

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.251 OF 2010
Cuttack this the 10th day of April, 2012

Bhikari Charan Das 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 Tribunal or not?

(C.R. MOHAPATRA)
Member (Admn.)

(A.K. PATNAIK)
Member (Judl.)

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HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER
AND

HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

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**Bhikari Charan Das, aged about 50 years, S/o.Late Sankar Das, At-
Kathagada Sahi, PO. Buxi Bazar, PS-Purighat, Dist. Cuttack(Orissa).**

...Applicant

By the Advocates :M/s.Samarendra Swain, S.C.Samantray,
T.K..Mohanta, Mrs.M.Satpathy,
Mr.U.K.Mishra, Counsel.

-VERSUS-

- 1.Union of India represented through its General Manager, South
Eastern Railway, Garden Reach, Kolkata-43.**
- 2.The Workshop Manager, South Eastern Railway, Carriage Workshop,
Kharagpur.**
- 3.The Deputy Chief Mechanical Engineer (Proj), Khargpur Workshop,
South Eastern Railway, Kharagpur.**

...Respondents

By the Advocates: Mr.S.K.Ojha, SC

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ORDER

A.K.PATNAIK, MEMBER (JUDL):

The contention of the Applicant is that while he was working as White Mettler (Grade III) under the Respondents due to mental disorder, he left the place of work and was under the treatment of Dr. Gopal Chandra Kar (Psychiatrist) at SCB Medical College and Hospital, Cuttack from 15.01.1997 to 13.07.1998. After his recovery from illness, although he reported for duty before the Dy. CME (Proj) (C&W), South Eastern Railway, Kharagpur on 20.7.1998 along with all medical certificates but he was not allowed to join but was informed that a disciplinary proceedings initiated against him for his unauthorized absence from duty had

ultimately culminated with a punishment of removal from service vide Dy.CME (Proj) L No.WLE/2602/06 w.e.f. 24.12.1997. Thereafter, he made several representations for his reinstatement in service which did not yield any result. His contention is that the so-called disciplinary proceedings were initiated and concluded without giving him any opportunity by way of serving the charge sheet and report of the IO let alone the service of the punishment order. Hence by filing the present OA on 30th April, 2010 he has prayed to quash the letter of the Dy.CME (Proj) No.WLE/2602/06 dated 24.12.1997 removing him from service without following due procedure of the Rules by violating the principles of natural justice and for a direction to the Respondents to reinstate him in service with all consequential service and financial benefits.

2. By filing counter, the Respondents opposed the prayer of the applicant both on merit as well as on the ground of limitation. It has been stated that SS -3 vide letter dated 23.5.1996 intimated that the applicant took THREE days Casual leave from 08.5.96 to 10.5.1996. Thereafter, he remained absent from duty without any intimation. He was directed to resume duty immediately vide letter dated 14.7.1996 but the aforesaid letter returned undelivered with postal remarks "addressee left; room locked. No man in the quarters". After two months i.e. on 02-08-1996, although the applicant turned up with both unfit and fitness certificates but instead of resuming duty he again left the place and remained absent continuously w.e.f. 11.5.19996 only to turn up to resume his duty on 21.8.1996. A major penalty charge sheet dated 22.8.1996 was served on him on 23.8.1996 for his unauthorized absence from 11.5.1996 giving him an opportunity to submit his reply within specified period provided therein but he did not submit any such reply. Therefore an enquiry was ordered to be conducted by appointing an Inquiry Officer. It is the specific case of the respondents that despite acknowledgement of the notice to

attend the enquiry, neither the applicant nor his representative attended the enquiry on the date fixed. In the aforesaid circumstances, the IO conducted the enquiry ex parte and submitted its report holding the charge proved against the applicant. The copy of the report of the IO dated 22.7.1997 was sent to the applicant vide letter dated 08.8.1997 but the same was returned undelivered. Hence in compliance with the provision as enumerated in Estt.Srl.No. 312/70 the report of the IO was displayed on the notice board of his working place on 19.10.1997. Even then there was no response from the applicant. Thereafter, considering all aspects of the matter, the Disciplinary Authority imposed the punishment of removal from service of the applicant vide order dated 24.12.1997 a copy of which was sent to the applicant by Regd. Post with AD in his residential address but the same was also returned with postal remark that "always absent; no such man in this address". Therefore, the same was displayed in the office notice board. Accordingly, Respondents have prayed that this OA is devoid of any merit besides barred by limitation and therefore is liable to be dismissed.

3. In the rejoinder, it has been stated that the applicant was imposed with a harsh punishment without due application of mind, about the service of the charge sheet and notice to attend the enquiry etc. and even without serving a copy of the order of punishment he has been prohibited from joining his duty. It has been stated that the way of communication adopted by the respondents being no communication in the eyes of law, the punishment imposed is liable to be set aside. In this regard reliance has been placed on the judgment of the Hon'ble Apex Court in the case of Union of India -Vs- Dinanath Santaram Karekar, reported in AIR (1998) SC 2722.

4. By filing MA No. 268 of 2010 the applicant has stated that poverty was the main hurdle for which there is a delay in approaching this Tribunal belatedly as he is out of employment since 1997. Accordingly he has prayed to condone the delay.

5. In the case of D.C.S.Negi -Vrs- Union of India and others in SLP (C) No.7956 of 2011 disposed of on 11-03-2011, the Hon'ble Apex Court have held that

"in view of the specific provision in the A.T. Act, 1985, it is the duty of the Tribunal to first consider whether the application is within limitation."

In view of the above, we invite the Learned Counsel for both sides to first address on the MA filed by the applicant seeking condonation of delay.

6. Mr. S.C.Samantaray, Learned Counsel for the applicant contended that this is a fit case where the Tribunal should exercise its inherent power to condone the delay so as to adjudicate the matter on merit as the applicant has been visited with a harsh punishment in violation of the Rules and principles of natural justice. According to him the applicant was very much vigilant as he was pursuing his grievance by making representation after representation & lastly when his entire efforts proved futile he has approached this Tribunal by filing the present OA. Hence by placing reliance on the decision of the Hon'ble Apex Court in the case Collector, Land Acquisition, Anantnag and another -Vrs- Mst Katiji and others reported in AIR 1987 SC 1353, Mr. Samantaray prayed for condonation of the delay and decide the matter on merit.


7. On the other hand Mr. S.K.Ojha, Learned Standing Counsel appearing for the Respondents Railways while denying receipt of any such representations as

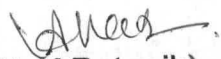
annexed to the OA, has contended that delay being abnormal and the explanation offered by the applicant being not sustainable, this OA is liable to be dismissed in limine without going into the merit of the matter.

8. According to the Applicant, he could come to know from the Letter under Annexure-2 that as a measure of punishment he has been removed from service vide letter dated 24.12.1997. Thereafter he submitted representation on 16.4.2001. As no reply was received he has reiterated his grievance by representation dated 15.7.2004, thereafter on 18.10.2006, thereafter on 12.12.2008, thereafter on 22.1.2010 and after that he has approached this Tribunal by filing the present OA. However receipt of any such representation has been strongly denied by the Respondents. Even if it is accepted for the sake of argument that the Respondents have received the representations, still then no explanation has been given for making such representations at the interval of two years. The representations [alleged to have been made to Authority] are on the face of it is stale and also does not contain details of the grounds for which he seeks annulment of the impugned order in this OA. Law is well settled in the case of S.S.Rathore Vrs. State of Madhya Pradesh (AIR 1990 SC 10) that repeated representations not provided by law will not save limitation. This view has again been reiterated in the case of Naresh Kumar Vrs. Department of Atomic Energy and others reported in (2010) 2 SCC (L&S) 436. Also it is the trite law that by making representation one after the other will not renew the limitation. Law cannot help those who sit on fence and do not move within limitation. The reason canvassed for not approaching on time by the applicant is not convincing at all. Since this case deserves to be dismissed on the

ground of being grossly barred by limitation, we do not like to deal with the submissions made by the respective parties on the merit of the matter.

9. In the light of the discussions made above, both the OA and MA stand dismissed being grossly barred by limitation. No costs.


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


(A.K. Patnaik)
Member (Judicial)

