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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.1151 of 2002
Cuttack, this the ²² day of June 2005

Narendra Sendriya

..... Applicant

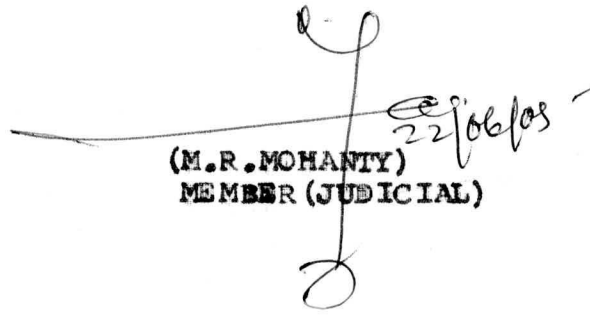
-VERSUS-


Union of India & others

..... Respondents

FOR INSTRUCTIONS

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


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N.SOM)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 1151 of 2002
Cuttack, this the 2nd day of June 2005

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI M.R.MOHANTY, MEMBER (JUDICIAL)

...

Narendra Sendriya, aged about 45 years, S/o. Late Rama Prasad Sendriya, Shed Khalasi Helper (Safaiwala), of Senior Section Engineer (Carriage and Wagon), South Eastern Railway, Jharsuguda, Orissa, Permanent Resident of Vill: Talibhata, P.O./Dist: Jharsuguda.

..... Applicant

Advocates for the applicant

..... M/s. R.K. Samant-
singhar,
Sanjeet Das &
A.K. Mallick

-Versus

1. Union of India, represented through General Manager, South Eastern Railway, Garden Reach, Calcutta-43.
2. D.P.M., S.E. Railway, At/P.O.; Chakradharpur, Dist: Singhbhum, Jharkhand.
3. Sr. Divisional Mechanical Engineer, South Eastern Railway, At/P.O.; Chakradhar Pur, Dist: Singhbhum, Jharkhand.
4. Sr. Section Engineer (Carriage and Wagon), South Eastern Railway, At/P.O./Dist. Jharsuguda, Orissa.

..... Respondents

Advocates for the Respondents

..... Mr. P.C. Panda (R-3)

.....

ORDER

SHRI B.N.SOM, VICE-CHAIRMAN;

Shri Narendra Sendriya has filed this O.A. being aggrieved by the order of removal from service by order dtd.27.11.95 issued by Res.No.2 and rejection of his appeal against the said order of removal from service by Res.No.3(Annexure-6) and review application by Divisional Railway Manager, Chakradharpur by his order dtd.28.8.97 (Annexure-7).

2. The case of the applicant is that on account of hospitalisation of his wife, he was absent from duties from 20.2.95 to 10.5.95. He reported for duty and produced medical certificate issued by Medical Specialist District Headquarters hospital, Jharsuguda dtd.21.2.95. However, the Respondents in total disregard of the problems faced by the applicant initiated disciplinary proceedings against him by their order dtd.20.6.95. His allegation is that without giving him full opportunity to choose a defence counsel, the enquiry was completed in one day, i.e. by one sitting on 22.7.95 followed by imposing on him the punishment of removal from service. He had, at every stage, submitted before the authorities i.e. Disciplinary Authority(DA in short), Appellate Authority(AA) and Reviewing Authority(RA) his family problems and those circumstances in which he had to remain absent but without effect. His further grievance is that the orders passed by the DA/AA/RA are not only non-speaking orders but have not taken into account at all the problems highlighted

by him to understand that his absence from duty was not deliberate.

3. The Respondents have opposed the application on the ground of limitation. They have stated that the review order having been passed under Annexure-7 on 28.8.97, the Original Application could not have been filed in September, 02, that is, after more than five years nor is there any petition for condonation of delay. On the merit of the case, they have submitted that it is the applicant who submitted that he would defend his case himself and during the enquiry he had admitted that he was away from duty from 21.2.95 to 10.5.95 without authority and therefore the charge against him was proved without doubt. With regard to the submission made by the applicant at Annexure-2, the letter dtd. 21.6.05 where he had stated that his wife was ailing and required frequent medical check up and that she suddenly fell ill from 21.2.95 and was hospitalised which compelled him to remain absent from duty and that there was no adult member in his family to look after her was never brought to their notice.

4. We have heard Id. Counsel for the rival parties and have also perused the records placed before us.

5. The applicant by filing a rejoinder has stoutly contested that the disciplinary authority had followed the procedure laid down in the various circulars issued by the Railway Board. He has submitted that while imposing penalty, the DA should not only have taken into consideration the written statement of defence, and the enquiry

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report but also pass a speaking order by applying his mind to the facts and circumstances of the case. His case is that none of the orders passed by either the DA or the AA or by the RA followed the procedure as mentioned in the Railway Board's order dtd.20.12.1955 or the procedure as given under Rule 22(2) of Railway Servants (Disciplinary and Appeal) Rules 1968.

6. We have given our anxious thoughts to the point of law and the facts brought before us by both the parties to this matter. The Respondents have opposed the application on the ground of limitation. It is a fact that the applicant has come late before us. He has, however, in his application given detailed explanation of his mis-fortunate and adverse circumstances affecting his life since 1995. By producing the certificates issued by the Medical Specialist, District Headquarters Hospital, Jharsuguda dtd.17.8.02, he has submitted that because of the ill-health of his wife, followed by his mis-fortune of being thrown out of the service by the authorities, he was so harrassed and in utter financially trouble he had lost mental balance and he became a patient of mental depression. In fact, the Medical Specialist had certified that he was under his treatment from 17.12.97 and he was advised not to move without a companion when on travel from one place to another. The statement that he has submitted through Annexure-2 and 4 are quite revealing. In his rejoinder he has woefully submitted that for remaining absent for a period of three months, his removal

from service was a punishment not only disproportionate to the charge but also shocking to the conscience and as such the order under Annexure-5, 6 & 7 are liable to be quashed.

7. On the strength of the certificate issued by the Medical Specialist, District Headquarters Hospital, Jharsuguda, we have no doubt that it is a fit case where the provisions of the Limitation Act eminently comes into play. We accordingly condone the delay in submitting the application by the applicant because he was not in his normal self to exercise his legal option.

8. On the merit of the case, there is no dispute that the applicant was absent without prior permission for about three months. But the reasons for his absence are available and the medical certificate submitted by the applicant has not been called into question by the disciplinary authority. It is not intelligible how DA failed to see the facts and circumstances of the case and the evidence available on record before he awarded the most severe punishment to the applicant. Further, his order is a non speaking one, We have, therefore, no hesitation to agree with the submission of the applicant that the order was passed without due application of mind. We also find, as alleged by the applicant, that the Appellate Authority did not act according to the procedure laid down in Rule 22(2) of the RS (DA) Rules 1968 because none of the issues highlighted by the applicant in his appeal application justifying his absence without leave was at all considered by the authority.

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9. The role and function of the AA has been clearly defined in Rule 22 of DA Rules. The said rule mandates the AA to consider an appeal inter alia on the following three aspects:

- A: Whether the procedure laid down in these rules has been complied with;
- B: Whether the findings on the DA are warranted by the evidence on record; and
- C: Whether the penalty imposed is adequate, inadequate or severe and then pass orders.

10. It is the allegation of the applicant that the AA had failed to see that the findings of the DA were not warranted by the evidence on record; and that he was not given proper opportunity to defend himself reasonably. The applicant has also alleged that the AA had failed to appreciate his dire family circumstances which forced him to remain away from duty and that he had joined his duty as soon as his wife was back home from the hospital. He had the certificate of the medical authorities to support his stand. But neither the Inquiring Authority (IA) nor the DA was reasonable enough to listen to his grievances or was reasonable enough to dispassionately enquire into the facts of his case.

11. In this regard, we would like to rely on the decision of the Apex Court in Ram Chander v. Union of India and others (AIR 1986 Supreme Court 1173) where it has been held that "a civil servant can exercise his valuable right of being heard, giving him an opportunity of putting forward his case is, by enforcing his remedy by way of departmental appeal or revision or by way of judicial review.

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In the Tulsiram Patel's case (AIR 1985 SC 1416) the majority decision has pointed out that even after the Forty-Second Amendment the enquiry required by clause (2) of Art. 311 would remain the same and he shall have the right to appeal before the Department under the service rules and if ^{he} still ~~dis-~~
^{can} satisfied, ~~invoke~~ Courts power for judicial review. It has been further held by the Apex Court that "It is of utmost importance after the Forty-Second Amendment as interpreted by the majority in Tulsiram Patel's case that the Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contention raised by him in the appeal. ^{like} We shall ~~to~~ emphasise that a reasoned decision by the Tribunals such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible if the delinquent servant is heard and given a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fairplay and justice also require that such a personal hearing should be given."

12. Having regard to the above law position of the case, we have no hesitation to hold that the AA has grossly violated the principles of natural justice by not following the procedure laid down for disposal of appeal. The AA should have the sagacity to see that he was handling a case where extreme punishment has been imposed for absence of three months and it was his bounden duty to sift through the evidences on record before coming to the conclusion

if it was a case for handing out capital punishment of removal from service. No where in his order he has given any reason as to why he felt that the penalty imposed was adequate. In fact he was observed as follows in his order which consists of only two sentences betraying non-application of mind.

"I, the undersigned as an appellate authority have carefully gone through your's appeal dtd. 20.12.95 as well as the attendance record and do not find any reason to change the punishment imposed by the disciplinary authority i.e. DME.

Therefore decided to uphold the above mentioned punishment."

Sr. Divl. Mech. Engineer,
Chakradharpur.

Such an order is not only unreasoned and non speaking order but also bad on ground of being violative of the procedures laid down in this regard. It is already held by the Apex Court in the case of RAMACHANDRA KESHAV ADKE V. GOVIND JOTI CHAVARE AND OTHERS AIR 1975 SC 915, that "where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden. This rule squarely applies where the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other way."

12.1. With regard to the Revisionary Authority (RA), we find that he has not only failed to pass a reasoned order but he had taken into account the applicant's previous conduct in deciding the matter in review. The

Review Authority, i.e. the Divisional Railway Manager, Chakradharpur held as follows:

"Moreover I also find from your attendance record that you had been remaining absent in 1993 & 1994 as well. This proves that you are habitual of remaining absent from duty. I therefore see no reason to review the decision taken by the DA and AA."

12.2. We have also held in the case of Shri R.V.Rao in O.A.No.1072 of 2002 dtd.19.4.05 that relying on instances of past bad record in deciding the quantum of punishment is violative of the instructions laid down by the Railway Board's in their letter No.98/V-1/Meet/4/1 dtd.19.6.2000, wherein the General Managers of the Railways were instructed as follows:

"Unless instances of past bad record figured in the charge-sheet, it would be incorrect to refer the same in the speaking orders of DA/AA/RA, but there is no harm in considering the past conduct of the employee while deliberating on the quantum of punishment, because, it is a natural thing to do."

The Railway Board had also advised that the DA/AA/RA etc. should make an independent application of mind in deciding on the quantum of punishment in disciplinary matters. As there was no whisper of the past service in the charge memo, it was not open to the reviewing authority to take note of his past service record for imposing penalty in the instant case. The allegation of non application of mind on part of the RA is also irrefutable in the circumstances of the case.

13. In these facts and circumstances of the case, we are of the view that in the instant case there has been

violation of the principles of natural justice and that the DA as well as the AA and RA have in violation of the procedure laid down both in the rules as well as in Railway Board's circulars, passed non-speaking orders thereby vitiating the disciplinary proceeding initiated against the applicant. At the top of all, punishing an individual with removal from service for absence for three months on account of hospitalisation of his wife is surely a punishment utterly disproportionate to the quantum of offence which shocks our conscience. The bias or pre-determined mindset of the authorities against the applicant is evident from the way the enquiry was conducted, the manner in which disciplinary authority passed his order, the manner in which of his appeal was considered by the AA or his review was disposed of by the RA. In the circumstances, we set aside the impugned order passed by the disciplinary authority at Annexure-5, the order of the AA at Annexure-6 and the order of the RA at Annexure-7 being bad in the eye of law. We also direct the authorities to reinstate the applicant and grant him leave as due and admissible for the period he was absent without prior approval of his leave on account of illness of his wife.

14. On reinstatement, his service from the day he reported to join the duty, should be treated as if he was not removed from service. He will be entitled to backwages as due and admissible and other service benefits which have been availed by his junior in service.

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15. Accordingly this O.A. succeeds. No costs.

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22/06/05

(M.R. MOHANTY)
MEMBER (JUDICIAL)

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(B.N. SOM)
VICE-CHAIRMAN

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