

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.875 OF 2005

Cuttack this the 29th day of August, 2008

Banabehari Sahoo	Applicant
Vrs.		
Union of India and others	Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not?
- 2) Whether it be sent to the Principal Bench of CAT or not?

(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER

(K.THANKAPPAN)
JUDICIAL MEMBER

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CORAM:

HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

AND

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

Shri Banabihari Sahoo, S/o. late Budhinath Sahoo, At-College Road, PO/Dist-
Nayagarh ...Applicant

By the Advocates: M/s.A.K.Bose, P.K.Das, D.K.Mallick

-VERSUS-

1. The Union of India represented through the Secretary to Union Govt., Ministry of Defence, Army Headquarters, New Delhi
2. The Director General, Ordnance Service, Master General Ordnance Branch, Army Headquarters, DHQ., PO-New Delhi-110 011
3. The Officer Incharge, Army Ordnance Corps, Record Office, Secunderabad, Andhra Pradesh
4. The Commandant, Central Ordnance Depot., Jabalpur, At/PO/Dist-Jabalpur ...Respondents

By the Advocates: Mr.U.B.Mohapatra, SSC

O R D E R

SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:

Challenging the dismissal order dated 6.4.2002 (Annexure-A/4) and also the appellate order dated 8.8.2005 (Annexure-A/5) the applicant has filed this Original Application under Section 19 of the A.T.Act, 1985. The applicant, while praying for quashing of those impugned orders under Annexure-A/4 and A/5, has also prayed for his reinstatement in service with all service benefits.

2. The backdrops of the case are that while working as Storekeeper in the office of the 4th Respondent, the applicant applied for 29 days leave, i.e., from 5.10.1998 to 3.11.1998 and before the said leave could be granted, he left office and remained absent from duty. In spite of several reminders and letters sent by the authorities, the applicant remained absent and hence an inquiry was

(A)

conducted under Rule 14 of Central Civil Services (CCA) Rules, 1965. In the conclusion of the inquiry, the Inquiry Officer held that the charges levelled against the applicant had been proved and hence, on the basis of the report of the inquiry Officer, as per Annexure-A/4 order dated 6.4.2002 of the Disciplinary Authority, the applicant was dismissed from service. The appeal preferred by the applicant against the order of the Disciplinary Authority having been turned down by the appellate authority, the applicant has approached this Tribunal.

3. This Tribunal heard Shri A.K.Bose, learned counsel appearing for the applicant and Shri U.B.Mohapatra, learned Senior Standing Counsel for the Respondents and perused the records produced in the O.A.

4. The learned counsel for the applicant Shri Bose assailed the impugned orders on the following grounds:

Firstly, Shri Bose submitted that the applicant had already submitted an application for leave of 29 days and as he was entitled for said leave as per the leave rules, the non-sanction of his leave has not been considered within the purview of leave rules. Secondly, the learned counsel submitted that though the applicant left office, the authorities ought to have considered that he was appointed in service on compassionate grounds inasmuch as the reasons for his leave application would also show that the applicant actually had absented from duties due to unavoidable circumstances and to render help to his family members. Thirdly, it has been argued by the counsel for the applicant that the inquiry was conducted ex parte and the applicant had not been given any

opportunity to prove his defence. Finally, the learned counsel submitted that the authorities ought to have considered the circumstances under which the applicant was compelled to apply for leave, i.e., to look after his ailing mother and to sort out some serious family problems, and if so, instead of imposing the punishment of dismissal from service which is more harsh, the authorities could have imposed any other lesser punishment.

5. In reply to the above contentions, the learned Senior Standing Counsel Shri U.B.Mohapatra, on the basis of the counter filed by the Respondents, submitted that as the applicant was working as Storekeeper he should not have left office before the leave could be granted by his superior officer. Further, Shri Mohapatra submitted that in spite of several letters as per Annexures-R/2, R/3 and R/5, the applicant was so adamant that he did not turn up to resume his duties and if so, the punishment imposed on him is justifiable. Hence the Original Application is liable to be dismissed.

6. The short question to be considered in this O.A. is whether the orders impugned are justifiable or not.

7. The facts of the case are not disputed. Admittedly, the applicant left office by submitting an application for leave. As a matter of fact, when an employee applies for leave other than the Casual Leave available to him at his credit, it is the duties of the employee concerned to see that he should leave the duty station only after the leave sought for is granted by the competent authority. With regard to the inquiry conducted by the I.O., it is also to be noted that several reminders were sent to the applicant to attend the inquiry and even



on certain occasions the I.O. was forced to adjourn the enquiry expecting appearance of the applicant. However, the applicant did not appear before the I.O. Hence the inquiry was concluded by the I.O. on the basis of materials produced before him. All the documents produced before the I.O. would show that the applicant had applied for leave, but that leave application was not recommended by his immediate superior officer, viz., Group Officer, to the authority competent to grant leave. If so, leaving office prior to leave being granted by the competent authority cannot be considered a silly matter on the part of a Government employee. However, the stand taken by the counsel for the applicant is that even if the applicant left office before the leave could be granted, the applicant was entitled for any kind of leave as per the leave rules and if so, this question has to be borne in mind by the Disciplinary Authority while imposing penalty. It is not in dispute that despite so many reminders having been sent to the applicant for resuming duties, he did not turn up. It is also not in dispute that the inquiry against the applicant was concluded by the I.O. ex parte due to non-cooperation of the applicant. This being the situation, the only inference may possibly be drawn from the averments made in the O.A. that the authorities should have taken into consideration the circumstances under which the applicant was forced to leave office before the leave could be sanctioned by the competent authority and at the same time, it is to be inferred that the applicant ought not to have left office prior to sanction of leave. However, these are the matters which ought to have been considered by the D.A while imposing the penalty of dismissal from service. However, as per the



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charge memo, it has been alleged that the applicant was disobedient to the orders issued by the authorities. The above charge against the applicant vis-à-vis his non-cooperation with the Inquiry Officer creates some doubt in the minds of this Tribunal also. However, the report of the I.O. holding the charges as proved, in our considered view, is in accordance with the procedures laid down in that behalf and we find no flaw or infirmity therein. However, as the applicant was entitled to leave as per the leave rules and he having served the Respondent-organization for about 13 years, keeping in mind the gravity and seriousness of misconduct, we are of the view that while imposing the penalty of dismissal from service on the applicant, the Disciplinary Authority should have considered imposition of some lesser punishment than the dismissal, as the applicant was appointed on compassionate grounds and he was compelled to leave office under unavoidable circumstances before the leave could be sanctioned. In the above circumstances, while confirming findings arrived at by the I.O., we are setting aside Annexures A/4 and A/5 orders and remitting the matter back to the Disciplinary Authority to consider imposition of a lesser penalty, i.e., compulsory retirement from service, on the applicant instead of dismissal from service, as dismissal from service would cast a stigma on the applicant and make him disqualify for any future employment.

8. In the result, the O.A. is allowed to the extent indicated above. No costs.

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(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER

Kappan
(K.THANKAPPAN)
JUDICIAL MEMBER