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O.A. No. 519 OF 2001

ORDER DATED 25-02-2004.

Heard Mr. Achintya Das, Learned Counsel for the Applicant and Mr. R.C. Rath, Learned Standing Counsel appearing for the Respondents/Railways and perused the materials placed on record.

The Applicant, Shri Simadri Behera, in this Original Application has prayed for the following reliefs:-

- "8.1. to quash and set aside the charge-sheet including the imputation of misconduct placed at Annexures A/6 and A/7;
- 8.2. to quash and set aside the punishment notice dated 28.3.2001 including the speaking order placed at Annexure-A/9 and A/10;
- 8.3. to quash and set aside the appellate order dated 3.12.2001 at Annexure-A/33;
- 8.4. the period from 16.10.1999 to 13.2.2000 should be converted to leave on self sickness ground and commuted leave should be granted as per leave rules;
- 8.5. the respondents may be directed to grant all consequential benefits consequent upon setting aside the charge-sheet, imputation of misconduct, punishment notice, speaking order;
- 8.6. to grant any other relief including cost as deemed fit by the Hon'ble Tribunal".

The case, in short, is that the Applicant was charge-sheeted by the Divisional Commercial Manager, Khurda Road by his Memo dated 25.10.1999 on grounds of his absence from duty from 16.10.1999. It was alleged that the applicant who reported sick from 30.9.1999 by

submitting unfit certificate from Railway Doctor, was discharged from his sickness on 16.10.1999 by the Senior DMO(OPD), vide his Memo dated 19.10.1999; and, that the Applicant has been unauthorisedly absenting from his duty on and from 16.10.1999. The Disciplinary Authority, after receipt of representation/explanation submitted by the Applicant, to the charge-sheet, referred to above, passed a speaking order dated 28.03.2001(Annexure-A/10) ^{on} imposing him the penalty of stoppage of promotion for a period of two years w.e.f. 1.4.01 and also ordered that the period of his absence should be treated as leave without pay. The applicant had, thereafter, filed an appeal before the Divisional Railway Manager, who disposed of the same vide his speaking order dated 03.12.2001. The Appeal was rejected by the Divisional Railway Manager, on the ground that a Sr. Supervisory level staff should/have behaved in a most irresponsible manner by remaining unauthorised/absent from duty for a considerable period of time from 16.10.99 to 14.2.2000. He also stated that the submission of PMC had been banned by the order of the competent authority for a period of one month from 1.10.1999 to 30.10.1999 and on that ground the absence of applicant, without permission was reprehensible. He had felt that the applicant should have been punished further since treating the period as LWP is not considered as a punishment but the same is considered as "no work no pay situation". However, taking the fact that the administration had taken long time for completing the disciplinary proceedings against the applicant, he modified the period of two years of punishment of withholding of

promotion to be counted from 16.10.1999 onwards as against 1-4-2001 as imposed by the Disciplinary Authority.

The grievance of the Applicant in this Original Application is that as per the Railway Board's instruction, instead of rejecting the PMC at the threshold, the Respondents should have referred the matter to the Railway Doctors for second medical opinion. He has also challenged the ban order issued by the DRM on the PMC. He has further submitted that he was never informed by the Respondents that he would not be paid his salary for the period of his absence until he received the order of the disciplinary authority, as stated above. Therefore, he submits that the Respondents have acted, in withholding his leave salary, without following the procedure as laid down in the relevant Railway Estt. Manual. Mr. R.C. Rath, learned Standing Counsel for the Respondents have contested the contentions of the applicant and have also filed, on behalf of the Respondents, a detailed counter in this regard. His main submission is that the Railway OPD Doctor having declared the applicant fit for duty on 16.10.99 itself, disappearance of the applicant, without any notice can be seen as a breach of discipline and the plea of the applicant that he has to undergo further medical advise is not supported by either the medical certificate which he had submitted with his application or by the facts of the case as narrated in his application. He has, therefore, submitted

that this Original Application merits no consideration.

Having heard learned counsel for both sides, I have perused the materials placed on record. From the facts it is clear that the applicant had left his duty, without obtaining prior permission from any authority. Although he has submitted that he had sent a representation on 20.10.1999 seeking leave, it is not ^{same as} say, that he had obtained permission of his authority to be away from office. With regard to the plea that he was not aware that PMC has been issued during the period he had to leave headquarters for further medical treatment also does not seem to be credible because the DR^WAppellate Authority himself has endorsed that in the interest of Railway work the PMC was banned for a period of one month from 1.10.1999 to 30.10.1999. Further, the private medical certificate that he has submitted alongwith his application from one Dr. J. P. Behera, Ophthalmology, Berhampur, it is seen that he was treated by Dr. Behera only at OPD for some eye ailments, who has also not noted the period during which the applicant was under his treatment for the eye ailment at OPD, Berhampur Hospital. From all these facts of the case, it is difficult to accept the plea of the applicant that injustice has been done to him either by the disciplinary authority or by the appellate authority. What is more the appellate authority has shown his utmost distress that a senior supervisor like the applicant could think of leaving his duty point without informing his

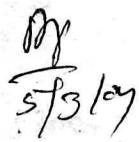
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senior officer at a time when his ^{presence} work was very much essential due to festival period.

In view of the above, I see no merit in this Original Application; which is accordingly dismissed. No costs.

Copy of order
off 25/2/04 issued
to the counsel for
both side.


Vice-Chairman 25/2


S.O.


M.S.