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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.NO. 230 of 2001
Cuttack, this the 10th day of August, 2005.

UPENDRA BARI

APPLICANTS.

VERSUS


UNION OF INDIA AND 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 CAT or not? *yes*


(B.N. SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER (JUDICIAL)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

Original Application No. 230 of 2001
Cuttack, this the 10th day of August, 2005.

CORAM:-

**THE HON'BLE MR. B.N.SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR. M.R.MOHANTY, MEMBER(JUDL.)**

UPENDRA BARI, aged about 42 years,
Son of late Najir Bari, permanently of
Village Govindapur, Po; Lataphar,
PS: Sonua, Via: Chakradharpur,
Dist. West Singhbhum, Bihar.

..... APPLICANT.

For the Applicant : Mr. P.K.Mishra, & Mrs. Prativa Mishra, Adv.

VERSUS

1. Divisional Mechanical Engineer, S.E. Railway, Chakradharpur,
West Singhbhum, Bihar.
2. Senior Divisional Mechanical Engineer, S.E. Railway,
Chakradharpur, West Singhbhum, Bihar.
3. General Manager, S.E. Railway, Garden reach, Calcutta.

..... RESPONDENTS.

FOR THE RESPONDENTS: M/s.R.Sikdar, A.Sikdar, Mrs.S.dutta,
Addl. St. Counsel (Railways.)

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O R D E R

MR. M.R. MOHANTY, MEMBER(J):-

Upendra Bari, (a member of the Scheduled Tribe) served the Railways from 15.11.1978 as Sub-Skid Porter. On the allegation that he remained absent from duty (from 21.06.1991 to 20.06.1994) for 514 days, a Memorandum of charges dated 12-09-2004 was drawn as against him; which was served on the Applicant on 20.04.1995. A reply thereto was furnished by him on 03.06.1995. It appears, the matter was enquired into and, ultimately, he was found guilty of the charges (for unauthorized absence from duty) and, he was visited with the order of punishment (of removal from service) 21.09.1995 with immediate effect. On 29.09.1995 he preferred an appeal, which was rejected by the Appellate Authority on 11.10.1995. Thereafter, he filed a petition before the next higher Authority on 20.10.1995, which was turned down on 27.6.1996. Again, with a ray of hope, he filed a mercy appeal to the General Manager of S.E. Railway, Garden Reach, Calcutta-43 on 06.12.1990. While the matter stood thus, he was advised on 20-10-1997 to prefer a fresh mercy appeal to the competent authority. Thereafter, as it appears, he preferred a mercy petition on 05.11.2000 and, without hearing about the fate of his said mercy petition, had filed this Original Application on 23.09.1001 in this Tribunal with prayers to quash the

order passed by the Appellate Authority. He has further prayed that he may be allowed to continue in his post and the past period be treated as in service and he be paid all financial benefits.

2. Respondents-Railways have filed a counter; wherein they have raised the preliminary objection with regard to delay in approaching this Tribunal in this O.A. As regards the facts and other allegations averred by the Applicant in his Original Application, the Respondents have stated in their counter that there was no illegality in the matter of conducting inquiry, and that adequate opportunities were given to the Applicant to defend his case and that, since the Applicant admitted the charges of unauthorized absence and that as he was a habitual absentee, the Disciplinary Authority thought it expedient to do away the services of the Applicant and, accordingly, after observing the necessary formalities as per the rules, inflicted the punishment of removal from service. It is the case of the Respondents that the decision of the D.A. (in the matter of imposition of punishment) having been confirmed by the Appellate Authority (as well as the Revisional Authority) this Original Application is devoid of any merit and, therefore, the same should be dismissed.

3. We have heard learned counsel appearing for the parties and perused the materials placed on record. The learned counsel for the Applicant, during argument submitted that the entire proceedings was conducted in a perfunctory manner; inasmuch as the Applicant was

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neither supplied with a copy of the enquiry report nor was he given an opportunity to cross examine the witnesses examined by the I.O. during the enquiry proceeding. This submission of the learned counsel for the Applicant was vehemently opposed by the learned counsel appearing for the Respondents. However, we are very much handicapped to weigh the rival contentions in a judicious manner in the absence of any materials placed before us by either of the parties. At paragraph 9 of the counter, the Respondents have submitted that the enquiry findings were served on the Applicant on 3.7.1995. Since no materials have been placed on record by either of the parties, we are in darkness to know as to what were the findings of the IO; how the Applicant met those findings and as to whether the Applicant at all raised any objection (with regard to the findings of the IO/non-compliance of the principles of natural justice) during the disciplinary proceedings. It is a fact that the Applicant has approached this Tribunal belatedly; but if on that hyper technicality the grievance of the applicant is thrust aside, it would be an injustice and that would prolong injustice and, therefore, to meet the ends of justice, we are inclined to proceed on the merits of the case.

4. We have gone through the orders passed by the Disciplinary Authority as well as of the Appellate Authority and we find that both orders are bereft of reasoning and have been passed in a bald and cryptic manner (without taking into consideration) without any discussion on the

findings of the I.O. and the evidence adduced during the inquiry. *It is the settled position of law that the authorities, while passing any order detrimental to the interest of a Govt. servant, must assign reasons leaving no room of doubt that his grievance has been left out of consideration. Recording of reasons by every authority entrusted with quasi judicial functions and communication thereof to the parties are the basic requirements for complying the principles of natural justice. The requirement of recording of reasons and communications thereof have been held as an integral part of the concept of fair play. The administrative authorities vested with powers should act judicially and should not decide the matter on extraneous considerations and it should exhibit clarity and maintain checks and balance in the decision making process.* Rule 22(2) of the Railway Servants(Discipline & Appeal) Rules, 1968 unequivocally provide that in case of an appeal against an order imposing or enhancing any of the penalties specified in Rule 6, the Appellate Authority shall "consider" pros and cons of the matter indicated therein. This point was considered by the Hon'ble Supreme Court of India in the case of **RAMACHANDER VS. UNION OF INDIA (REPORTED IN AIR 1986 SC 1173)** . While interpreting Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules, 1968 in the case of Ramchander (Supra) the Hon'ble Supreme Court held as under :

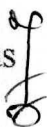
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"It is of utmost important after the 42nd Amendment as interpreted by the majority in the Tulsiram Patel case (1985) 3 SCC 398 that the appellate authority must not only give a hearing to the Govt. servant concerned, but also pass a **reasoned order dealing with the consideration raised by him in the appeal**. Reasoned decisions by the Tribunals such as the Railway Board in the present case will promote public confidence in the administrative process. **An object consideration is possible only if the delinquent servant is heard and given a chance to satisfy the authorities regarding the final order that may be passed on his appeal. Considerations of fair play and justice also require that such a personal hearing should be given**".

5. In the instant case, we see that the orders passed by the disciplinary authority as also of the appellate authority do not satisfy the basic requirement of rule and the judge made laws, as quoted above. Apart from the above, in the counter filed by the Respondents Railways it has been disclosed that the Applicant was a habitual absentee; for which he had been visited with minor punishments. Therefore, there is no escape to come to a conclusion that the orders passed by the disciplinary authority and the appellate authority are against the principles of settled position of law, inasmuch as the authorities, while passing the impugned order of punishment, had carried in his mind the past conduct of the applicant in respect of which the applicant was not noticed/asked to show cause and, therefore, not only the principles of natural justice has been violated but also the final order is bound to be assessed as bad; for past conduct has been taken into consideration without confronting the same

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to the Applicant. To add to this we would like to note here that the Hon'ble Supreme Court of India in the case of **Union of India & ors. Vs. Girija Shama** (reported in AIR 1994 SC 215) held that *the punishment of removal from service for unauthorized absence is an extreme punishment* .Further, the Hon'ble Supreme Court in the case of **MANAGEMENT OF NILPUR TEA ESTATE vrs. STATE OF ASSAM AND OTHERS** (reported in AIR 1996 SC 373); in the case of **STATE OF PUNJAB AND OTHERS vrs. BAKSHISH SINGH** (reported in AIR 1997 SC 2696); in the case of **SHRI BHAGWANLAL ARYA vrs. COMMISSIONER OF POLICE DELHI AND OTHERS** (reported in (2004) SCC (L&S) 661) and in the case of **RAM AUTAR SINGH vrs. STATE PUBLIC SERVICE TRIBUNAL AND OTHERS** (reported in AIR 1999 SC 1542) have taken the same view that dismissal from service on the ground of absence/overstayal of leave is too harsh and uncalled for. In the instant case the Applicant has put in 17 years of service by the time he was removed from service. If the punishment of removal from service is sustained, he will not only be deprived of the right to life enshrined under Article 21 of the Constitution of India but that would be bad for it takes out the effect of the long service rendered to the nation;n, as it is well known that in course of rendering active service, one earns pension to be paid to him at the end of the employment and, as

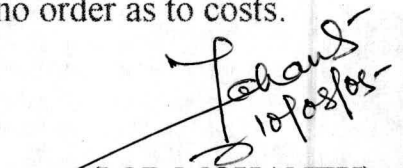


such, the effect of the entire period of service rendered can just not be taken away.

6. Having regard to what has been discussed above, while we do not feel inclined to fetter the discretion vested with the authorities, we grant liberty to the Applicant to make a consolidated representation to the Respondents/competent authorities setting out all his grievance within a period of 30 days from today and, accordingly, the Respondents are hereby directed to consider the grievances of the applicant as raised therein and pass appropriate orders keeping in view the observations as made in the foregoing paragraphs within a period of sixty days from the date of receipt of such representation to be made by the Applicant.

7. With the observations and directions, as made above, this O.A. is disposed of. However, there shall be no order as to costs.


(B.N.SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER(JUDICIAL)