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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.704 OF 2006
Cuttack this the 5th day of December, 2007

Sri Rohit Kumar Nayak Applicant

Vs.

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?

Yes.

2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

No


(GAUTAM RAY)
MEMBER(A)


(G. SHANTHAPPA)
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.704 OF 2006

DATED THE 5th December 2007

HON'BLE SHRI G. SHANTHAPPA ...MEMBER(J)

HON'BLE SHRI GAUTAM RAY ...MEMBER(A)

Sri Rohit Kumar Nayak,
aged about 35 years,
S/o Mohan Nayak, at present
near Bank colony, P.R.Peta,
Jeypore, Dist.Koraput,
Orissa.

...Applicant

(By Advocate Shri K.P.Mishra)

Vs.

1. Union of India,
represented through it's Secretary to
the Ministry of Home Affairs,
Government of India Security
Division (NCB Section),
Lok Nayak Bhawan, New Delhi.
2. Director General,
Narcotics Control Bureau,
Ministry of Home Affairs,
Wing No.5, W.B.No.1,
R.K.Puram, New Delhi.
3. Deputy Director (Administration),
Narcotics Control Bureau,
Sector-1, R.K.Puram, New Delhi.

...Respondents

(By Additional Central Government Standing Counsel Shri S.B.Jena)

ORDER


SHRI GAUTAM RAY, MEMBER(A)

This Original Application under Section 19 of the Administrative Tribunals Act, 1985 has been filed against Order Nos.11/8/3/99-Admn dated 1-8-2002 (Annexure 11) and F.No.11/1/(1)99-Estt. dated 9-5-2006 (Annexure 14) passed by the 3rd respondent herein.

2. Briefly stated, the facts of the case of the applicant are as follows:-

(a) The applicant while working as a Radio Technician in the Mumbai Zonal Unit from 1995 was transferred to the Headquarters, New Delhi in 1999 where he was promoted to the post of Technical Assistant in 2000. On 13.11.2000 while on duty the applicant was unable to move and was rushed to Neurologist in New Delhi. As there was none to look after him during treatment, he took 3 days' leave w.e.f. 15-11-2000 to 17-11-2000 suffixing 18-11-2000 and 19-11-2000 being Saturday and Sunday with permission to leave New Delhi. Thereafter he had been under continuous treatment under the CDMO Koraput. As his condition deteriorated day by day the applicant extended his leave on medical ground with due permission of the authorities. Medical certificates which were furnished alongwith the leave applications revealed that the applicant was suffering from PID and Parapalsis. Copies of one of the leave applications and copies of the prescriptions are enclosed as Annexures 'A-1' and 'A-2' to this OA. It is the contention of the applicant that though he was submitting his applications for extension of leave on medical ground with medical certificates but the 3rd respondent issued orders to the applicant for rejoining duty within a short period. On 21-5-2001 the 3rd respondent sought for opinion from the Chief Medical Officer, District Hospital, Jeypore regarding the applicant's health condition. In reply thereto, the CDMO, District Hospital, Jeypore communicated the 3rd respondent the expert's opinion that the applicant was not cured from the disease and advised to take rest for further 15 days from 16-6-2001. Copies of the above mentioned letter dated 21-5-2001 and the Expert's opinion regarding the health condition of the applicant are enclosed as Annexures 'A-4' and 'A-5' (series) to this OA.

(b) The applicant submits that on 13-9-2001 the 3rd respondent communicated the charge-sheet against the applicant alleging inter alia that the



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applicant was willfully absenting from duty after expiry of leave inspite of repeated instructions from the office. A copy of the Charge sheet is enclosed as Annexure 'A-6' to this OA. The applicant submits that as he was bed-ridden and lost memory due to administering high antibiotics, he could not represent or reply to the charges framed against him. However, disciplinary proceedings were initiated under Rule 14 of the CCS (CCA) Rules, 1965 for unauthorised absence by appointing an Enquiry Officer to enquire into the charges framed against him. Copy of the letter dated 21-12-2001 showing appointment of the Enquiry Officer is enclosed as Annexure 'A-7' to this O.A. It is the contention of the applicant that as the Enquiry Officer did not communicate the date of enquiry to the applicant, the applicant could not participate in the said enquiry. The Enquiry Officer concluded the inquiry ex parte and the Disciplinary Authority supplied the aforesaid Enquiry Report to the applicant and directed the applicant to give representation, if any, within a period of 15 days from the date of receipt of the aforesaid Enquiry Report vide letter dated 17-4-2002, a copy of which is enclosed as Annexure 'A-8' to this O.A. The applicant submits that due to mental illness i.e., Bipolar Affective Disorder, the applicant was not in a position to make any correspondence with the authorities during the period from 5-7-2001 to 3-1-2003. Thereafter the 3rd respondent passed the order of removal of the applicant from service on 1-8-2002. Copies of medical certificates showing that the applicant was suffering from mental illness from the period 5-7-2001 to 4-1-2002 and 5-1-2002 to 3-1-2003 and the removal order dated 1-8-2002 passed by the 3rd respondent are enclosed as Annexures 'A-9', 'A-10' and 'A-11' respectively to this OA.

(c) The applicant further submits that the applicant was suffering from mental illness i.e., Bipolar Affective Disorder from 4-1-2003 to 3-1-2006 and he was declared medically fit to resume any official duty from 4-1-2006 onwards.

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The applicant preferred an Appeal with all medical records under Rule 27 of the CCS (CCA) Rules, 1965 against the order of removal from service before the Director General, Narcotics Control Bureau, the 2nd respondent herein but on 9-5-2006 the 3rd respondent communicated to the applicant that the competent authority has rejected the appeal. Copies of the appeal of the applicant and the order of rejection of the Appeal communicated by the 3rd respondent dated 9-5-2006 are enclosed as Annexure 'A-13' and 'A-14' respectively to this O.A. The applicant contends that as the competent authority/appellate authority did not pass any speaking order and rejected the appeal of the applicant without due application of mind and ignoring the provisions of Rules governing the field, the applicant preferred a Revision Petition on 21-7-2006 before the Director General, Narcotics Control Bureau. Being aggrieved by the impugned orders at Annexures '11' and '14' to this OA, applicant has filed this Application seeking for the following reliefs:-

"(i) quash the order of removal dated 01.8.2002 under Annexure-11 and order of rejection of Appeal under Annexure-14 by concurrently holding the same as bad, illegal and cannot be sustainable or maintainable in the eye of law;


(ii) direct/order the Respondents to reinstate the applicant in service with immediate effect with all consequential monetary benefits thereto and thereby grant extraordinary leave for the aforesaid period as per Rule 32 of the Central Civil Services (Leave) Rules, 1972;

(iii) pass such other order(s)/direction (s) as may be deemed fit and proper in the bonafide interest of justice."

3. The respondents have contested the Application by filing a counter reply. The respondents have stated that facts and circumstances which led to the termination of the applicant. According to them, the applicant applied for 3 days' casual leave from 15-11-2000 to 17-11-2000 suffixing Saturday and Sunday on 18.11.2000 and 19.11.2000 respectively citing the illness of his grand mother

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and proceeded to his home town in Orissa. Copy of the leave application is enclosed as Annexure 'R-1' to this reply. As he did not join duty after expiry of the leave, he was directed vide office letter dated 24-1-2001 to join duty. However, the applicant vide his application dated 7-2-2001 sent two medical certificates dated 20-11-2000 and 5-1-2001 for medical leave for six weeks. Copies of the letters dated 24-1-2001 and 7-2-2001 are enclosed as Annexures 'R-2' and 'R-3' respectively. As the applicant failed to join duty, vide office letters dated 14-2-2001 and 13-3-2001 the respondents directed him to join duty immediately failing which disciplinary action for unauthorised absence would be taken against him. Copies of the letters dated 14-2-2001 and 13-3-2001 are enclosed as Annexure 'R-4' and 'R-5' respectively to this OA. The respondents further state that vide office letter dated 14-4-2001, copy of which is enclosed as Annexure 'R-6' to this reply, the Chief Medical Officer, Dist. Hospital, Jeypore, Orissa was requested to arrange medical examination of the applicant. In reply the Office of the Sub-Divisional Medical Officer, Jeypore, Orissa vide letter dated 6-6-2001 informed that the Second Medical opinion cannot be ascertained as the doctor who gave the medical certificate was transferred and posted as Assistant Medical Officer, Koraput. The Office of the CMO, Koraput vide letter dated 16-6-2001 forwarded the medical certificate dated 16-6-2001 stating that the applicant was not cured and was advised rest and treatment for further 15 days. Copies of the letter dated 16-6-2001 and the medical certificate are enclosed as Annexures 'R-8' and 'R-9' respectively to this OA. The respondents submit that thereafter the applicant neither joined duties nor there was any communication from him who remained on unauthorised absence from 1-7-2001. The applicant was served with a memorandum dated 13-9-2001 (Annexure 'A-6' to the OA) containing all the charges of imputation of misconduct/misbehaviour on which the inquiry under Rule 14 of the CCS (CCA) Rules was proposed to be



undertaken. All the supporting documents were also supplied to the applicant at his permanent address giving him ten days' time to reply to the aforesaid Memorandum. The respondents further state that since no written communication or a personal appearance was received from the applicant, after waiting for two months, an inquiry was ordered vide office order dated 21-12-2001 (Annexure 'A-7' to the OA) and an Inquiry Officer was appointed. The respondents further submit that even after service of the Memo of Charges by the disciplinary authority and appointment of the Inquiry Officer, the applicant did not respond through any written communication or by personal appearance. Therefore, the decision to remove the applicant from service as per Rule was taken ex parte. The applicant was served with a copy of the Inquiry Report dated 26-3-2002 vide Memo dated 17-4-2002 (Annexure 'A-8' to the OA) and the applicant was intimated that before coming to a decision about the quantum of the penalty proposed, he was given an opportunity of personal hearing to explain the circumstances why penal action should not be taken against him. The respondents state that a disciplinary proceeding under Rule 14 of the CCS (CCA) Rules, 1965 was initiated against the applicant and on conclusion of the said disciplinary proceedings, the disciplinary authority awarded him the penalty of 'removal from service' w.e.f. 1-8-2002 vide order dated 1-8-2002 (Annexure A-10 to the OA). The respondents further state that the applicant vide his appeal dated 19-1-2006 (Annexure 'A-13' to the OA) stated that he was unwell having psychological problems and his case for reinstatement may be considered. However, he himself had written to the office vide letter dated 4-9-2002 for settlement of the dues with regard to CGEIS and GPF. When contacted by the office for submission of certain forms for final payment of GPF, the applicant promptly signed and intimated his Bank details and also his new address as Aska, Dist. Ganjam, Orissa and submitted the required documents. This shows

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that he was well aware of the removal from service order dated 1-8-2002. Copy of the letter dated 4-9-2002 is enclosed as Annexure 'R-10' to the reply. The respondents, therefore, pray that this Original Application be rejected.

4. We have heard Mr.K.P.Mishra, learned counsel with M/s S. Mohapatra, T.P.Tripathy and L.P.Dwivedi, learned counsel appearing for the applicant and Mr.S.B.Jena, learned Addl. Standing Counsel appearing for the respondents. We have perused the pleadings of both the parties and the material documents produced before us.

5. The applicant was issued with the Charge Memo. alleging the charges as mentioned in the Memo. Admittedly he did not reply to the said Charge Memo. It is the contention of the applicant that due to his sickness he could not reply to the Charge Memo. The Inquiry Officer was appointed as there was no reply filed by the applicant denying the charges. The applicant in para-4.9 of his O.A. has categorically stated that he has not been informed about the date fixed for the inquiry. The respondents have not denied the said contention while replying to para 4.9 (at page 7) of their counter reply. In fact, nowhere in their counter reply they have stated that the applicant was informed about the date fixed for the inquiry. The order of the appellate authority has not been sent to the applicant. The Deputy Director (Admn) vide letter No.F.No.11/1(1)/99-Estt/10,002 dated 9-5-2006 (Annexure 'A-14' at page 43 of the OA) informed the applicant about the consideration and rejection of his appeal by the competent authority. Even in the Inquiry Officer's report, there is no mention about the fact that the applicant was informed about the date fixed for the Enquiry. In this context it is required to refer to DG. P&T letter No.101/2/80-Disc.II dated 1.10.1980 which reads as under:-

" Need for thorough examination of appeal and issue of a 'speaking order'.- It has been noticed that there is a growing tendency on the on the part of the punished officials to submit petitions to the P&T Board and the President. The employees have a right to submit the petitions to the higher authorities and accordingly this trend

cannot be put under objection. However, while dealing with the petitions in the Directorate, an impression has been created that a number of petitions could be avoided if the Appellate Authorities had made an objective assessment of the findings of the Disciplinary Authorities and issued detailed orders - what is termed as speaking order. A number of points are generally raised in the appeal and the appellant reasonably expects that the Appellate Authority would give weightage to those points before coming to any decision on his request. While it may be that the Appellate Authorities had made a mental examination of those points, but their brief observations to the effect that they were not tenable cannot satisfy the appellant. It is necessary that all the points raised by the appellant are summarized in the orders and are also logically discussed to show how they are not tenable or acceptable. Unless this is done, the appellants are not likely to be satisfied with the orders and will apparently submit petition to the higher authorities even though there may not be sufficient justification therefor.

2. Sub-rule (2) of Rule 27 clearly lays down that the Appellate Authority shall consider -

- (a) whether the procedure laid down in the CCS (CCA) Rules has been complied with and if not whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
- (b) whether the findings of the Disciplinary Authority are warranted by the evidences on the record; and
- (c) whether the penalty is adequate, inadequate or severe.

Thus the rule requires that even if the appellant has not brought out any new points in the appeal, it is obligatory on the part of the Appellate Authority to discuss how there has been no procedural flaw or denial of opportunity of defence and that the findings of the Disciplinary Authority are based on evidences and are just. This is rarely done and the result is obvious. It has also created a feeling (though may not be quite correct) that the decisions of the Appellate Authority are arbitrary and summary in nature. The Appellate Authorities should bear this in mind and issue the appellate orders in such a way that such unjust feelings or impressions are not created. This is possible only if the appellate orders discuss thoroughly the following points:-

- (i) the procedural aspects as well as the justness of the findings of the Disciplinary Authority with reference to the admissible evidences;
- (ii) a proper discussion of the points raised in the appeal; and

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(iii) any objective assessment of the lapse on the part of the punished official with a view to coming to a decision that the charge(s) had been established and that the penalty is appropriate/adequate and does not require to be either toned down or enhanced.

3. Heads of Circles, etc., are requested to bring these instructions to the notice of all the officers so that the Appellate Authorities may not in any case be found to be lacking in thoroughness of examination of appeals as required under Rule 27 of the CCS(CCA) Rules."

That being so, it is very much essential to communicate the speaking order of the appellate authority to the charged official. Mere information to the charged official by the disciplinary authority that his appeal has been considered and rejected by the competent authority is not sufficient. Unless the speaking order is communicated, it is not possible for the charged official to make an appropriate Revision Petition to the Revising Authority. Moreover, from the order it can be understood whether the appellate authority has passed its order in conformity with the provisions contained in the Rule as mentioned in the letter dated 1.10.1980 (supra).

6. As mentioned above, the contention of the applicant that he has not been informed of the date fixed for the inquiry has not been denied by the respondents in their counter reply. There is nothing before us to show that applicant was informed of the date fixed for the inquiry. Without informing the charged official of the date of inquiry fixed for, holding ex parte inquiry amounts to denial of opportunity to the charged official to defend his case. Since the order of the appellate authority has not been sent to the charged official, it is also not known whether the appellate authority has considered this aspect.

7. We, therefore, quash and set aside F.No.11/1(1)/99-Estt. dated 9.5.2006 (Annexure A-14 to the O.A.) passed by the 3rd respondent and direct the appellate authority to communicate the speaking order to the applicant within two

months from the date of receipt of copy of this order. The Original Application is disposed of accordingly with no order as to costs.


(GAUTAM RAY)
MEMBER(A)


(G. SHANTHAPPA)
MEMBER(J)

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