

8

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO. 758 OF 2005
(Decided on 22nd June 2007)

M.Punnayya

Applicant

Vrs.

Union of India and others

Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not? *yes.*
- 2) Whether it be sent to the Principal Bench or not? *yes.*

B.B.Mishra
(B.B.MISHRA)

ADMINISTRATIVE MEMBER

N.D.Raghavan
(N.D.RAGHAVAN)
VICE-CHAIRMAN

9

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO. 758 OF 2005

(Decided on 22nd June 2007)

CORAM:

HON'BLE SHRI N.D.RAGHAVAN, VICE-CHAIRMAN
AND

HON'BLE SHRI B.B.MISHRA, ADMINISTRATIVE MEMBER

.....

M.Punnayya, aged about 51 years, son of late M.Appallaswamy, at present working as Fitter, Grade I (C&W), East Coast Railway, Carriage Shed, Puri, At/PO/Dist.Puri Applicant

Advocates for applicant - M/s B.S.Tripathy, M.K.Rath & J.Pati

Vrs.

1. Union of India, represented through the General Manager, East Coast Railway, At/PO Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. The Divisional Railway Manager, East Coast Railway, Khurda Road, At/PO-Jatni, District Khurda.
3. The Divisional Mechanical Engineer, East Coast Railway, Khurda Road, At/PO: Jatni, District Khurda.
4. The Assistant Mechanical Engineer, East Coast Railway, Khurda Road, At/PO Jatni, Dist. Khurda.
5. Shri Arjun Behera, C.W.I., Khurda Road, Enquiring Officer, East Coast Railway, Khurda Road, At/PO-Jatni, Dist. Khurda

..... Respondents

Advocate for Respondent No.1 - None

Advocate for Respondents 2 to 4 - Mr.T.Rath, Railway Panel Counsel

.....

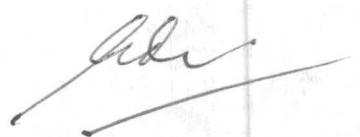


10

ORDER

SHRI N.D.RAGHAVAN, VICE-CHAIRMAN

The applicant's case is that while working as Fitter Grade III under South Eastern Railway (now East Coast Railway), posted at Bhadrak^{- he}, was issued with a memorandum of charge vide letter dated 20.4.1987 (Annexure A/1) stating that after availing leave for 10 days w.e.f 19.10.1986 to 28.10.1986 he did not join duty and remained absent unauthorizedly from 29.10.1986 to 17.2.1987 without any authority or intimation to the controlling officer. By another order of the even date (Annexure A/2) an Inquiring Officer was appointed. The applicant submitted his written statement of defence dated 01.05.1987 (Annexure A/3) stating that he remained absent from duty^{- with effect} from ^{Adm} 29.10.1986 to 17.2.1987 as his wife unexpectedly became mentally weak due to some other domestic problems. The disciplinary authority, after considering his written statement of defence, imposed on the applicant the punishment of withholding his increment at the stage of Rs.1090/- with direction that the punishment shall operate for a period of 36 months and postponed^{his} his future increments on the expiry of punishment, by order dated 5.11.1987 (Annexure A/4) On appeal, the appellate authority by his order dated 3.6.1988 (Annexure A/6) upheld the punishment.

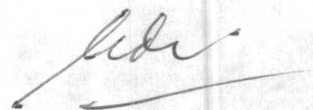


2. The applicant made a representation on 2.6.2004 (Annexure A/6), i.e., after about sixteen years from the date of passing the appellate order dated 3.6.1988 for setting aside the punishment imposed on him. Immediately after making the representation, the applicant approached this Tribunal by filing O.A.No. 440 of 2004 on 2.7.2004.

3. The O.A. was, for the first time, placed before the Single Member Bench on 2.7.2004 for considering the question of admission. The learned Single Member Bench, without issuing notice requiring the Respondents to appear and file counter, finally disposed of the O.A. by order dated 2.7.2004 (Annexure A/7), the relevant portion of which is quoted below:

“In the aforesaid premises, without entering into the merits of this case, this O.A. is disposed of at this admission stage, with direction to the Respondents to consider the grievances of the Applicant (as raised in his representation under Annexure A/6 dated 2.6.2004 and in the present O.A.) and pass necessary orders thereon within a period of 120 days from the date of receipt of a copy of this order.”

4. When the applicant's representation dated 2.6.2004 (Annexure A/6) against the punishment order dated 5.11.1987 (Annexure A/4) and the appellate order dated 3.6.1988 (Annexure A/5) was not considered and order was not passed by the concerned authority, the applicant filed Contempt Petition No.14 of 2005 before the Tribunal. After notices were issued in the Contempt Petition, the Respondents filed their show-cause stating that the applicant's representation dated 2.6.2004 (Annexure A/6)

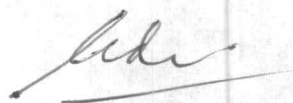


was duly considered and rejected as being barred by limitation. In support of their statement, the Respondents filed the letter dated 2.6.2005 (Annexure A/8) along with the speaking order passed by the Divisional Mechanical Manager. Accordingly, the contempt proceeding was dropped by the Tribunal in its order dated 26.7.2005 (Annexure A/9) passed in the Contempt Petition No. 14 of 2005. Thereafter the applicant filed the present O.A. praying for quashing Annexures A/4, A/5 and A/8.

5. The Respondents have filed a detailed counter denying the allegations made by the applicant in his counter.

6. We have perused the pleadings and have heard the learned counsels on both sides.

7. The applicant in the O.A. and his counsel in course of the hearing have submitted that the representation dated 2.6.2004 (Annexure A/6) having been made by him to the Divisional Railway Manager, the Divisional Mechanical Engineer should not have considered and rejected the same, the latter being the appellate authority against whose order the representation was made. It has also been submitted that the punishment order as well as the appellate order have been passed contrary to law. Both the disciplinary authority as well as the appellate authority did not apply their mind. They have also failed to take into consideration the fact that the applicant belonged to SC community, illness of his wife and the domestic problems.



13

8. If at all the applicant was aggrieved by the punishment order dated 27.10.1987 (AnnexureA/4) and the appellate order dated 3.6.1988 (AnnexureA/5), the applicant should have approached the Tribunal within a period of one year from 3.6.1988 when the appellate order was passed rejecting his appeal. The applicant, instead of approaching the Tribunal within the period of limitation, chose to file a further representation dated 2.6.2004 (Annexure A/6). Immediately thereafter he filed OA No. 440 of 2004 on 2.7.2004 praying for quashing the punishment order and the appellate order. Though the said O.A. could be questioned on its maintainability under Section 20(2)(b) of the Administrative Tribunals Act, 1985, the applicant having chosen to make a representation against the aforesaid punishment order and the appellate order, the learned Single Member Bench, without issuing notices to the Respondents to appear and file counter, was pleased to finally dispose of the same by order dated 2.7.2004, the relevant portion of which has been already quoted above, directing the Respondents to consider the grievances of the applicant (as raised in his representation under Annexure A/6 dated 2.6.2004 and in the present O.A.) and pass necessary orders thereon within a period of 120 days from the date of receipt of a copy of the order. The said O.A. appears to have been also barred by limitation of more than 15 years. The order passed by the learned Single Member Bench dated 2.7.2004 cannot be held to have saved the limitation which started running from



the date the appellate order was passed, i.e., on 3.6.1988. Accordingly, the present O.A. filed by the applicant challenging the punishment order dated 5.11.1987 and the appellate order dated 3.6.1988 is held to be barred by limitation.

9. As regards the applicant's prayer for quashing (Annexure A/8) the order dated 2.6.2005, it is to be noted here that the impugned order was passed only in compliance with the direction issued by the learned Single Member Bench contained in the order dated 2.7.2004 passed in OA No. 440 of 2004 which has been viewed by us as barred by limitation and not maintainable. It is also the applicant's case that when he had made the representation dated 2.6.2004 (Annexure A/6) to the Divisional Railway Manager, the same was disposed of by another authority, i.e., Divisional Mechanical Engineer, who acted as appellate authority and passed the order dated 3.6.1988. The learned Single Member Bench of the Tribunal, by his order dated 2.7.2004 passed in OA No. 440 of 2004, directed the Respondents to consider the grievances of the applicant as raised in his representation dated 2.6.2004 and did not direct the Divisional Railway Manager to do so. There is nothing wrong on the part of the said Divisional Mechanical Engineer, who was one of the Respondents in the said O.A. No. 440 of 2004, in considering and disposing of the applicant's representation.



15
10. As has been held above, the present O.A. is also barred by limitation in as much as the cause of action arose only on 3.6.1988 when the applicant's appeal was rejected by the appellate authority. Having failed to approach the Tribunal for redressal of his grievances against the punishment order and the appellate order within the period of limitation and his earlier O.A. having been barred by limitation of more than 15 years, the present O.A. is inevitably to be ^{- held as barred} barred by limitation. The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the competent authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent officer is conferred on the disciplinary authority under the Rules made under the proviso to Article 309 of the ^{- of India. Constitution} Constitution. What punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the said authority. If the penalty can lawfully be imposed on the employee for the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. In the instant case, it is found that the applicant in his explanation dated 1.5.1987 (Annexure A/3) has admitted his unauthorized absence from 29.10.1986 to 17.2.1987 and prayed for being exonerated of the charge, as his wife was ill and there was some domestic problem. The disciplinary authority in consideration of the materials available on record

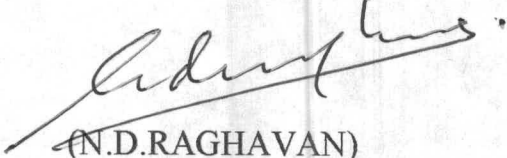
[Signature]

has imposed the punishment and the appellate authority has upheld the punishment. We also find that while imposing the punishment the disciplinary authority has complied with the principles of natural justice. The applicant has also not alleged in this O.A. that he was not given reasonable opportunity of hearing.

11. As regards the submission of the applicant that he belongs to SC community, we find no provisions in the Railway Servants (Discipline & Appeal) Rules which enable the disciplinary authority and the appellate authority to take a lenient view in the disciplinary proceedings initiated against employees belonging to SC community and debar them from imposing any punishment on such employees.

12. In the result, the O.A. being devoid of merit is dismissed as barred too. No costs.


(B.B. MISHRA)
ADMINISTRATIVE MEMBER


(N.D. RAGHAVAN)
VICE-CHAIRMAN