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

O.A. NO. 247 OF 2004
Cuttack, this the 31st day of August, 2005.

B. BHAGABATI RAO

APPLICANT

VERSUS

UNION OF INDIA & ORS.

RESPONDENTS.

FOR INSTRUCTIONS

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


(B.N.SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER (JUDICIAL)
21.08.05

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

**ORIGINAL APPLICATION NO. 247 OF 2004
Cuttack, this the 31st day of August, 2005.**

CORAM:

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

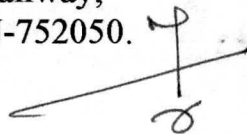
SHRI B.BHAGABATI RAO,
Aged about 36 years,
Son of Late B.S.Narayana, Ex-Sr.Pantry Boy,
At Khurda Road Railway Hospital under
Sr.Divisional Medical Officer (I/C) Indoor,
Khurda Road at present residing at
Qr.No. 105 Side, Loco Colony,
PO. Jatni, Dist. Khurda, PIN-752 050.

... APPLICANT.

By the Advocates : Mr. Achintya Das, Advocate.

-VERSUS-

1. Union of India represented through its General Manager,
East Coast Railway, Chandrasekharpur,
Bhubaneswar, PIN 751 023.
2. Chief Medical Director, East Coast Railway,
Chandrasekharpur, Bhubaneswar, District: Khurda
3. Divisional Railway Manager, East Coast Railway,
Khurda Road, PO: Jatni, Dist: Khurda, PIN-752050.



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4. Medical Superintendent (I/C), East Coast Railways,
Khurda Road, PO: Jatni, Dist. Khurda,
PIN- 752 050.
5. Sr. Divisional Medical Officer (I/C), Indoor,
East Coast Railway, Khurda Road, PO: Jatni,
Dist. Khurda, PIN 752 050.

.... RESPONDENTS

By the Advocates: Mr. C.R. Mishra, Counsel for Railways.

O R D E R

MR. M.R. MOHANTY, MEMBER (JUDICIAL)

Applicant, while continuing as Sr. Pantry Boy under the Senior DMO (I/C) IND/KUR of S.E. Railways/E.Co. Railways, was issued with a set of charges under Rule-9 of the Railway Servants (Discipline & Appeal) Rules, 1968, under Annexure-A/2 dated 11-02-1999 on the allegation of remaining absent from duty, unauthorisedly, from January, 1998 to January, 1999 and charged for having committed gross negligence in duty and for having failed to maintain absolute integrity and devotion to duty. On 26.09.1999, Mrs. K. Savitri Prasad, Matron (I/C) of the Hospital at Khurda Road was appointed as the IO to enquire into the charges leveled against the Applicant. As is evident from the record, the I.O., after putting five questions and recording the answers of the Applicant, closed the inquiry on

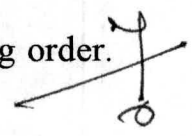
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29-06-1999 and, after supplying a copy of the said recordings to the Applicant, submitted a report on the very same day. On receipt of the said report, the Disciplinary Authority issued a letter to the Applicant, on 27-07-1999, proposing to impose penalty of "removal from service, which shall not be a disqualification for further employment under the Government or Railway Administration". The Applicant was asked to give his remark on the said proposed punishment within ten days. Thereafter, the Applicant was issued with the punishment order under Annexure-A/7 dated 20-08-1999 by removing him from service. Applicant preferred an appeal on 23-09-1999 and the Appellate Authority observed as under:-

"I have interviewed this person on 17.12.1999 in person and heard him fully. He has no new evidence or reasons except his family problems. I, therefore, do not consider it necessary to review the punishment imposed. His removal from service to be maintained"

This order of the Appellate Authority was communicated to the Applicant by the Sr. DMO (i/c) Indoor/KUR under Annexure-A/8 dated 08-03-2000. Against the said order of the Appellate Authority, the Applicant exercised his right by making a review petition under Annexure-A/9 dated 08-07-2000. On the said review petition of the Applicant, the CPO/GRC considered the Appellate Order to be "**not as per the Rules**" and, in the said premises, it directed the Appellate Authority to pass a speaking order.



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However, under Annexure-A/11 dated 30.7/11-08-2001 it was intimated by the Medical Supdt./KUR that, as the Appellate Authority has been transferred to Konkan Railway in the meantime, it is not possible to obtain a fresh order and, accordingly, the Medical Superintendent, Khurda Road sent all the Disciplinary proceedings record (of the Applicant) for necessary action at the end of the Rev. Authority. Thereafter, the Applicant, made an exhaustive review Petition to the Chief Medical Director of East Coast Railway, Bhubaneswar, under Annexure-A/12 dated 18.05.2004. Since no action was taken on the said review petition, the Applicant, on 1.06.2004, had filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 (along with a petition seeking condonation of delay), with the following reliefs:-

- “8.1. To quash and set aside the punishment notice dated 20-08-1999 issued by the Sr.DMO (I/C) Indoor/KUR (Annexure A/7) and the appellate order communicated by the Sr. DMO (I/C) Indoor/KUR dated 08-03-2000 (Annexure-A/8);
- 8.2. To direct the Respondents to reinstate the applicant with all consequential benefits.”

2. Respondents have filed a counter opposing the prayers made by the Applicant. They have made a preliminary issue/objection of maintainability of this Original Application due to delay and laches. As regards the merit of this case, it has been stated by the Respondents that as

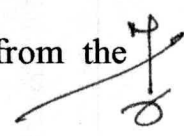
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the Applicant remained absent unauthorizedly from January of 1998 to January of 1999 a Disciplinary Proceedings under Rule-9 of the Railway Servants (Discipline and Appeal) Rules, 1968 was initiated against him and that, after following due procedure of Rules & law, the Applicant was removed from service by the competent Authority. It has been stated by the Respondents that in the enquiry, the Applicant was provided all opportunities to defend his case. As regards the plea of the Applicant that he was not furnished with the report of the enquiry, before imposition of the punishment, it has been submitted by the Respondents that the copy of the report was served on the Applicant by the IO on 29-06-1999; which would be evident from the endorsement made by the Applicant on Annexure-R/I.

3. We have heard Mr. Achintya Das, Learned counsel appearing for the Applicant and Mr. C.R.Mishra, Learned Counsel appearing for the Respondents-Railways and perused the materials placed on record.

4. On the point of limitation, it has been submitted by the Learned Counsel appearing for the Applicant that in fact there was no delay; because after the order of the Revisional Authority, remanding the matter to the Appellate Authority for passing of an order as per the prescribed procedures, the Applicant was waiting ^{for} a reply from the Appellate Authority and that only when he failed to receive any communication from the

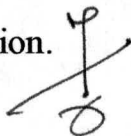


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Appellate Authority, he brought the entire matter to the notice of the revisional authority (and was very much hopeful that his grievances will be redressed by the hands of his authorities) and finally, when no action was taken by the Authorities, he filed this Original Application challenging the action/inaction of the Respondents and the impugned order of punishment that was imposed on him under Annexure-A/7 dated 20.08.1999. He has also submitted that the poverty of the Applicant overpowered him to approach this Tribunal earlier, as he had spent a lot of money for treatment of his ailment and became helpless for being out of job for a long period and that in the said premises, he remained crippled to approach this Tribunal to challenge the illegal and arbitrary order of punishment and that, therefore, the Applicant was all along trying to redress his grievances at the hands of his authorities. He has also submitted that an order, which was ab initio void (being non-existent in the eye of law) can be challenged at any point of time. The law of limitation will not apply to an order which is non-existent in the eye of law and in case the stand of the Respondents is accepted and the matter is thrown out of consideration on this technical ground, then there will be complete miscarriage of justice. On the above ground, he has prayed for consideration of the matter on merits. As regards the merit of the matter, he has pointed out that the starting from appointment of the IO till the end of the

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disciplinary proceedings, there was complete violation of the prescribed procedures/Rules and the law governing in the field. He has specifically pointed out that Matron (I/C) Indoor of S.E.Railway Hospital at Khurda Road having been notified as an witness to the charge-sheet, she ought not to have been nominated/appointed as the IO; that before issuing show cause notice to the proposed punishment, the Disciplinary Authority ought to have granted opportunity to the Applicant to represent on the report of the IO; which was not done in the present case. He also pointed out that the DA ought not to have issued show cause disclosing the tentative punishment at the first instance and that Disciplinary Authority, while passing the order of punishment (as well as the Appellate Authority while rejecting the appeal of Applicant) ought to have passed a reasoned/ speaking order and, having not done so, neither the order of punishment passed by the Disciplinary Authority nor the order of the Appellate Authority are sustainable in the eye of law and, therefore, he has prayed for quashing of those orders with direction for his reinstatement and payment of back wages. On the other hand, learned counsel appearing for the Respondents-Railways has reiterated the stands taken in the counter and has prayed for dismissal of this Original Application.



5. Having heard the rival submissions of both parties and having gone through the records, it is clearly established that a novel procedure was adopted by the Respondents in the present case; inasmuch as there was serious breach of the well settled Rules/Law in the matter of conducting the disciplinary proceedings against the Applicant. Rule 10 of the Railway Servants (Discipline & Appeal) Rules, 1968 provides for supply of enquiry report and the manner of supply of copy of the Inquiry Report by the Disciplinary Authority to the charged officer, before final orders are passed by him. In the instant case, the report of the IO was not supplied to the Applicant for giving him an opportunity to put-up an effective representation. That should have been done before asking the Applicant to put-up his show cause on the proposed punishment. The I.O. is required to be an impartial body, appointed by the Disciplinary Authority and, as such, no power has been vested on him to supply the copy of his report, to the charged official; before making it available to the Disciplinary Authority. It is the Disciplinary Authority, who, after getting the report from the IO has to apply his mind on the report (and may agree or may not agree with the findings given by the IO) and in any event he is bound to furnish a copy of the same to the charged Official seeking his comments on the said report. As is evident, the IO neither conducted the proceedings nor drawn the report



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as per the RSs(D&A) Rules, 1968; which interalia provides that after conclusion of the inquiry, a report shall be prepared and it shall contain (a) the article of charge and the statement of imputations of misconduct or misbehaviour; (b) the defence of the railway servant in respect of each article of charge; (c) an assessment of the evidence in respect of each article of charge; and (d) the findings on each article of charge and the reasons therefore; but in the instant case a complete departure has been made to the said rules and the report of the IO is nonetheless like a questionnaire prepared by him . Another most important feature of the matter is that though it is a sound principles of law that nobody should be the judge of his own action,(AIR 1989 SC 2218 – **BAIDYANATH MAHAPATRA vs. STATE OF ORISSA & ORS.**) in ignoring such well settled sound principle of law the Disciplinary Authority, in the instant case, appointed the an Officer as IO , who was not only declared as prosecution witness but also on whose allegations the charges were framed against the Applicant. It is also noticed that the Disciplinary Authority, while imposing the harsh punishment of removal on the Applicant had taken note of the past conduct of the Applicant, without any notice/confrontation; which is against the settled principles of Rules & law(AIR 1960 SC 159- **S. NANJUNDESWAR vs. STATE OF MYSORE**). That-apart though repeatedly the Hon'ble

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Apex Court of India, various High Courts of India and this Tribunal observed the requirements of recording reasons by the Disciplinary Authority and Appellate Authority, in the instant case, neither at the stage of passing of the impugned order of punishment nor at the time of rejecting the appeal of the Applicant, the Authorities adhered to the said observations of various Courts; and the directions of the Railway Board issued in letter No. E(D&A) 86 RG 6-1 dated 20.1.1986/ E(D&A) 91 RG 6-122 dated 21.2.1992. Though the Appellate Authority's order has been declared to be void, till date neither the Applicant was taken back to service nor any further order was communicated. This itself shows the mindless work of the Authorities/officers those who are in power and position. This also shows the negligence and laches on the part of the Authorities; by which action there was infringement of the fundamental rights of the Applicant as enshrined under the Constitution of India and such right has been taken away by the Respondents without due application of mind/without following proper procedure of Rules and Law; for which we feel inclined to over rule the point of limitation as raised by the Respondents. We also record that it is a settled principles of law that mere hyper technicality (like limitation point) should not stand on the way of dispensing the justice; where the order has been passed taking out the rights of a citizen/civil servant, without following

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the due procedure of Rules and law. Law is well settled that if the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay and the expression sufficient cause is adequately elastic to enable the court to apply the law in a meaningful manner which subserves the ends of the justice that being the sole purpose for the existence of the institutions like Courts and Tribunals. (ref. AIR 1984 SC 1744 – **O.P.KATHPALIA vs. LAKHMIR SINGH (dead)**, AIR 1987 SC 1353 – **COLLECTOR, LAND ACQUISITION, ANANTNAG vs. MST. KATIJI**, AIR 1962 SC 361- **RAMLAL, MOTILAL & CHHOTELAL vs. REWA COALFIELDS LTD.**, AIR 1976 SC 237- **NEW INDIA INSURANCE CO. LTD, vs. SMT SHANTI MISRA**, AIR 1917 PC 156 – **BRIJ INDER SINGH vs. KANSHI RAM**, AIR 1969 SC 575- **SHAKUNTALA DEVI JAIN vs. KUNTAL KUMARI**, AIR 1979 SC 1666- **CONCORD OF INDIA INSURANCE CO. LTD. VRS. NIRMALA DEVI** and AIR 1970 SC 1953 **LALA MATA DIN vs. A. NARAYANAN**). Therefore, the plea of limitation raised by the Respondents is hereby over ruled. We, feel that the punishment of removal from service (for a period of 218 days absence) is certainly harsh and shocking. The punishment of removal from service is like imposing a death sentence on an employee of the Government; whose source of income generates only

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from 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. This was also the consistent view taken by this Tribunal in earlier occasions relying on the decisions of the Hon'ble Apex Court of India rendered in the case of **UNION OF INDIA & ORS. -vrs. GIRIRAJ SHARMA** (Reported in AIR 1994 SC 215); in the case of **MANAGEMENT OF NILPUR TEA ESTATE - vrs. - STATE OF ASSAM AND OTHERS** (reported in AIR 1996 SC 737), in the case of **STATE OF PUNJAB AND OTHERS vrs. BAKSHISH SINGH** (reported in AIR 1997 SC 2696); in the case of **SHRI BHAGWANLAL ARYA - Vrs. COMMISSIONER OF POLICE DELHI AND OTHERS** (reported in (2004) SCC (L&S) 661) and in the case of **RAM AUTAR SINGH vrs. STATE PUBLIC SERVICE TRIBUNAL AND OTHERS** (reported in AIR 1999 SC 1542).

6. We also take support of a decision of the Hon'ble High Court of Orissa rendered in the case of **PARESWAR TRIPATHY vrs. 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 (by taking

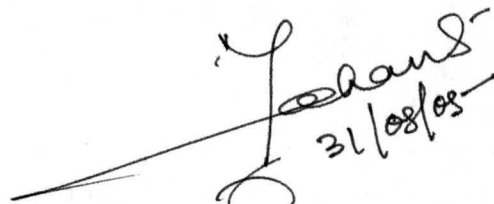
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support of the decisions of the Hon'ble Apex Court of India rendered in the case of **EX.NAIK SARDAR SINGH vs. UNION OF INDIA AND OTHERS** reported in AIR 1992 SC 417), held that "the Court's conscience is shocked to see that a bona fide constable 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".

7. In view of the discussions made above, the order of punishment under Annexure-A/7 dated 20-08-1999 and letter communicating the orders of the Appellate Authority under Annexure/A/8 dated 08-03-2003 (being in gross violation of the codified procedures/well settled principles of Rules/law), are hereby quashed. In the result, this OA is allowed. No costs.


(B.N.SOM)
VICE-CHAIRMAN


(M.R.MOHANTY)
(MEMBER(JUDICIAL))