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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.593 of 2001
Cuttack, this the 7th day of Jan 2005

Bhubaneswar Prasad Upadhyaya

.... Applicant

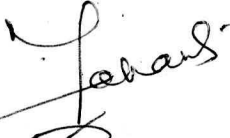
-VERSUS-


Union of India & others

.... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not ? 74
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? 75


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(E.N. SOM)
VICE-CHAIRMAN

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CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN .

AND

HON'BLE SHRI M.R.MOHANTY, MEMBER (JUDICIAL)

...

Bhubaneswar Prasad Upadhyaya, aged about 45 years,
S/o.Madhusudan Upadhyaya, at-Railway Qr.No.B/22/5, At/P.O/Dist.
Jharsuguda.

.... Applicant

Advocates for the applicant

....Mr.J.K.Lenka

Versus-

1. Union of India, represented through its General Manager, South Eastern Railway, Garden Reach, Calcutta-43.
2. Senior Divisional Mechanical Engineer, S.E.Railway, Chakradharpur, Dist.Singhbhum (Bihar).
3. Divisional Railway Manager, S.E.Railway, Chakradharpur, Dist.Singhbhum (Bihar).
4. Sectional Controller (Loco foreman), S.E.Railway, Jharsuguda at/P.O/Dist.Jharsuguda (Orissa).

.... Respondents

Advocates for the Respondents

.... Mr.C.R.Misra

.....

O R D E R

SHRI B.N.SOM, VICE-CHAIRMAN:

Shri Bhubaneswar Prasad

Upadhyaya has filed this O.A. being aggrieved by the order of removal from service passed by Res.No.3 vide his order dt.25.9.97. He has sought for the following reliefs:

- a) to set aside the impugned removal order at Annexure-A/7 passed by the Disciplinary Authority (DA in short)
- By

and Appellate order at Annexure-A/8 and review order at Annexure-A/11.

- b) to reinstate him forthwith with all consequential benefits.
- c) to pass any other order.

2. The undisputed facts of the case are that the official while was working as call boy at Jharsuguda, Locoshed, his wife fell ill in December, 1989 and was under treatment in the Railway Hospital, Chakradharpur. Thereafter, he remained on leave till 2.12.90. During this period his wife underwent Tubectomy operation, on account of which he was issued a Green Card bearing No.153483 dt.27.7.90. The doctor had also advised her four months rest and these facts were communicated by him to the Controlling Authority while seeking extension of leave. He has submitted that when he reported for joining his duty on 2.12.90, the controlling authority advised him to submit the medical certificates in original so that his leave could be sanctioned. Although he complied with the instructions yet his leave was not sanctioned. On the other hand, on 24.12.90, he was served with a Memorandum of Charges (Annexure-A/1) under Rule 9 of Railway Servants (Discipline and Appeal) Rules, 1968. Although he denied the allegations they appointed an Enquiry Officer (EO in short) to inquire into the allegation of his un-authorised absence from 22.12.89 to 1.12.90. The EO Submitted his report based on which the Disc.Authority (DA in short) passed an order removing him from service and the same order was confirmed by the Appellate Authority and also the Reviewing Authority without application of mind and

without assigning any reason for turning down his representation/appeal against the punishment order.

3. The applicant in this O.A. has stoutly submitted that the charge of un-authorised absence brought against him was mis-conceived and without any basis. Secondly, that the EO had bias against him which he brought to the notice of the DA and had asked for substitution of the EO but without any effect. Thirdly, that the inquiry was conducted ex-parte without any valid reason and that inquiry relating to the charge indicated in Annexure-A/1 was never proved. Lastly, that the DA had not given any opportunity to him to defend his case before imposing a major penalty.

4. The Respondents have opposed the O.A. by filing a detailed counter, wherein they have stated that they had given reasonable opportunity to the applicant to defend his case and it is he who had remained away from inquiry for reasons best known to him. They have also stated that they had received no letter from the applicant seeking postponement of the enquiry on any date and that the allegation that he was not spared by the controlling officer to attend the enquiry is not valid as the enquiry was held in the Loco-shed itself. Therefore, the question of sparing him for attending enquiry did not arise. They have rebutted the allegation of the applicant that the EO appointed by the DA was in the grade of driver and therefore was not competent to conduct the enquiry. The fact of the matter is the EO appointed by them was a Loco-Inspector who had necessary

competence to act as EO.

5. We have heard the Ld.Counsel for both the sides and perused the records placed before us.

6. In a disciplinary case, it is well settled principle of law, the Courts/Tribunals has got limited scope of judicial scrutiny. However, we are not totally precluded from intervening into the matter in case the disciplinary case is based on no evidence or there is denial of natural justice, like, denial of access to relevant documents/non-production of material witnesses or where the allegation of bias or malice is levelled or the punishment is shockingly disproportionate to the guilt. In this case, the applicant has drawn our notice to the fact that the applicant had admitted his wife in Railway Hospital for treatment and as he was the only male member of his family he had to remain with his wife to take care of her, during the period of her ill-ness. He has submitted that he had produced, on returning back to duty on 2.12.90, the medical certificate issued by Sr.Medical Superintendent, South Eastern Railway, Bilaspur to the effect that his wife was under treatment there from 3.12.89 to 30.6.90 and that, on doctor's advice, he had remained on leave for four more months. And these facts were communicated by him to the authorities at that point of time. But no one was considerate to his problem and went hammer & tongue against him.

7. In the counter, the Respondents have not given any direct answer to these points raised by the applicant. The applicant had, at Para-4(E) and 4(I) of his application, given

reasons for his absence for the period from 22.12.89 to 1.12.90 and for absence from 21.1.91 to 11.3.93. The Respondents in their counter have not contested the facts stated either at para-4(E) or 4(I). In reply to para-4(E) they have only stated as follows:

"The applicant produced the medical certificate of his wife's illness but had not submitted any application explaining the valid reason of his absence unauthorisedly from 22.12.89 to 1.12.90."

The Id.Counsel for the Respondents have on our query submitted the copy of the medical certificates issued by the Senior Medical Superintendent, Bilaspur, South Eastern Railway which gives credence to the submission made by the applicant. His wife was hospitalised/under treatment during this period. On perusal of the enquiry report, we find that allegation of the applicant that the EO was not conversant with the procedure of conducting disciplinary proceedings under Rule 9 of Railway servants (D & A) Rules does not appear to be inapt. It appears that the proceedings were carried out in a perfunctory manner. The allegation being one of un-authorised absence, the EO^{though obliged} had not found out whether the applicant had actually failed to keep his controlling officer apprised of his absence with reasons. From the facts of the case, and which have not been rebutted by the Respondents, the applicant was away from duty from 22.12.89 to 1.12.90 on two grounds. Firstly, that his wife was under treatment at the Bilaspur Medical Hospital from 3.12.89 to 30.6.90 and thereafter as his wife was advised four months rest; he remained at home to look after her. The EO during his

inquiry did not go into these aspects of the case and never brought out the reasons as to why there was a communication gap between the applicant and the Respondents. It also defies our understanding as to why after having received the medical certificate issued by the Sr. Medical Superintendent, Bilaspur, the Respondents refused to grant him leave on the plea that he had not given valid reasons for his absence. From the perusal of the records we get ^{the} feeling that there was total non application of mind both at the inquiry stage and at the level of Disciplinary Authority and above, when they failed to ~~appreciate~~ the problems brought out by the applicant through his representations that he had submitted to them from time to time, that he had genuine difficulties at home for which he ^{had} remained away from duty. The Ld. Counsel for the applicant by drawing our notice to the case of Ranjit Thakur vs. Union of India has submitted the punishment is grossly disproportionate to the alleged offence as to shock the judicial conscience and that the punishment itself is a conclusive evidence of bias of the Respondents against him. In this case the doctrine of proportionality was given a go by. Relying on the judgement of B.C. Chaturvedi Vs. Union of India, he has prayed that the Tribunal would appropriately mould the relief, ~~either~~ directing the disciplinary/appellate authority to reconsider the penalty imposed. His conclusion is that punishment of removal from service given to the applicant was grossly disproportionate and is liable to be set aside.

8. On the facts of the case, we find it difficult to

disagree with the Ld. Counsel for the applicant. It is not disputed that the applicant was absent from duty from 22.12.89 to 1.12.90 but it could never be alleged that he was absent without reason. It is also to be remembered that the applicant is a low grade employee, in the post of callboy, and with his breadth of knowledge and understanding of things, he had been reporting about his family problems seeking leave and then on 2.12.90 he did come back to report for duty. It is unfortunate that his controlling officer never tried to find out the nature of his difficulties and if he had ever thought that the applicant had failed to follow the office disciplines he could have appropriately counselled him to enable him to come to the expectations of his superiors. Instead, the controlling officer took a hostile view almost betraying his bias towards the applicant. If these are the circumstances of the case, we have no hesitation to say that the punishment awarded was grossly disproportionate to the alleged offence. It was another matter if for his long absence the applicant might not have ~~been~~ granted leave with full pay; but surely the circumstances in which he had to be away from duty could not be called to be an act of misconduct. There was, in this case, a clash between duty towards family and duty at the workplace and the applicant had decided to put greater importance on his family duties. It may not have been a good decision under certain circumstances, may not be tolerated in all cases but after having before ^{us} ~~are~~ the uncontroverted facts of this case, the conduct of the applicant under no circum-

can
stances ~~be~~ categorised as ~~fraud~~ misconduct.

9. That being our finding, we cannot allow the punishment to stand and therefore, we have no hesitation to quash the impugned order at Annexure-A/7, Annexure-A/8 and Annexure-A/11. We also direct the Respondents to reinstate the applicant forthwith with all consequential benefits and regularise the period of absence with full pay allowances. No costs.


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

SAN/