

6

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 887 of 2002
Cuttack, this the 14th day of October, 2004

R.L.Pradhan

.....

Applicant

Vrs.

Union of India & Others

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? 75
2. Whether it be referred to all the Benches of the
Central Administrative Tribunal or not ? 75

14.10.2004
(M.R.MOHANTY)
MEMBER (JUDICIAL)

14.10.2004
(B.N.SOM)
VICE-CHAIRMAN

X

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 837 of 2002
Cuttack, this the 14th day of October, 2004

CORAM :

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI M.R.MOHANTY, MEMBER (J)

.....

Shri R.L.Pradhan, aged about 33 years, Son of : Hurshi Pradhan, At- Danti, P.O.- Mahulpani, Dist.- Jharkhanda, West-Singhbhum. Previously working as Gangman under BWI/SEI, S.E.Railway, Sambalpur.

..... Applicant

Advocate for the Applicant - Mr. Bijay Kr. Behera.

Vrs.

1. Union of India, represented through its General Manager, S.E.Railway, Garden Reach, Calcutta-43.
2. Senior Divisional Engineer (Central) S.E.Railway, Sambalpur Division, At/P.O./Dist.-Sambalpur.
3. Assistant Engineer (A E N) S.E.Railway, Sambalpur Division, At/P.O./Dist.-Sambalpur.

..... Respondents

Advocates for the Respondents - Mr. R.C.Rath.

.....

V

ORDER

SHRI B.N.SQM, VICE-CHAIRMAN

Shri R.L.Pradhan previously working as Gangman in BWI/SEI, S.E.Railways, Sambalpur has filed this O.A. being aggrieved by the punishment order dated 24.6.98 passed by the Disciplinary Authority, removing him from service with effect from the date of that order and the order dated 31.5.02 passed by the Appellate Authority, rejecting his appeal which he had submitted in pursuance of the order dated 19.3.02 passed in O.A. No. 353/01 by this Tribunal.

2. Shorn of details, the facts of the matter are that the applicant while working as Gangman was served with a chargesheet dated 19.11.97 by the Respondent No.3 for un-authorised absence for certain periods during the years 1995,1996 and 1997. An enquiry officer was appointed to inquire into the matter. The enquiry officer submitted his report, but the Disciplinary Authority without giving him opportunity to submit his defence against the findings of the enquiry, passed the impugned order of removal from service w.e.f. 26.2.98 (Annexure-3). Thereupon, the applicant preferred the statutory appeal before Respondent No.2, who, without applying his mind and without proper consideration of the facts, raised in the appeal, passed a cryptic order upholding the decision of the Disciplinary Authority. Further, that the order was not a speaking one either

9

(Annexure-2). Being aggrieved by the order of the Appellate Authority, he approached the Tribunal on O.A. No. 357/01. The Tribunal after hearing the matter, quashed the order dated 25.8.98 passed by the Appellate Authority and remitted the matter to him for consideration of the appeal. The Tribunal's order dated 19.3.02 is quoted below :

"Heard the parties through their Advocates. The applicant having been proceeded against departmentally, because of unauthorised absence, had to face removal from service as a measure of punishment. As against the said order of removal he carried an appeal, and the Appellate Authority rejecting his appeal without any reason vide Annexure-4, dated 25.8.98. Since the Appellate order is not a reasoned one, we hereby quash the same and remit the matter to the Appellate Authority for reconsideration of appeal with a direction that he shall pass a reasoned/speaking order within a period of three months hence, especially by keeping in mind, as averred by the applicant in the O.A. that the punishment imposed is highly disproportionate. The O.A. is allowed in part. No costs".

3. However, the Appellate Authority for reasons best known to him, again rejected the appeal dated 1.5.2000 filed by the applicant by a non-speaking order rejected the appeal without assigning any reason as follows:

"I find that Shri R.L.Pradhan ex-gangman was unauthorised absent from duty from a period for 117 days in the year 1995, for 157 days for the year 1996 and for 126 days in the year 1997. I uphold the penalty of removal from service, imposed by the Disciplinary Authority".

4. Having failed to secure justice from the Respondents the applicant has again approached the Tribunal, in this second round of litigation, for justice.

h

10

5. The Respondents have opposed the application by filing counter. Their main contention is that the Disciplinary Authority had given opportunity to the applicant to defend his case and had passed the impugned order after carefully considering the enquiry report as per the Railway Servant (D&A) Rules, 1968. They further pointed out that the applicant had never submitted any representation against his removal from service to the Appellate Authority, i.e., DEN(Central)/SBP, but it was his father-in-law who appealed to the authority, after which the said authority passed the order dated 24.6.98.

6. We have heard the Ld. Counsel for both the parties and have perused the records placed before us. We had also called for the disciplinary file by the Respondents to peruse the original records.

7. The main contention of the applicant is that the punishment order passed by the Disciplinary Authority is disproportionate to the charges levelled against him. He has also assailed the orders passed by the Disciplinary Authority and the Appellate Authority as cases of non-application of mind and that neither of these two orders is reasoned one or speaking one. The Ld. Counsel for the applicant repeatedly drew our attention that the orders smacked of arbitrariness and mindlessness. What is more glaring is that the Appellate Authority flouted the direction of the Tribunal's order in O.A. No. 357/01

2

dated 19.3.02, as quoted above by failing to adhere to the direction issued by it. No heed has been paid to the direction of this Tribunal that the punishment imposed was 'highly disproportionate' and that the order was not a reasoned one. It is seen from the records that the applicant while admitting the fact of his absence from duty, had explained the circumstances in which it was inevitable for him to remain away from duty. He had sent repeated intimations to the concerned authorities, along with medical certificates in support of his illness and that of his family members.

8. In the case of Union of India and Others Vrs. Giriraj Sharma, AIR 1994 SC 215, the Hon'ble Supreme Court has held that the extreme punishment of dismissal from service on account of unauthorized absence from duty is harsh since the circumstances show that it was not the intention of the employee to wilfully flout the order, but the circumstances forced him to do so. This Bench of the Tribunal in O.A. 416/2000 decided on 14.10.2003 has held that punishment of removal from service is disproportionate to the charge of unauthorized absence.

9. In the aforesaid view of the matter, we hold that a major penalty of removal from service imposed on the applicant was not called for. We, therefore, quash the order of the disciplinary authority (Annexure-3) and that of the appellate authority (Annexure-6)

2

and direct the Respondents to reinstate the applicant in service with monetary benefits. It will be open to the Respondents, if they so desire, to visit the applicant with any other form of punishment, other than removal, keeping in view the fact that the period of absence was not wilful. The O.A. stands disposed of with no order as to costs. The Respondents shall reinstate the applicant in service within 30(thirty) days from the date of receipt of copy of this order.

(M.R. MOHANTY)
MEMBER (JUDICIAL)

RK/SD