

O.A.NO. 595 OF 2003
Cuttack, this the 07th day of July, 2005

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *yes.*
2. Whether it be circulated to all the Benches of CAT or not? *yes.*

(M.R.MOHANTY)
MEMBER(JUDICIAL)

07/07/05-

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

Original Application No. 595 OF 2003
Cuttack, this the 07th day of July, 2003

C O R A M:-

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

BHAGABAN DANAK,
Aged about 49 years,
Son of late Chhupuri Danak,
Ex-Chief Divisional Power Controller,
East-Coast Railways, Khurda,
At present residing at Railway Qrs.No.L/T/81/1,
Type-II Loco Colony,
Bhadrak, PO- Charampa,
Dist. Bhadrak.

APPLICANT.

For the Applicant: M/s.D.N.Lenka,D.S.Ray, Advocate

VERSUS

1. Senior Divisional Mechanical Engineer,
East Coast Railways, Khurda Road,
At/Po: Jatni,
Dist. Khurda.
2. Additional Divisional Railway Manager,
Office of the Divisional Railway Manager,

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East-Coast Railway, AT/PO-Jatni,
Dist. Khurda.

3. Chief Mechanical Engineer,
East-Coast Railway,
At/Po- Chandrasekharpur,
Bhubaneswar,
Dist. Khurda.
4. Union of India represented through
General Manager,
East Coast Railways,
Chandrasekharpur,
Bhubaneswar,
Dist. Khurda.
5. Enquiring Officer-Cum-Assistant,
Divisional Mechanical Engineer ©,
S.E. Railways (now East Coast Railways)
Khurda Road Division,
At/Po-Jatni,
Dist. Khurda.

RESPONDENTS.

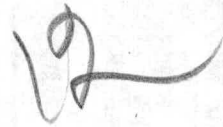
For the Respondents: Mr. R.C. Rath, SC(Railways)

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O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL):

Applicant started serving in the Railways with effect from 30.3.1976. While working as Chief Divisional Power Controller under the (East Coast Railways) at Khurda Road, he was issued with charge sheet under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968, on the allegation of unauthorized absence 158 days during the year 1999 and 2001 and 133 days by submitting private medical certificates during the years 1999, 2000, 2001 and 2002 at different spells vide Annexure-A/2 dated 31.5.2002/3.6.2002. He having filed an explanation; the matter was enquired into. The I.O. having submitted his report, a copy of the same was supplied to the Applicant and under Annexure-A/7 dated 16.1.2003, the Disciplinary Authority passed the final order by removing the applicant from service. Against the said order of removal, the Applicant preferred an appeal under Annexure-A/8 dated 28.1.2003; which was rejected under Annexure A-9 dated 25.2.2003. Thereafter, the Applicant preferred a revision under Annexure - A/10; which was also rejected under Annexure A-12 dated 15.7.2003. By filing this Original Application under section 19 of the



Administrative Tribunals Act, 1985, the Applicant has sought for the following relief:-

- “(i) The impugned order under Annexure-A/7 be quashed;
- (ii) The order under Annexure –A/9 in rejecting the appeal be quashed;
- (iii) The order under Annexure-A/12 in rejecting the revision petition be quashed
- (iv) The order be passed to take the applicant to be continuing in the post with all consequential benefits”.

2. Respondents have filed a counter in this case disclosing therein that there was no procedural irregularity in conducting the inquiry; that every opportunity was given to the Applicant to defend his case and that the charges having been proved against the Applicant, he has rightly been awarded the punishment of removal from service. According to respondents, as per the provision contained in Para 527 of the Indian Railway Manual and Establishment Sl. No.144/89, railway employees, who are residing within the jurisdiction of the Railway Doctors, have to submit sick certificates from the railway doctors; while those who are residing out side the jurisdiction of the railway doctors, should submit, within 48 hours, sick certificates, and that the Applicant did not submit any such certificate and that , therefore,

considering the said laches of the Applicant, there were no option but to impose the punishment of removal from service.

3. We have heard Shri D.N. Lenka, learned counsel appearing for the Applicant and Mr. R.C. Rath, Learned Standing Counsel appearing for the Railways/Respondents and perused the materials placed on record. We have also taken note of the averments made by the Applicant in his rejoinder.

4. Learned Counsel appearing for the Applicant, at the out set, during the course of hearing, submitted that the punishment imposed on the Applicant is disproportionate to the gravity of the charge. It was submitted by the learned counsel for the Applicant that the Applicant was visited with the civil and evil consequence of removal from service even after putting about 27 years of service in the Railways. It was submitted by the learned counsel for the Applicant that neither illness comes with prior notice nor the authorities can compel an employee to go to a particular doctor for treatment and that, if the authorities doubted about the genuineness of the medical certificate produced by the Applicant, it was within their domain to have referred the matter to the Medical Board and that, having not done so, the removal order is not sustainable in the eye of law. Further it was submitted by the learned counsel for the Applicant that since many other punishments

are available to be imposed, imposition of such harsh punishment (of removal from service) has, in fact, driven the Applicant to suffer through out rest of his life (along with his family members) even though he served the Railways for 27 years. He has therefore, prayed for quashing of the order of punishment under Annexure-A/7, order of the Appellate Authority under Annexure-A/9 and the order of the Revisional Authority under Annexure-A/12.

5. On the other hand, learned Standing Counsel appearing for the Respondents/Railways has submitted that this Tribunal having no powers to decide what should be the appropriate punishment to be imposed on an employee, at the end of a disciplinary proceedings this Tribunal can only interfere in a matter of disciplinary proceedings, if there is (a) gross violation of principles of natural justice and (b) non compliance of the Rules and that, since no such allegations have been made by the Applicant, the Tribunal may not interfere with the order of punishment; as interference in the order of punishment would invite indiscipline in a disciplined organization like the Railways.

6. Having considered all the averments and the arguments made by rival parties, we do not find any illegality or irregularity committed by the authorities, while conducting the proceedings against the Applicant. The

Appellate Authority also while considering the appeal allowed personal hearing to the Applicant and rejected the appeal. But we find that neither the Disciplinary Authority nor the Appellate Authority, while considering the matter, have ever taken into consideration the fact that the Applicant stayed away from duty due to compelling reason of his illness and that the punishment of removal, of Applicant after 27 years of service in the railways, will not only drive him to desperation but also deprive his entire family of their rights under Article 21 of the Constitution of India. The admitted fact of the parties are that Applicant remained on leave for 133 days at different spells, by producing leave application supported by private Medical Certificates. If there was any doubt about the genuineness of such certificate, under the Rules of the Railways, the authorities could have referred the matter to the medical Board. That apart, the Applicant had also a right to apply for leave; which he exercised. Now the question remains for the alleged unauthorized leave period of 158 days and 133 days; for which the Applicant had produced Medical Certificate from a private practitioner. It is the specific plea of the Applicant that he stayed away from the duty due to his illness. We, therefore, feel that the punishment of removal for such period of unauthorized absence (which was due to illness) is certainly harsh and shocking to the judicial conscience. We also feel that the punishment

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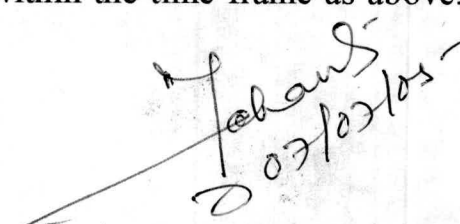
of removal from service is like a death sentence for a holder of a civil post whose source of income generates from Government job. Article 21 of the Constitution of India guarantees right of life and livelihood to every citizen of this country and, therefore, an order by which the life line is cut has to be adjudicated in a manner which must be fair to both the parties. For deciding this matter, we took support of a decision of the Hon'ble High Court of Orissa rendered in the case of **PARESWAR TRIPATHY vs. UNION OF INDIA (reported in 89 (2000) C.L.T. 274)**; wherein a constable in CRPF faced an order of removal due to unauthorized absence of 207 days (on the ground of illness) and the Hon'ble High Court of Orissa, taking support of the decisions of the Hon'ble Apex Court of India rendered in the case of **EX.NAIK SARDAR SINGH vs. UNION OF INDIA AND OTHERS (reported in AIR 1992 SC 417)**, have held that "*the Court's conscience is shocked to see that a bona fide constable loses the job for his absence from duty on medical ground. It is true that regarding the quantum of punishment this court may not substitute by passing the order of punishment as the case deserves, but this Court can hold that the ultimate punishment of removal from service is not warranted. As life includes livelihood, the matter should be considered by the disciplinary authority once again and any other penalty may be inflicted except the punishment of removal from service*". We also

see in the present case that the order of punishment of removal from service (for 158 days/ 133 days; for which he produced Medical Certificate from a private practitioner of unauthorized absence due to illness) is shocking to the judicial conscience and deserves to be interfered with.

7. For the foregoing reasons, we allow this Original Application, and quash the order of punishment(of removal from service) that was imposed on the Applicant, under Annexure-A/7 as confirmed by the Appellate Authority under Annexure-A-9 and the Revisional Authority under Annexure-A/12. The matter is thus, remitted back to the Disciplinary Authority. The matter should be considered afresh (by the Disciplinary Authority) for grant of lesser punishment on the Applicant as the law permits (other than removal/dismissal from service) within a period of four months of communication of this order. The Disciplinary Authority will make all endeavour to conclude the matter within the time frame as above.

No costs.


(B.N.SOM)
VICE-CHAIRMAN


(M.R.MOHANTY)
MEMBER (JUDICIAL)