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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.155 OF 2002
Cuttack, this the 2nd day of January, 2003.

Gopinath Behera.

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Applicant.

Vrs.

Union of India and 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*

Manoranjan Mohanty
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL) 02/01/2003

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.155 OF 2002
cuttack, this the 2nd of January, 2003.

C O R A M

THE HONOURABLE MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL) .

IN THE MATTER OF;

GOPINATH BEHERA, Aged about 53 years,
S/o. Daityari Behera, Village: Fakirpada,
PO: Biribati, PS: Sadar, Dist: Cuttack,
At present Village/PO: Kishorenagar,
DISTRICT: CUTTACK.

..... APPLICANT.

By legal practitioner: M/s. R. C. Patnaik, M. Bisoi, B. B. Ray,
Advocates.

: VERSUS :

1. UNION OF INDIA REPRESENTED through
General Manager,
South Eastern Railway,
Garden Reach,
Kolkata, West Bengal.
2. Divisional Railway Manager (P),
South Eastern Railway,
Khurda Road,
At/PO: Khurda Road,
Jatni, Dist: Khurda.
3. Deputy Chief Personal Officer (C),
South Eastern Railway, Bhubaneswar,
At/PO: Chandrasekharapur, Bhubaneswar,
Dist. Khurda.
4. Permanent Way Inspector (Con.),
South Eastern Railway, Cuttack.

..... RESPONDENTS.

By legal practitioner: M/s. P. K. Mishra, A. K. Panda, ASC.

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O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL) :-

The fact, in brief, is that admittedly, the Applicant was working in the Railways (under the Respondents) on casual basis, as Chowkidar/Khalasi w.e.f. 02-09-1967 to 02-07-1982 when he abandoned himself from duty due to an accident, while on duty, causing severe head injury and consequent hospitalisation. After he became fit, when he reported to duty, he was not allowed by the Respondents to join/perform his work. It is his case that when all his approaches (through representations and personal requests) did not yield any fruitful result, he moved this Tribunal U/s. 19 of the A.T. Act, 1985 in O.A. No. 655/1997 which was disposed of finally on 13.11.97 with liberty to the Applicant to make a representation to the Respondents who shall consider the same within a period of 60 days. However, after a long lapse of time and, with the further intervention of this Tribunal, the said representation of the Applicant was rejected and communicated to the Applicant on 28.11.2001 under Annexure-3, which is now under challenge, in this O.A.

2. Respondents have filed their counter. In the counter, the Respondents, while not ^{counter-acting} the factual aspects of the matter, have placed reliance on the Rule-732-RI (1959 edn.) stating inter-alia that the Applicant was treated to have

'left casual engagement' on his own when he did not return to duty and due to his long unauthorised absence. It has also been averred by the Respondents that this Original Application shall not be entertained on the ground of law of limitation; as the cause of action in this case had arisen in the year 1982, whereas he has approached this Tribunal in the year 1997.

3. Heard learned Counsel for the Applicant and Mr. P.K.Mishra, learned Additional Standing Counsel for the Railways, appearing for the Respondents and perused the records.

4. Before dealing with the merits of the case, it is worthwhile to deal with regard to the preliminary objections raised by the Respondents, in their counter with regard to the law of limitation. It has been averred by the applicant in his Original Application at para 6(b) that he was injured in line during the period of work when a heavy iron rod fell on his head and he was treated in hospital continuously and after recovery, he approached the officer for re-engagement in his previous work but he was not engaged inspite of assurances given by the Respondents on repeated occasions. Order passed on 13.11.1997 in O.A.No.655/1997 also indicates that the Applicant was under prolonged medical treatment in SCB Medical College and Hospital, Cuttack. In this view of the matter, it can not be said that this application is barred by limitation. Hence the said objection of the Respondents is over-ruled.

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5. Now coming to the merits of the case, it is to be noted that on reading of the order of rejection of the representation of the Applicant under Annexure-3 dated 28.11.2001 the Respondents had taken the same ground as in the counter that the Applicant was correctly treated to have left his casual engagement, due to long unauthorised absence in terms of Rule-732-RI. It would be profitable to quote the above Rule; which is as under:-

When a temporary railway servant fails to resume duty on the expiry of the maximum period of extraordinary leave granted to him, or where he is granted a lesser amount of extraordinary leave than the maximum amount admissible, and remains absent from duty for any period for which together with extraordinary leave granted exceeds the limit upto which he could have been granted such leave under sub-rule(1) above, he shall be deemed to have resigned his appointment and shall, accordingly, cease to be in railway's employment.

6. In support of the claims of the respective parties, several contentions have been addressed by learned counsel of either side. However, for the purpose of disposal of this Original Application, it is suffice to consider only one aspect of the matter and that is, whether the Applicant had been given an opportunity of being heard before terminating his services and, in the absence of the same, whether such termination is valid. Further more, as to whether on the face of the constitutional mandate and judge-made-laws, such a Rule, basing on ~~which~~ the applicant has been denied to resume ~~duty~~ is valid.

7. On a plain reading of the Rule, it prima facie shows that the same contravenes/offends the provisions of

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Article 14 of the constitution of India. Law is well settled that non-arbitrariness is an essential facet of Article 14 pervading the entire realm of State action governed by Article 14. It has come to be established as a further corollary, that the audi alteram partem facet of natural justice is also a requirement of Article 14; for natural justice is the antithesis of arbitrariness. In the sphere of public employment, it is well settled that any action taken by the employer against an employee must be fair, just and reasonable; which are components of fair treatment. The conferment of absolute power to terminate the services of an employee is antithesis to fair, just and reasonable treatment. To substantiate this view, I feel persuaded to refer to the decisions of the Hon'ble Supreme Court of India in the case of DEOKINANDAN PRASAD VRS. THE STATE OF BIHAR reported in AIR 1971 SC 1409, which reads as under:-

*xxx xxx xxx. Even if it is a question of automatic termination of service for being continuously absent for over a period of five years, Art. 311 applies to such cases as is laid down by this Court in Jaishanker V. State of Rajsthan (AIR 1966 SC 492) !

In the case of Jaishanker vrs. State of Rajsthan reported in AIR 1966 SC 492, the Hon'ble Apex Court of India held that an opportunity must be given to a person against whom such an order was proposed to be passed, no matter how the regulation described it. In the case of SOBHANA DAS GUPTA VRS. THE STATE OF BIHAR AND ANOTHER reported in 1974 SLR (2)

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674, the Hon'ble High Court of Patna (by taking into consideration the decision of the Hon'ble Apex Court rendered of India in the case of Jaishanker vrs. State) have held as under:-

The consideration on these two cases makes it clear that in the circumstance as in the present case treating the petitioner to have ceased to be in Govt. employ amounts to her removal, and further that the said removal without giving her an opportunity is to go against Art. 311 of the Constitution. In the circumstances of the present case, violation of Article 311 of the Constitution is writ large. There can, therefore, be no doubt that the order under Annexure-2 is illegal, and the petitioner cannot be deemed to have ceased to be in Govt. employ on the basis of the said order or on the basis of Rule 76 of the Service Code.

It is also worthwhile to quote the decision of the Hon'ble rendered Apex Court of India in the case of JAI SHANKER VRS. STATE OF RAJASTHAN (reported in AIR 1966 SC 492) which runs thus:-

The removal of a Government servant from service for overstaying his leave is illegal even though it is provided by the Service Regulation that any individual who absents himself without permission after the end of his leave would be considered to have sacrificed his appointment and may be reinstated only with the sanction of the competent authority.

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A removal is removal and it is punishment for overstaying one's leave an opportunity must be given to the person against whom such an order is proposed, no matter how the Regulation describes it.

(emphasis supplied)

In the case of TEK CHAND VRS. STATE OF HIMANCHAL PRADESH reported in 1987 (3) SLJ 210 the Hon'ble High Court of Himachal Pradesh held as under:-

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"True it is that the petitioner was a daily rated workman. However, even a daily rated workman, who has been employed for such a length of time, cannot be put out of employment on such grounds and under such circumstances without compliance with basic rules of natural justice. Though no regular departmental inquiry is required to be held against such a workman the least that required to be done is: (1) to inform him of the proposed action; (2) to disclose him the material sought to be relied against him; (3) to afford him a reasonable opportunity to correct or controvert such material and to place his view point and (4) to arrive at a fair and just decision supported by reasons".

8. But here, in this instant case no such material has been placed by the Respondents to show that any opportunity had ^{ever} been given to the Applicant to have his say before terminating the services of the Applicant. Since the Rule-732-RI, basing on which the services of the Applicant have been dispensed with, offends the provisions of the Constitution as enshrined under Article 14, the same is held to be illegal.

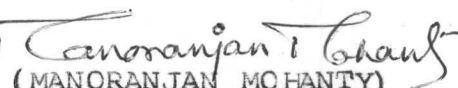
9. It has been further argued by the learned Counsel for the Applicant that persons having less number of working days and having entered into the Railways on a later date, on such casual basis, than the Applicant, have been conferred with temporary status and consequent regularisation but the case of the Applicant has been ignored; which amounts to gross discrimination.

10. In view of the foregoing discussions made above, and keeping in view the various judicial pronouncements, the impugned order under Annexure-3 dated 23.11.2001 (is which it has been stated that the Applicant faced a deemed termination) is held to be not sustainable in the eye of law

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and the same is, accordingly, quashed/set-aside with direction to the Respondents to take appropriate follow up action to meet the ends of justice, in favour of the Applicant within a period of three months from the date of receipt of a copy of this order. The Applicant be treated to have never faced termination/disengagement and he be given all consequential service benefits, as was given to his counterparts within the time fixed.

11. In the result, therefore, this Original Application is allowed leaving the parties to bear their own costs.


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)
02/01/2003

KNM/CM.