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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 915 OF 2004
CUTTACK, THIS THE 13th DAY OF September, 2005

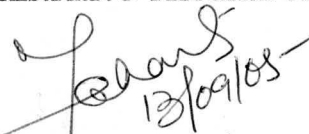
Bhaskar Chandra Sahu.....APPLICANT


V S

Union of India & AnotherRESPONDENTS

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? 7/2
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? 7/3


(M.R. MOHANTY)
MEMBER (Judicial)


(B.N. SOM)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 915 OF 2004
CUTTACK, THIS THE 13th DAY OF September, 2005

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

AND

HONBLE SHRI M.R.MOHANTY, MEMBER(J)

.....

Shri Bhaskar Chandra Sahu, Aged about 58 years, S/o. Late Purushottam Sahu, village – Sabulia, P.O.-Sabulia, Dist-Ganjam.

.....Applicant.

Advocate(s) for the Applicant – M/s. B.K.Sharma, G.K.Das.

VERSUS

1. Union of India, represented by the Additional Divisional Railway Manager, Sourt Eastern Railway, At/P.O. Kharagpur, Dist. Medinapur, West Bengal.
2. Senior Divisional Electrical Engineer (TRD) South Eastern Railway, At/P.O. Kharagpur, Dist. Medinapur, West Bengal.

.....Respondents

Advocate(s) for the Respondents - M/s. Ashok Mohanty, S.K.Ojha, H.M.Das.

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ORDER

SHRI B.N.SOM, VICE-CHAIRMAN:

The applicant, Shri Bhaskar Chandra Sahu had earlier visited this Tribunal in O.A.No. 193/03. After hearing the rival parties, the Tribunal by its order dated 1.5.03 had observed that the punishment of removal from service for unauthorized absence of five months to the applicant who had put up 30 years of dedicated service was disproportionate to the offence and that keeping in view the ratio of the judgment in the case of B.C.Chaturvedi deserves to be modified. The Respondents were, therefore, given direction to pass consequential orders on the appeal of the applicant within a period of 120 days from the date of receipt of the copy of that order. In pursuance of the said order, the Appellate Authority, Respondent No.1, reconsidered the matter by his order dated 15.3.04 (Annexure-2) but held that the representation dated 14.5.03 filed by the applicant taking additional grounds seeking modification of the order did not merit consideration, and, therefore, confirmed the punishment imposed on him by the Disciplinary Authority as that was found to be appropriate to the offence committed.

2. In the present O.A., the applicant has assailed the above decision of the Respondent No.1 on the ground that he had failed to appreciate the observations made by this Tribunal regarding the judgment rendered by the Apex Court in the case of B.C.Chaturvedi and that the punishment remains utterly disproportionate to the offence committed.

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3. The Respondents have opposed the application on the ground that the same is not tenable either in fact or in law. They have submitted that the ratio of the judgment in B.C.Chaturvedi case may not be applied because the case of B.C.Chaturvedi was a case under Prevention Of Corruption Act relating to disproportionate asset whereas the action taken against the applicant in this case was taken in the interest of ensuring safety and security of Railway service where the applicant was holding a post in safety category and his dedicated service was essential for maintenance of OHE system which is a pre-requisite condition for EIG certification; failure to maintain OHE as per existing norms would lead to electrical accident causing irreparable loss of life and property of innocent people. Therefore, the Appellate Authority have taken into consideration the facts and nature of duty of the applicant while passing the appellate order and the said order can not be termed as contrary to the direction of the Tribunal more so when the Tribunal directed the Appellate Authority to consider the matter on merit.

4. We have heard the Ld. Counsel for the rival parties and have also perused the records placed before us.

5. The applicant had filed a rejoinder where he has submitted that the Tribunal having held that the Disciplinary Authority instead of throwing him out of the employment by dismissal/removal, they ought to have imposed the punishment of compulsory retirement. It was not correct on the part of the Respondents to say that the Tribunal had asked them to reconsider the matter on merit. The Respondents having been given the direction to modify the order of punishment, which was held to be harsh, the

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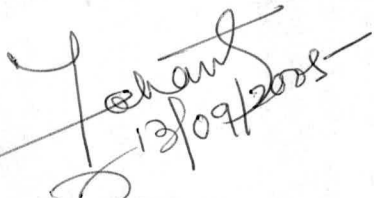
Appellate Authority, Respondent No.1, could not have passed any other order. To that extent, the order passed by him under Annexure-2 is not sustainable.


6. We have considered the rival view-points. We have no hesitation to hold that the Appellate Authority while passing his order-dated 15.3.04 (Annexure-2) had failed to keep in view the observations of this Tribunal dated 1.5.03. We had found the punishment of removal as shockingly disproportionate to the guilt and the Courts including the Apex Court in catena of cases have held that dismissal/removal from service for unauthorized absence is unwarranted being disproportionate to the offence. In our said order-dated 1.5.03, we had also stated with reasons why we have felt that the punishment handed-out was too harsh. The Appellate Authority in his order as also the Respondents in their counter have argued that as the applicant belongs to safety category, they had taken his absence, without prior permission, as causing danger to the safety of Railways, no exception could be taken to their aforesaid finding. However, there are alternative avenues available to set right the matter, i.e., he could have been posted out from the safety group to the non-safety group or if he was to be punished under the statutory rules, there were other punishments available to lessen the impact of punishment because the applicant had served the department for 30 years and he had earned service privileges for three decades of service. It is not the case of the Respondents that the applicant had unsatisfactory past service. Taking the over all view of the matter, punishment of removal from service, denying him and his family the benefit of long years of service, is definitely disproportionate to the fault.

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It has also emerged in the inquiry that the wife of the applicant was going through a period of illness. We also find that, ~~although~~, it was open to the appellate authority, taking into account the long years of service rendered by the applicant to grant him the benefit of compassionate allowance under Rule 65 of the Railway Services (Pension) Rules-1993, to ensure that the applicant and his family after he was removed from service would not pass into penury. The concern of the Appellate Authority was to ensure safety and security of the Railways and not to impoverish the applicant and his family. It also failed to appreciate the ratio of the order in the B.C.Chaturvedi case and failed to rise up to the demand of the situation.

7. In conspectus, the O.A. must succeed and, therefore, the order-dated 15.3.04 (Annexure-A/2) is hereby modified to that of compulsory retirement with effect from the date he was actually removed from service. We order accordingly. No costs.


(M.R.MOHANTY)
MEMBER(JUDICIAL)


(B.N.SOM)
VICE-CHAIRMAN

KUMAR