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CENTRAL ADMINISTRATIVE TRIBUNAL
CUATTACK BENCH : CUATTACK

ORIGINAL APPLICATION NO.422 OF 2000
Cuttack this the 9th day of Oct., 2001

Aloke Ghosh. Applicant.

V e r s u s



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 Central Administrative Tribunal or not?

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
9.10.2001

G. Narasimham
(G. NARASIMHAM)
MEMBER (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUATTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.422 OF 2000
Cuttack this the 09th day of Oct., 2001

CORAM:

THE HON'BLE SHRI SOMNATH SOM,
THE HON'BLE SHRI G.NARASIMHAM,

VICE-CHAIRMAN
MEMBER (J)

.....

1. Aloke Ghosh,
Junior Engineer,
Grade-I(W)/Construction
Haridaspur, Dist: Cuttack
By the Advocates

... Applicant.
M/s Dhalsamant
P.K.Mallik

V e r s u s



1. Union of India represented through
the General Manager, S.E.Railways,
Garden Reach, Calcutta-43

2. Chief Engineer(Construction)
S.E.Railways, Chandrasekharpur,
Bhubaneswar, District:Khurda.

3. Dy.Chief Engineer(Construction)/D-II
S.E.Railways, Chandrasekharpur,
Bhubaneswar.

4. District Engineer (Con)-I
S.E.Railways, Bhubaneswar.
By the Advocate(s)

.. Respondents.
Mr.P.K.Mishra

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O R D E R

G.NARASIMHAM, MEMBER(JUDICIAL): Applicant, a Jr.Engineer, Gr.I(WS) serving under South Eastern Railway ~~at~~ Haridashpur was placed under suspension w.e.f.10.6.98 (Annexure-1) by District Engineer(Con.)-I, South Eastern Railway, Bhubaneswar (Respondent No.4) in contemplation of disciplinary proceeding against him. He filed this Original Application on 12.9.2000 with the following prayers as mentioned at para-8.

1. The order of suspension under Annexure-1 be quashed.

2. The respondents be directed to treat the period of suspension of the applicant as duty and to grant all benefits including pay and allowances.

3. Any other order/orders as deem fit and proper be granted.

2. In memo dated 15.1.99(Annexure-2) he was served with charges, the sum and substance which are that inconnivance with some contractors he committed forgery in drawal of excess Railway materials to a tune of about 30 lakhs of rupees.

3. The grievance of the applicant is that the order of suspension under Annexure-1 was not passed by the



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competent authority. It has also not been approved by the competent authority and as such the order is liable to be set aside. Further no periodical review of the order of suspension was undertaken under Rules. He is not being paid subsistence allowance since May 2000.

4. The Department in their counter filed on 1.8.2001 state upto date the subsistence allowance has been paid to the applicant on his furnishing non-engagement certificate required under Rules. The inquiry in the disciplinary proceeding was completed long ago. However, when the applicant was supplied with copy of the enquiry report in letter dated 7.12.2000, he pointed out in his representation alleging that a key witness had not been examined and he be given opportunity to cross-examine the witnesses. Accordingly, the disciplinary authority allowed further time to the applicant, remitting the case to the inquiry Officer for affording an opportunity to the applicant for examining those witnesses. The suspension order under Annexure-1 was issued by the District Engineer(Con), Respondent No.4 who is a senior scale Officer competent to suspend non-gazetted Railway servant up to scale of 550-750/- (pre-revised) of 4th C.P.C. scale, Respondent No.4, the DEN(c) is appropriate authority to suspend the applicant who is in the scale of 550-750/- and this has also been duly taken note of and approved by the higher authorities. Time to time review was being done. In view of the gravity of the case and nature of forgery committed by the applicant, the case had been referred to the C.B.I. for further



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investigation.

5. No rejoinder has been filed.

6. We have heard Shri D.P.Dhalsamant the learned counsel for the applicant and Shri P.K.Mishra the learned Additional Standing Counsel for the department.



7. In Misc.case 742 of 2001 the applicant prayed for direction to the Department to produce the order of approval of the disciplinary authority and the order of review of suspension of the applicant. On the concluding date of hearing, i.e., 20.9.2000, Shri Mishra for the Department produced documents in a closed cover. Shri Dhalsamant the learned counsel wanted permission for perusal of the documents. Normally, this Bench directs concerned Department to produce documents for perusal of the Bench only and not for perusal of the counsel of the applicant. However, Shri Dhalsamant submitted ^{that} he reasonably apprehends that the respondents might have manipulated/fabricated the documents. Hence without ^{the} opening ^{the} closed cover we observed that orders on the question of permitting the counsel of applicant to peruse the documents ~~are~~ or otherwise will ^{be} passed during preparation of the judgments.

8. During preparation of the judgment we have opened the closed cover which consist of only one file. We have not

come across any instance of fabrication. The order of suspension to be passed in contemplation of disciplinary proceeding was approved by Respondent No.3 For payment of subsistence allowance review was made in October 1998, April 2000, August 2000, March 2001 and June 2001. The Misc case is accordingly disposed of.

9. During hearing, the applicant has not disputed the version in the counter that he has been paid upto date subsistence allowance. He has also not denied that on his representation for examination of key witness and opportunity to examine witnesses, further inquiry was ordered and that the enquiry stands posted on 16.7.2001. Hence the applicant cannot find fault with the Department in prolonging of suspension on this score. Considering the gravity of the charge, we do not see any unreasonably delay in framing the charge, from the date of suspension.

10. The main contention of Shri Dhal Samant is that the impugned order of suspension was not passed by the competent authority, Though in the original application a plea to that effect was taken the application is however conspicuously silent as to who is that competent authority. According to the applicant, In para 9 of the counter it has been clearly averred that Respondent No.4 i.e., District Engineer(Con), South Eastern Railway, Bhubaneswar who is a senior scale Officer and who passed the suspension order is the competent authority to place a non/gazetted Railway servant drawing the scale of pay



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Rs.550-750/- (Pre revised) of 4th C.P.C. scale and that the applicant belongs to non/gazetted cadre in that scale and suspension has been approved by the Higher Authorities. This averment in the counter has not been refuted through any rejoinder. In other words, the applicant who does not say who is the competent authority that can place him under suspension yet could not even refute this clear and categorical description of the competent authority mentioned in para 9 of the counter. Even gist of schedule of 1985 under D&A Rules 1968 discloses a senior scale Officer (not of any independent charge) can suspend ~~the~~ employee, up to the pay scale of Rs.550-750/-. We therefore do not see any force in this contention of Shri Dhal Samant not supported by any ~~date~~ ^{authority} from his side. We are of the view that respondent No.4 was the competent authority to place the applicant under suspension and this was made with the approval of disciplinary authority i.e., respondent No.3. Hence the order of suspension under Annexure-1 cannot be held to be illegal on this score.

11. It is true that in the counter the Department has not specified the dates of review even though, it was mentioned that review was being done time to time. The file produced by the Department has as already stated would reveal that a review was made time to time for the purpose of payment of subsistence allowance and there is no discussion as to the continuation or otherwise of the suspension. Even assuming the review as per the Rules



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would not

was not made, the order of suspension on that account, be
vitiated though at best order of suspension can be
revoked. No decision in this connection has been placed
before us.

Shri Dhal Samant the learned counsel placed
reliance on the decision of the Apex Court in State of
Himachal Pradesh Vrs. B.C.Thakur reported in (1994), 27
ATC, 567. This decision is not on account of
non-conducting of time to time review of an order of
suspension. The applicant therein was chargesheeted on
7.2.90 and was placed under suspension on 10.5.90.
Because there was no substantial progress in
Departmental enquiry for nearly 2 years, The State
Administrative Tribunal quashed the order of suspension
as well as the chargesheet. The Apex Court while
upholding the quashing of the suspension order set aside
the quashing of the charge sheet. The order of
suspension was quashed in that case because there was no
substantial progress in the disciplinary proceeding and
the proceeding was in connection with the conduct of the
concerned employee in having possession of
disproportionate assets. In the case before us the
charges are indeed serious and there was substantial
progress and even though the enquiry was completed, only
at the instance of the applicant, further inquiry has
been posted for cross/examination of some witnesses and
examination of one witness. Thus the Apex Court
decision being distinguishable will not be of any help to
the applicant.



12. Last but not the least is the point of maintainability and limitation urged by the respondents. The impugned order of suspension was passed on 10.6.98. Under Rule 18 of the Railway Servant (D&A) Rules, 1965, a suspended Railway employee has the right to prefer ~~Departmental~~ ^{Departmental} appeal, within a period of 45 days under Rule 20 of those Rules. Even if, the version of the applicant that he preferred appeal under Annexure-3 dated 14.3.99 (denied by the Respondents), is accepted as true yet it will not save him from limitation because the Departmental appeal was preferred 18 months after the impugned order of suspension was passed. In otherwords, he has preferred this Departmental appeal beyond the one year period of limitation prescribed under section 21 of the AT Act, 1985. A representation or appeal provided under Departmental Rules and not preferred within the period of limitation prescribed under the Rules but preferred after expiry period of limitation prescribed for filing a petition or application before a Court/Tribunal will not save limitation. Impugned order of suspension could have been challenged by filing an original application before 10.6.99. But this O.A. was filed on 12.9.2000 long after the expiry period of limitation and that too without any petition for condonation of delay as required under Rule 8(4) CAT(Procedure) Rules 1987.

There is also no clear material on record that the ^{applicant} application in fact preferred this





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representation or appeal to the higher authority challenging the order of suspension. The Department strongly refuted any such appeal/representation having been made. Yet the applicant did not think fit to file rejoinder denying this fact. Why we say that there is no convincing material on record because Annexure-3 which is supposed to be a typed copy of the Departmental appeal has been first dated 24.1.2000. Thereafter, it appears to have been subsequently over written by ink as 14.12.1999. Further this appeal/representation Annexure-3 is stated to have been submitted through proper channel and it will disclose that it was addressed by the applicant while stationed at Cuttack. But the order of suspension under Annexure-1 passed by the Respondent No.4 stationed at Bhubaneswar contains a direction that the applicant stationed at Haridas Pur ~~was~~ ^{shall} not leave Headquarter s without obtaining prior approval of the competent authoritiy and there e is no mention in the original application that he came to Cuttack to submit the representation/appeal after obtaining the approval of the competent authority. We have therefore no hesit~~at~~^{at}itation to hold that the applicant has not prefer red departmental appeal and Annexure-3 has been manufactured for the purpose of filing this original application. Viewed from this anagle, the original application is also not maintainable under Section 20 of the AT Act 1985 in not exhausting the alternative remedy of preferring departmental appeal.

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13. During hearing neither side could give us information as to the stage at which the disciplinary proceeding is pending. The fact however, remains that the applicant is under suspension since more than 3 years.

14. In the result while dismissing this Original Application as per our discussion made above we direct the respondents to consider the revocation of the order of suspension in case the disciplinary proceeding is still pending and will not be finalised by 31.12.2001 provided the delay is in no way attributable to the applicant. No costs.



Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

(G. NARASIMHAM)
MEMBER (J)

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