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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 121 OF 2008

Cuttack, this the 1st day of July, 2009

Bijay Kumar Samantaray Applicants
Vs.
Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?

J
(C. R. MOHAPATRA)
ADMINISTRATIVE MEMBER

KT
(K. THANKAPPAN)
JUDICIAL MEMBER

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CORAM:

Hon'ble Mr. Justice K. Thankappan, Member (J)

Hon'ble Mr. C.R. Mohapatra, Member (A)

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Bijay Kumar Samantaray, aged about 55 years, S/o.-Late Rahasbihari Samantaray, At-Ankoi, P.O.- Motori, P.S.-Delang, Dist.- Puri.

Liverman at Nergundi Station, Subsequently as Token Porter Railway Department, East Coast Railway, Cuttack. **Applicant**

By the Advocate(s) M/s. P.N. Patnaik,
U.C. Behura,

Vs.

1. Union of India represented thorough the Secretary, Railway Department, Rail Bhawan, New Delhi.
2. General Manager-cum-Revising Authority, E.C. Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
3. Office of the Divisional Railway Manager, represented through its D.R.M., East Coast Railway, Khurda Road, Dist.- Khurda
4. East Coast Railway Authority, represented through its Senior Operating Manager, East Coast Railway, At-Khurda Road, Dist-Khurda.
5. East Coast Railway, Represented through its Assistant Operating Manager, East Coast Railway, Khurda Road, Dist-Khurda.
6. East Coast Railway, Represented through its Station Master, Nergundi Station, Town/Dist.- Cuttack.

..... **Respondents**

By the Advocate(s).....Ms. S.L. Patnaik

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O R D E RHON'BLE MR. JUSTICE K. THANKAPPAN, MEMBER(J)

This Original Application has been filed by the applicant with the following prayer:-

- "(i) ...to pass an appropriate order by quashing the order of removal on 25.08.99.
- (ii) to direct the authorities to reinstate the applicant in his post and give all the service benefit, as he is entitled to.
- (iii) Pass such other order(s)/direction(s) as may be deemed fit and proper."

2. The short factual matrix leading to filing of this application is as follows:-

The applicant was originally appointed as Class IV (Group D) employee in the Railways and was subsequently promoted as Leverman and posted to Nirgundi Station, Cuttack, under the control of Respondents No.3 & 6. While working as such, he was served with Annexure-1 Memo of charge, dated 31.10.97, alleging misconduct of unauthorized absence from 07.06.95 to 24.06.95 and also from 26.06.95 to 23.06.97 without giving any intimation. On receipt of the above memo of charge, the applicant had submitted his explanation. However, on the basis of the inquiry conducted and as per the report of the Inquiry Officer, the applicant was found guilty of the misconduct and finally, as per the order dated 25.08.99 (Annexure-2) he was removed from service w.e.f. 31.08.99. Against the said removal order dated 25.08.99 the applicant preferred an appeal on 10.04.02 to the Additional Divisional Railway Manager, South Eastern Railway, Khurda Road who rejected the

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same on merit and also barred by time, which was communicated to the applicant vide letter dated 22.01.03 (Annexure-3). After his appeal was rejected, the applicant stated to have made a mercy petition on 20.10.04 to the General Manager, S.E. Railway (Respondent No.2). His efforts having yielded ~~no~~ fruitful result, challenging the punishment of removal from service, the applicant has filed the present O.A.

3. The Original Application has been admitted by this Tribunal on 27.02.08 and the Respondents were noticed. In response to the notices, a counter reply statement has been filed for and on behalf of the Respondents in which the orders passed by the authorities have been supported and justified.

4. We have heard Mr. P.N. Patnaik, Ld. Counsel for the applicant and Mr. S.L. Patnaik, Ld. Counsel for the Respondents and also perused the records produced along with the O.A. and the counter statement.

5. Ld. Counsel for the applicant has urged two grounds. Firstly, the applicant has not been given sufficient opportunity to defend his case before the Inquiry Officer and secondly, on receipt of Annexure-1 memo of charge, although the applicant had given his explanation on 28.12.97 wherein he had assured that he would be careful

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in future, but in spite of that, the inquiry authority or the disciplinary authority had not given him sufficient opportunity to prove his case that his absence, as alleged in the charge, was not willful and because of illness, he could not attend office on the relevant dates. Besides the above, without affording reasonable opportunity the inquiry authority as well as the disciplinary authority proceeded with the inquiry, which ended ex parte, and if so, the report submitted by the Inquiry Officer should not be acted upon. The next ground urged by the counsel for the applicant is that even on receipt of the punishment order, the applicant had preferred sufficient representations, explaining his absence, the one of which being mercy petition dated 20.10.04 and if the authorities had considered the same as per law, certainly they would have come to the conclusion that the absence of the applicant was not willful. To substantiate the arguments, the Ld. Counsel had placed reliance on the mercy petition dated 20.10.04 in which he had stated as follows:-

“The AOM/KUR did not call for the report from the Nergundi Station and given his decision in a casual and cavalier manner ultimately pose a serious threat to the basic value on which democratic way of life in the country is founded. Had he called for the information from SM/NRG then he would have aware about the seriousness of my wife who was under the treatment at Cuttack and I had to remain at Cuttack for more than 08 months. No opportunity was given to me to represent my condition, since all the enquiries and decision of AOM/KUR was during that period of 08 months.”

The Ld. Counsel also relied on the judgement of the Hon'ble Apex Court reported in 1959 SC 737 in the case of S. Singh Vrs. State of

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Punjab. The Ld. Counsel finally contended that the order passed by the Disciplinary Authority is not in accordance with the findings entered by the Inquiry Officer and that the removal order has been passed with extraneous consideration, which reads as under:-

“ Further, on scrutiny of your working particulars, it is observed that you have absented yourself from duty unauthorizedly on several occasions and finally you are continuing under unauthorized absence from 25.06.98 without giving any intimation to your Supervisory Unit, which proves that you have never tried to mend your habit of remaining absent.”

and if so, the order passed by the Disciplinary Authority is not sustainable in the eye of law.

6. To the above contentions, the Ld. Counsel for the Respondents relying on the counter reply submitted that the Memo of charges dated 31.10.97 (Annexure-1) alleging misconduct of unauthorized absence by the applicant from 07.06.95 to 24.06.95 and from 26.06.95 to 23.06.97 was without giving an intimation. On receipt of the charge the applicant had given a short explanation on 23.12.97 (Annexure-R/1) wherein he had assured that in future he would not absent from duty. Respondents have stated that the applicant further continued to remain absent from duty from 25.06.98 to 29.04.99, i.e. till the date of inquiry, as per muster roll, produced by the Station Superintendent Nergundi (Annexure-R/3). However, the applicant having not attended inquiry, the Inquiry Officer concluded the inquiry ex parte and submitted the report to the Disciplinary Authority holding the charge proved against the applicant, whereupon the Disciplinary Authority imposed punishment of removal from service w.e.f. 31.08.99.



It has been further submitted that the applicant did not receive the punishment notice. Hence, he preferred appeal against the said punishment order dated 10.04.2002 after a lapse of 2 & ½ years was rejected by the Appellate Authority in the following terms:-

"The punishment notice issued by the D.A. was pasted on the Station Notice Board in presence of two witnesses as per estant rule. The C.O. failed to submit any appeal within the stipulated time period of 45 days from the date of pasting of the NIP on the Station Notice Board. The C.O. was removed from service w.e.f. 31.08.1999 but the appeal against this punishment order was submitted on 10.04.2002 i.e., after lapse of 2 & ½ years. On the appeal, the reason for delay is not mentioned. Hence, the appeal is rejected due to delay in submission as well as on merit."

With these submissions the Respondents have prayed for dismissal of the O.A. being devoid of merit.

7. We have heard the Ld. Counsel for the parties and perused the materials on record. The Ld. Counsel for the Respondent had produced the file dealing with the disciplinary proceedings against the applicant, which we have also gone through. The scope of interference by the Court/Tribunal with the order of punishment is very limited. However, the Court/Tribunal can interfere with such matters where the charges are vague and unspecific, the delinquent is not afforded reasonable opportunity to defend his case, procedural irregularities, charges are proved based on no evidence, decision making process is wrong with attended circumstances. But, here is a case, where the applicant, in response to Charge Memo (Annexure-A/1) submitted a representation that he would not remain absent in future. In

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spite of repeated intimations to him to attend inquiry on the scheduled date, he did not turn up. We find from the record that although the Inquiry Officer had made an attempt for ensuring attendance of the applicant during the course of inquiry, but the applicant, for the reasons best known, did not cooperate with the inquiry. There being no alternative, the Inquiry Officer, after observing the formalities concluded the inquiry ex-parte and submitted the report to the Disciplinary Authority holding the charge proved against the applicant. Also it reveals from the record that the applicant, although had been supplied with a copy of the inquiry report, but he did not submit any reply thereto. Further, it reveals from the record that the applicant did not avail of the opportunity of being heard in person provided by the Disciplinary Authority before the punishment order could be passed. Therefore, the Disciplinary Authority, after recording the reasons issued punishment of removal from service, against which, the applicant preferred appeal after two and half years which was rejected by the Appellate Authority, on the grounds as quoted above.

From the above conduct and attitude of the applicant, it can only be concluded that he himself is the creator of his own destiny, for which the Railway Administration cannot be faulted with. Therefore, we hold that the applicant had been provided with adequate opportunities at every stage of the proceedings and in no circumstances, the principle of

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natural justice has been violated either by the Inquiry Officer or Disciplinary Authority. As regards the extraneous consideration of evidence, as argued by the Ld. Counsel for the applicant, we would hold that this argument is a misconceived one. By citing the previous instance, the Disciplinary Authority has come to a conclusion that the applicant is a habitual absentee, which is based on record. But the fact remains, the punishment awarded by the Disciplinary Authority is with reference to the charge proved against him and based on rules on the subject.

8. Having considered and decided the facts and circumstances of the case, we find no legal flaw or infirmity in the conduct of disciplinary aroceedings against the applicant and therefore, the punishment of removal from service imposed by the Disciplinary Authority warrants no interference.

9. Last but not the least, we cannot but hold the O.A. suffers from laches and limitation inasmuch as the applicant having preferred appeal two and half years after punishment of removal from service was awarded by the Disciplinary Authority moved this Tribunal after five or six years of the disposal of the appeal by the Appellate Authority as would be evidenced from Annexure-R/14 dated 12.09.02, without explaining as to what prevented him from approaching the Tribunal on

time, by filing petition for condonation of delay. In the result, the O.A. is held to be devoid of merit and accordingly the same is dismissed.

No costs.

l. Mohapatra
(C. R. MOHAPATRA)
MEMBER (A)

K. Thankappan
(K. THANKAPPAN)
MEMBER (J)

Kalpeswar/C.M.

