(RESERVED)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

(Dated this Thursday the 17th day of February, 2011)

CORAM:

HON'BLE MRS. MANJULIKA GAUTAM, MEMBER-A
HON'BLE MR. SANJEEV KAUSHIK, MEMBER-J

ORIGINAL APPLICATION NO. 849 of 2005
(U/s, 19 Administrative Tribunal Act, 1985)

Thakur Das aged about 51 years
S/o Late Shri parma Naand
S/o 661 Baragaon Gate
Vahar Bahar Ka pura, Dist. Jhansi .....Applicant
By Advocate: Shri R. Verma,

Versus

1. Union of India, through General Manager, North Central Railway, Jhansi.

2. Deputy Chief Mechanical Engineer (P&P) (Works) North Central Railway, Jhansi.

..... Respondents

By Advocate: Shri A.K. Sinha, Counsel for the Union of India.

O R D E R

PER: MR. SANJEEV KAUSHIK, MEMBER (J)

By way of the instant Original Application the applicant has impugned the order dated 14.2.2005 passed by the respondent No.3 imposing the penalty of reduction in pay from Rs. 5,125/- to Rs. 4500/- per month in the pay scale of Rs. 4500 – 7000 for a period of one year without cumulative effect and the order dated 12.5.2005 vide which

respondent No.2 modified the punishment and enhanced the same for a period of two years 11 months without cumulative effect.

2. The skeleton facts of the case are that the applicant while working as technician grade I in the pay scale of Rs. 4500/- to 7000 was chargesheeted vide Memorandum dated 5.1.2005 (A.3). It is submitted by the applicant that he has been held to be responsible for derailment of wagon near Babina Station on 26.11.2004 on the ground that said wagon was entrusted for maintenance to the applicant on 11.8.2003. He was chargesheeted under Rule (3) i(ii) of the Railway Servants (Conduct) Rules, 1966 (for brevity '1968' Rules), the applicant was asked to submit reply to the chargesheet within a period of 10 days. On 15.1.2005 the applicant made a representation to the respondent No.3 demanding certain documents i.e. duty list of Bench Fitter Grade I, Grade II and Grade III (Technicians). It is stated that the above stated document was demanded in order to give specific defence to the chargesheet whether on the date as alleged in the chargesheet the applicant was actually put to work on the wagon or not. It is specifically stated in the above stated representation that the said letter may not be treated as reply to the chargesheet. (Annexure A.4). It is further submitted that the Disciplinary Authority without taking a decision on the representation made by the applicant proceeded *exparte* enquiry which resulted into imposition of punishment of reduction in the pay scale vide impugned order dated 14.12.2005 (Annexure A.1). Against this order the applicant filed statutory appeal on 29.3.2005 to respondent No.2. The appellate authority vide its order dated 7.4.2005 issued a show cause notice to the applicant proposing therein to modify the punishment in terms of the Railway circular and proposed for enhancing the same and was asked to

submit reply within a period of 15 days. The applicant stated to have submitted his representation on 3rd March, 2005 to the appellate authority. Without considering what has been stated by the applicant in his representation the appellate authority i.e. respondent No.2 vide its order dated 12.5.2005 enhanced the punishment that of stoppage of annual increment for a period of two years and 11 months without cumulative effect in the same time scale of Rs. 4500 700 (A.2). The applicant has further submitted that Railway Board vide its note dated 11.2.1986 have categorically stated that when the delinquent employee demand certain documents to put his defence the same should be considered by the disciplinary authority by applying its own mind and communicate the decision thereupon in writing to delinquent officer. The applicant has taken a ground that his right has been prejudiced by the respondents in as much as that he has not been provided documents which were demanded by him for submitting the reply to the chargesheet. Even no decision whatsoever has been conveyed to him on his request for supplying the documents. An *exparte* inquiry has been conducted on his back and the impugned order has been passed inflicted punishment, which is in violation of principle of natural justice and thus the same is liable to be set aside having been passed contrary to the rules and well established principle of natural justice.

3. Upon notice the respondents submitted detailed Counter Affidavit. In the Counter Affidavit the first preliminary objection has been raised by the respondents that the applicant has not availed alternate effective remedy of revision against the impugned and therefore the instant Original Application be dismissed on this count alone. On merit it is admitted by the respondents that no documents has been

given to the applicant as demand by him as the disciplinary authority did not find his request genuine and did not feel it necessary to supply the same. It is further submitted that the punishment inflicted by the disciplinary authority is minor penalty only and therefore, the instant O.A. be dismissed with costs. It is further submitted by respondents that has been established by the disciplinary authority that the applicant was negligent in performing his duty which resulted into loss to the railways.

4. We have heard Shri Rakesh Verma Ld. Counsel for the applicant and Shir A.K. Sinha, ld. Counsel for the respondents and have perused the material on record.

5. The Ld. Counsel for the applicant Shri Rakesh Verma has vehemently argued that while passing the impugned order the respondents have violated the well established principle of natural justice. It is further submitted that once the delinquent officer in terms of the Rule asked for certain documents then it is more for the respondents to decide the same before proceeding further. In the instant case admittedly the applicant made a request for supply of certain documents which were very much relevant for filing reply to the charges. Neither the documents were supplied nor any decision taken thereupon had been communicated to the applicant. Therefore, the right of the applicant has been prejudiced to stake his claim and to rebut the charges levelled against him. He further submitted that in terms of Rule 11 of Railway Servants (Disc. & Appeal) Rules 1968 it is mandatory for the authority to reply to the request made by the delinquent with regard to the supply of documents. It is further submitted that the authority are bound to pass speaking order indicating the reason for the conclusion arrived thereupon while rejecting the representation of the

delinquent. It is further submitted by the counsel for the applicant that the disciplinary authority has considered only those facts which have not been conveyed to the applicant. In short, the statements have been recorded on the back of the applicant and the applicant has not been provided an opportunity to cross examine the witnesses which had been examined by the disciplinary authority, which became the basis in passing the final order of punishment. Therefore the same is breach of Article 14 of the Constitution.

6. On the other hand, Shri Sinha,. Counsel for the respondents reiterated what has been stated in the Counter Affidavit. He emphasized only on the ground that the applicant is having an alternate remedy of revision therefore, the instant application be dismissed for want of alternate remedy.

7. We have considered the rival submissions and perused the records. Firstly we will deal with the objection raised by the Counsel for the respondents with regard to having alternate remedy. Sec.20 (1) of the Administrative Tribunals Act 1985 the same is reproduced hereinbelow:

> "**20. Application not to be admitted unless other remedies exhausted .**
> (1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

8. From the bare perusal of above section it is clear that the provision does not bar the ultimate jurisdiction of the Administrative Tribunal but it only requires the party to exhaust the other remedies available. The aim of introducing this provision is to provide for an additional forum and certain opportunities to the redressal of grievances and to prevent short-circuiting of normal Departmental procedures specified under the

service rules. The word "ordinarily" has been considered by the Hon'ble Supreme Court *in the case of* Kailash Chandra v. Union of India, while dealing with the interpretation of the words "should ordinarily be retained" in Rule 2046(2)(a) of Railway Establishment Code the Apex Court held that the intention is made clear and beyond by the use of the word "ordinarily" and ordinarily means in the large majority of cases, but not invariably. In the decision referred (4) supra, it was held at as hereunder:

> *"The Rules relating to disciplinary proceedings do provide for an appeal against the orders of punishment imposed on public servants. Some Rules provide even a second appeal or a revision. The purport of Section 20 of the Administrative Tribunals Act is to give effect to the Disciplinary Rules and the exhaustion of the remedies available thereunder is a condition precedent to maintaining of claims under the Administrative Tribunals Act. Administrative Tribunals have been set up for Government servants of the Centre and several States have already set up such tribunals under the Act for the employees of the respective States. The law is soon going to get crystallized on the line laid down under Section 20 of the Administrative Tribunals Act.*

The emphasis on the word, *'ordinarily'* means that if there be an extraordinary situation or unusual event or circumstances, the Tribunal may exempt the above procedure being complied with and entertain the application. Such instances are likely to be rare and unusual. That is why, the expression 'ordinarily' has been used. There can be no denial of the fact that the Tribunal has power to entertain an Application even though the period of six months after the filing of the appeal has not expired but such power is to be exercised rarely and in exceptional cases. In case in hand admittedly no documents were given to the applicant

despite his request, so there is clear violation of principle of natural justice as held by Hon'ble Apex Court in number of decisions. The Hon'ble Apex Court in case of *M.P. State Agro Industries Development Corpn. Ltd and others versus Jahan Khan reported as 2007(10) Supreme Court Case 88* held as under:-

> "12. Before parting with the case, we may also deal with the submission of learned counsel for the appellants that a remedy by way of an appeal being available to the respondent, the High Court ought not to have entertained his petition filed under Articles 226/227 of the Constitution. There is no gainsaying that in a given case, the High Court may not entertain a writ petition under Article 226 of the Constitution on the ground of availability of an alternate remedy, but the said rule cannot be said to be of universal application. The rule of exclusion of writ jurisdiction due to availability of an alternative remedy, but the said rule cannot be said to be of universal application. The rule of exclusion of writ jurisdiction due to availability of an alternate remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of the availability of an alternative remedy, a writ court may still exercise its discretionary jurisdiction of judicial review, in at least three contingencies, namely, (i) where the writ petition seeks enforcement of any of the fundamental rights (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an act is challenged. In these circumstances, an alternative remedy does not operate as a bar.
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> 13. In the instant case, though it is true that the penalty order impugned in the writ petition was appealable in terms of the aforenoted Regulations but having come to the conclusion that the order was per se illegal being violative of the principles of natural justice, it cannot be aid that the High Court fell into an error in entertaining the writ petition filed by the respondents."

9. In view the above settled position, we reject the preliminary objection and proceed to decide the matter on merits. The applicant has not been supplied the documents which was demanded by the applicant vide its representation dated 15.1.2005. From the bare perusal of the (Annexure A.X) it is clear that the applicant had specifically stated that

he needed these documents so as to file effective reply to the chargesheet.

10. That the preposition of non supply of documents which resulted and the prejudice caused to the delinquent officer has been considered by the Hon'ble Supreme Court in the case of *State* of Punjab *vs. Bhagat Ram, AIR 1974 SC 2335* in which it has been held as under:

> "The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the Government servant is afforded a reasonable opportunity to defend himself against charges on which inquiry is held. The Government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the Government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the Government servant. Unless the statements are given to the Government servant he will not be able to have an effective and useful cross-examination.
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> It is unjust and unfair to deny the Government servant copies of statements of witnesses examined during the investigation and produced at the inquiry in support of the charges leveled against the Government servant."

The very same view was taken by Their Lordships of the Supreme Court in a case *State of Uttar Pradesh vs. Mohd. Sharif.* At paragraph 3 of the judgement, Their Lordships were pleased to observe as follows:

> " Secondly, it was not disputed before us that a preliminary inquiry had preceded the disciplinary inquiry and during the preliminary inquiry, statements of witnesses were recorded but copies of these statements were not furnished to him at the time of the disciplinary inquiry. Even the request of the plaintiff to inspect file pertaining to preliminary inquiry was also rejected. In the face of these facts which are not disputed it seems to us very clear that both the first appeal court and the High Court were right in coming to the conclusion that the plaintiff was denied reasonable opportunity to defend himself at the disciplinary inquiry; it cannot be gainsaid that in the absence of necessary particulars and statements of witnesses he was prejudiced in the matter of his defence."

11. The same very view has recently been again reiterated by the Hon'ble Supreme Court in *Indu Bhushan Dwivedi vs. State of Jharkhand and Anr. (2011) 1 SCC (L&S) 64* wherein it has been held as under:

> *"22. As a general rule, an authority entrusted with the task of deciding lis between the parties or empowered to make an order which prejudicially affects the rights of any individual or visits him with civil consequences is duty bound to act in consonance with the basic rules of natural justice including the one that material sought to be used against the person concerned must be disclosed to him and he should be given an opportunity to explain his position. This unwritten right of hearing is fundamental to a just decision, which forms an integral part of the concept of rule of law. This right has its roots in the notion of fair procedure. It draws the attention of the authority concerned to the imperative necessity of not overlooking the cause which may be shown by the other side before coming to its decision.*
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> *23. When it comes to taking of disciplinary action against a delinquent employee, the employer is not only required to make the employee aware of the specific imputations of misconduct but also to disclose the material sought to be used against him and give him a reasonable opportunity of explaining his position or defending himself. If the employer uses some material adverse to the employee about which the latter is not given notice, the final decision gets vitiated on the ground of the violation of the rule of audi alteram partem. Even if there are no statutory rules which regulate holding of disciplinary enquiry against a delinquent employee, the employer is duty-bound to act in consonance with the rules of natural justice – U.P. Warehousing Corpn. Vs. Vijay Narayan Vajpayee."*
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> *24. However, every violation of the rules of natural justice may not be sufficient for invalidating the action taken by the competent authority/employer and the Court may refuse to interfere if it is convinced that such violation has not cause prejudice to the affected person/employee."*

Moreover in terms of Rule 11 of 1968 Rules, it is mandatory for the respondents to decide the request of the Delinquent Officer and to convey the decision thereupon immediately.

> "Inspections of documents – In the procedure for minor penalty, there is no mention that the delinquent can ask for inspection of documents. However, the purpose of mentioning the documents with charges is to enable the delinquent to weight the case against him. It is, therefore, natural that if he wants to see the documents for preparing his representation, he should be given the opportunity, of course, depending upon

the merits of the request. Request for additional documents should also be dealt with on the same basis. Where a particular document is not considered relevant, the delinquent should be intimated. "

12. Further it has been circulated by the Board on 3.3.1978 that after considering the representation a speaking order be passed indicating the reasons for the conclusions arrived at. In the instant case as seen from the record, the respondents without deciding the application proceeded to complete the inquiry *exparte* which is in violation of all the above stated rules and well established rules of principles of natural justice. It is now well settled that any order having civil consequences has to be conveyed to that person.

13. In the instant case the applicant has established that for non supply of the necessary documents prejudice has caused to him as the impugned order has been passed by which he has been penalized. In this context reliance has been placed on the decision of the Hon'ble Apex Court in the case of ***O.K. Bhardwaj vs. UOI & Ors 2002 SCC (L&S) 188*** in which it is held as under:

> *"3. While we agree with the first preposition of the High Court having regard to the rule position which expressly says that "withholding increments of pay with or without cumulative effect." is a minor penalty, we find it not possible to agree with the second proposition. Even in the case of a minor penalty a opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with."*

14. The preposition laid down in the above noted judgements represent one of the basic cannon of justice that no one can be condemned unheard and no order prejudicially affecting any person can be passed by a public authority without affording him reasonable opportunity to defend himself on represent his case.

15. In view of the settled law laid down by the Apex Court as above, we are of the considered view that the facts and circumstances of the present case and that of the above cited case is squarely identical the impugned order is liable to be set aside having been passed in violation of principle of natural justice. Secondly, the impugned order of appellate order is also liable to be set aside as the appellate authority has not recorded the reasoning for enhancing the punishment. The impugned appellate order also suffers from the procedure adopted by the appellate authority. It can be seen from the appeal preferred by the applicant that he has taken stand that on the alleged date he was not performing the duty as alleged in the chargesheet. To rebut the same he has already submitted an application for supply of documents. This has not been supplied by the Disciplinary Authority. But without giving weightage to the grounds made in the appeal the appellate authority enhanced the punishment which is also against the 1968 Rules. We are convinced that prejudice has been caused to the applicant by not supplying the documents and by not allowing to cross examination of the witnesses which has been examined by the Disciplinary Authority.

16. For the reasons stated above, the impugned orders of punishment dated 14.2.2005 and appellate order dated 12.5.2005 are hereby set aside with liberty to the respondents to proceed further in the inquiry proceedings if so desired from the stage when the principles of

natural justice has been violated as observed above. The question of arrears to be paid to the applicant is to be decided by the Competent Authority after a decision is taken regarding continuation of the enquiry against him.

17. The O.A. is accordingly disposed of. No order as to costs.

MEMBER (J) MEMBER (A)

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