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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK**

OA No.625 of 2013
Cuttack, this the 24th day of September, 2013

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

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Pitambar Murmu aged about 45 years, Son of Late Gopal Murmu, At-Angargadia, PS-Balasore, Industrial Estate, At/Po.Balasore, Dist. Balasore.

...Applicant

(Advocates: M/s. B.K.Sharma, A.U.Senapati)

VERSUS

Union of India Represented through –

1. The Divisional Railway Manager, South Eastern Railway, Kharagpur, At/Po.Kharagpur, Dist. Medinapur.
2. Senior Divisional Mechanical Engineer, South Eastern Railway, Kharagpur, At/Po.Kharagpur, Dist. Medinapur.

... Respondents

(Advocate: Mr.T.Rath)

ORDER

A.K. PATNAIK, MEMBER (JUDL.)

Applicant's case, in nut shell, is that on 29.6.1998 he was appointed as a Trainee Assistant Driver (Electrical/Diesel) and while he was working as LP (Goods) at Loco Shed, Kharagpur vide Memorandum dated 12.2.2008, disciplinary

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proceedings under Rule 9, under Rule 9 of the Railway Servant (Disciplinary and Appeal) Rules, 1968 was initiated against him. The matter was enquired into and the IO submitted its report on 20.6.2009. On the basis of the report of the IO the Disciplinary Authority imposed the order of compulsory retirement on 29.7.2009. Thereafter, the applicant preferred appeal/mercy petition to the Appellate Authority on 24.8.2012. It is the further case of the Applicant that he has sought information/documents relating to the disciplinary proceedings initiated against him which was supplied to him vide letter dated 21.6.2013 and, thereafter, he has filed this OA on 29th August, 2013, U/s. 19 of the A.T.Act, 1985 seeking to quash the order dated 28.7.2009 of the Disciplinary Authority imposing the punishment of compulsory retirement on the applicant.

2. Mr.T.Rath, Learned Standing Counsel for the Railway on receipt of advance copy of the OA entered appearance for the Respondents and opposed the very maintainability of this OA on

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various grounds such as law of limitation ; nonjoinder of necessary/proper party and in absence of any prayer for reinstatement of the applicant after quashing the order of the Disciplinary Authority. He has also contended that the information/document, obtained under RTI Act, 2005, after lapse of the prescribed period provided under section 21 of the A.T. Act, 1985 cannot give life to a stale/dead claim. By drawing our attention to the mercy petition dated 24.8.2012, Mr.Rath contended that this OA ought not to have been registered at all by the Registry as the documents stated to have been enclosed to the mercy petition are not accompanied with the copy filed along with this OA. On the merit of the matter it was contended by Mr.Rath that the disease in which the applicant is alleged to have been suffering is not such, which crippled/disabled him from sending an application for leave. It was also not the case of the applicant that despite his leave application the authority treated his absence as unauthorized and

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imposed the punishment. The Applicant was working as Loco Pilot (Goods) and his unauthorized absence for such a long time has its impact on the administration. As such, this OA is liable to be dismissed at the threshold.

3. On the other hand Mr.B.K.Sharma, Learned Counsel for the Applicant submitted that the absence of the applicant from duty was not intentional or deliberate. He remained on leave due to his suffering from various diseases and after recovery when he came to know about the imposition of punishment of compulsory retirement for his absence from duty, by making representation dated 24.8.2012 he has prayed for taking him back to duty and no action having been taken thereafter the applicant sought information/document under RTI Act, 2005 and after that he has approached this Tribunal in the instant OA. Therefore, if this OA is dismissed on law of limitation, the injustice caused to the applicant in the decision making process of the matter would be allowed to perpetuate for

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eternity. Hence he has prayed to admit this OA and issue notice to the Respondents to file their counter.

4. But we find force on the contentions advanced by Mr.Rath that if this OA is entertained, this would tantamount to opening a flood gate for the litigants to file OA contrary to the provisions made in the AT Act and Rules made there under. We find that the mercy petition lacks documents enclosed thereto. As per the provision, Union of India can only be represented by an authority of the level of Secretary of the Governments of India and in the instant case the General Manager of the Railway. But the applicant has filed this OA making the DRM to represent the Union of India instead of the GM. In the appeal/mercy petition dated 24.8.2012 no whisper has been made as to how he came to know with regard to the order dated 29.7.2009 imposing the punishment of compulsory retirement and what prevented him from making an application/leaving information of his illness etc. No separate application has been

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filed seeking condonation of delay within the period prescribed in Section 21 of the A.T. Act, 1985.

5. In the light of the discussions made above, this OA deserves to be dismissed and is accordingly dismissed by leaving the parties to bear their own costs.


(R.C.MISRA)

Member(Admn.)


(A.K.PATNAIK)

Member (Judl.)