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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH

O.A.NO. 524 of 2006

Cuttack, this the 5th day of January 2010

Arun Kumar Jena

.....

Applicant

Vrs.

Government of India and others

.....

Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not?
- 2) Whether it be sent to the P.B., CAT, or not?


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH

O.A.NO. 524 of 2006

Cuttack, this the 5th day of January 2010

CORAM:

HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
AND

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

.....

Arun Kumar Jena, aged about 49 years, son of late K.C.Jena, At-Nuabandha, P.O.Jenapada, Via-Athagarh, Dist.Cuttack, at present working as Scientific Assistant-E, Heavy Water Plant, Talcher, At/PO Vikrampur, District Angul, PIN 759106

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Applicant

Advocates for applicant

- M/s S.Kr.Rath & ON Ghosh

Vrs.

- 1) Government of India, represented by its Secretary-cum-Chairman, Department of Atomic Energy, Anushakti Bhavan, C.S.M. Marg, Mumbai 400 001.
- 2) Chief Executive, Heavy Water Board, Department of Atomic Energy, Government of India, Vikram Sarabhai Bhawan, 4th Floor, Anushakti Nagar, Mumbai 400 094

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Respondents

Advocate for Respondents

- Mr.R.C.Behera, ACGSC

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ORDER

JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

In this Original Application, the applicant has prayed for the following relief:

“This Hon’ble Tribunal may be pleased to quash the order of punishment as imposed by the disciplinary authority as in Annexure-10 in order dated 20.5.2005;

And also may be pleased to quash the order of the appellate authority as passed on 20.3.2006 (Annexure 12);



Further may be pleased to direct the respondents to grant consequential financial and service benefits to the applicant, such as arrear differential salary and promotional benefits as accrued to him as if the order of reduction in rank is not passed;

And further may be pleased to direct the respondents to grant promotional benefits as accrued to him as the applicant is otherwise eligible to get promotion to the next higher post.

And further may be pleased to grant all consequential service benefits in the nature of financial benefits and more specifically promotion benefits due to him from time to time, if he would not have been reduced in rank for five years by virtue of such irregularly and unlawfully framed charge sheet dated 5/18.1.1995.

And pass such other order/orders as deem fit and proper in the facts and circumstances of the case."

2. The facts of the case in brief are that the applicant, while working as Scientific Assistant 'D' under Respondent NO.3, on an allegation of unauthorized absence from duty w.e.f. 2.11.1993, had been issued with memorandum of charge, as per Annexure A/1 dated 5/18.1.1995, with direction to submit his written statement of defence and for personal hearing, if so desired, enclosing therewith a list of documents by which and a list of witnesses by whom the proposed charge of misconduct or misbehaviour was sought to be proved. In response thereto, the applicant, as per Annexure A/2 dated 15.2.1995, submitted his written statement of defence explaining the circumstances under which he had to send his application for headquarters leaving and went on keeping communication with the Respondents by sending application and necessary documents, etc., from time to time, with a prayer to drop the proposed enquiry. However, the authorities having not been satisfied with the explanation whatever offered, it gave rise to a fact finding inquiry by appointing Inquiry Officer, who, upon conclusion of such inquiry, submitted its



18 report holding the charge of unauthorized absence against the applicant proved, as per Annexure A/3, dated April/May 1, 1997, asking him to represent if any. It appears from the record that the applicant has not annexed to the O.A. his representation dated 4.6.1997 against the inquiry report, although he has averred in the O.A. to that effect. However, the Disciplinary Authority, as per order dated 3/12.9.1997, in consideration on the inquiry report, the written submission dated 4.6.1997 of the applicant against the inquiry report and the connected documents, in exercise of powers conferred under Rule 12(2)(b) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, read with Department of Atomic Energy Order No.1/6(1)/91/Vig./93 dated 3.5.1993, imposed the punishment of reduction of the applicant to the lower post of Scientific Assistant 'C' until he was found fit by the competent authority to be restored to the higher post of Scientific Assistant 'D' after a period of five years, from the date of the order. The applicant, against this punishment, preferred an appeal dated 5.11.1997 (Annexure A/5) before the Appellate Authority. While the matter stood thus, the Disciplinary Authority again issued an order dated 20.10.1997 (Annexure A/7) treating the period of unauthorized absence of the applicant from 2.11.1993 to 6.2.1995 as dies non with direction that the above period should not be treated as duty for any purpose. It was further directed that during the period of reduction to the lower post of Scientific Assistant 'C', the applicant would draw pay at such rates as he would have drawn from time to time had he not been promoted from Scientific Assistant 'C' to Scientific

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Assistant 'D'. It appears that the applicant has not filed any appeal against the order of the Disciplinary Authority at Annexure A/7 treating the period of unauthorized absence as dies non. Be that as it may, the appeal preferred by the applicant against the punishment of reduction to Scientific Assistant 'C' having been rejected and the punishment order confirmed by the Appellate Authority as per its order dated 8.7.1998 (Annexure A/6), the applicant had moved this Tribunal in OA No.403 of 1998 with prayer for quashing the punishment imposed by the Disciplinary Authority as well as the order passed by the Appellate Authority, confirming the order of the Disciplinary Authority. The applicant also by filing MA No.1057 of 2002 also sought for quashing the further order of the Disciplinary Authority treating the period of unauthorized absence as dies non, by bringing the said impugned order within the ambit of the said O.A. This Tribunal, after hearing the parties on merits, as per order dated 12.2.2004 quashed the punishment order issued by the Disciplinary Authority as well as the order of the Appellate Authority confirming the punishment. Also the Tribunal quashed the second order of the Disciplinary Authority treating the period of unauthorized absence from duty and remitted the matter back to the Disciplinary Authority to 'reconsider the order of punishment commensurate with the gravity of allegation'. In this background, it is advantageous to quote hereunder the findings of this Tribunal, while issuing the above said direction:

"4. Heard learned counsel for both sides and perused the materials placed on record. Law is well settled in a catena of judicial pronouncements of the Apex Court (as well as of various courts/Tribunals in the country) that in a



disciplinary proceedings, interference of judiciary is very very limited; which is only possible, where the punishment is based on no evidence/record, or perverse. Such interference is also possible if the findings reached in the disciplinary proceedings by the Inquiring Officer/Disciplinary Authority are perverse and no reasonable man can reach to such a findings and/or the punishment is disproportionate shocking to the judicial conscience.

5. Keeping in mind the above dictums of the various courts, it is to be examined, as to whether the present case is falling in any of the grounds for interference. It is evident from the report of the Inquiring Officer and from the orders of the Disciplinary Authority that the Telegrams/Letters sent by the Applicant time and again and the medical certificate produced by him had not received due consideration of the authorities. They have also nowhere denied the same to have been received. It is also seen that as per the Rules, the Inquiring Officer should have discussed the evidence/deposition/charges before recording his findings in the report. But without discussing anything, in each of the Article, he has opined and recorded his findings; which is not as per the rules. Rule-14 of the CCS (CCA) Rules, requires that there should be a thorough discussion in all the charges; whether the Applicant admits the charge or not. This fact has also not been taken note of by the Disciplinary Authority/Appellate Authority in his order. That apart looking to the order of punishment and the order of the Appellate Authority, it prima facie shows that the punishment has not been imposed, as per the codified manner and is an innocuous one and, to make good, the disciplinary authority has passed another order subsequently; which is also beyond his jurisdiction as per Rules. Further more it is seen that the order making the period of absence 'dies non' is without giving any opportunity to the Applicant. Neither the Inquiring Officer; nor the Disciplinary Authority/Appellate Authority have passed any order at first instance, in this regard. Therefore, without giving any opportunity to the Applicant before modifying the order of punishment under Annexure 4/1 or making the period as 'dies non', is violative of principles of natural justice/Article 14 of the Constitution of India. 'Dies non of service period of an employee is a far reaching consequence; which ought not to have been ordered, without giving opportunity to a Government servant. This Bench of the Tribunal in OA No. 656 of 1996 (Rabindra Martha v. Union of India and others) have taken the same view and remanded the matter for reconsideration. We also find in this case that when an employee stayed away due to his illness, supported by medical evidence; which has been uncontroverted by his authorities; for not having been referred for second medical opinion, has been visited with the punishment of reduction in rank for five years and treating the period as dies non, without giving any opportunity; which shocks the judicial conscience being disproportionate to the allegations leveled against the Applicant...."

2.1 Against the above order, the Respondent-Department moved the Hon'ble High Court of Orissa in W.P. (C) No. 18 of 2005. The Hon'ble High Court in judgment and order dated 22.2.2005 (Annexure A/9) disposed of the said writ



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petition as under:

“Heard Mr.Mishra, learned Senior Standing Counsel for Central Government and Shri S.K.Rath, learned counsel for Caveator-opp.party.

This writ petition has been filed against the order dated 12.2.2004 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in OA No. 483 of 1998 by which the Central Administrative Tribunal quashed the impugned orders of punishment passed against the opposite party and remitted the matter back to the Disciplinary Authority to reconsider the order of punishment commensurate with the gravity of the allegation.

Mr.Mishra, learned Senior Standing Counsel for the Central Government at this stage does not dispute the impugned orders passed by the Tribunal, but he has submitted that the grievance of the petitioner is that the Tribunal has not fixed any time limit to pass a fresh order and in case any higher authority directs the Disciplinary Authority to finalize the matter in accordance with direction of the Tribunal, it will amount to interference in the jurisdiction of the Disciplinary Authority. Therefore, there is no other way except to approach this Court by way of filing the instant writ petition.

We have perused the impugned order. It is correct that no time limit has been fixed by the Tribunal for conclusion of the proceeding after remanding the matter to the Disciplinary Authority and as such the Disciplinary Authority may keep the matter pending for long. Certainly this situation would not be proper.


Learned counsel for the opposite party does not oppose the innocuous nature of prayer made by Shri Mishra, learned Senior Standing Counsel for Central Government and has given his consent that the proceeding should be concluded expeditiously.

Therefore, without interfering in the impugned orders passed by the Tribunal, this writ petition is disposed of with the direction to the Disciplinary authority to conclude the proceeding as expeditiously as possible, but not beyond three months from today.

The Misc.Case is also accordingly disposed of.”

2.2 In compliance with the order of this Tribunal, subject to the directions issued by the Hon'ble High Court, as aforesaid, the Disciplinary Authority reconsidered the matter and after recording its findings at Annexure A/10 dated 20.5.2005 to the effect that the applicant had committed gross misconduct by absenting from duty for an unduly long period of one year three months and four days, i.e., from 2.11.1993 to 6.2.1995, without giving proper






intimation to his Section-in-Charge either for leaving the headquarters in the first instance or for his continued absence subsequently without intimating his contact address, concluded that there was no need to revise the penalty already imposed on the applicant. But taking into account the observation of this Tribunal as well as of the Hon'ble High Court, the Disciplinary Authority treated the period of absence from 2.11.1993 to 6.2.1995 as Extraordinary Leave and thereby regularized the absence. Against this order, the applicant preferred appeal dated 26.6.2005 (Annexure A/11), which, however, having not been acceded to, the applicant has approached this Tribunal in the second round of litigation with the prayer as referred to above. The grounds urged by the applicant are as follows:

- (i) The Disciplinary Authority having recorded its findings that the receipt of leave/headquarters leaving permission application is open to doubt, the conclusion in that behalf is bad in law.
- (ii) There being no Shift Register except the Attendance Register, the shift in charge pinned up the leave/headquarters leaving permission to the Attendance Register. Therefore, the finding of the Disciplinary Authority that "no entry" was made in the Shift Register is based on no material, particularly when no finding has been recorded by the Inquiry Officer regarding the Shift Register.
- (iii) The finding recorded to the effect that the applicant having remained at Cuttack could not have sent telegrams or letters, as the





case may be from Bhubaneswar, is baseless and outcome of sheer imagination.

- (iv) The Disciplinary Authority, notwithstanding the findings of this Tribunal in paragraph 5 of the order dated 12.2.2004 in OA No. 403 of 1998 to the effect that “the Department had nowhere denied to have received telegrams/letters sent by the applicant and that the order of the Disciplinary Authority was based on misconception” should not have imposed the same punishment. This apart, the findings of the Tribunal that the medical certificate having not been controverted nor the authority having referred to second medical opinion, the imposition of punishment shocks the judicial conscience. But the Disciplinary Authority has not only totally ignored this but also failed to discuss the implication of Leave Rule-19.
- (v) In compliance with the order of this Tribunal, confirmed by the Hon’ble High Court, the Disciplinary Authority having regularized the period of absence by granting EOL, imposition of punishment of reduction in rank is contrary to the order of this Tribunal, as there exists no unauthorized absence amounting to misconduct.
- (vi) The Respondents having failed to avail of substituted service by way of publication in the newspaper after the letter sent by the



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Department returned unserved, the initiation of disciplinary proceeding is bad in law.

3. The Respondent-Department have filed their counter opposing the prayer of the applicant. The applicant has also filed rejoinder to the counter.

4. We have heard Shri S.K.Rath, the learned counsel for the applicant and Shri R.C.Behera, learned counsel for the Respondents and perused the materials on record.

5. It is to be noted that since the matter has been remitted back to the Disciplinary Authority for reconsidering the order of punishment commensurate with the gravity of the allegation, the only point that arises for consideration is as to whether the order passed by the Disciplinary Authority is on the basis of materials available on record and in accordance with the Rules. In this regard the Tribunal has to examine the inquiry report, the written submission to the Inquiry Officer's report, the order of the Disciplinary Authority now passed, as well as the order of the Appellate Authority on the appeal preferred by the applicant. Before considering all those materials, it is needless to refer to what the applicant in his written statement of defence against the proposed inquiry for misconduct on the charge of unauthorized absence from duty w.e.f. 2.11.1993, had stated as per Annexure A/2 dated 15.2.1995 which, in our considered view, would throw much light on the report of the Inquiry Officer as well as the order of the Disciplinary Authority. In this connection, the full text of Annexure A/2 dated 15.2.1995 is extracted hereunder:



“Sub: Written statement of defence against the proposed inquiry for misconduct on charges of unauthorized absence from duty from 2.11.93.

Ref: Your Office Memorandum No.HWB/IRS/5(18)/44 dated 5/18th January 1995.

Sir,

Your above office memorandum on the subject under reference was received by me on 7th Feb.'95 and as required under para 2 of the said memorandum I most humbly and respectfully beg to submit my written statement of defence as follows:

1. That after performing 'A' shift duty on 1.11.93, when I returned to my quarter, one of my relations from my native village was awaiting me to take to Cuttack on account of the serious illness of my mother there. On hearing such news I was shocked and just by giving a plain paper application to my C.C.(CHIEF CHEMIST) I left the headquarters on 1.11.93 A.N. The said application was addressed to the C.C.(CHIEF CHEMIST) with request to allow headquarters leaving permission in anticipation of approval. The application was handed over to my neighbour, who later informed me that on account of his forgetfulness, he could not deliver that application to the C.C.(CHIEF CHEMIST).

2. That on account of my severe shock because of my mother's serious illness, I suffered from Acid Peptic Disease a disease from which I was earlier suffering also for which I was treated under Dr.S.B.Acharya, M.S., Surgical Specialist of Govt. City Hospital, Cuttack. The said attending physician also stressed upon me and advised me not to leave Cuttack unless advised by him since at any moment it was apprehended that I may be admitted in the S.C.B.Medical College Hospital, Cuttack, for treatment and surgery.

3. That the communication dated 15.11.93, 13.1.94, 15.1.94, 14.2.94, 11.3.94, 12.4.94 and 23.5.94 stated to have been sent to me have not at all been received by me as they were sent in my village address and at the relevant times, I was at Cuttack.

4. That I admit to have sent telegrams dtd.9.2.94, 16.3.94 (16.3.94) and 16.5.94 respectively. The confirmatory copies of those telegrams were also sent by ordinary post, but no mention has been made in the statement of imputations with regard to its receipt by my authorities. Further more, I have also sent telegrams dtd.22.7.94, 17.9.94, 28.9.94, 4.12.94, 3.2.95 and 6.2.95 to the C.C.(CHIEF CHEMIST) for HWP-Talcher from time to time with request to allow extension of leave. The confirmatory copies of the said telegrams along with a copy of the Doctor's certificate were also sent by me in ordinary post. My the-then postal address was given in those communications sent in ordy. Post. But, I find that no mention in respect of these communications have been made in the statement of imputations.

5. That I joined my duties on 7.2.95 at HWP-Talcher. The period of my absence from 2-11-93 to 6-2-95 was spent at Cuttack on account of my own illness. During the said period I was under treatment of Dr.S.B.Acharya, M.S., Surgical Specialist, Junior Class-I, Govt. City

Hospital, Cuttack. IN this connection I beg to submit herewith a photocopy of the Doctor's certificate which has been duly countersigned by the Chief District Medical Officer (Civil Surgeon), Cuttack (Orissa). In the said certificate I have been certified to be fit to resume duties w.e.f. 7.2.95.

6. That in support of the telegrams sent by me as stated at para-4 above, I beg to enclose herewith a photo copy of the relevant telegram receipts for favour of your kind ready reference.


7. That as a matter of fact, my mother was also bedridden when I sent telegram dtd.16.5.94. It is only my own sickness that compelled me to remain on leave. Had it not been so, I would have never lost the chance to attend interview for my promotion on 5.4.94.

8. That during my past 12 years of service under your kind disposal, I have all along maintained my integrity and absolute devotion to duty. I have never committed any act which constituted a misconduct or misdemeanour in the past. It is also the lack of communication from my end to my employer and communication from my employer's side to me which has given rise to the present situation. Because of my own sickness, I had to depend on others to send the communications to HWP-Talcher and this is another reason for not keeping contact during the period of absence.

I would therefore most earnestly request you and to further pray you Sir, kindly be pleased to accept my aforesaid submissions and be further pleased to drop the proposed inquiry for which act of your kindness I shall be highly obliged. I further assure that such things will not be repeated in future and I will put best of my efforts to ensure that I am regular and devoted to my duty."

Having regard to the above, we feel it proper to discuss on each and every aspect of the matter, before considering the grounds urged by the applicant as indicated above.

5.1 The applicant in his written statement of defence to the proposed inquiry has submitted in paragraph 1 that having performed his 'A' shift duty on 1.11.1993, when he returned to quarters one of his relatives was waiting to take him to Cuttack, due to serious illness of his mother there, which shocked him and just handing over a plain paper application addressed to the Chief Chemist to allow headquarters leaving permission to one of his neighbours, in anticipation of approval, he left the headquarters on 1.11.93 A.N., though later



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on the said neighbour informed him that due to forgetfulness, he had not handed over the said application to the Chief Chemist. It is not clear as to whether the applicant had applied for leave together with headquarters leaving permission and if according to him he had applied for headquarters leaving permission, whether that by itself amounts to granting him leave and even if he had applied for leave or headquarters leaving permission, as the case may be, the applicant has nowhere stated up to which date he had so sought from 2.11.93, presuming that he had submitted such an application to the Chief Chemist, let alone, the steps he should have taken having come to know from his neighbour at a later stage that due to forgetfulness the said letter could not be delivered. Thus from this statement of the applicant, two things are very clear that the applicant has not specified the date up to which he wanted headquarters leaving permission or leave, as the case may be from 2.11.93 and although he was in communicating term with his neighbour, who stated that due to forgetfulness he could not hand over the application, the applicant did not take any further step to prove his bona fide. Further it is to be noted that while seeking leave with headquarters leaving permission, it is incumbent on the part of the concerned employee to indicate his leave address, so that the employer in case of contingency would be able to communicate.


5.2 It is the next statement of the applicant that being shocked because of his mother's illness, he suffered from Acid Peptic Disease and as such his treating physician of Government City Hospital at Cuttack advised him not to



12 leave Cuttack as it was apprehended that he might be admitted to SCB Medical College for treatment and surgery. This statement of the applicant is based on no evidence. The applicant even nowhere has stated as to the date when exactly he suffered from the above disease and when he received such advice from the treating physician on being consulted, although not as an indoor patient but as an outdoor patient.

5.3 According to the applicant, he had sent telegrams on 9.2.94, 16.3.94, 15.5.94, 22.7.94, 28.9.94, 4.12.94, 3.2.95 and 6.2.95 to the Department, the confirmatory copies along with the Doctor's certificate being sent through ordinary post indicating his 'the-then postal address'. In this connection, it is to be noted that the applicant for the first time had sent telegram on 9.2.94 seeking extension of leave on the ground of ill health. As indicated earlier, the applicant has not made it clear when he left headquarters on 1.11.93 A.N. up to which date he had sought for granting him leave. The applicant has also not annexed to the O.A. the written statement of defence against the inquiry report enabling the Tribunal to consider the same in its proper perspective. He has also not made it clear regarding the date and nature of Doctor's certificate which is stated to have been sent by ordinary post indicating his leave address. However, even if he had sent unfit certificate from his treating physician along with confirmatory copies of telegrams, it was not expected of him to have posted the same by ordinary post, as onus lies on the applicant to prove so. It is to be noted that when the applicant left headquarters it was due to his mother's illness. But when





he fell ill, it was his duty to have been in communication with the authorities, while seeking extension of leave, by bringing to their notice the unfit certificate, particularly when he could come to know that due to forgetfulness, his application could not be handed over by his neighbour to the authorities concerned. Besides, the extension of leave is always in continuation of the leave already applied for and the applicant has not brought on record the date up to which he prayed for leave of any kind.

6. In the conspectus of above facts, we have to consider the grounds urged by the applicant in support of his case. With regard to first grounds that the Disciplinary Authority after recording his findings that receipt of leave/headquarters leaving application is open to doubt, should not have arrived at a conclusion as has been arrived at. This point we have considered having regard to written statement against the proposed inquiry submitted by the applicant at Annexure A/2. We are at one with the applicant that under a predicament he had to leave the headquarters and in this context, we have discussed above presuming that the applicant had submitted a leave/headquarters leaving permission to be put up before his authorities through one of his neighbours. It is the case of the applicant that soon after reaching Cuttack he fell ill. It is also admitted by the applicant that the application which he had handed over to his neighbour could not be delivered by him due to forgetfulness of his neighbour. It is also very clear that the applicant notwithstanding his illness had not received the treatment as indoor



patient. Therefore, it is quite evident that the situation was not beyond his control to send a revised leave application enclosing thereto the unfit medical certificate instantly as he was out of headquarters due to the illness of his mother, but he slept over the matter for the reasons best known. It is the case of the applicant that he sent telegram on 9.2.94 for the first time seeking extension of leave, whereas it has been admitted by him that soon after reaching Cuttack he fell ill. If so, nothing prevented him from sending a copy of unfit certificate while sending confirmatory copy of telegram dated 9.2.94, but he sent some Doctor's certificate in the year 1995, while sending confirmatory copy of telegram. This by itself makes it clear that the applicant has not been able to establish that he fell ill soon after he arrived at Cuttack. Apart from this, extension of leave is always with reference to last leave. It is not the case of the applicant that he had applied for leave up to 8.2.94 and the telegram dated 9.2.94 was in continuation of that. Therefore, even if the leave/headquarters leaving permission application submitted by him while leaving headquarters is taken into consideration, in the absence of any material showing that the applicant had applied for leave up to 8.2.94, the telegram dated 9.2.94 seeking extension of leave cannot be said to be in continuation of leave applied for by him up to 8.2.1994,

7. In view of our above discussion, ground nos. (ii) and (iii) as mentioned above need no consideration.



8. As regards ground no.(iv) that the Disciplinary Authority acted contrary to the observation of this Tribunal, it is to be noted that in a disciplinary matter, the Inquiry Officer, the Presenting Officer, the Disciplinary Authority and the Appellate Authority are expected to act impartially, without being influenced, and also in accordance with the procedure as prescribed. Thus each one is having its own and independent power, authority and jurisdiction. Keeping the above factums in view, we have looked into the observations of this Tribunal in paragraph 5 of the order in OA No.403 of 1998. But the fact remains that this Tribunal did not feel inclined to strike down the inquiry report or the findings of the Disciplinary Authority, as the case may be, to the extent it observed wrongful. The Tribunal also did not issue any direction to conduct enquiry from a stage where it found to be not in consistence with rules giving a scope to the Disciplinary Authority to have a fresh look. In the circumstances, the inquiry report having remained unfettered, there was no other option left for the Disciplinary Authority than to consider the report of the Inquiry Officer and take a view as to whether the punishment order passed by it was ~~in~~ commensurate with the gravity of the misconduct proved. Be that as it may, in view of our discussions in the preceding paragraphs regarding telegrams, letters, etc., sent by the applicant from time to time, with the presumption that everything had been received by the Department, further discussion on this point will not improve the matter any more.



9 . As regards the ground urged by the applicant that the Disciplinary Authority having regularized the period of absence, there is no misconduct of unauthorized absence and therefore, the punishment of reduction in rank is liable to be set aside, it is the case of the Respondents in their counter that keeping in view the observation of this Tribunal and the Hon'ble High Court of Orissa, the Disciplinary Authority has ordered that the period of unauthorized absence of the applicant from 2.11.93 to 6.2.95 is treated as Extraordinary Leave and his absence is regularized. It has been specifically submitted by the Respondents in the counter that the applicant having remained absent unauthorizedly for unduly long period without indicating his leave address, the Disciplinary Authority was not convinced with whatever explanation was offered by the applicant, nor has the Disciplinary Authority in order dated 20.5.2005 anywhere stated that the unauthorized absence of the applicant is regularized by grant of EOL on medical certificate and therefore, it is maintained that the penalty imposed is in order. We have considered the submissions of both the sides in this regard. Treating the period of unauthorized absence by itself does not mean that the punishment imposed has been wiped out as the penalty has been imposed because of proved misconduct or misbehaviour which is unbecoming on the part of a Government servant. This apart, the unauthorized absence regularized by granting EOL, in effect, obviates the break in service of the applicant.



10.

Having regard to the above discussions, we hold as under:

(i) The applicant had never applied for leave before leaving headquarters and even if he had applied for 'headquarters leaving permission', the same cannot be construed that he had applied for leave, particularly when he failed to indicate or establish from which date up to which date he sought such leave or headquarters leaving permission, as the case may be.

(ii) Even if the applicant had applied on a plain paper for headquarters leaving permission, it was his onerous responsibility to indicate his address for communication or leave address. Having not done so, all along during the course of his absence, the applicant cannot be said to have acted with integrity and due devotion to duty.

(iii) The applicant's leaving the headquarters was due to the illness of his mother. But when he fell ill immediately it was imperative on his part to seek leave by enclosing unfit medical certificate, particularly when he could know that the headquarters leaving application which he had left with his neighbour could not be handed over to his authority. Having failed to do so, the applicant's absence from duty was definitely unauthorized.

(iv) Having not specified the date of last leave, the leave whatever the applicant had applied for by telegrams seeking extension of leave from 9.2.1994 cannot be said to be in continuation of the leave already applied for.



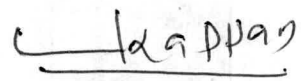
(v) Mere treatment of the period of unauthorized absence by granting EOL does not wipe out the charge of unauthorized absence from duty or the punishment imposed for such proved misconduct on the part of the applicant.

(vii) The findings of the Tribunal in the earlier O.A. that the Inquiry Officer should have dealt and discussed each evidence cannot make the proceedings vitiated unless the extent to which it so held had been struck off and therefore, the Respondents, particularly the Inquiry Officer had no option to delve into the matter any further.

(viii) Accordingly, we hold that the applicant has rightly been proceeded against and the charges having been established, there is no infirmity in the orders passed by the Disciplinary Authority and the Appellate Authority.

11. In consideration of all the above, the O.A. fails. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER