came to the conclusion that the applicant was not a fit person to be retained in service and therefore, ordered his removal from service with effect from 15.9.1999. This brings a contradiction in the order passed by the disciplinary authority and to that extent the allegation of non-application of mind in imposing the extreme penalty on the applicant finds support.

7. It is well settled that if a Government servant remains absent without leave/authority, that constitutes misconduct and depending on the gravity of the misconduct, any of the statutory punishments maybe imposed on the delinquent official. However, the Courts have repeatedly held that while imposing extreme penalty, like removal from service, the disciplinary authority should keep in view that the punishment imposed is not shockingly disproportionate to the gravity of the offence, otherwise such an order will not pass judicial scrutiny. As we have noted earlier, the only reason that weighed with the disciplinary authority to hand out

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the extreme punishment of removal from service to the applicant was that as it revealed from the attendance particulars that the applicant was in the habit of remaining absent from duty frequently and he had failed to mend his habits. There is no doubt that the behaviour pattern of the applicant was not exemplary. He was breaking discipline by going on leave without permission. He had to comply with the office discipline and for his failure to do that he was definitely liable to be taken to task. To drive that lesson home under the Railways Discipline & Appeal Rules, number of other punishments are also available for imposition on the erring Railway servant than to remove him from service. The Respondents, in their counter, have gone on record to show that during the two years period of 1996 and 1997, the applicant had been on leave for 370 days out of 575 days. There is no doubt that he had remained on leave for long period, but it has not been clarified beyond doubt whether the applicant remained absent on account of illness or for any other unacceptable reasons. For the period from July 1997 to December 1997, when he remained absent, he had submitted that he was ill and he had produced medical certificate in support of his averment. It is not that the Respondents had proved that certificate to be wrong or that he was never ill but had produced a fictitious certificate. They had sent him for special

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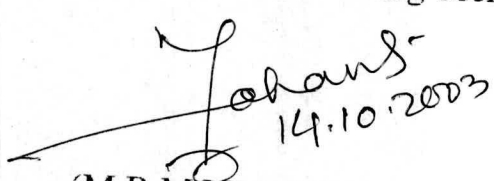
medical examination and in that examination, no adverse comment was given to show that the claim of the applicant that he was ill was not found to be wrong.

8. From the above discussion, we are of the view that the Respondents inflicted the extreme punishment on the applicant which shocks the judicial conscience. The applicant had already served the Respondent-organization for over twenty-nine years when he was removed from service with effect from 15.9.1999. This has brought financial disaster to his family, as submitted by the applicant. Having found that the order of imposition of extreme punishment of removal from service was shockingly disproportionate to the gravity of the offence and that the said order was passed without due application of mind, we are satisfied that this punishment order is liable to be interfered with and we accordingly modify the said order of punishment of "removal from service with effect from 15.9.1999" to that of "compulsory retirement with effect from 15.9.1999" and direct the Respondents to pay the applicant all retirement benefits as due and admissible under the Pension Rules within a period of 90 (ninety) days from the date of receipt of copy of this order.

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9. In the result, the Original Application is allowed to the above extent.
No costs.

10. Before parting with the case, we would like to record our strong appreciation in favour of Shri D.P.Dhalsamant, Advocate, whose able assistance we received, he having been engaged as amicus curiae.


(M.R. MOHANTY)
MEMBER(JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

AN/PS