


CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.106 OF 2007
Cuttack this the 22nd day of April, 2010

P.K.Satpathy ...Applicant
-VERSUS-
Union of India & Ors. ...Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ?
2. Whether it be referred to C.A.T., Principal Bench or not ?


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(B.V. RAO)
JUDICIAL MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.106 OF 2007

Cuttack this the ~~22nd~~ day of April, 2010

CORAM:

HON'BLE SHRI B.V.RAO, JUDICIAL MEMBER
AND
HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

...
Sri Prayas Kumar Satpathy, aged about 43 years, Son of Sri Samarendranath Satpathy, permanent resident of Ward No.11, At-Dhipa Sahi, PO/PS-Baripada, Dist-Mayurbhanj formerly working as Chief Vigilance Inspector (Com.), South Eastern Railway, 11-Garden Reach Road, Kolkata-700043

...Applicant

By the Advocates: M/s. Asim Amitav Das, K.K. Balabant Ray, A.K. Behera, S. Mohanty, B.R. Swain, B. Sahu

-VERSUS-

1. Union of India represented through the Secretary, Ministry of Railway, New Delhi
2. S.D.G.M.-cum-Appellate Authority, South Eastern Railway, 11-Garden Reach Road, Kolkata
3. Chief Vigilance Officer(T), South Eastern Railway, 11-Garden Reach Road, Kolkata
4. Deputy Chief Vigilance Officer (E & S)-cum-Disciplinary Authority, South Eastern Railway, 11-Garden Reach Road, Kolkata

...Respondents

By the Advocates: Mr. S.K. Ojha, SC

ORDER

HON'BLE MR.B.V.RAO, JUDICIAL MEMBER:

1. The applicant, while working as Chief Vigilance Inspector©/GRC, in consequence of a disciplinary proceedings initiated against him, the Disciplinary Authority, as per order dated 31.6.2004 at Annexure-A/8 imposed the punishment of removal from service with all other benefits, with direction to prefer appeal to the SDGM/SE Railway, if any, within a period of 45 days from the date of receipt of the order of punishment. As revealed from the records, the applicant, as per Annexure-A/9 dated 17.4.2006 preferred an appeal before the appellate authority praying therein to reduce the punishment of removal from service to that of superannuation on medical ground so that with the admitted retrial benefits he could sustain. This appeal having not been disposed of, the applicant moved this Tribunal in

O.A.No.813/2006. This Tribunal, vide order dated 1.12.2006 disposed of the said Original Application at the admission stage as under:

“The applicant, however, after suffering much delay, filed the appeal on 17.4.2006, before the Appellate Authority. Since the same appears to remain un-disposed of, keeping in question of maintainability and limitation open, this Original Application is disposed of with direction to the Appellate Authority/SDGM, S.E.Railway (Respondent No.2) to dispose of the appeal petition of the Applicant dated 17.4.2006, if pending, on merit as per law within three months from the date of receipt of a copy of this order and communicate the result thereof to the applicant”.

2. It is in this background the Appellate Authority, vide Annexure-A-11 dated 17.12.2006 having confirmed the order of the Disciplinary Authority, the applicant has moved this Tribunal in the present Original Application seeking the following relief:

“(i)To quash the impugned order dated 31.05.2004 as well as the order dated 27.12.2006 vide Annexures-8 and 11 respectively passed by the Respondent No.3 and 2 respectively by holding that the same is illegal, arbitrary and violative of principle of natural justice.

(ii)Necessary direction/orders may kindly be issued to the Respondents to reduce the punishment from the removal from service to superannuation on the medical grounds with all the retirement benefits by regularizing the period from 16.07.2001 to 7.03.2006.

(iii)Any other appropriate order may kindly be passed which would be deemed fit and proper in the facts and circumstances of the case”.

3. It is the case of the applicant that while discharging his duties at Kolkata, his knee problem aggravated during the month of July, 2001 and as such he was not in a position to discharge his day to day official work. Because he was staying alone at Kolkata, having no other alternative the applicant was compelled to come back to his native place at Baridada, where his parents, wife and children are staying. According to him, while he was under treatment having suffered from various ailments from time to time in different hospitals, he received Annexure-A-4 Memorandum of charges dated 18.11.2002. As it reveals from Annexure-A/5 dated 27.11.2002, a letter addressed to C.V.O.(T), S.E.Railway by the applicant in response to certain letter dated 23.7.2002, wherein the applicant had sought 5 to

6 months time to face the inquiry. However, the applicant having not attended inquiry due to his illness, it was set ex parte and as per Annexure-A/7 dated 28.1.2004, the applicant was supplied with copy of inquiry report with instruction to submit written statement of defence within 15 days of the receipt of such inquiry report. By reason of illness, the applicant, as it appears from the record could not make any written statement of defence and ultimately, on receipt of the inquiry report, the Disciplinary Authority, as per Annexure-A-8 dated 31.6.2004 imposed the punishment of removal from service of the applicant. To buttress his contentions, it has been urged by the applicant that the Disciplinary Authority failed to appreciate the medical certificates produced by him in support of his illness and rushed to the conclusion by imposing the punishment of removal from service. It has been submitted that despite appearance of the applicant's wife before the Disciplinary Authority and submission of representation ventilating the grievance regarding inability of her husband to move, the Disciplinary Authority passed an ex parte order, at the time when the applicant was mentally disordered and not able to prefer appeal within the prescribed period, which he so preferred after being recovered from illness on 7.3.2006. It is the case of the applicant that as per law contemplated under Rule-9 of Railway Servant Discipline and Appeal Rules, 1968 so also the Article 311(2) of the Constitution of India, which provides that no such person shall be punished/dismissed or removed or reduced in rank except after an enquiry in which he has been informed of all the charges against him and given a reasonable opportunity of being heard in respect of those charges and as such before imposing any major penalties the Disciplinary Authority should have concluded the proceeding fairly by providing natural and reasonable opportunity. It has been stated that as the quantum of punishment by the Disciplinary Authority is very high this Tribunal has jurisdiction to go into the question of quantum of punishment. It has been submitted that as the Medical Certificate dated 7.3.2006 under Annexure-1 series clearly speaks that as the applicant is not medically fit to take up the



responsibility attached to his service, he should be given retirement on medical ground as he has rendered more than 20 years of service. With these submissions, the applicant has prayed for the relief as referred to above.

4. The Respondent-Railways have filed their counter. It has been submitted by the Respondents that the applicant had been absenting himself w.e.f. 16.7.2001. He had submitted an application dated 12.11.2001, i.e., almost 4 months after his date of absence for sanction of leave without pay enclosing private medical certificate, albeit, as per extant rules those certificates should have been countersigned by a Railway Doctor. It has been submitted that since the applicant did not perform his duty diligently or sincerely during his tenure in Vigilance Office and absented himself unauthorisedly for considerably a long time and his inaction in responding to Administration's several calls through various sources, he was issued with the Memorandum of charge. It has been submitted that every opportunity was given to the applicant, but he did not avail of the same. They have submitted that there being no violation of the principles of natural justice nor any procedural irregularity in conducting disciplinary proceedings, the punishment so imposed should not be interfered with. As regards appeal, it has been submitted that the Appellate Authority rejected the appeal with observation that grounds urged by the applicant as brought out in appeal did not merit any leniency to be shown. With these submissions, the Respondents have prayed for dismissal of this O.A. being devoid of merit.

5. We have heard the learned counsel for the parties and perused the materials on record. We have also gone through the rejoinder and note of submission filed by the applicant.

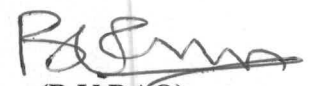
6. The fact that the applicant had left headquarters without applying for leave or permission is not in dispute. In other words, it is not the case of the applicant that while on leave at his native place, he fell ill. This action amounts to dereliction of duties which is not expected of the status enjoyed by the applicant. Therefore, it can be safely presumed that the



applicant had absented himself from duty unauthorisedly. This being the genesis, there was no other alternative on the part of the Respondents than to issue him with Memorandum of charges. We also find from the records that there has been no procedural irregularities in conducting disciplinary proceedings against the applicant. It is also apparent that the applicant had been afforded adequate opportunities to defend himself. Be that as it may, against the punishment of removal from service, in the appeal filed, the applicant has never challenged the legality of punishment order, instead he has prayed for reducing the punishment of removal to that superannuation on medical grounds. This prayer of the applicant in the appeal is totally misconceived inasmuch as the superannuation on medical ground is not a substitute to any punishment. Because, punishment is an outcome of disciplinary action whereas superannuation on medical ground is unconnected with the punishment. Since the charges leveled against the applicant are grave in nature and the applicant in conclusion of disciplinary proceedings has been imposed the punishment of removal from service, as noted above, there being no legal flaw or infirmity in conducting disciplinary proceedings nor the principles of natural justice having been violated, in our considered view, there is hardly any scope for the Tribunal to interfere with the matter, particularly when the applicant has nowhere in the appeal challenged the legality of the punishment order and has shown a passive resistance to it.

7. For the reasons discussed above, we hold that the applicant has not been able to make out a case for any of the relief in his favour. In the result, the O.A. is dismissed. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(B.V. RAO)
JUDICIAL MEMBER