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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.445 of 2004
Cuttack, this the 19th day of March, 2007.

Ananda Chandra Behura ... Applicant
Versus
Union of India & Others ... 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 CAT or *not?* *yes*

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(N.D.RAGHAVAN)
VICE-CHAIRMAN

BBM
(B.B.MISHRA)
MEMBER(A)

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

Original Application No.445 of 2004
Cuttack, this the 19th day of March, 2007.

C O R A M:

THE HON'BLE MR. N.D.RAGHAVAN, VICE-CHAIRMAN
AND
THE HON'BLE MR.B.B.MISHRA, MEMBER (A)

Sri Ananda Chandra Behrua, Aged about 62 years, son of late Sudarsan Behura, At/ Village-Jharabandha, PO:Nimabahali-759 121, Dist. Dhenkanal, Orissa.

..... Applicant.

By legal practitioner: M/s. Dr. V.Prithiviraj, S.Jena, S. Patnaik, K.V.S.B.T.Kumar, Advocates

-Versus-

1. The Union of India through the General Manager, South Eastern Railway, Garden Reach, Kolkata-700043.
2. The Chief Medical Director, South Eastern Railway, Garden Reach, Kolkata-700043.
3. The Divisional Railway Manager, South Eastern Railway, Kharagpur.
4. The Senior Divisional Personnel Officer, South Eastern Railway, Kharagpur.
5. The Chief Medical Superintendent, South Eastern Railway, Kharagpur.
6. The Sr. Divisional Medical Officer, South Eastern Railway, Kharagpur.

... Respondents.

By legal practitioner: Mr. S.K.Ojha, Standing Counsel.

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ORDER

MR.B.B.MISHRA, MEMBER(A):

The plea of the Applicant is that he belongs to scheduled caste. During the year 1963, he joined the Railways as Khalasi which post comes under the category of Class IV. Thereafter, by virtue of his merit he was promoted to the post of Junior Clerk(LDC). While working in the post of Junior Clerk, during 1984 he was promoted to the post of Senior Clerk. While working as such in the Office of the Chief Medical Superintendent Hospital Laboratory, Kharagpur, on 12.06.1985, he was transferred and posted as Compilation Clerk in the Family Welfare Office, Kharagpur. At that relevant time, the scale of pay of Compilation Clerk was Rs. 330-560-1200-2040/- and on 01.04.1986, the scale of compilation Clerk was revised to Rs. 425-700-1400-2300/-. Vide order dated 15.01.1987, Group C posts of the Family Welfare

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Establishment of the Railways were restructured and vide order dated 03.02.1988 (Annexure-A/3) the scale of Compilation Clerk was revised to Rs. 1400-2300/- with effect from 01.04.1986. Despite the position of the Applicant as Compilation Clerk, he was not granted the revised scale for which he filed OA No. 380/1991 before the CAT, Calcutta Bench seeking direction to the Respondents to extend the benefits of the revised pay to the applicant with effect from 01.04.1986. However, pursuant to the directions of the CAT, Calcutta Bench dated 21.04.1992, the Applicant got all benefits of the revised scale of the post of Compilation Clerk. It is his case that due to hostile attitude of the Authorities, he lost his mental equilibrium and was under treatment from 04.02.1991 to 21.08.1994 and he was detected to have been suffering from "depressive psychosis". However, on being in a sound state of mind, when he reported to duty,

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the authorities of the Railways again sent him to Railway Hospital, Kharagpur. He was discharged from the Railway Hospital on 06.09.1994 and reported to duty on 04.10.1994. In the meanwhile a set of charges dated 01.06.1993, signed on 11.06.1996 was issued to the Applicant asking to furnish his reply as to why suitable disciplinary action shall not be taken against him for his intentional and wilful unauthorized absence from duty with effect from 01.04.1991. Thereafter, vide Annexure-6 dated 03.10.1994 he was served with the so called report of the IO dated 29.07.1994 finding the Applicant guilty of the charge and vide order dated 14.11.1994 (Annexure-A/7) the Senoir DMO (Respondent No.6) issued the notice of punishment of 'removal' with effect from 14.11.1994. According to him, though the order of punishment dated 21/22.11.1994 removing him from service was not served on him, he was served with the order dated 06.01.1995

(Annexure-A/8) of the Senior Divisional Personnel Officer
(Respondent No.4) stating as under:

"Shri A.C.Behera, Sr. Clerk under CMS/KGP, DA:31.3.63 in scale Rs.1200-2040/- (RPS), pay Rs.1320/- p.m. who was removed from Railway Service with effect from 14.11.1994 vide this Office Order with effect from 14.11.1994 vide this office Order No.ESB/1/1/DMO/ACB dt. 21/22.11.94 is now taken back to duty reducing to the post of Jr. Clerk in scale Rs. 950-1500/- (RPS) on pay Rs.1200/- for a period of 3 (three) years with cumulative effect.

His seniority to the higher post i.e Sr. Clerk should be regained after expiry of the punishment.

The period of unauthorized absence from 1.4.1991 to the date ;of reinstatement is treated as LWP."

The Applicant pleads he was issued with the order of punishment when he was working as Compilation Clerk and not as Sr. Clerk but by the order dated 06.01.1995 though he was taken back to service, he was visited with three punishments. Being aggrieved by such order, on

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23.03.1995 he preferred a revision to the Respondent No.2. On consideration of his revision petition, the Revisional authority vide order dt. 25.07.1995 modified the order of punishment to the extent of ordering reversion for a period of two years with cumulative effect; which was served on the applicant under Annexure-A/9 dated 11.12.1995. Being aggrieved by the aforesaid order, under Annexure-A/9, applicant approached the Respondent No.1 through representation dated 28.08.1996. However, vide order under Annexure-A/10 the applicant was reinstated in service as Sr. Clerk w.e.f. 04.01.1997. He pleads that prior to the order of punishment he was working as Compilation Clerk carrying the scale of Rs.1400.2300/- But without any notice, he was designated as Sr. Clerk carrying the scale of pay of Rs.1200-2040/- and on reinstatement his pay was fixed at Rs.1350/-. On 30.06.2001(Annexure-A/11), the applicant submitted an appeal to Respondent

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No.3 for fixation of his pay and drawal of arrears which was forwarded vide letter dated 30.06.2001 (Annexure-A/12). On 10.04.2001, Applicant received the report of the IO, appointed for enquiring into the charge levelled against him for his unauthorized absence from 16.03.1999 to 19.05.1999, 16.08.1999 to 19.08.1999 and on 04.09.1999 to 15.12.1999 and ultimately, vide punishment notice dated 31.05.2001 he was imposed with the punishment of 'censure'. It is the further case of the Applicant that as per the recommendations of the Vth Pay Commission the pay scale of Compilation Clerk has been up-graded to Rs. 5250-8500/- with effect from 01.01.1986. Though benefits of the scales of pay were given to other employees, such benefits had not been extended to the Applicant till date. While his grievances were pending with the authorities, he retired from service on 30.04.2002 on attaining the age of retirement and as a result of this, he was paid his

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retirement benefits on the lower pay scale which has caused him harassment and humiliation. On 30.04.2003 he preferred an application to the National Commission for SC & ST, New Delhi showing the apathetic attitude towards a SC& ST employee in the Railways and receiving no reply, he preferred W.P.(C) No. 6666 of 2003 before the Hon'ble High Court with specific prayer to direct the National Commission for SC&ST to deal with the grievance of Applicant. A request was made by the Learned Counsel for the Applicant before the Hon'ble High Court of Orissa that he may be permitted to withdraw the aforesaid Writ Petition in order to enable him to approach the appropriate authority, vide order dated 20.01.2006, the Hon'ble High Court dismissed the Writ Petition as withdrawn. Hence, by filing this Original Application on 06.02.2004, he has sought for the following relief:✓

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....to direct the Respondents to re-fix his pay in the post of Compilation Clerk in the grade of Rs. 1400-2300/-(and in the revised scale w.e.f. 01.01.1996) quashing the impugned orders in Annexures-8, 9, 10, 14 and quashing the disciplinary proceedings initiated not in accordance with the provisions of the Railway Servants' (Discipline and Appeal) Rules, 1968 and to provide the humble applicant his financial benefits, he could have enjoyed in the promotional posts, arrears of pay re-fixation of retrial service benefits, pensionary benefits and other such further consequential service benefits which he is entitled to;

And/or to direct the Respondent No.3 to dispose of the pending representation in Annexure-11 for the ends of justice."

2. Simultaneously, by filing M.A.No. 104 of 2004 he has prayed for condonation of the delay in filing the Original Application late. On 08.07.2004 this Tribunal issued notices to the Respondents both on the OA and the MA keeping the question of limitation open to be decided at the time of hearing of the matter.

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3. Respondents in their reply filed on 17th May, 2005 have raised the preliminary question of maintainability. In this connection, they have pointed out that Annexure-14 is the outcome of another proceedings altogether different than the proceedings and punishments awarded at Annexures-8, 9 and 10. The Applicant has unnecessarily confused the whole issues by clubbing both the proceedings and the grant of pay. It has been averred that the applicant has filed this OA seeking multiple relief and, that too, after the period of limitation prescribed in section 21 of the A.T. Act, 1985. Therefore, this OA being opposed to Rule-6 of CAT (Procedure)Rules, 1987 and Section 21 of the A.T. Act, 1985 is liable to be dismissed *in limine*. Also on merit, the Respondents opposed the prayer of the Applicant by stating that before coming in this OA, the applicant had never brought to the notice of any authority of the illegal exercise of the power of the

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Divisional Medical Officer in initiating the proceedings or he was deprived of reasonable opportunity to defend his case. As regards the competence of the Divisional Medical Officer, it has been clarified by the Respondents that Rule 7 of the Railway Servants (D&A) Rules, 1968 clearly provides that the authority competent under the Rule is empowered to take disciplinary action against a Railway Servant. Rule 7(2) of the Rules, 1968 indicates that without prejudice to the provisions of sub rule 1 of Rule 7, any such penalties specified under Rule 6 can be awarded by an authority as specified in Schedule. Schedule-II 5 (b), 6,7, and 8 clearly specified that the Appointing Authority or an authority of equivalent rank or any higher authority can take the disciplinary action against the employees appointed in Group 'C' or Group 'D' posts. In the present case even though the applicant was initially appointed by the Divisional Personnel Officer, he was placed under the

Administrative Control of the Divisional Medical Officer who is competent under the Rule to initiate proceedings under the Discipline and Appeal Rule. On the other hand, the DMO is also authority holding the post equivalent to the appointing authority i.e. Divisional Personnel Officer. Therefore, they have taken the plea that there was no wrong either in initiation of the disciplinary proceedings or in the matter of imposition of the punishment. In regard to violation of principles of natural justice, it has been averred by the Respondents that from the report of the IO it would be evident that ample opportunity was given to the applicant to defend his case and before imposition of penalty, he was given chance to file his second show cause and, thereafter he was imposed with the punishment of removal from service by the Disciplinary Authority. It has been stated that on the appeal of the applicant, the order of punishment was reduced and finally considering the

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revision petition preferred by the applicant the revisional authority reduced the punishment and imposed a lesser punishment such as reduction to the post of Jr. Clerk for two years with cumulative effect and applicant having accepted and joined is estopped under law to challenge after such a long lapse of time. The Respondents have also opposed the contention of the Applicant that on promotion he was posted as Compilation Clerk in the Office of the Family Welfare Department of the Railways. In this regard, they have stated that initially the applicant joined the railways as a Casual Labour and as per the scheme of the Railways, he was conferred with the temporary status w.e.f. 31.3.1963 and posted at Shalimar as temporary Khalasi in the scale of Rs. 70-85. Thereafter, his service was regularized w.e.f 11.1.1965 as Khalasi. Then he appeared in the selection of Clerk against Gr. D to C quota and promoted to the post of Clerk in scale of Rs. 110-180

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vide Memorandum dated 17.02.1972. Accordingly, he joined as Office Clerk in Medical Department. Thereafter, he passed the suitability Test for promotion to the post of Senior Clerk vide order dated 14.06.1984. In the capacity of Sr. Clerk, he was transferred and posted to Family Welfare Section vide order dated 26.07.1985. Due to redistribution of cadre of the Family Welfare Wing (Medical Department) with effect from 01.04.1986, orders were issued on 03.09.1990 for giving ad-hoc promotion to the existing eligible incumbents to the post of Compilation Clerk with effect from 01.04.1986 till regular incumbents join the post. Being aggrieved by his non promotion and promotion of others to the post of Compilation Clerk, he submitted representation on 01.02.1991. The said representation was rejected 01.02.1991. Therefore, the CPO, GRC issued guidelines for filling up of the vacancies of Compilation Clerk under Family Welfare Wing vide

No.P/Med/17 (Selection) dated 29.04.1991. Being aggrieved, the Applicant filed OA No. 380 of 1991 before the CAT, Calcutta Bench which was disposed of on 21.04.1992 (copy not enclosed by Applicant). Thereafter, applicant preferred a Review Petition No. 63/1992 before the Calcutta Bench of the CAT. However, the applicant was promoted to the post of Compilation Clerk in the scale of pay of Rs.1400-2300/- w.e.f. 01.04.1986 with clear understanding that his promotion was on ad-hoc basis till regular incumbent joins. Subsequently vide order dated 15.07.1992 & 4/6.08.1992, the Applicant was replaced by regular incumbent Shri S.K.Biswas (SC) (Annexure R/2, R/4 and R/5). According to the Respondents on the regular posting of Compilation Clerk in place of applicant, he was spared from Family Welfare Wing vide order dated 01.02.1991 with advice to report to CMS/KGP for further posting. On receipt of the above order, applicant was

transferred vide order dated 29.1.1991. On 12.03.1991 he filed OA No. 380/91 before the CAT, Calcutta Bench and without reporting in his new place of posting, without taking leave he abandoned his duty w.e.f. 1.4.1991. Though he was noticed, neither he reported for duty nor he appeared in the enquiry. It has been averred that there was no illegality or irregularity either in the order of punishment or in the matter of promotion of the applicant since on consideration of the revision petition of applicant, the punishment was reduced to reversion for a period of two years with cumulative effect vide order dated 25.07.1995 and accordingly, after expiry of the period of punishment, the Applicant's pay was fixed in the grade of Sr. Clerk at the pay scale of Rs. 1350/- in the scale of Rs.1200-2040/- w.e.f. 04.01.1997 and based on the pay, on his retirement, he was sanctioned and paid all his dues. On the above grounds, the Respondents by opposing the

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prayer of the applicant on merit, have prayed for dismissal of this OA.

4. By filing rejoinder, the Applicant while reiterating the facts mentioned in the Original Application has stated that as he belongs to Scheduled Caste he was harassed by the Authorities of the Railways for which he lost mental equilibrium and he remained on leave. Therefore, the punishment imposed on him being illegal the same needs to be quashed. To this, the Respondents have also filed additional reply which has been taken note of.

5. In support of condonation of delay in approaching this Tribunal it has been stated that though the Applicant made several representations/appeals to the Respondents since 1995, the Railway authorities did not dispose of the same within the reasonable period of time,

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stipulated by the Hon'ble supreme Court in the case of

S.S. Rathore v. State of Madhya Pradesh, AIR 1990 SC

10. In support of his plea that he had made several representations/appeals, due to mental illness the applicant could not keep each and every copies of such representations/appeals. But Annexure-12 dated 10.07.2001 is the acknowledgment of receipt of appeal of the Applicant dated 30.06.2001 (Annexure-11). Therefore, as per provisions of Section 21 of the A.T.Act,1985 the period of limitation starts only from 10.07.2001 and one and half years means it ends on 09.01.2003. Thereafter, he submitted representation to the National Commission for SC&ST. Since no action was taken by Commission on the grievance petition, applicant approached the Hon'ble High Court of Orissa. The Hon'ble High Court of Orissa appreciating the subject matter of the Writ Petition and complaint petition to be that of service matter, with liberty

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allowed the prayer of applicant to pursue the same before appropriate forum. Therefore, this OA has been filed before this Tribunal on 5.2.2004. Therefore, there is no point of limitation that arises now.

6. In paragraph 6 of the MA it has been stated that in the case of **State of M.P. v. Syed Qumarali**, 1967 SLR 229 at page 234, the Hon'ble Apex Court has settled the law that if an order of dismissal of an employee had been made in breach of a mandatory provision of the relevant rules and was totally invalid, such order had no legal existence. He has also stated that similar view has been reiterated by the Hon'ble Apex Court in the case of **Mohinder Singh v. Punjab State**, 1977 SLR 447 and followed by the Hon'ble High Courts as also Tribunals in the following cases:

1. **State of Mysore v. Boramma**, 1971 (1) SLR 801 (Mysore HC);

2. **State of Punjab v. Ram Singh**, 1986 (3) SLR 379 (Punjab and Harayana HC)
3. **Shri Beer Singh v. UOI and Others**, 1990 (1) ATJ 576 (CAT) (Principal Bench)(New Delhi);
4. **Shri Bhanwar Lal v. Union of India and others**, 2003 (3) ATJ 609 (CAT)(Jodhpur Bench);
5. **Ajay Shanker v. Union of India and others**, (1989) 9 ATC 682.

7. Thus, he has submitted that since the Applicant has been visited with the punishment in violations of the provisions of Article 20(2), 311 of the Constitution of India and the provisions in the Rules in parts III to VI of the Railway Servants (Disciplinary and Appeal) Rules, 1968, in the interest of justice, the delay, if any, in approaching this Tribunal may be condoned and the matter may be heard on merits.

8. Dr. V.Prithiviraj, Learned Counsel for the Applicant by describing the facts mentioned in the MA has submitted that in fact there is no delay. Secondly in placing reliance on the decision made in the case of State

of **Nagaland v. Lipok AO and others**, 100 (2005) CLT III (SC) = AIR 1998 SC 3222, he has submitted that when substantial justice and technical approach are pitted against each other the former has to be preferred and by relying on the decision made in the case of **Narasingh Ch. Ray v. Radhagovind Deb and Others**, 97 (2004) CLT 278 has stated that question of limitation is not applicable in the event a strong case is made out in support of the allegation of illegality during hearing. Since in the present case the order of punishment has been passed by an authority not competent to do so as per the rules, the same being *non est* has no legal sanctity. An order which is void *ab initio* unless the same is quashed, the Applicant will suffer irreparable loss and injury. Therefore, for the sake of dispensation of justice to the poor, in exercising the powers conferred on this Tribunal, delay, if at all any, may also be condoned and the matter may be heard on merit. Though

the juniors of the applicant were given promotion the case of applicant was not considered for promotion to Compilation Clerk. On the merit of the matter, his main thrust of the argument is that neither the Respondent No.6 is the appointing authority nor was he the disciplinary authority as per Rule 2(a) and 2(c) of the Railway Servants (Discipline and Appeal) Rules, 1968 of the applicant. Therefore, he was not at all competent to initiate the disciplinary proceedings regard less to passing of the order of punishment as against the applicant and, thus, he has prayed for quashing the entire proceedings being illegal, arbitrary and void *ab initio*. He has argued that even conceding for a moment that the initiation of the proceedings by the Respondent No.6 is justified, then also the order of punishment is not sustainable; as the applicant was not given adequate opportunity to defend his case inasmuch as he was not informed about the appointment of

the IO; appointment of PO; he was not given the opportunity to say as to whether he wants to be defended by any defence counsel; he was not allowed any opportunity to call for any records, or cite any witnesses in support of his case and, therefore he has submitted that the punishment was imposed in violation of the principles of natural justice, the same needs to be quashed. The order of punishment also suffers from double jeopardy viz; he was reverted from the post of Compilation Clerk to Sr. Clerk then to the post of Junior Clerk. He has also reiterated the other stands taken in the Original Application, fervently prayed to allow this OA by granting the relief claim in this OA.

9. On the other hand, Mr. S.K.Ojha, Learned Standing Counsel for the Respondents has strongly opposed the argument put forward by Learned Counsel for applicant in support of his prayer for condonation of

delay. It has been argued by him that the decisions of the Hon'ble Apex Court and High Court relied on by the Applicant cannot be construed as judgment in *rem* so as to entertain each and every grievance of a party raised even after 50 years of the cause of action. Further he has argued that had those decisions been of general application, then the Legislation might have amended the law of limitation. Rather each decision has its own background and purpose. He has therefore, argued that by this his juniors have been superseded in the matter of promotion. He has not, however, disclosed the names of those juniors who had superseded him. He has argued that in case this application is entertained at this stage, it would amount to unsettling a settled thing that too without giving any opportunity to those so called juniors. As regards merit of the mater, it has been argued by him that there was no injustice done to the applicant in the matter of initiation of proceedings and

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principles of natural justice was strictly followed. But the Applicant failed to avail of those opportunities. He has further argued that if he was not satisfied with the order of punishment, he could have taken the matter to the appropriate court of law. Having slept over the matter, now after retirement he is estopped under law to challenge that he was not given adequate opportunity or for that matter the initiation of proceedings and thereby punishment was not made by the authority competent to do so. Further he has argued that the applicant did not at any point of time bring this fact to the notice of appellate authority or revisional authority. Therefore, he has strongly opposed the prayer of the applicant and has prayed for dismissal of this OA.

10. Going by the arguments advanced by the parties and materials placed on record, it is evident that the promotion of the applicant to the post of Compilation

Clerk was on ad-hoc basis with the stipulation that in the event of regular incumbent joins, he had to make room for the regular incumbent. Applicant was repatriated to his substantive post vide order dated 01.02.1991 and with effect from 01.04.1991 he remained away from his duty without any intimation to his authority. In conclusion of the disciplinary proceedings he was removed from service with effect from 14.11.1994 which order was ultimately modified by the Revisional Authority and a lesser punishment of reduction for two years was imposed on the applicant vide order dated 25.07.1995. From the above, it is clear that by the time the order of punishment was issued, Applicant was no more in the post of Compilation Clerk. Junior Clerk is the immediate feeder post of Sr. Clerk. Therefore, the order of reversion to the post of Junior Clerk passed by the Revisional Authority cannot be faulted with. As regards the competence of the DMO, it is

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noted that this plea could have been taken by the applicant at the beginning when he received the charge sheet dated 01.06.1993 (Annexure-5). If it is the case of the applicant that at that relevant time, he was not in a state of time, he was very much sound when he received the report of the IO . Since he was in sound mind he could have taken the plea of competence before his authority. This point he could have as well taken in the appeal and revision petition. Having not taken this before any of the authority earlier and having accepted and undergone the punishment of reversion, at this belated stage, we are not inclined to accept and restore the status of applicant. The Applicant had also not shown the specific prejudice caused to him. At the time of hearing, by producing letter dated 26th August, 1994, Learned Counsel for the applicant has tried to establish that the applicant was really not in sound mind during the period in question. We are not also inclined to

pay any importance; for the same having not been exhibited before his authority prior to filing before us at this belated stage. In the case of **M.A.Perumal Raja v. Managing Director, Tamil Nadu Textile Corporation Ltd.**, 2005 (I) ATJ 216 it has been held by the Hon'ble High Court of Madras that there is no wrong if an authority below the rank of appointing authority initiates the disciplinary proceedings.

11. As regards the proportionality of the punishment of reversion for unauthorized absence from duty is in no way shocking to the judicial conscience. In the case of **General Manager, Appellate Authority, Bank of India and another v. Mohd. Nizamudding**, 2006 SCC (L&S) 1663 while dealing with a case of dismissal on the ground of unauthorized absence, it was held that long absence from duty is detrimental to public interest, hence grave enough to warrant dismissal from

service. In that case it was also held by the Hon'ble Apex Court that in not attending the enquiry is itself misconduct. This view has been reiterated in the case of **State of Rajasthan and Anr. V. Mohd. Ayub Naz, 2006 SCC(L&S) 175.**

12. As regards point of delay, it is seen that by placing reliance on various decisions of the Hon'ble Supreme Court and High Court, applicant has prayed for condonation of delay. His case is that his appeal being entered and forwarded on 10.07.2001 the cause of action has started from that date. On going through the said letter it is seen that his representation, so far as payment of arrear pay and allowance, was forwarded. It was a representation only not an appeal as coloured by the Applicant. It was also not a representation against the order of punishment. He has also not filed a copy of it. Therefore, limitation starts from the date revisional

authority passed the order i.e. 25.07.1995 and he approached this Tribunal after expiry of 9(nine years) without giving any satisfactory explanation for such delayed approach. Applicant was conscious enough to make application to the National Commission alleging harassment. He has also approached the Hon'ble High Court seeking direction to the National Commission for disposal of his application but for the reasons best known to him he withdrew it and thereafter, approached this Tribunal. This cannot be a ground to condone the delay.

13. A case is a precedent and binding for what it explicitly decides and no more, is well settled by the Hon'ble Apex Court in the case of **State of Orissa and others vrs. Md. Illiyas**, 2006 SCC (L&S) 122 . It has been held that what is of essence in a decision is its ratio and not every observation found therein nor what logically flows from various observations made in the judgment. Further it

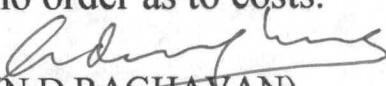
is held that a decision is a precedent on its own facts. Reliance on the decision without looking into its factual background is clearly impermissible. Every judgment must be read as applicable to the particular facts proved or assumed to be proved. Keeping in mind the above decisions, we have gone through the decisions relied on by the Learned Counsel for the applicant and we find that the facts of this case are totally different from the facts involved in cases cited. However, we may say that even if the delay is condoned, it will have no impact as the applicant failed to substantiate his claim on merit.

14. We would also fail, if we do not take note of another important aspect of the matter of plural remedy. The Applicant has challenged two proceedings and punishments initiated/imposed on him for unauthorized absence on different occasions. He has also prayed for the scale of pay in the grade of Compilation ✓

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Clerk. On thorough scrutiny, we are of the considered opinion that the prayers are different and distinct to each other. Rule 10 of CAT (Procedure) Rules, 1987 clearly provides that an application shall be based upon a single cause of action and may seek one or more reliefs provided that they are consequential to one another. No power has been vested with the Tribunal to condone this omission on the part of the Applicant.

15. Viewed the matter in any angle, this OA is bound to fail and is accordingly dismissed. There shall be no order as to costs.


(N.D.RAGHAVAN)
VICE-CHAIRMAN

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(B.B.MISHRA)
MEMBER(A)

KNM,Ps