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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


OA No.650 of 2005
Cuttack, this the 14th day of January, 2009

Bishnu Prasad Mishra Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

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


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


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

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.650 of 2005

Cuttack, this the ~~14th~~ day of January, 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)

Bishnu Prasad Mishra, 40 years, Son of Banamali Mishra,
H.No.145, Lalsingh Road, Bhanjanagar, Ganjam at present
3rd Street, Hilpatna, Berhampur, Ganjam.

.....Applicant

By Advocate :M/s. A.K.Mishra, J.Sengupta, D.Panda,
G.Sinha, A.Mishra.

- Versus -

1. Union of India represented through Secretary, Ministry of Home Affairs (Intelligence Bureau), New Delhi.
2. Director, Intelligence Bureau, North Block, Gate No.7, New Delhi.
3. Joint Director, Subsidiary Intelligence Bureau Srinagar-29, Gupkar Road, Srinagar-190001.
4. Assistant Director, Intelligence Bureau, Ministry of Home Affairs, Government of India, 74-P-Sector-9, Trikutanagar, JAMMU.

....Respondents

By Advocate :Mr.U.B.Mohapatra, SSC.

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O R D E R

Per- MR. C.R.MOHAPATRA, MEMBER (A):-

Applicant was working as Assistant Central
Intelligence Officer Grade II (General) in the Intelligence

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Bureau, under the Ministry of Home Affairs, Government of India. He having been visited with the order of punishment of removal from service under Annexure-A/12 in a Rule 14 disciplinary proceedings and order of treating the period of unauthorized absence from 01.08.2002 to 29.4.2004 as no work no pay under Annexure-A/12, carried the matter in appeal and the appeal having been rejected under Annexure-A/14, he has approached this Tribunal in the present OA seeking to quash the impugned order under Annexures-A/11, A/12 and A/14 with direction that he is entitled to all service and financial benefits retrospectively.

2. Respondents by filing counter opposed the contentions raised by the Applicant in his Original Application and averred that the applicant abandoned his right to challenge the impugned orders as also to seek entitlement of all service and financial benefits retrospectively; as he not only stayed away from his duty for a long time but also refused to receive the notice issued to him by post as also by special messenger to attend the departmental enquiry. Accordingly, the Respondents

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prayed for dismissal of this OA. No rejoinder has been filed by the Applicant controverting the stand taken by the Respondents in their counter.

3. Learned Counsel appearing for the Applicant, in support of the prayer made in this OA has contended that Applicant started his career in the Department as a temporary post holder of Assistant Central Intelligence Officer, Grade II (General) on 01.03.1990. Subsequently he was made permanent in the said post w.e.f. 1.4.1993. While working as such, vide order at Annexure-A/3 dated 10.3.2002 he was transferred from Bhubaneswar to Srinagar. Due to domestic problem as also his ill health he did not go to join in his new place of posting but went on representing to the authority for cancellation of his transfer. But without considering his difficulties in proper perspective, the Respondents started proceedings under Rule 14 of CCS (CC&A) Rules, 1965. He was served with the charge without any documents. His request for supply of documents did not yield any result. Thereafter the Respondents conducted and concluded the proceedings *ex parte* against the Applicant

without ensuring service of notice before proceeding in the enquiry. His next contention is that the order of punishment was passed by an authority incompetent to do so. Lastly he has contended that it cannot be said that the applicant was absent unauthorisedly. He remained on leave due to his family problems as also his own illness after informing the fact and seeking sanction of leave. The Respondents also vide order under Annexure-A/12 treated the period of his absence 'without pay'. Therefore, further imposition of punishment of removal and dismissal of the appeal is disproportionate to the gravity of offence and as such, the order of punishment is liable to be quashed.

4. On the other hand it has been contended by the Respondents' counsel that one cannot claim the leave as a matter of right. In a department like the Intelligence Bureau, remaining absent without any authority is fraught with serious consequences. He has contended that the applicant stayed away to avoid his order of transfer to Srinagar which was made in public interest. Since he did not report for a long time in his new

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place of posting, proceeding under Rule 14 of CCS (CC&A), 1965 had to be initiated against him. He was duly noticed to attend the enquiry but intentionally and deliberately he evaded to receive such notice. He also refused to accept the notice sent by special messenger. Therefore, as per the rules, the enquiry was proceeded to its finality and he having been found guilty the order of punishment of removal from service was imposed on him, further treating the said period of his absence as no work no pay. Appeal preferred by him was duly considered by the Appellate Authority but in a reasoned/speaking order the Appellate Authority rejected the appeal of the Applicant. It was contended by the Learned Counsel for the Respondents that it is incorrect to say that the order of punishment was passed by an authority incompetent to do so. The authority ^{which} ~~with~~ passed the punishment order was fully empowered and competent and there is absolutely no ambiguity on the same. However, had it been so, the Appellate Authority would have certainly set aside the order of punishment. He has contended that though adequate/sufficient opportunity was afforded to the applicant, he

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did not choose to avail the same for which he is estopped under law to challenge the impugned order of punishment on the ground that opportunity was not given to him. Further contention was put forth by Learned Counsel for the Respondents that for his willful absence; especially in the department of Intelligence Bureau, the punishment of removal cannot be construed as disproportionate. Accordingly, the Learned Counsel appearing for the Respondents strenuously urged for dismissal of this OA.

5. We have considered the rival submissions of the parties and perused the materials placed on record. Before proceeding further to express our opinion, we may record that the scope of judicial review in matters relating to disciplinary action against an employee has been well settled by a catena of decisions of the Hon'ble Apex Court and it would suffice to refer to one such decision reported in (2008) 2 SCC (L&S) 365 (**Government of India and Another v George Philip**). In paragraph 11 of the said decision, the Apex Court unequivocally précised the law that the Tribunal or the High Court exercising

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jurisdiction under Article 226 of the Constitution are not hearing an appeal against the decision of the Disciplinary Authority imposing punishment upon the delinquent employee. The Jurisdiction exercised by the Tribunal or the High Court is a limited one and while exercising the power of judicial review, they cannot set aside the punishment altogether or impose some other penalty unless they find that there has been a substantial non compliance with the rules of procedure or a gross violation of rules of natural justice which has caused prejudice to the employee and has resulted in miscarriage of justice or the punishment is shockingly disproportionate to the gravity of the charge.

6. We appreciate the endeavour made by Learned Counsel appearing for the Applicant to the quashing of the impugned orders in this case but from the record we find that absolutely there has been no violation of any of the norms provided in the rules or the principles of natural justice. Rather the Applicant evaded to receive the notice and to offer his comments at every stage. At one occasion he refused to receive



notice sent through special messenger by the Respondents in regard to the proceedings which has not been controverted by the Applicant by filing any rejoinder. Therefore, from the fact of the matter, it cannot be said that the punishment was imposed on the applicant without giving him adequate opportunity. In regard to the submission of the Learned Counsel for the Applicant that the punishment is disproportionate and is liable to be quashed, we may record that as per the Rules one cannot claim the leave as a matter of right. Unless leave is applied and sanctioned the absence of leave can be termed as unauthorized as in the present case. Staying away from duty unauthorisedly cannot be termed as a minor lapse. Law on the subject is that unauthorized absence cannot be treated as minor misconduct (**Northern Eastern Karnataka R.T. Corporation vs. Ashappa and another**, 2007 (1) AISLJ 52); punishment of removal/dismissal for unauthorized absence is not disproportionate (**State of Punjab Dr.P.L.Singla**, (2008)2 SCC (L&S) 719). Evading to carrying out the transfer and posting by a Bank officer thereby imposition of punishment of removal/dismissal, came up for

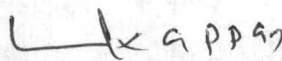
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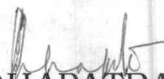
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consideration in the case **Y.P.Sarabhai vs. Union Bank of India & Anr**, 2007 (1) AISLJ 59 wherein it was held that such punishment for his unauthorized absence cannot be termed as disproportionate.

7. When the factual scenario is examined in the background of the legal principles set out above, we are bound to hold that there has been no miscarriage of justice caused to the Applicant in the decision making process of the matter. Hence we decline to interfere in the orders passed by the Disciplinary as well as Appellate Authorities. Accordingly, this OA stands dismissed by leaving the parties to bear their own costs.



(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)



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