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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A. No.133 of 2012
Cuttack, this the 7th day of May, 2013

CORAM

**HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL.)
HON'BLE MR. R. C. MISRA, MEMBER (ADMN.)**

.....

Manoj Kumar Hota,
Aged about 51 years,
Son of Late Siddheswar Hota,
Ex-Senior Clerk,
O/O.the Senior Divisional Operations Manager,
Sambalpur,
At-Puranabasti,
Chakradharpur,
West Singhbhum,
Jharkhand-833 102.

.....Applicant

(By Advocate(s): M/s.B.Mohanty-1,S.Patra-1,
P.K.Mohapatra, A.Panda,
S.J.Mohanty, D.D.Sahu

-Versus-

Union of India represented through

1. General Manager,
East Coast Railway,
Samanta Vihar,
Chandrasekharpur,
Bhubaneswar,
District- Khurda.

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2. Senior Divisional Operations Manager,
Sambalpur,
East Coast Railway,
At/Po/Dist.Sambalpur.

3. Divisional Operation Manager,
Sambalpur,
East Coast Railway,
At/Po/Dist.-Sambalpur.

4. Additional Divisional Railway Manager,
Sambalpur,
East Coast Railway,
At/Po/Dist.-Sambalpur. Respondents

(By Advocate: M/s.R.N.Pal,M.R.Lenka)

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MR. A.K. PATNAIK, MEMBER (I):

Applicant's case is that he was working as Senior Clerk under the Respondents. As he suffered mental disorder/illness, in his working place, his family members took him to Ranchi where he was treated under Dr.U.N.Choudhury, Medical Officer, Ranchi Manasika Arogyasala. He was under treatment from 10.4.2005 to 28.11.2009 for his suffering from "Sihizophrenia Psychosis" and in this connection the certificates granted by the treating physician are annexed at

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Annexure-A/1 series. It has been stated that after being cured, he submitted an application on 23.12.2009 along with medical certificate with a request to allow him to resume his duty. But the Assistant Operations Manager (G), ECoRly, Sambalpur, vide letter dated 27.1.2010 intimated the Applicant that he has already been removed from service w.e.f. 08.11.2006 and he may appeal to the appellate authority as per rule through Sr.DOM/Sambalpur. A copy of punishment notice dated 8.11.2006 was also supplied to the applicant along with the letter dated 27.1.2010 at Annexure-A/2.

Further case of the Applicant is that on 09.02.2010 he preferred appeal to Respondent No.4 but the Appellate Authority (Respondent No.4) rejected his appeal without applying due application in other words, without paying any heed to the points raised by him in the appeal. However, against the said order of rejection, he filed Revision Petition dated 12.5.2010 before the General Manager, ECoRly, BBSR/Respondent No.1. The General Manager, Manage4r,

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ECORly/Respondent No.1, vide order dated 14.9.2011 at Annexure-A/7 remitted the matter back to the Appellate Authority with direction to dispose of the appeal fresh considering all or any evidence submitted and to be submitted by the applicant within a stipulated period after hearing and affording opportunity to the applicant to present his defence.

The Appellate Authority vide order dated 20.12.2011 at Annexure-A/9 communicated the Applicant as under:

- “1) Though the reasons of unauthorized absences cannot be established out rightly, but there is no denial that Sri Hota has absented unauthorizedly. It could be due to pressure from money lenders, it could be due to family pressures or it could be due to his illness;
- 2) It is evident that he failed to respond in time, both after removal and in service for his irregular attendances;
- 3) There is considerable time passed since his removal in 2006. He remained out of Railway working system for nearly five years. His worthiness in the Railway working may not be the same. There is no certainty that Sri Hota would be regular once reinstated in light of facts stated above.
- 4) Therefore, I upheld the decision of removal imposed by Disciplinary Authority.

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Hence, being aggrieved, the Applicant filed the instant OA with the following relief(s):-

- “A. Orders under Annexure-A/3 and A/9 be quashed after declaring these as illegal;
- B. Respondents be directed to reinstate the Applicant w.e.f. 8.11.2006 with all consequential benefits;
- C. Any other order/orders be passed as would be deemed fit and proper under the circumstances.”

2. Respondent-Railway filed their counter in which it has been stated that the the office was not aware of the fact that the applicant was undergoing mental stress and strain due to his family problems. The Applicant was proceeded with disciplinary proceedings under Rule 9 Railway Servants (Discipline and Appeal) Rules, 1968 for his unauthorised absence from 3.9.2004 to 31.01.2005 vide charge Memo dated 22.12.2005 which was sent to the applicant by Regd. Post with AD but the same returned undelivered . The matter was enquired into and ultimately the applicant was issued punishment notice of removal. The report of the IO and punishment notice was sent

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by Regd. Post with AD but the same also returned undelivered with postal remark that "addressee not met hence returned". Therefore, the charge sheet, report of the IO and the punishment notice were pasted in the office notice board where the applicant was working. They have also denied the allegation of rejection of the appeal without due application of mind, in a mechanical manner by stating therein that since the applicant absented himself from duty unauthorizedly and the appellate authority rejected the appeal after allowing the applicant an opportunity and taking into consideration all the evidence, no interference in the matter is warranted. They have, therefore, prayed for dismissal of this OA.

3. The stand of the Applicant in the rejoinder is that he was taken to Ranchi for treatment by a specialist. He has also denied the allegation that the letters sent were returned undelivered and so on.

4. We have heard Mr. Biswajit Mohanty-I, Learned Counsel for the Applicant and Mr. R.N. Pal, Learned panel

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Counsel appearing for the Respondent-Railways and perused the materials placed on record. We have also gone through the various provisions of the RS (D&A) Rules, 1968 and instructions issued by the Railway Board from time to time in this regard. The contention of the Learned Counsel for the Applicant is that the Disciplinary Proceedings were initiated and ultimately concluded by the order of removal behind the back of the Applicant. His contention is that if letters were returned undelivered then in compliance with the principles of natural justice and Railway Board's instruction, before further proceeding with the enquiry the authority ought to have published the same in the newspaper and having not done so the entire proceedings is vitiated. Further contention of Mr. Mohanty is that the Appellate Authority, rejected the appeal *ipse dixit*, in violation of the Rules providing the manner in which the appeal is to be considered. In this regard, Mr. Mohanty, Learned Counsel for the Applicant also drew our attention to the provisions embodied in the Rules with regard to



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consideration of the appeal of the employee. Hence, it has been contended by Mr. Mohanty that as the applicant has been visited with the harsh/capital punishment of removal in violation of *audi alterum partem*/Rules the applicant is entitled to the relief claimed in this OA.

Per contra, Mr. Pal, Learned Counsel appearing for the Respondent-Railway opposed the contentions advanced by Mr. Mohanty, recorded above, and has submitted that the applicant was not punctual in attendance earlier to proceeding on leave unauthorisedly. However, the Department have taken every steps to communicate the order but as the same was returned undelivered, the Respondents proceeded further in the Disciplinary Proceedings after pasting the orders in the notice board where the applicant was working. Therefore it cannot be said that there was any violation of principles of natural justice. However on the specific question as to whether the Respondents have brought the matter to the notice of the Applicant by

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publishing the same in any newspaper it was fairly submitted by Mr. Pal that no such step was taken by the Respondents.

5. From the above, it is established that the applicant was not aware of the initiation of the major disciplinary proceedings for his unauthorized absence from duty. He came to know for the first time when after being cured, he came to join the duty through letter dated 27.1.2010. The Respondents have also not taken any steps to bring the initiation of the disciplinary proceedings to the notice of the applicant by sending the same once again or publishing in any newspaper in compliance with the principles of natural justice. A dispute in which a document sent by regd. Post but returned unserved without making further efforts to serve the charge sheet can be legally treated to have been served and on that basis conclusion of the proceedings ex parte by imposing the punishment is sustainable came up for consideration before the Hon'ble Supreme Court of India in the case of **Union of India and others**

Vrs Dinanath Shantaram Karekar and others, AIR 1998 SC



2722 in which Charge-sheet which was sent to delinquent was returned with the postal endorsement "not found". Thereafter, the authorities proceeded in the matter and concluded the proceedings. It was held by the Hon'ble Apex Court that registered cover returned to the sender with the endorsement "not found" cannot be legally treated to have been served. Further efforts should have been made by the authority to serve the charge sheet on the delinquent. Single effort in the circumstances of the case cannot be treated as sufficient. Hence, the Hon'ble Apex Court declared the very initiation of the departmental proceedings as bad.

6. In the above context, the observation of the Hon'ble Apex Court in the case of **Dr.Ramesh Chandra Tyagi Vrs Union of India and others, 1994 SCC (L&S) 562** is very much relevant, a portion of which is quoted herein below:

"xxxxx. No charge sheet was served on the appellant. The enquiry officer himself stated that notices sent were returned with endorsement "left without address" and on other occasion "on repeated visits people in the house that he has gone out and



they do not disclose where he was gone. Therefore, it is being returned". May be that the appellant was avoiding it but avoidance does not mean that it gave a right to Enquiry Officer to proceed ex parte unless it was conclusively established that he deliberately and knowingly did not accept it. The endorsement on the envelope that it was refused was not even proved by examining the postman or any other material to show that it was refusal by the appellant who denied on oath such a refusal. No effort was made to serve in any manner known in law. Under Postal Act and Rules the manner of service is provided. Even service rules take care of it. Not one was resorted to. And from the endorsement it is clear that the envelope containing charge sheet was returned. In absence of any charge sheet or any material supplied to the appellant it is difficult to agree that the inquiry did not suffer from any procedural infirmity."

7. In the instant case the charge sheet by post was admittedly returned with postal remark that addressee not met and thereafter the same was pasted in the notice board which cannot be accepted to have been legally served on the applicant in view of the law laid down by the Hon'ble Apex Court in the case of Dinanath Shantaram Karekar (supra).

8. However, we have perused the order of the Disciplinary Authority dated 8.11.2006 at Annexure-A/3 order

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of the Appellate Authority dated 20.4.2010 at Annexure-A/5 and the order dated 20.4.2011 at Annexure-A/9 which was issued by the Appellate Authority for the second time after the order of the Revisional Authority dated 14.9.2011 at Annexure-A/7.

9. As per the rulings of the Court, it must be proved that unauthorized absence was willful. If absence is due to compelling circumstances under which it is not possible to report for duty or perform duty such absence cannot be held to be willful and employee guilty of misconduct which is conspicuously silent in the order of the Disciplinary Authority dated 8.11.2006 at Annexure-A/6 and on the other hand the stand of the applicant that he was prevented from discharging his duty ^{due to} to his suffering from "Sizophrenia Psychosis" supported with medical certificate. In this connection we have had the strength from the decision of the Hon'ble Apex Court in the case of **Krushnakant B.Parmar Vs Union of India and another (2012) 1 SCC (L&S) 609**. In view of the above, removal

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from service imposed by the Disciplinary Authority cannot sustain in the eyes of law.

10. As per the Rules, the appellate authority is required to consider (i) whether the procedure laid down in the Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (ii) whether the findings of the disciplinary authority are warranted by the evidence on record; and (iii) whether the penalty imposed is adequate and thereafter pass orders confirming, enhancing etc. the penalty or may remit back the case to the authority which imposed the same. But the order of the Appellate Authority 20.12.2011 at Annexure-A/9 is conspicuously silent. The Appellate Authority has also taken note of pernicious incident of irregular attendance without stating whether this was a part of the charge sheet. The power given to the Appellate Authority to consider implies 'due application of mind' which seems has not been exercised by the



Appellate Authority. The Appellate Authority, in short, demonstrates total non-application of mind.

11. Similar issues came up for consideration before this Tribunal in the case of **Balajinath Padhi -Vrs.- Union of India and others, 2002 (II) OLR (CSR) 28** in which by placing reliance on the above decisions of the Hon'ble Apex Court this Tribunal quashed the order of punishment of removal for the same being issued in violation of principles of natural justice. In the case of **Sailendra Narayan Bhanjadeo Vrs. UOI and others (OA No. 128/1997 disposed of on 3rd August, 1999)** the order of punishment of removal which was upheld by the Appellate Authority, without following due procedure of Rules of Law as enumerated above, was also quashed by this Tribunal. After being noticed that the issues involved in the above cases and the case in hand are same and similar, we find no justification to deviate from the view already expressed by this Tribunal.

12. In view of the discussions made above, we quash the order of the Disciplinary Authority dated 8.11.2006 at

Annexure-A/3 and the order of Appellate Authority dated 20.4.2011 at Annexure-A/9 and direct the Respondents to reinstate the Applicant to service forth.

In so far as payment of back wages is concerned, it is ordered that the Applicant would be entitled to his salary to the extent of the leave available to his credit and for rest of the period, he would not be entitled to any back wages but his pay shall be fixed notionally and the period shall be taken into consideration for qualifying service for all other purposes.

13. In the result this OA stands allowed to the extent stated above. There shall be no order as to costs.


(R.C.MISRA)
Member(Admn.)


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