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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

OA No. 876 of 2010
Cuttack, this the 04th day of January, 2012

Smt. Sushila Behera Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be sent to the PB for circulation?


(A.K. Patnaik)
Member (Judl.)


(C.R. Mohapatra)
Member (Admn.)

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CORAM:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)
And
THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

.....

Smt. Sushila Behera, aged about 46 years, W/o.Satya Narayan Behera, resident of Huma Pada Khujuripalli (Railway Colony back side), PO. Huma, PS: Rambha, Dist. Ganjam.

....Applicant

By legal practitioner - M/s.B.S.Tripathy,A.Misra,
Advocates

-Versus-

1. Union of India represented through General Manager, East Coast Railways, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Divisional Railway Manager, East Coast Railways, Khurda Road, At/Po.Khurda Road, PS. Jatni, Dist. Khurda.
3. Senior Divisional Commercial Manager, East Coast Railways, Khurda Road, At/Po.Khurda Road, PS. Jatni, Dist. Khurda.

....Respondents

By legal practitioner -Mr.S.K.Ojha, SC (Rlys.)

.....

O R D E R

Per-MR.C.R.MOHAPATRA, MEMBER (A):

Applicant is the wife of Satya Narayan Behera who while working as a Peon under the Station Manager, Palas railway Station absconded without leaving any information to

(Signature)

the family or to the Respondent from his duty place w.e.f. 23-03-1999. For his continuous unauthorized absence, the Respondent-Department (Railway) initiated disciplinary proceedings and finally removed him from service. On the other hand, on 24.9.2003 an FIR was lodged by the applicant about the missing of her husband with the Humma Out Post, PS Rambha, Dist. Ganjam. As it appears from Annexure-4 the husband of the applicant was not traced out till 12.8.2004. Against the above background, by filing the present OA, the applicant seeks declaration of initiation of disciplinary proceedings ending with the order of punishment as void and consequential sanction of retirement dues including family pension in her favour.

2. Respondent-Department have filed counter objecting to the prayer of the Applicant on the ground that as the applicant's husband absented from his duty w.e.f. 23.3.1999 disciplinary proceedings were initiated against him for his unauthorized absence. Charge sheet and all other connected papers were sent to the husband of the applicant in his home address available in the service record but the same was

returned either with the postal remark 'addressee is absent' or 'addressee left without any information'. In the above circumstances the husband of the applicant was removed from service vide order under Annexure-R/9 dated 14.1.2004. Hence it has been contended by the Respondent- Department that as the husband of the applicant has been removed from service since long, the applicant is not entitled to the relief claimed in this OA. Accordingly, Respondent-Department have prayed for dismissal of this OA.

3. Learned Counsel appearing for the Respondents reiterated that all possible steps were taken by the Respondent- Department to serve the charge sheet, report of the IO etc on the husband of the Applicant by Post as per rules but all the time the letters returned with remark that the addressee is always absent. It was further argued by Learned Counsel appearing for the Respondents that at no point of time the applicant had brought to the notice of the Respondent- Department that her husband has not reported back after 23.3.1999 for which she had filed FIR with the police station and the Police has not traced out her husband. Therefore, it was

argued by him that the charge of unauthorized absence having been proved by the IO the applicant was imposed with the punishment of removal from service and as such, the applicant is not entitled to the relief as claimed by her in this OA.

4. On the other hand, this argument of the Learned Counsel for the Respondent was strongly refuted by the Learned Counsel for the Applicant by stating that merely sending the letter is not enough to ensure compliance of the principle of natural justice. If the letters were returned un-served had the Respondent Department noticed it in any of the news papers the Applicant could have got opportunity to bring the true fact of the missing of her husband and filing of FIR before the Police station. Having not done so and passing the order of removal without following the due procedure is not sustainable and as such the Applicant is entitled to the relief claimed in this OA. It was further submitted by the Learned Counsel for the Applicant that till date the husband of the applicant has not been traced out and in other words his whereabouts is not known to the family members or the police.

5. After giving due consideration to various submissions raised by respective parties, we have perused the materials placed in support thereof.

6. Admittedly, the charge sheet which was sent to the applicant's husband was returned with postal endorsement not found. This implies that the charge sheet was never tendered to the charged official by the concerned authority. A single effort by the Respondents having failed it was incumbent on them to have found out and followed alternative means for service of the charge sheet. The Respondents acknowledged that they have treated the CO as unauthorizedly absent from duty w.e.f. 23.3.1999 for which charge sheet was issued on 17.8.2001 and order of removal was issued on 14.1.2001. It appears that the Applicant in this OA was blissfully ignorant about the punishment meted out to her husband by the Railway Authority. It would imply that the Respondents took no step to contact the family members of the CO when the charge sheet came back with postal endorsement not found. Respondents' Counsel made a submission that service of notice by paper publication is not mandatory according to the Railway Rules.

This plea appears to be too simplistic in nature in a case where a decision is taken by the authority to deprive not only the CO but also the entire dependent family members of their means of livelihood. During hearing it was submitted by Learned Counsel for the Applicant that till date the husband of the applicant has not been traced out and even the police have failed to locate him. Thus, the period of absence is more than 7 years and the Respondents should have reconsidered the matter on receipt of the representation from the applicant by treating the husband of the applicant as missing instead of sticking to their stand of having removed from service on the charge of unauthorized absence. It does not appeal to judicial conscience as to how the employer can be so indifferent to treat the case as a case of unauthorized absence warranting departmental action and pursuing the matter by imposing the harsh punishment of removal from service particularly in the back drop of non service of charge sheet and exparte report of the enquiry etc. Everything was done in an unilateral manner and throwing into the winds the principles of natural justice which is so crucial to any disciplinary proceedings. The Railway Board vide RBE No.



RBE No. 50/91 [No.E (D&A) 91 RG 6-41 dated 22.8.91] has made a distinction between unauthorized absence and missing and have made specific provision to address such type of problems. Relevant portion of the RBE is quoted herein below:

“Where action was initiated against an employee for an authorized absence who could not be traced despite best efforts of police he shall be presumed as dead under Section 108 of Evidence Act. The disciplinary action initiated shall be considered as on invalid ground and be annulled by the disciplinary authority. If penalty has already been ordered the annulment may be done by appellate/revisionary authority. The Revision or Review procedure will not be applicable in this. After dropping the action other benefits as due like leave encashment, salary dues, retirement benefits, compassionate ground appointments etc may be extended.”

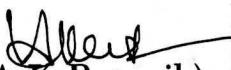
7. In view of the above we find no substance on the submissions of the Respondents that as the husband of the applicant has been removed from service for his unauthorized absence in disciplinary proceedings the applicant is not entitled to the relief claimed in this OA. The disciplinary proceedings initiated against the husband of the applicant is held to be non est in the eyes of law. Hence this OA is disposed of with direction to the Respondents to take immediate follow up action



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in pursuance of the RBE No.50/91, quoted above and grant all
admissible benefits to the Applicant within a period of 90 days
from the date of receipt of copy of this order. No costs.


(A.K. Patnaik)
Member (Judl.)


(C.R. Mohapatra)
Member (Admn.)