

9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.NO. 431 of 2002

Cuttack, this the 16th day of April, 2004

Chittaranjan Raula.

....

Applicant.

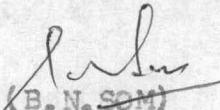
-Versus-

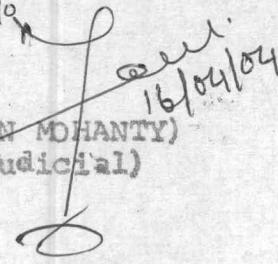
Union of India & Others.

Respondents.

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No


(B.N. SOM)
Vice-Chairman


(MANORANJAN MOHANTY)
Member (Judicial)

16/04/04

10
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 431 of 2002
Cuttack, this the 16th day of April, 2004.

C O R A M:

THE HON'BLE MR. B. N. SOM, VICE-CHAIRMAN
A N D
THE HON'BLE MR. M. R. MOHANTY, MEMBER (JUDL.).

....

Chitaranjan Raula, aged about 38 years,
S/o, Late Chaturbhuj Roul, Vill. Baraboria,
PO: Patapur, Via: Bahugram, PS: Jagatpur,
District-Cuttack, Orissa. Applicant.

By legal practitioner: Mr. S. C. Samantaray, Advocate.

-Versus-

1. Union of India represented through its General Manager, South Eastern Railway, Garden Reach, Kolkata-43.
2. The Workshop Manager, South Eastern Railway, Carriage Workshop, Kharagpur.
3. Deputy C.M.E. (Carriage Workshop) Kharagpur Workshop, Kharagpur.

.... Respondents.

By legal practitioner: Mr. B. K. Bal, Addl. Standing Counsel.

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O R D E R

MR. MANDIRANJAN MO HANTY, MEMBER (JUDICIAL) :-

Applicant, while working as Khalasi (w.e.f. 26.03.1983) under the Deputy Chief Mechanical Engineer (Carriage Workshop) at Kharagpur Division of South Eastern Railway, remained absent from duty (due to his mental disorder) from 11.04.1992 to 23.03.1995 and it is the case of the Applicant that during the period he was under the treatment of a Psychiatrist at R.M.A., Ranchi and, on being recovered, when he reported to duty on 07.04.1995 (alongwith all medical certificates) he was prohibited from joining on the plea that his services were terminated (vide an order dated 19.1.1994) on the ground of unauthorised absence from duty. He immediately preferred a representation to the Respondent No. 3 to reconsider his case for reinstatement under Annexure-1 dated 7.4.95 and, having been unsuccessful in his attempt, he has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 with the prayer to (a) quash the order bearing No. EC/20/CRR/7075 dated 19.1.1994 issued by the Workshop Manager (carriage) Kharagpur and the order No. EC/20/CRR/213 dated 20/21.4.1995 rejecting the appeal of the Applicant and (b) to direct the Respondents to reinstate the Applicant with all consequential service benefits.

2. Respondents have filed their counter stating therein that the Applicant was unauthorisedly absent from duty w.e.f. 11.4.1992 and, despite due opportunity being given to him, he did not report to duty till 20.5.1993 for which a

disciplinary proceedings was initiated against him and starting from sending charge-sheet till imposition of punishment order, everything were sent to the Applicant in his addresses were returned unserved and, accordingly, the same were pasted in the Departmental Notice Board ~~by~~ per the extent rules. It has been submitted by the Respondents that none of his family members have ever intimated about the illness of the Applicant or his whereabouts. It is submitted that after the removal of the Applicant on 19.1.1994, he was evicted from the Railway quarters which was allotted to him at Kharagpur on 7.7.1994; for the same was allotted to another person namely Sri V.R. Naidu and, at the time of eviction, the Applicant was also not present and, therefore, an inventory of materials was taken/prepared and all the materials were kept under the custody of new allottee in presence of a Sub-Inspector of Police of Town Thana. It has been stated by the Respondents in their counter that the Applicant was intimated to take back all his belongings within one month and, accordingly, all the materials were taken from Shri Naidu on 22.9.94 at 12.00 hours in presence of three witnesses under Annexure-R/7 but surprising enough no such annexure-R/7 has been filed by the Respondents alongwith their counter. It has also been submitted that since the Applicant has been removed from service on 19.1.1994, the Appeal preferred by him on 709-04-1995 after lapse of one year and three months from the date of issuance of the punishment order) the appeal was rejected and communicated to the Applicant.

3. Applicant, by filing a rejoinder, has submitted that, as the family members were attending the Applicant, they were not in a position to give any intimation to the Respondents. It is stated that on 22.9.1994 his signature was taken on a typed order; which is reported to be Annexure-R/7. It is submitted by the Applicant that he had never remained absent unauthorisedly, but such absence was necessitated due to his mental disorder. He has reiterated that he had not received any communication nor the order of punishment. It has been reiterated that no notice was sent to his permanent address and the enquiry was conducted behind his back.

4. We have heard learned counsel for both sides and perused the materials placed on record.

5. Learned counsel for the Applicant has submitted that the absence of the Applicant was ~~not~~ intentional nor deliberate/wilful. It was inevitable for him to remain absent from duty; in the forceable/unavoidable/unexpected circumstances. Further he has argued that the so-called enquiry or punishment order is not sustainable as the same was conducted behind the back of the Applicant. It has been submitted by the learned counsel for the Applicant that where the disciplinary proceedings are intended to be initiated by issuing a charge-sheet, its actual service is essential; as the person to whom the charge-sheet is issued is required to submit his reply and, thereafter, to participate in the proceedings and, since the Applicant was unaware of the factum of initiation of proceedings and imposition of the

order of punishment, he reported to duty, soon after his recovery, and submitted his appeal which ought not to have been rejected on technical ground of limitation. In support of this submission, learned counsel for the Applicant has relied upon the following decisions:-

- a) UNION OF INDIA AND OTHERS vs. GIRIRAJ SHARMA-
reported in AIR 1994 SC 215;
- b) GOVERNMENT OF TAMIL NADU AND ANOTHER Vs. K. RAJARAM APPASAMY-reported in AIR 1997 SC 2439;
- c) UNION OF INDIA AND OTHERS Vs. DINANATH SHANTARAM KARKAR AND OTHERS-reported in AIR 1998 SC 2722;
- d) SYED ZAHEER HUSSAIN Vs. UNION OF INDIA AND ORS-
reported in AIR 1999 SC 3367;
- e) Decision of this Bench rendered in the case of Sailendra Narayan Bhanjadeo Vs. Union of India and others on 3.8.1999 in OA No.128/1997;
- f) JAYASANKAR NAYAK Vs. UNION OF INDIA AND OTHERS-
reported in Vol.95 (2003)CLT 47 (ATC)
- g) BALAJINATH PADHI Vs. UNION OF INDIA AND OTHERS-
reported in 2002(II)OLR(CSR)28.

6. Learned counsel appearing for the Respondents submitted that since the Applicant did not report to duty for a long time, despite due opportunity, it was thought just and expedient to initiate a disciplinary proceedings against him for his wilful unauthorised absence. None of the members of the family of the Applicant had also ever intimated about the illness of the Applicant nor about his treatment at Ranchi. Learned Counsel for the Respondents has strenuously urged that since the Applicant had been absenting himself from duty unauthorisedly, the service of charge-sheet sent to him through Regd. Post should be treated as sufficient. However,

when the notices were returned back to the sender/ employer, the same was pasted in the notice Board in presence of Witnesses. As such, the same having been done according to Rules, no fault can be found out with the Respondents. It was further argued by the Lt. Counsel for the Respondents that once an order is issued and it is sent out to the concerned Government Servant, it must be held to have been communicated to him, no matter when he actually received it. When the Applicant did not join for such a long time, having been found guilty, he was removed from service. The appeal Preferred by the Applicant was dismissed by the Appellate Authority; as the same was preferred beyond the period of time. Hence, it was prayed by the Respondents that there is no ground in this Original Application to interfere in the order of punishment and, therefore, this Original Application is liable to be dismissed.

7. Having heard learned counsel for the parties and having given our anxious thought to the matter, it is seen that the Applicant was away from his duty for a long period of about five years. Basing on the medical certificates produced by the Applicant, it is also prima facie proved, that he was under treatment at Ranchi due to his mental disorder and, soon after his recovery, he reported to duty; when it was intimated to him that he has been terminated from service. The appeal preferred by him

7

ought not to have been rejected on the ground of Limitation; especially when the specific case of the Applicant is that he was sick and under treatment at Ranchi. It has, however, been admitted by the Respondents in their counter (as also during course of argument) that copy of charge-sheet, notice to appear before the Inquiring Officer, order of punishment etc., were sent to the Applicant through Regd. Post; which were un-served. However, no such documents have been filed by the Respondents showing that the papers were sent to the Applicant through Regd. Post. However, the fact remains that the charge-sheet and other papers; which were sent to the Applicant were returned with the postal endorsement 'NOT FOUND'. In the case of Union of India and others Vs. Dinanath Shantaram Karekar and others (supra), relied upon by the Applicant, the Hon'ble Apex Court while dealing with a similar case observed as under:-

"... The charge-sheet which was sent to the Respondent was returned with the Postal endorsement "not found". This indicates that the charge-sheet was not tendered to him even by the postal Authorities. A document sent by registered post can be treated to have been served only when it is established that it was tendered to the addressee. Where the addressee was not available even to the postal authorities and the registered cover was returned to the sender with the endorsement "not found" it cannot be legally treated to have been served. The Appellant should have made further efforts to serve the charge-sheet on the respondent. Single effort, in the circumstances of the case cannot be treated as sufficient. That being so, the very initiation of the departmental proceedings was bad. It was ex parte even from the stage of charge-sheet which, at no stage was served upon the respondent".

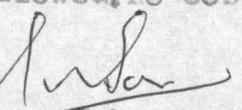
By stating so, it was held by the Hon'ble Supreme Court in the said case that since the Respondents failed to prove that neither the charge-sheet nor the show-cause notice

were ever served upon the delinquent; the entire proceedings were vitiated. In the case of Syed Zaheer Hussain vs. Union of India and others (supra), while dealing with the case of unauthorised absence, it was ordered that dismissal is too harsh and, accordingly, ordered that ends of justice will be served if we set aside the order of dismissal and order for withholding of 50% of back wages from the date of dismissal etc. The other decisions citated by the learned Counsel for the Applicant needs no examination; as law on the subject has been well settled and this Bench of the Tribunal in the case of Balajinath Padhi (supra), after taking into consideration the decisions of Hon'ble Supreme Court, have already held that since adequate steps have not been taken to serve the notices/charge-sheet etc. on the delinquent the order of punishment is vitiated. Here in this instant case also the Respondents have not taken any steps to publish it in any of the news paper making attempt to bring the fact to the notice of the Applicant. In this view of the matter, we have no doubt in our mind to hold that due notice/opportunity was not given to the Applicant (in the disciplinary case) before imposition of the order of termination and, as such, the entire proceedings was vitiated; being violative of the principles of natural justice/Article 14 of the Constitution of India.

8. In view of the settled principles of law and in view of the discussions made above, the order of punishment of removal/termination from service dated 19.1.1994 is not sustainable in the eye of law being violative of the Constitutional mandate/principles of natural justice and the

same is accordingly, hereby, quashed and, as a consequence, the order passed by the Appellate Authority dated 20/21-04-1995 (rejecting his Appeal) is also hereby quashed; with a direction to the Respondents to reinstate the Applicant forthwith. The Respondents are, however, free to initiate action against the Applicant, if so advised for the alleged unauthorised absence for long period.

9. In the result, this Original Application is allowed. No costs.


(B.N. SOM)
VICE-CHAIRMAN


16/04/04
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)