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O.A. No. 864 of 2004
J.V.Rao ... Applicant
Versus
UOI & Ors. ... Respondents
.....

1. Order dated 12 November, 2009.

C O R A M
THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)
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In this Original Application u/s.19 of the A.T. Act, 1985, the Applicant seeks the following relief:

"A. That the applicant's salary for the sick period i.e. from 22.3.2000 to 28.9.2000/10.10.2000 sanctioned in the interest of justice and stoppage order of increment for one year may kindly be quashed/cancelled."

2. Applicant's contention is that although his proceeding on leave from 22.3.2000 to 28.9.2000/10.10.2000 was on account of his illness supported by medical certificate submitted by him, as the said medical certificate was lost by the Supervisor (Booking Office) he was visited with the punishment of stoppage of one increment for a period of one year with cumulative effect and treating the period from 22.3.2000 to 28.9.2000 as leave without pay. It appears from the record that against the said order of punishment dated 18.4.2002 he preferred an appeal and the said appeal of the applicant was rejected by order dated 26.12.2003. He has therefore prayed for the aforementioned reliefs on the ground that the allegation that his absence due to sickness hampered the earning of Railway

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administration is ridiculous and bogus; as there are employees who suffer from sickness for year and for that reason the smooth administration of the Railway never suffers and moreover the sale of tickets was managed with L/R staffs and 10 LR staffs are provided to manage the counters in place of urgent sick leave and shift vacancy of the employees. As such, the charge against him is neither genuine nor correct and the charge has no legs to stand. It has further been contended that he has been visited with the punishment in spite of the charge not being proved against him by the IO.

3. Respondents filed their counter *inter alia* stating that the applicant remained unauthorized absent from duty for a period of 191 days from 22.3.2000 to 28.9.2000 and reported for duty on 29.9.2000 before SMR (Gaz.) Bhubaneswar by submitting three private medial certificates for unfit, progress and fit dated 22.3.2000, 22.6.2000 and 28.9.2000 respectively. The private medical certificates were later on countersigned by the Senior DMO (L) Khurda Road on 10.10.2000 and this matter was intimated to the competent authority by SMR (G) Bhubaneswar in his letter dated 11.10.2000. After examining the papers in details, Respondent No.2 found the case as one of unauthorized absence from duty by the applicant for which a major penalty charge sheet dated 28.3.2001 was issued against the applicant on the charge of unauthorized absence from duty for a period of 191 days. The matter was duly enquired into. IO

in its report dated 17.10.2001 held the charge not proved. Disciplinary Authority i.e. Respondent No.4 did not agree with the findings of the IO and thereafter Copy of the report of the IO along with the note of disagreement recorded by the DA was supplied to the Applicant in letter dated 19.02.2002 giving him opportunity to submit his reply. Applicant submitted his reply on 09.03.2002. On consideration of the fact of the matter vis-à-vis the reply submitted by the applicant, the disciplinary authority imposed the punishment vide order dated 18.04.2002. Appeal preferred by the Applicant was duly considered and rejected vide order dated 26.12.2003. As there was no violation of any of the Rules in the proceedings and principles of natural justice were strictly observed in the matter, there is hardly of any reason to interfere in the matter. Hence, they have prayed for dismissal of this OA.

4. Neither the Applicant nor his Counsel was present on the date of hearing. No adjournment was also sought on his behalf. This being a matter of 2004 in which pleadings have been completed long ago, we are not inclined to keep this case pending any more. Hence after hearing the Learned Counsel appearing for the Respondents with his assistance perused the materials placed on record. At the outset, we may state that it is trite law that Courts/Tribunal can interfere in the disciplinary proceedings and in the order of punishment imposed thereby on an employee if the decision was illegal or

suffered from procedural improprieties or was one which no sensible decision-maker could, on the materials before him and within the frame work of the law, have arrived at. The Courts/Tribunal would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The Court/Tribunal would also consider whether the decision was absurd or perverse. The Court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him; nor could the Court/Tribunal substitute its decision to that of the administrator (Ref: **Union of India and another v G.Ganayutham (death) by LRs**, AIR 1997 SC 3387. Circumstances leading to interference in Disciplinary Proceedings, have more exhaustively been dealt with by the Hon'ble Supreme Court in the case of **State Bank of Patiala & Others v S.K.Sharma**, JT 1996 (3) SC 722. Keeping the aforesaid parameters set apart by the Hon'ble Apex Court, in mind, we have examined the matter in detail, but the Applicant failed to substantiate the grounds upon which the Tribunal can interfere in the order of punishment. We see that the appellate authority considered the entirety of the matter and passed a reasoned order. The applicant has also not sought quashing of the appellate authority's order on any ground. The applicant has also not filed copy of the Charge sheet, reply to the charge

sheet, report of the IO and the views of the DA to enable this Tribunal to see if any of the grounds urged by the applicant has not been considered by the authorities.

5. For the discussions made above, we see no merit in this OA. Hence, this OA stands dismissed. No costs.

K. Thankappan
(JUSTICE K.THANKAPPAN)

MEMBER (JDDL.)

C.R. Mohapatra
(C.R.MOHAPATRA)
MEMBER (ADMN.)