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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 134 OF 2007
CUTTACK, THIS THE 12th DAY OF August, 2010


K. Gavarayya.....Applicant

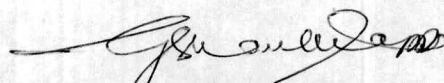
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Union of India & OrsRespondents

FOR INSTRUCTIONS

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


(C.R. MOHAPATRA)
MEMBER (ADMN.)


(G. SHANTHAPPA)
MEMBER (JUDL.)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

**ORIGINAL APPLICATION NO. 134 OF 2007
CUTTACK, THIS THE 1st DAY OF August, 2010**

CORAM :

HON'BLE MR. G. SHANTHAPPA, MEMBER(JUDL.)

&

HON'BLE MR. C.R.MOHAPATRA, MEMBER(ADMN.)

.....

K. Gavarayya, aged about 49 years, son of Late K. Jayaram, a permanent resident of Vill: Samanta Ramchandrapur, P.O. Kanchilli, Dist: Srikakulam, working as Khalasi Helper under Sr. Divisional Mechanical Engineer, E.Co. Railways, Khurda Road.

.....Applicant

Advocate(s) for the Applicants- M/s. Achintya Das, D.K.Mohanty.

VERSUS

- 1. Union of India, represented through its General Manager, East Coast Railway, Bhubaneswar, Dist. Khurda, PIN 751023.**
- 2. Divisional Railway Manager, E.Co.Railway, Khurda Rad, P.O: Jatni, Dist. Khurda, PIN 752050.**
- 3. Sr. Divisional Mechanical Engineer, E.Co.Railway, Khurda Road, Post-Jatni, Dist. Khurda, PIN 752050.**
- 4. Divisional Mechanical Engineer, E.Co.Railway, Khurda Road, P.O: Jatni, Dist. Khurda, PIN 752050.**
- 5. Section Engineer (C&W)/BHC, E.Co.Railway, Bhadrak.**

..... Respondents

Advocate for the Respondents – Mr. M.K.Das

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ORDER

HON'BLE SHRI G. SHANTHAPPAN, MEMBER (JUDL.) :

The above application is filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the relief for (i) quashing the entire disciplinary proceedings initiated against the applicant (ii) quashing the orders of the Disciplinary Authority dated 17/18.08.2005 (Annexure-A/4) (iii) quashing the Appellate Authority's order dated 29.03.2006 (Annexure-A/6) and further relief to grant all service and consequential benefits retrospectively.

2. We have heard the Ld. Counsel for the respective parties and also perused the written note of submission filed by the Respondents on 10.08.2010.

3. The admitted facts of the either side are the applicant was served with a memorandum of charges dated 1/6.5.2003, along with the imputation of charges, list of documents and list of witness. Ld. Counsel for the applicant submits that the applicant submitted his representation to the charge memo but he has not maintained a copy of the representation and denied the charges. Considering the representation, the Disciplinary Authority appointed an Inquiry Officer to inquire into the charges. Inquiry Officer conducted the inquiry and submitted his findings vide his inquiry report dated 08.01.2004. A copy of the inquiry report was served on the applicant vide letter dated 19.01.2004. Considering the charge memo, the



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inquiry report and the representation to the inquiry report dated 05.02.2004 the Disciplinary Authority has imposed the penalty of removal from service with immediate effect. The applicant challenged the said order of Disciplinary Authority before the Appellate Authority by way of appeal dated 25.09.2005. The Appellate Authority decided the appeal on 29.03.2006 and modified the penalty of removal from service into compulsory retirement with 2/3 of pensionary benefits. The applicant has challenged the said order of the Disciplinary Authority and Appellate Authority in this O.A.

4. It is contended by the applicant that the Respondents have not conducted the inquiry in accordance with the rules, no witness was examined in the inquiry, inquiry report is not in accordance with the rules and such an inquiry report has been accepted by the Disciplinary Authority, which is illegal.

5. He further contended that the Disciplinary Authority has considered the service records, which is beyond the charges leveled against the applicant. Before issuing the order of removal, the applicant was not heard, hence the applicant is prejudiced. The impugned order is violative of principles of natural justice and the same is liable to be quashed. The applicant further contended that when the inquiry proceeding was not properly conducted, the Disciplinary Authority has exercised his powers and considered the facts of the case beyond the charge memo, such an illegal order has


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been accepted by the Appellate Authority. The Appellate Authority though modified the order of removal from service into compulsory retirement with 2/3 pensionary benefits, the Appellate Authority has observed that on scrutiny of attendance records of the applicant, it is clear that the applicant is a habitual absentee and, despite being charge sheeted, he remained unauthorized absent from duty for certain period. When the orders of the Disciplinary Authority is illegal the Appellate Authority has not exercised his powers under Rule 22(2) of R.S.(D&A) Rules, hence entire proceedings vitiated and the same is liable to be quashed, and there shall be direction to the Disciplinary Authority to reinstate the applicant into service with all consequential benefits.

6. The Ld. Counsel for the Respondents supported the impugned orders and he has submitted, the applicant was a habitual absentee during his service and one such incidence has been considered and issued the charge memo for the period 7.12.2002 to 23.3.2003. The applicant has admitted the charge that he did not inform the authorities for his absence for his duty. He did not submit the medical certificate issued by the Railway Medical Hospital but he has submitted the fitness certificate, which was issued by the Registered Medical Practitioner at Bhadrak, covering his period of absence. Since, the applicant remained absent from duty



unauthorizedly for a period of more than three months, the Section Engineer (Carriage and Wagon), S.E.Railways, Bhadrak referred the matter to the Office of Sr. Divisional Mechanical Engineer, S.E.Railways, Khurda Road for issuing necessary orders, based on that, charge memo was issued and the inquiry held. The applicant participated in the inquiry but did not raise any objection during the inquiry, hence, at this stage, he cannot challenge the orders of the Disciplinary Authority, the Appellate Authority and the punishment imposed on him. Seeing the service records of the applicant competent authority was convinced and exercised the powers vested and imposed the penalty of removal from service. As per the service records, the applicant has 975 days of non-qualifying service due to absent/leave without pay out of total service of 26 years 9 months and 10 days. During the service, there were following penalties imposed on the applicant:

- (i) withheld 1 set of free pass for the year 1989- due to charge of unauthorized absence from duty from 20.10.1988 to 20.12.1988.
 - (ii) Next increment raising his pay from Rs. 965/- to Rs. 980/- withheld for a period of 12 months with cumulative effect- due to charge of
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unauthorized absence from duties from 6.10.1989 to 9.1.1990.

(iii) Next increment raising his pay from Rs. 3510/- to Rs. 3580/- withheld for a period of 24 months with non-cumulative effect- due to charge of unauthorized absence from duties from 21.06.2002 to 10.08.2002.

7. The present charge is for unauthorized absence from 7.12.2002 to 23.3.2003 without giving prior intimation. On 24.3.2003, he reported the depot in-charge, i.e. Section Engineer (Carriage & Wagon), Bhadrak for resumption to duty and he submitted unfit and fit certificate simultaneously on that day, which was issued by the Registered Medical Practitioner at Bhadrak. As per provisions contained in para 538 of the Indian Railway Medical Manual and Establishment Sl. No. 144/89, Railway employees, who are residing within the jurisdiction of the Railway Doctors have to submit sick certificate from the Railway Doctors while those residing beyond the jurisdiction of the Railway Doctor should submit within 48 hours sick certificate from Registered Medical Practitioner. Admittedly, the applicant is residing in Railway Quarters No. L/153-4, Type-I at Bhadrak.

8. Ld. Counsel for the Respondents submitted that the charge leveled against the applicant has been proved in the inquiry.



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Accordingly, there is no illegality or error of jurisdiction and the O.A. is liable to be dismissed.

9. We have carefully considered the submissions made by the Ld. Counsel for the either side and have gone through the documents available on the record.

10. The charge leveled against the applicant vide charge memo dated 1/6.5.2003 reads as under:

“ That the said Shri K. Gava Rayya, Khalasi Helper, Carriage/BHC has committed gross negligence in duty in that he remained unauthorisedly absent from duty from 07.12.2002 to 23.03.2003 without prior intimation to the competent authority and subsequently submitted unfit and fit medical certificates (P.MCs), at a time, on 24.03.2003 covering the period of absence from 07.12.2002 to 24.03.2003.”


The list of documents are as follows:

“1) S.E. (C&W)/ BHC's Letter No. 2/60 dated 24.03.2003

2) Unfit & Fit medical certificates covering period of absence from 07.12.2002 to 24.03.2003.


3) Extract of Mustor Roll covering period of absence from 07.12.2002 to 13.03.2003.”

There is only one witness, Shri S.N.Routray, Section Engineer (C&W)/BHC.



11. We have carefully examined the inquiry report at page 27 of the O.A. in which it is stated that the date of inquiry was fixed on 05.12.2003 but since Shri S.N.Routray, SSE (C&W)/BHC was not present on that day, the proceeding of inquiry was posted on 06.12.2003 and completed in presence of P.W. Shri S.N.Routray. In the inquiry, no proceeding was recorded, which was conducted on 6.12.2003. The Respondents, in their counter, have stated that inquiry was conducted in presence of the applicant. The applicant was examined by the Inquiry Officer and ~~disposed~~ that he failed to intimate to SSE (C&W)/BHC. During the course of inquiry, in his answer to the Question No. 12, he ~~disposed~~ to submit his defence statement within 10 days of the conduction of the inquiry and he also submitted the defence statement within 10 days. The Ld. Counsel for the Respondents disputed the inquiry report filed by the applicant, he has produced the inquiry report along with memo on 5.8.2010 for rehearing, in which he has relied on the analysis of the evidence, which is as under:

"From the evidence, it is clearly understood that Sri K. Gavarayya, KH of Carr. BHC remained unauthorized absent from his duty from 07.12.2002 to 23.03.2003 without giving any intimation to SSE (C&W)/BHC in time, as required under the rule and subsequently submitted unfit and fit medical certificates at a time.



During the course of enquiry, Sri K. Gavarayya, KH of Carr. BHV vide his answer to question No. 7 desposed that being illiterate, he failed to intimate to SSE (C&W)/BHC regarding his unauthorized absent in time and also failed to submit unfit medical certificate to SSE (C&W)-BHC in time and also he desposed that he is not aware about the railway rules.

He has in intention to examine P. Witness and also he desposed that no defence help is required to defend his case and accepted the charge with pray to consider his case sympathetically as he does not know the railway rules.

Finally, he desposed that he has given all the reasonable opportunities during the course of enquiry to defend his case."

He has also produced the deposition of the applicant, but not the witness Sri S.N.Routray. The statement of the applicant is also produced in his statement as under:

Q.No.5 :- Do you accept the charge which was framed against you?

Ans :- Yes.

Q.No.6 :- Have you been allotted with Railway quarter or not ?

Ans :- Yes.

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Q.No. 9 :- Do you aware that you will be liable for disciplinary action for not submitting medical certificate in time as required under the rule ?

Ans :- Yes, but due to my serious illness, I have forgotten to intimate to SSE (C&W)/BHC regarding my illness or forgotten to send unfit PMCs to SSE (C&W)/BHC in time. Please consider my



case sympathetically and excuse me for this time.


Q.No.10:- As you have accepted that you remained unauthorisedly absent from 7.12.2002 to 23.03.2003, do you want to examine the P. Witness to avail reasonable opportunity to defend your case ?

Ans :- No, I do not want to examine the P. witness.

Considering the said proceedings, the Inquiry Officer submitted his finding that the charge leveled against the applicant is substantiated. The reasons for finding are as under:

“ Sri K. Gavaraya KH of Carr. BHC remained unauthorisedly absent from his duty from 07.12.2002 to 23.03.03 without any intimation to SSE (C&W)-BHC in time and subsequently submitted unfit and fit PMCs at a time on 24.03.03 due to his serious illness i.e. suffering from jaundice and accepted that he has done great mistake as he is not aware about the rules and regulations of Railway act due to his illiteracy and finally accepted the charge framed against him.”

12. We have carefully examined the inquiry report in which it is stated that the witness Shri S.N.Routray was examined on 6.12.2003. The deposition and the documents marked during the course of inquiry are not reflected in the inquiry report. The Respondents have not produced the deposition of the P. Witness, Sri S.N.Routray, which is evident, the witness was not examined. Rule 9



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(17) of R.S. (D&A) Rules, 1968 contemplates "the witness shall be examined by or on behalf of the Presenting Officer". "The Inquiring Authority may also put such question to the witnesses as it thinks fit." The Inquiring Officer has not followed the procedure under Rule 9(17) of the said Rules. When there are three documents listed in the list of documents, those documents were not marked in the inquiry. The applicant was not given an opportunity to cross-examine the witness. Without recording the statement of witness, there shall not be an inquiry. There is a lacuna in the inquiry proceedings. Such an inquiry proceeding is not sustainable in view of the judgment of the Hon'ble Supreme Court in Union of India vs Alok Kumar (2010) 2 SCC (L&S) 22. In the reasons for finding it was a fact that the applicant did not inform the SSE (C&W)/BHC in time and, subsequently, submitted unfit and fit PMCs at a time on 24.03.2003, the Inquiry Officer has not considered the serious illness, i.e., suffering from Jaundice. Had the opportunity been given to the applicant to cross-examine the witness based on the documents, i.e. medical certificate, the applicant could have proved his case in the inquiry. As the applicant was not given an opportunity during the course of inquiry, we are of the view that the proceedings of inquiry conducted by the Inquiry Officer is fatal. The procedure under Public Servants (Inquiries) Act, 1950 has not been followed.

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13. We have carefully examined the impugned orders of the Disciplinary Authority. When the charge leveled against the applicant is for unauthorized absence from duty is from 07.12.2002 to 23.03.2003, the Disciplinary Authority has considered the entire service records of the applicant and absence from 1.07.2004 to 27.07.2005 has been considered while imposing the penalty. The reasons while imposing the penalty reads as under:

“....I have gone through your performance report for the period from 01/07/2004 to 27/07/2005. During this period you have stated away from duty unauthorizedly for a prolonged period (3/11/04 to 21/1/2005 and again from 10/4/2005 to 27/07/2005). Thus it shows that you have not improved your performance despite your having been served with a major penalty charge sheet for your absence from duty unauthorizedly during the year 2002-2003.

The charge of unauthorized absence from duty from 7/12/02 to 23/03/2003 framed against you vide the major penalty charge sheet No. Mech/UA/C/BHC/1334 dt 1/6-05-2003 has been established. I have decided that you are not a fit person to be retained in service as this would invite indiscipline in a disciplined organization like the Railway and therefore removed from Railway Service with immediate effect.”

14. When the charge leveled against the applicant is for unauthorized absence from duty for a particular period, the




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Disciplinary Authority has gone beyond the charge leveled against the applicant. Such an observation, while imposing the penalty of removal from service is too harsh. The penalty imposed, based on the illegal inquiry report, is not sustainable in law. Before imposing the penalty, the applicant was also not issued notice. The impugned order of removal from service has been passed without hearing the applicant, which is violative of principles of natural justice.


15. For the reasons mentioned above, we are of the considered view that the impugned order of removal from service passed by the Disciplinary Authority based on the illegal inquiry report, which is not sustainable in the eye of law, and the observation made by the Disciplinary Authority is beyond the charge leveled against the applicant, such an order is not sustainable in the eye of law.


16. The applicant challenged the said orders of the Disciplinary Authority before the Appellate Authority vide his appeal dated 25.09.2005. The Appellate Authority modified the orders of removal from service into compulsory retirement with 2/3 pensionary benefits. We have carefully examined the orders of the Appellate Authority. The reasons given by the Appellate Authority reads as under:

“.....on scrutiny of the attendance record of yours, it is clear that



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you are habitual absentee and despite being charge sheeted you remained unauthorized absent from duty for certain period."

17. The Appellate Authority, while considering the appeal, has not exercised the powers vested under Rule 22(2) of R.S.(D&A) Rules. It is the duty of the Appellate Authority to examine whether the procedure has been followed by the Inquiry Officer and the Disciplinary Authority. While modifying the order, the Appellate Authority on scrutiny of the attendance records of the applicant was convinced that the applicant was habitual absentee and despite being charge sheeted he remained unauthorized absent from duty for certain period. The Appellate Authority has also gone beyond the charge leveled against the applicant when the Appellate Authority has accepted the reasons assigned by the Disciplinary Authority and modified the order of penalty of removal from service into compulsory retirement with 2/3 pensionary benefits. When the Appellate Authority has accepted the inquiry report, which is not in accordance with the Rules supra, is not sustainable in the eye of law. When the Disciplinary Authority,  has gone beyond the charge leveled against the applicant, the Appellate Authority should have passed a reasoned and considered order by exercising the power vested under Rule 22 (2) of R.S. (D&A) Rules. However, such a




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power has not been exercised by the Appellate Authority. Hence, we are of the view that the Inquiry Report, orders of the Disciplinary Authority and the orders of the Appellate Authority are not sustainable in the eye of law. Accordingly, we quash the impugned orders and direct the Disciplinary Authority, i.e. Divisional Mechanical Engineer, E.Co.Railways, Khurda Road to reinstate the applicant into the service and conduct fresh inquiry from the stage of submission of the representation to the inquiry report. The Disciplinary Authority is also directed to treat the period from the date of removal from service till the date of retirement by exercising the powers vested in him. Disciplinary Authority is directed to pass orders within a period of six months from the date of receipt of a copy of this order. The applicant is also directed to co-operate with the Inquiring Officer to conclude the inquiry at early.

18. With the above observation, the O.A. is allowed in part.


(C.R. MOHAPATRA)
MEMBER (ADMN.)


(G. SHANTHAPPA)
MEMBER (JUDL.)