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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 52 of 2007
Cuttack, this the 08th day of May, 2008

B.K.Panda Applicant.
Versus
Union of India & Ors. Respondents

For instructions

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?

K. Thankappan
(JUSTICE K. THANKAPPAN)
MEMBER (JUDL.)

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C O R A M:

THE HON'BLE MR. JUSTICE K.THANKAPPAN, MEMBER(JUDICIAL)

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B.K.Panda Applicant.

Versus

Union of India & Ors. Respondents

(For Full details, see the enclosed cause title)

By legal practitioner: M/s. P.K.Chand, D.Satpathy,
P.S.Mahanta, Counsel

By legal practitioner: Mr.T.Rath, Counsel.

O R D E R

MR. JUSTICE K. THANKAPPAN, MEMBER(J):
Applicant, in this Original Application

under section 19 of the Administrative Tribunals Act,

1985 challenges the order under Annexure-A/6 and A/8.

Vide Annexure-A/6, dated 07.03.2005 the Disciplinary

Authority/ Respondent No.3 i.e. Senior Divisional

Personnel Officer), East Coast Railway, Khurda Road, Khurda imposed the punishment of stoppage of increment raising his pay from Rs. 6350/- to Rs.6500/- in scale of Rs.5000-8000/- (RSRP) for a period of 6(six) months w.e.f. 01.03.2005, on the Applicant; against which the Applicant preferred appeal u8nde Annexure-A/7 and the Appellate Authority/Respondent No.2, i.e. Additional Divisional Railway Manager, E.Co. Railway, Khurda, vide its order under Annexure-A/8 dated 25.06.2005 modified the order of penalty imposed on the Applicant by the Disciplinary Authority under Annexure-A/6 to the extent of stoppage of increment for a period of three months instead of six months without any future effect.

The backdrop of the case is as under:

2. While the Applicant was working as Personnel Inspector, Gr.III under S.E. Railway (now E.Co. Railway), ~~he was put in the additional charge of Personnel Inspector~~ Gr.II with effect from 23.04.2003. While he was working

so, on 13.05.2004, the Chief Personnel Inspector informed the Applicant to remain present in the working sport namely at Talcher during the time of visit of ADRM for inspection on 14.05.2004. But in spite of such telephonic instructions on 13.05.2004, the Applicant did not present at the time of visit of ADRM and hence, the Respondent No.3, under Annexure-A/3 dated 20.05.2004, issued Memorandum of charge, under Rule 11 of the Railway Service (Discipline and Appeal) Rule, 1968 allowing the Applicant ten days time to submit his written statement of defence. However, on finalizing the disciplinary proceedings, the Respondent No.3 imposed the penalty as quoted above under Annexure-A/6. Applicant has preferred appeal against the order of punishment under ~~Annexure-A/6~~ and by Annexure-A/8 the Appellate Authority confirmed the findings but reduced the penalty imposed.

3. This Tribunal heard the Learned Counsel appearing for both sides and perused the records produced.

4. Learned Counsel appearing for the Applicant submits that though the applicant admits that on 13.05.2004 he was instructed over telephone to be present during the visit of ADRM on 14.05.2004, the information did not show the time of visit of ADRM. However, the Applicant went to the place of the visit of ADRM on 14.05.2004 when, on enquiry he came to know that ADRM has already left the place. However, he stood up there up to 11.00 AM. Hence, the allegation of the charge memo is not sustainable. That apart, Learned Counsel for the Applicant submits that the applicant being a heart patient, the Disciplinary Authority ought to have taken a lenient view in the matter. However, the contention of the Learned Counsel for the Applicant is that though the Disciplinary Authority had passed the penalty order without waiting for the appeal time, the penalty order was

implemented and the Appellate Authority had now found, as would be evident from Annexure-A/8, that there was a communication gap and the Applicant was suffering from some ailments. If so, the order of punishment passed by the Disciplinary Authority and confirmed by the Appellate Authority are not sustainable in the touch stone of judicial scrutiny. Further it is contended that though proceedings were initiated against the Applicant under Rule 11 of the Railway Service (Discipline and Appeal) Rules, 1968, there was violation of the procedure prescribed under the said Rule-11 as the Disciplinary Authority has not given sufficient opportunity to the Applicant and the decision taken by the Disciplinary Authority was without considering the statement of defence furnished by the Applicant.

5. Learned Counsel for the Respondents submits that the Applicant was informed on 13.05.2005 by his authority regarding the visit of ADRM on 14.05.2004 with

instructions to be present on the spot and if so the absence of Applicant during visit of ADRM is a clear case of disobedience of the instructions/orders of the Higher Authority. However, Learned Counsel for the Respondents submits that the Applicant has himself admitted his absence during the visit of ADRM, in his written statement of defence under Annexure-A/4. The Applicant has only stated that he has not deliberately neglected his duty. If so, the finding of the Disciplinary Authority that the Applicant had disobeyed the instructions of the superior officer and had neglected his duty to be present during the visit of ADRM on 14.05.2004 cannot be faulted with. Learned Counsel further submits that the Appellate Authority though found that there was communication gap and the applicant was having some illness that by itself is not a reason to come to conclusion that the finding reached by the Disciplinary Authority is not based on any evidence.

6. On considering the rival contentions of the parties and on going through the records, this Tribunal is of the view that though the Appellate Authority had found that there has been communication gap and the Applicant was suffering from some ailment that by itself will not conclude that the Applicant had not committed the misconduct alleged in the memorandum of charge. Admittedly, the Applicant was instructed/informed on 13.05.2004 at night that he should be present during the visit of ADRM on 14.5.2004. But it is coming out in evidence that the Applicant was present at Talcher station on 14.05.2004 but at what time he was present in the spot was not answered by him properly. The Applicant has only said that when he went to Talcher station he ~~understood~~ understood that the ADRM had visited on 14.05.2004 and left the place. The explanation given by the Applicant in Annexure-A/4 would clearly indicate that the Applicant has neglected his duty in disobeying the instructions of the

superior officer. If so, this Tribunal finds no reason to interfere with the orders challenged in this OA.

7. In the result, this Original Application stands dismissed by leaving the parties to bear their own costs.

K. THANKAPPAN
(JUSTICE K. THANKAPPAN)
MEMBER (JUDL.)

KNM/PS.