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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.874 OF 2006
Cuttack this the 6th day of March, 2009

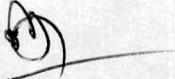
Bijaya Kumar Biswal ... Applicant
Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

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

(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER

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ORIGINAL APPLICATION NO.874 OF 2006

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CORAM:

HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

AND

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

Bijaya Kumar Biswal, aged about 47 years, Son of late Bansidhar Biswal, At-Haladia, PO-Tiran, PS-Tirtol, Dist-Jagatsinghpur
...Applicant

By the Advocates: M/s.K.K.Swain

P.N.Mohanty

U.Chhotray

-VERSUS-

1. Union of India, Ministry of Defence, represented through its Secretary, New Delhi
2. General Manager, Gn and Shell Factory, Cossipore, Kolkata-2, West Bengal
3. Director General of Ordnance Factory, Ordnance Factory Board, 10A Shaheed K.Bose Road, Kolkata-700 001

...Respondents

By the Advocates: Mr.S.Bari^K, ASC

ORDER

HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

Aggrieved by the order removing him from service, the applicant has filed this Original Application seeking the following relief:

“...to quash the impugned order passed by the disciplinary authority under Annexure-2 and the order of the Appellate Authority under Annexure-4 and the applicant may be reinstated in his former post with all service benefits including back wages for the intervening period”

2. It is the case of the applicant that he was appointed as Labour-B (unskilled) on 15.12.1986 under Rehabilitation Assistance Scheme and

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while continuing as such, his service was confirmed. The applicant has submitted that due to critical condition of his parents, he took leave on 22.5.2000 and it was because the condition of his parents further deteriorated, he extended the leave by intimating the authorities. It has been submitted that while he was on leave, a charge sheet was issued to him on 27.2.2001 alleging that he had remained absent unauthorizedly and had not reported to the authorities despite correspondences made by the authorities. The applicant is stated to have submitted his explanation to the said charge sheet on 23.3.2001. However, it has been averred that an inquiry was conducted behind his back without affording him an opportunity of being heard and based on the report of the Inquiry Officer, the Disciplinary Authority imposed punishment of removal from service. The appeal preferred by the applicant was also rejected by the Appellate Authority. Hence, by assailing the above action and the impugned orders emanating therefrom, the applicant has moved this Tribunal with the prayers referred to above.

3. The Respondent-Department have filed a detailed counter reply opposing the prayer of the applicant. No rejoinder has been filed by the applicant to the counter-reply of the Respondents.

4. This matter came up for hearing on 5.12.2008 when the learned counsel for the applicant was absent. The Tribunal heard Shri S.Barak, learned Addl. Standing Counsel for the Respondents and perused the materials on record.

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5. It is the case of the applicant that along with the charge sheet, he should have been supplied with the copy of the document based on which such a charge had been leveled against him. It is the further contention of the applicant that the inquiry was concluded without giving him an opportunity of being heard and therefore, the disciplinary proceeding initiated against him is violative of the principles of natural justice and therefore, the impugned orders of the Disciplinary Authority and the Appellate Authority are bad in law. It has been submitted by the applicant that the authorities should have imposed on him a minor penalty instead of major penalty of removal from service and therefore, the punishment so imposed is disproportionate.

6. Per contra, the Respondents in their counter have stated that due to unauthorized absence, the applicant was charge-sheeted under Rule 16 of CCS(CCA)Rules, 1965, which was sent to him per Registered Post with A.D. as per his home address, which returned undelivered with the postal remark "Addressee not found/Left". However, the Respondents, keeping in view the long absence of the applicant again re-drew the charge sheet under Rule 14 of the CCS(CCA) Rules which having been sent to the applicant under Registered post with A.D. was received by him(Annexure-R/2). The applicant, in reply to the said charge sheet represented to the authorities admitting his lapse which was absolutely circumstantial. It was stated by him further that he was compelled to remain absent from duties due to super cyclone in Orissa which

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devastated his village and he was also badly affected by the same natural calamity and while so mentioning, he inter alia, indicated to the authorities to treat that representation as resignation, since he would not be able to report for duty as per Annexure-R/3. The Respondents have stated that keeping in view the applicant's outstanding dues towards HBA no action towards acceptance of resignation was taken and the applicant was directed to resume his duty immediately as per letter dated 1.12.2002. It is stated that the applicant, without resuming duties again represented as per his representation dated 4.2.2003 praying for his transfer at any place in Orissa or elsewhere in India. While the matter stood thus, in consideration of the statement of defence, an inquiry was directed to be conducted and in the report the I.O. held the charges proved against the applicant. It has been submitted that ample opportunity was given to the applicant in course of inquiry, but he did not avail of it and this is how, the inquiry was completed ex parte. The applicant was also supplied with copy of the inquiry report, to which, though late, he had also replied. Disciplinary Authority, after considering all the materials and also the representation made by the applicant to the inquiry report, imposed on him the punishment of removal from service. Similarly, the appeal preferred by the applicant was exhaustively dealt with by the Appellate Authority who upheld the punishment imposed by the Disciplinary Authority. There being no procedural irregularity, the



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Respondents have submitted that the Tribunal should not interfere in the matter.

7. Having regard to the above submissions, the question to be considered in this O.A. is whether the applicant deserves any favourable treatment by this Tribunal or not?

8. We have considered the prayer of the applicant and also have gone through the impugned orders passed by the authorities. From the records, it reveals that the Respondents have already admitted the fact that the show cause notice and other letters issued to the applicant to his residential address were not served on him and all these letters were returned with endorsement: 'Addressee not found/Left'. However, it is to be noted that when he received a letter from the authorities for remittance of the loan amount, which he had taken from the Department, he had replied to the effect that he may be allowed to resign from service, which means that the applicant was actually aware of the inquiry ordered against him and the steps taken against him though late and if so, initiation of proceedings against him on the ground that he was unauthorisedly absent from duties with effect from 22.5.2000 is justified. Hence, the orders now passed both by the Disciplinary Authority and the Appellate Authority cannot be considered irregular or illegal. But at this juncture, we are not ignoring the fact that the applicant was not in a position to approach the authorities by making application for regularization of leave due to cares and anxieties. As it is seen from the postal remarks that all the letters

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addressed to the applicant were returned with endorsement: 'Addressee not found/left', we are of the opinion that the prayer of the applicant for reinstatement may not be justifiable. However, if the applicant files a representation for reconsideration of the punishment, within one month from the date of receipt of this order, the Respondents, 1 and 2 shall consider the same as a mercy petition and pass appropriate orders in the matter of awarding lesser punishment than the removal from service within a period of one month from the date of receipt of such representation. This observation is made by this Tribunal keeping in mind that the applicant has rendered service for more than 14 years to the Institution.

9. The O.A. is disposed of as above. No costs.


(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER


(K.THANKAPPAN)
JUDICIAL MEMBER