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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 501 of 2001
Cuttack, this the 29th day of November, 2004

Jabbar Mahammad. Applicant.

-Vrs.-

Union of India & Ors. 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 or not? *No.*

[Signature]
(B.N. SOM)
Vice-Chairman

[Signature]
(M. R. MOHANTY)
Member (Judicial)
29/11/2004

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CORAM:

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

....

JABBAR MAHAMMAD,
Aged about 58 years,
S/o. Tahar Mahammad,
Village-Haridamada,
Po: Arugul, Ps: Jatni,
District-Khurda.

... Applicant.

By legal practitioners: M/s. D. R. Pattanayak,
M. K. Khuntia,
N. S. Panda,
S. K. Das,
A. K. Routray,
S. R. Mohapatra,
Advocates.

: Vrs. :

1. Union of India represented by
its General Manager, South Eastern Railway,
Garden Reach, Calcutta.
2. Divisional Railway Manager,
S. E. Railway, Kharagpur,
West Bengal.
3. Asst. Mechanical Engineer(P),
S. E. Railway, Kharagpur,
Dist. Madanpur.

... Respondents.

By legal practitioners: Mr. D. N. Mishra,
Standing Counsel for
the Railways.

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O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL):

In nut-shell, the case of the Applicant is that he joined Railways on 09-10-1963 as a Loco Steam Man and continued in Railways Services till 1988; during which period he had rendered blameless service and that, because of his illness, he remained absent; after giving intimation to the authorities from time to time and that by an order dated 25-10-1988, a Disciplinary proceedings (under Rule-9 of the Railway Servants (Discipline and Appeal) Rules, 1968) were initiated against him (on the ground of remaining absent from duty, from 06-06-1988, without any authority) for which he was noticed (on 27-08-1991) to attend the enquiry on 29-09-1991 and that without paying any heed to his application (to call for the files from the hospital where he was undergoing treatment) the impugned order of punishment (of removal from service) was passed against him by order dated 16-03-1994. Applicant, thereafter, challenged the said order of punishment (of removal) in this Tribunal in an earlier O.A.No. 216 of 2000 (on the ground that copy of the enquiry report was not furnished to him; that the punishment was grossly disproportionate to the charge levelled against him and

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that his appeal, filed on 15-04-1994, has not been disposed of) and this Tribunal (by its order dated 10th March, 2001) disposed of the said Original Application in remanding the matter to the Appellate Authority (Divisional Railway Manager, South Eastern Railway, Kharagpur) to consider (within 120 days) if in the circumstances of this case, the punishment of removal from service (as imposed against the Applicant) can be modified to one of compulsory retirement with effect from the date of his removal from service. Thereafter, the Applicant represented to the Divisional Railway Manager of South Eastern Railway at Kharagpur (on 02-07-2001) and the said representation of the Applicant was rejected (under Annexure-11 dated 04-09-2001) and hence this Original Application has been filed with the prayer to quash the order of punishment; to quash the order of rejection of Appeal and for a direction (to the Respondents) to grant him (Applicant) a voluntary retirement with consequential and other financial benefits, since the Applicant has completed more than 25 years of continuous service.

2. Respondents filed a counter reiterating the earlier stand taken in the counter filed in the previous case. With regard to the ground of challenge of

the order of rejection under Annexure-11, it has been submitted that since there is no illegality; nor there is nonapplication of mind nor there is any violation of the mandates of Article 14 and 16(1) of the Constitution during issuance of the order of rejection under Annexure-11, this Tribunal should not interfere in this matter.

3. Heard learned counsel for both sides and perused the materials placed on record.

4. Before recording the submissions adduced by both the parties, it would be profitable to record the findings reached by this Tribunal (while disposing of the earlier Original Application) which reads as under:-

"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 twenty five 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 twenty five 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 twenty five years by imposing the punishment of removal from service because removal from service results 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, SE Railway,

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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 review 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".

5. The case of the Applicant ought to have been considered and the punishment ought to have been modified to that of "compulsory retirement" but the case of the Applicant was rejected under Annexure-11 dated 04-09-2001 with the following words:-

" In obedience to the Hon'ble CAT, Cuttack Bench's order dated 10.5.2001 in the matter of O.A.No.216/2000 which was filed by you, I have gone through your aforesaid representation carefully.

I do find that you have already admitted vide para-1 of your above representation that you were taken up under Rly. Servants' (Discipline and Appeal) Rule-9 of 1868, for alleged absenting from duty for the period from 6-6-1988 onwards without any authority.

The disciplinary case against you was enquired into by the nominated enquiry officer who afforded you reasonable opportunity to defend disciplinary case by you and on conclusion of enquiry as per D&A Rules, the Article of charge framed against you was found to be proved.

On completion of enquiry proceedings, a copy of enquiry report/findings was furnished to you through postal department so as to enable you to represent/show cause against enquiry findings before passing final order by the disciplinary authority but it was returned back by the postal deptt. as undelivered with remark as "party refused to accept".

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The disciplinary Authority thereafter passed removal order and punishment notice No. Mech./D&A/88/66 dated 16-3-1994 was sent to you through registered post on 9.4.94 and receipt of the same was acknowledged by you on 16.4.94.

In your instant representation you have stated that an appeal on 15.4.94 was submitted by you but it is baseless and denied since you did not prefer any appeal to the appellate authority against removal order.

On examination of your past records it is revealed that your service to the railway was not at all satisfactory during your entire service career.

In view of the above, it is clear that the punishment of removal from Rly. service is inadequate and I do not find any new points brought out by you in your instant representation to modify original penalty of removal from Rly. service imposed by the Disciplinary Authority.

Accordingly, your representation dated 2.7.2001 stands disposed of and the penalty of removal from Rly. service is confirmed".


6. On thorough scanning of the order of rejection under Annexure-11, it is crystal clear that the Authorities rejected the claim of the Applicant/negated the order of this Tribunal on the ground that the past records of the Applicant was not at all satisfactory. It was not available for the Respondents to consider the past records of the Applicant innegative, in view of the clear findings of the Tribunal (in the earlier case) that the past records of the Applicant to be unblemish. This Tribunal also took into consideration the aspect of disproportionate punishment on the face

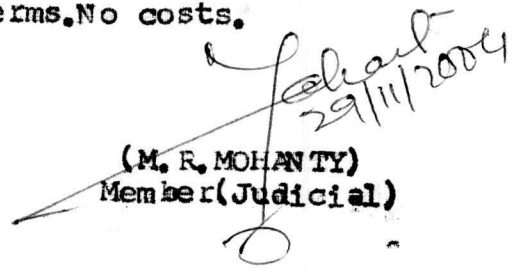
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of various judge-made-laws of the Hon'ble Apex Court and, as such, the Appellate Authority ought not to have rejected the case of the Applicant so casually. Hon'ble Supreme Court have also interfered with the order of punishment of removal from service (made on the ground of unauthorised absence/ overstayal of leave) in the case of UNION OF INDIA AND OTHERS vrs. GIRIRAJ SHARMA (reported in AIR 1994 SC 215); in the case of SYED ZAHEER HUSSAIN vrs. UNION OF INDIA AND OTHERS (reported in AIR 1999 SC 3367) and in the case of SHRI BHAGWANLAL ARYA vrs. COMMISSIONER OF POLICE, DELHI AND OTHERS (reported in 2004 SCC (L&S) 661); but as this Tribunal had already rejected the claim of the Applicant for quashing of the order of punishment of removal from service (which has not been challenged by the Applicant, by way of filing review or by filing Writ before the Hon'ble High Court) we do not want to disturb the said findings of this Tribunal reached in the earlier O.A. However, in view of the findings made in earlier O.A. (quoted above) and in view of the judge-made-laws of the Hon'ble Supreme Court of India and in view of the peculiar facts and circumstances of the case) we quash the order of rejection under Annexure-11 dated 04.09.2001 and since the Applicant is out of job from 1994 for the ends of justice and to mitigate the hardship of the Applicant, we convert the punishment order of "removal

from service" to that of "compulsory retirement" w.e.f. the date of removal from service of the Applicant; with a further direction (to the Respondents) to settle all the dues of the Applicant without any further delay.

7. In the result, this Original Application is allowed in the aforesaid terms. No costs.


(B.N. SOM)
Vice-Chairman


(M. R. MOHANTY)
Member (Judicial)
29/11/2004