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OA 133 of 2007

ORDER DATED 8<sup>th</sup> May 2007

The applicant is presently working as Chowkidar in the office of Inspector of Works (Headquarters), East Coast Railway, Khurda Road, Khurda. . He has filed this O.A. for quashing the charge memo dated 19.11.1999 (Annexure 7) and the order dated 19.3.2007 (Annexure 12) as well as for interim relief by staying the operation of the said order dated 19.3.2007 (Annexure 12).

2. On the charge of unauthorized absence of the applicant for nine years, a major penalty charge sheet was issued against the applicant, vide Charge Memo dated 19.11.1999 (Annexure 7). Due enquiry was conducted by the Inquiry Officer and on the basis of the findings recorded by the Inquiry Officer, the Disciplinary Authority passed the order dated 8.3.2000 (Annexure 9) imposing on the applicant the punishment of removal from service. He had preferred an appeal against the punishment order and during pendency of the appeal, had approached this Tribunal in OA No. 43 of 2001. The Division Bench by order dated 5.4.2004 disposed of the said O.A.No. 43 of 2001 with the following findings and direction:

“3. In course of hearing, Mr.P.K.Kar, the learned counsel for the applicant contested the said stand of the Respondents and pointed out that in para 6 of the appeal memo (Annexure-10) that was filed after receipt of order of removal under Annexure-9 dated 8.3.2000) the applicant had set out the following:-

‘That before issuing the letter dated 8.3.2000 removing me from my service no opportunity was given and even though the inquiry report was also not handed over to me, before passing the final order by the appointing authority.’



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The aforesaid statement of the applicant, as made in his appeal memo under Annexure-10, goes to support the stand of the applicant to the effect that inquiry report was really not supplied to him before imposing the punishment of removal from service under Annexure-9.

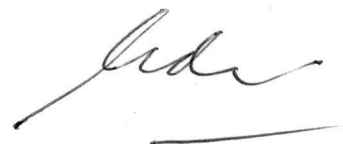
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7. In the above premises, the impugned order of removal vide Annexure 9 dated 8.3.2000 is quashed with direction to the disciplinary authority to give an opportunity to the applicant to put up a representation (directed against the inquiry report which should be supplied to the applicant by the Respondents) and on consideration of the said representation, the disciplinary authority should pass necessary final orders under intimation to the appellant."

3. It is stated by the applicant that after passing of the above order dated 5.4.2004 by the Tribunal, he had made representations on 11.8.2004, 24.1.2005, 30.10.2005 and 10.5.2006, praying for reinstating him in service. It is further alleged by the applicant that as the Respondents failed to reinstate him in service, he had filed O.A.No.4 of 2007 for appropriate orders and the said O.A. is subjudice before the Tribunal.


4. In this O.A. the applicant has prayed for quashing (Annexure 7) the charge memo dated 19.11.1999, and (Annexure 12) the notice dated 19.3.2007 whereby copy of the inquiry report was once again supplied to the applicant and the applicant was called upon to submit his representation/defence statement before the Disciplinary Authority on the inquiry report as per the order of the Tribunal passed on 5.4.2004 in O.A.No.43 of 2001(Annexure 10) within 15 days from the date of receipt of the said notice. Thus Annexure 12 is not an order of the authority but is merely a notice giving



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an opportunity to the applicant to submit his representation on the enquiry report in compliance with the order of the Tribunal.

5. The grounds taken by the applicant in the present O.A. are that the Respondents have failed to comply with the direction of the Tribunal to supply him the copy of the enquiry report within a reasonable period of six months; that delay in furnishing the copy of the enquiry report vitiates the charge memo; that the Respondents are debarred from continuing with the disciplinary proceedings; and that the impugned action [vide the charge memo (Annexure 7)] and the notice (Annexure 12) are violative of Articles 14, 21, 41, 46, 300A, 309 and 311 of the Constitution of India. On 10.4.2007 when the matter was taken up for hearing on the question of admission of the O.A. the applicant filed a memo of additional averments/pleadings along with enclosures. The applicant also filed a memorandum of written submission and list of citations enclosing the copies of judgments. The above documents were brought on record.


6. The Tribunal in paragraph 3 of its order dated 5.4.2004 (Annexure 10) in OA No.43 of 2001 has observed that copy of the enquiry report was not supplied to the applicant before the punishment order dated 8.3.2000 could be passed. On that ground alone the Tribunal quashed the punishment order dated 8.3.2000 and directed the disciplinary authority 'to give an opportunity to the applicant to put up a representation' and 'on consideration of the said representation, the disciplinary authority should pass necessary final order'. However, the Tribunal gave a further direction to supply copy of the enquiry report to the applicant. After disposal of O.A. No.43 of 2001 by the Tribunal in the manner indicated above, the applicant appears to



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have made representations on 11.8.2004, 24.1.2005, 30.10.2004 and 10.5.2006 (Annexure 11 series to the O.A.) for reinstating him in service although the Tribunal did not direct his reinstatement in service by its order dated 5.4.2004. In none of his representations, the applicant had asked for the copy of the enquiry report, presumably because he was supplied with the copy of the enquiry report along with the punishment order dated 8.3.2000. It is not the case of the applicant that, in pursuance of the order of the Tribunal he had submitted his representation on the enquiry report, which was received by him after the punishment order dated 8.3.2000 was passed against him. Since the applicant failed to comply with the order of the Tribunal in submitting his representation on the inquiry report, no fault can be found with the Respondents by issuing Annexure-12, the notice dated 19.3.2007, asking him to submit his representation on the enquiry report. The applicant has to submit his representation on the enquiry report in compliance with the order of the Tribunal passed in OA No. 43 of 2001. As regards his challenge of the charge memo (Annexure 7), it is not open to the applicant to question it after eight years of its issuance, more particularly when ~~the~~ it formed the subject matter of OA No.43 of 2001 and when the Tribunal did not interfere with it, while quashing the punishment order dated 8.3.2000.

7. We have gone through the case-laws cited by the applicant and found that the facts of those decisions are not similar to that of the instant O.A. and therefore, the ratio decidendi laid down therein are not applicable to the present case. We have also considered the averments made by the applicant in his Memo filed on 10.4.2007. He has stated therein that on receipt of the notice dated 19.3.2007 (Annexure 12) he has



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made a representation on 7.4.2007 (Annexure 15, page 7) where he has pointed out that the enclosures to the notice dated 19.3.2007 (Annexure 12) were not legible and requested for supply of legible copies thereof without prejudice to his contentions raised in the present O.A. We have carefully considered the facts stated in the said memo dated 10.4.2007. We find no relevancy in the averments contained in the said memo to buttress the contentions of the applicant raised in the O.A.

8. In view of the above, the applicant has no cause of action to file the instant O.A. in as much as in the earlier round of litigation the charge memo (Annexure 7) was the subject-matter in OA No. 43 of 2001 before the Tribunal and the Tribunal did not interfere with it while quashing the order of punishment and giving direction to the Respondents as stated above. Annexure-12 is not an order but is merely a notice furnishing the copy of the enquiry report and calling upon the applicant to submit his representation thereon in compliance with the order of the Tribunal in the earlier O.A. The grounds taken by the applicant in the present O.A. can be raised by the applicant in the representation to be submitted by him in response to the notice (Annexure 12).

9. In the result, the Original Application being too premature is not maintainable and is therefore rejected in limine

B.B.702  
(B.B.MISHRA)

ADMINISTRATIVE MEMBER

(N.D.RAGHAVAN)  
VICE-CHAIRMAN  
08/05/07