

CENTRAL ADMINISTRATIVE TRIBUNAL

Cuttack Bench, CuttackOA/260/00302/2014

Orders reserved on : 20.07.2016

Date of Order : 23rd August, 2016

CORAM

Hon'ble Mr. R.C.Misra, Member [A]

The Hon'ble Mr S.K. Pattnaik, Member [J]

Asita Kumar Nayak, aged about 53 years, S/o Late Sridhar Nayak,
At/PO/PS – G. Udayagiri, Dist.- Kandhamal, at present residing at – Majhi
Sahi, Jobra, PO – College Square, PS – Malgodown, Dist. – Cuttack.

Applicant

By Advocate : Shri R.N.Routray.

Vrs.

1. Union of India, represented through the General Manager, East Coast Railway, Chandrasekharapur, Bhubaneswar, Dist. – Khurda.
2. Divisional Railway Manager, East Coast Railway, Khurda Road Division, AT/PO/PS – Jatni, Dist. – Khurda.
3. Addl. Divisional Railway Manager, East Coast Railway, Khurda Road Division, AT/PO/PS – Jatni, Dist. – Khurda.
4. Senior Divisional Signal Telecom Engineer, East Coast Railway, Khurda Road Division, At/PO – Jatni, Dist. – Khurda.
5. Divisional Signal Telecom Engineer, East Coast Railway, Khurda Road division, At/Po – Jatni, Dist. – Khurda.
6. Asst. Signal Telecom Engineer, East Coast Railway, At/Po/Dist. – Cuttack.

..... Respondents

By Advocate : Shri S. K.Ojha

ORDER

S.K. Pattnaik, Member [J] :- The applicant seeks quashing of the order dated 31.07.2012/01.08.2012 [Annexure-8] by which he was dismissed from service by the Disciplinary Authority. The applicant also challenges the Appellate Order dated 06.03.2013 [Annexure-11] by which it has upheld the order of punishment imposed by the Disciplinary Authority.

Handwritten signature:
S.K. Pattnaik

2. Applicant's case in short, runs as follows :

According to the applicant, The Sr. DPO, Khurda, published the seniority list of ministerial staff as on 01.10.2004 in which the name of the applicant figures at Sl. No.2 in the cadre of OS-I and considering the work load at Cuttack, a post of OS-I was created at Cuttack vide order dated 28.11.2005 but the applicant was posted in the said post w.e.f. 01.03.2004. According to the applicant, on 18.08.2009, the Respondent No.6 misbehaved with him and threatened him with dire consequences. Due to this reason, the applicant was constrained to file an FIR against the respondent no.6 in the Government Railway Police Station Cuttack, which was registered as GRPS Case No.91[7] dated 21.08.2009. Thereafter, the applicant was transferred on 19.08.2009 and was relieved accordingly to joint at Khurda Road. According to the applicant, due to severe illness of his wife, he applied for leave and the same was duly sent to the Respondent No.4 by speed post. Subsequently he also applied for extension of leave through proper leave application which was sent to the concerned authority by speed post. According to the applicant, he was not directed to hand over the charge to any body at his previous place of posting, therefore, he could not hand over. The applicant submitted an application before respondent no.2 to recall the transfer order but while the same was pending consideration, a notice was published on 10.10.2009 in the news paper by the respondent no.4 directing the applicant to report in his new place of posting immediately. According to the applicant, he met respondent no.4 on 13.10.2009 personally and ventilated his grievance. Thereafter, he filed an OA No.548/2009 before the Tribunal wherein interim protection was granted vide order dated 30.11.2009 and finally vide order dated 09.03.2010, the OA was disposed of remitting the matter to

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the authorities for consideration. Respondent No.4 being the Disciplinary Authority issued a memorandum of charge dated 30.11.2009/07.12.2009 on the ground of un-authorized absence from 21.08.2009. The applicant filed the show cause requesting the Respondent No.4 to supply some relevant documents and after receipt of some the same, filed a detailed show cause on 13.01.2010 [Annexure-3] refuting the charges levelled against him. The applicant further pleaded that on 25.02.2010 [Annexure-4] he filed a representation submitting to change the Enquiry Officer and to appoint any other person as Enquiry Officer. Thereafter, the applicant challenged the disciplinary proceeding in OA No.286/2010 which was finally disposed of on 23.09.2011 [Annexure-5] with a direction to the Disciplinary Authority to complete the proceeding within six months. According to the applicant, the authorities sat over the matter for a long time and all of a sudden on 29.03.2012, a copy of the enquiry report was served on him asking him to file his show cause within fifteen days. The applicant further submitted that he was never called to attend in the enquiry proceeding and it was completed behind his back in utter violation of principles of natural justice. He again preferred an application on 12.04.2012 and prayed the authorities to grant some more time to file show cause but the same was rejected vide order dated 12.04.2012. Further, before imposing punishment upon him, he filed OA No.357/2012 which was disposed of vide order dated 04.05.2012 [Annexure-7] allowing time to file show cause. Pursuant to the direction of the Tribunal, he filed show cause within the time stipulated but without considering the show cause, the disciplinary authority vide his order dated 31.07.2012/31.08.2012 passed the order of dismissal from service. Hence, the instant OA.

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3. The respondents contested the case by filing a written statement. According to the respondents, the applicant was initially appointed in Railway as Sr. Clerk on 21.01.1988 and joined at Jamalpur under the Eastern Railway, Kolkata and on his own request, his transfer was acceded to by the Railways and finally he joined at Cuttack under Khurda Division w.e.f. 01.10.1990. He was promoted to the post of Office Supt. Gr. II w.e.f. 14.12.2002 and to the post of Office Supt. Gr. I w.e.f. 01.03.2004 vide order dated 01.03.2004 and posted under the Sr. Divisional Signal and Telecom Engineer, Khurda Road. According to the respondents, due to restructuring of cadre, one additional post of OS-I was available and that post was pin pointed at CTC and the applicant's promotion to the post of OS-I was effected w.e.f. 26.12.2005, i.e. from the date of shouldering responsibility. Being aggrieved, the applicant filed OA No.240/2006 which was disposed of with a direction to dispose of the representation of the applicant. The authorities have taken decision effecting the promotion w.e.f. 26.12.2005. However, without accepting the decision of the authority once again the applicant approached this Tribunal in OA 197/2007 which is still pending adjudication. In the meantime, the respondent no.4, Sr. DSTE/Kur felt necessary to utilize the services of the applicant at Divisional Office as OS Gr. I by transferring the applicant along with post from Cuttack to Khurda Road. Thereafter, the applicant was spared vide order dated 20.08.2009 which was received by the applicant on the same day. According to the respondents, after receipt of the sparing letter, he has remained absent unauthorizedly and without reporting for duty at division office at Khurda Road. The respondents further submitted that in compliance of the order of the Tribunal dated 30.11.2009 in OA 548/09, the applicant's transfer was kept in abeyance for a period of 45 days, vide letter

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dated 09.12.2009. They further submitted that the applicant joined in the office of the Respondent No.6 on 07.12.2009. Finally, the OA was disposed of on 09.03.2010 with an observation that the applicant shall not be disturbed from his present place till expiry of current academic session. Thereafter, the respondents did not disturb him till the expiry of the current academic session. However, they advised to join at the new place of posting on 04.04.2010 and all other terms and conditions stipulated vide order dated 19.03.2009 remains unchanged but without reporting to the office of the Respondent No.4. he remained un-authorized absent from 21.08.2009 after being spared from Cuttack on 20.08.2009. According to the respondents, a major penalty charge memo dated 30.11.2009 was issued with the charges that the applicant has failed to maintain devotion to duty and acted in a manner of unbecoming of a Rly. Servant in contravention to Rule 3.1[ii] [iii] of R.S. Conduct Rules, 1966. The applicant after receiving the charge memo asked for certain documents vide his letter dated 30.12.2009, which was sent to him vide letter dated 05.01.2010. Thereafter, the applicant submitted a written note of defence dated 13.01.2010. The Disciplinary Authority after considering the matter, nominated an Enquiry Officer to enquire into the matter. The applicant requested to change the Enquiry Officer, vide his representation dated 25.02.2010, which was rejected. The respondents submitted that opportunities were given to the applicant to attend the enquiry proceeding but he was found unavailable and ultimately a notice of inquiry was pasted on the notice board of his office and a letter to this effect was also sent to his current address but the same was returned undelivered with the remarks 'refused'. The respondents have further submitted that in the meantime, the Hon'ble High Court of Odisha/CTC passed order in WP No.5493/2010

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arising out of OA 548/09 and directed the applicant to join at Khurda Road on or before 02.04.2011. However, the applicant joined in the office of the Sr. DSTE/KUR on 06.05.2011. According to the respondents, the Enquiry Officer submitted his report on 28.03.2012 and a copy thereof was also sent to him vide letter dated 29.03.2012. The applicant, being aggrieved with the decision of the Disciplinary Authority, filed an appeal before CAT, Cuttack Bench in OA No.357/2012 which was disposed of with directions to the respondents to extend the time limit from 12.04.2012 to 05.06.2012 to submit his reply. In compliance of the order passed by CAT, Cuttack Bench in OA 357/2012, the applicant was allowed to inspect the documents and verification of the records as desired by him. The applicant once again made a written request to disciplinary authority on 30.05.2012 asking inspection of large number of files instead of specifying any particular records. However, such request of the applicant was turned down by the disciplinary authority. Thereafter, against such decision of the authority, the applicant again filed an MA No.502/2012 seeking extension of time to allow the applicant to file his reply after verifying the complete records. However, the Tribunal did not entertain such request of the applicant. The respondents further pleaded that on the basis of enquiry report and other document available in the case file and considering the case on merit, the disciplinary authority imposed the punishment of dismissal from Railway service vide order of penalty dated 31.07.2012/01.08.2012. The applicant filed an appeal before the Appellate Authority on 30.08.2012 but the punishment order has been confirmed by the Appellate Authority, vide order dated 06.03.2013 [Annexure-11].

4. Admittedly, the applicant was absent from duty w.e.f. 21.08.2009 till the date of issue of charge memo dated 31.11.2009 [Annexure-A/2], i.e. for

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103 days. Learned counsel for the applicant submits that the applicant was unauthorizedly absent and the absence was not willful, rather was not attending duty due to compelling circumstances. Whether the applicant ~~was~~ remained absent willfully or was propelled by circumstances is a factual matter to be adjudicated by the Disciplinary Authority, and such a matter cannot be decided at this point of time by this forum. The only point that comes for consideration is that even if for the sake of argument, it is admitted that the applicant was absent from duty for few months, will it entail ^{his} dismissal from service, over looking the fact that the applicant has already served the department for more than two decades? ²

5. We are concerned about the legal proposition that the scope of interference by the Tribunal in interfering the order of punishment is very limited. However, in the case of *Hombe Gowda Educational Trust and Another vs. State of Karnataka and Others, 2006 SCC [L&S] 133*, Their Lordships have summarized the law by observing that unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Since the punishment imposed in the instant case is shockingly dis-proportionate, it would be appropriate to direct the disciplinary authority and appellate authority to consider the penalty imposed, as has been observed by Their Lordships in the aforesaid case. By the time, the charge memo was issued, the delinquent employee had already served the department for more than 20 years and was in a pensionable job, and if for absence of 3 to 4 months shall be removed from service without any other grave misconduct, shall amount to injustice being disproportionate to the gravity of delinquency.

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6. In the case of *Krushnakant B. Parmar, vs. Union of India & Ors., [2012] 3 Supreme Court Cases 178*, Their Lordships have observed that unless there is an observation that the absence was willful, the order becomes vulnerable. In the said case, the appellant was unauthorizedly absent for more than three consecutive spells of 36 days, 32 days and 234 days. However, taking into consideration the circumstances, Their Lordships without remitting the proceedings to the Disciplinary Authority have passed an order for reinstatement of the appellant with 50% back wages.


7. In the instant case, since the applicant has some years of service left, it may not be just and proper to pass an order of dismissal merely because the applicant remained absent for 103 days. Hence, instead of interfering with the conclusion of the Disciplinary Authority, we feel it expedient to interfere with the punishment imposed by the Disciplinary Authority and affirmed by the Appellate Authority. It may not be out of place to mention here that the right to impose penalty carries with it the duty to act justly, considering the facts of the case and in the instant case, there can be no two opinions that the penalty of dismissal from service imposed upon the applicant was whimsical and not in consonance with the mis-conduct. It may not be out of place to mention here that the gravity of misconduct plays a vital role in imposing punishment. Here the misconduct was unauthorized absence though for some absence period, he had informed to the authorities and for some period there is dispute because when the applicant says that he had sent intimation, but the office says, not to have received the same. However, the enquiry officer in para 16 of his report, has observed that the original leave application dated 30.09.2009, 30.10.2009, 26.11.2009 and 22.11.2009 are available in the case file of Shri A.K.Naik.

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So, instead of churning the matter, we feel it appropriate to remit the matter to the Appellate Authority to consider the imposition of proper punishment on the delinquent keeping in view the degree of delinquency and it is a fit case for passing minor penalty. Hence ordered.

8. The OA is allowed in part. The order passed by the Disciplinary Authority dated 31.07.2012/01.08.2012 [Annexure-8] and Appellate Authority dated 06.03.2013 [Annexure-11] are set aside. The matter is remitted to the Appellate Authority to re-consider the case of the applicant only on the question of quantum of punishment and to pass a fresh order except major punishment. The exercise be completed within a period of one month from the date of passing of the order. Since the applicant is out of job, he may be reinstated forthwith. No costs.


[S.K. Pattnaik]
Member [Judicial]
mps.


[R.C.Misra]
Member [Admn.]