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RESERVED ON 18.12.2012

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(ALLAHABAD THIS THE 1st DAY OF MARCH, 2013)

**HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)**

Original Application No. 1186 OF 2007
(U/S 19, Administrative Tribunal Act, 1985)

Smt. Manju Dixit, Aged about 44 years, Wife of Shri Pradeep Kumar, Resident of 274 Inside Sainyar Gate, Jhansi, Presently posted as Junior Clerk in the office of Divisional Railway Manager (P), Jhansi.

.....Applicants

VERSUS

1. Union of India through Secretary Ministry of Railways, New Delhi.
2. Additional Divisional Railway Manager, North Central Railway, Jhansi.
3. Senior Divisional Personnel Officer, in the office of Divisional Railway Manager (P), North Central Railway, Jhansi.
4. Divisional Personnel Officer, in the office of Divisional Railway Manager (P), North Central Railway, Jhansi

..... Respondents

Advocate for the Applicant:- **Shri Vikas Budhwar**

Advocate for the Respondents:- **Shri Saumitra Singh.**

ORDER

DELIVERED:-

BY HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

By means of the present Original Application filed under section 19 of the Administrative Tribunals Act, 1985

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applicant impugned the order dated 22.05.2007 passed by the disciplinary authority/respondent No.4, order dated 19.07.2007 passed by the appellate authority dismissing the statutory appeal and the order dated 20.08.2007 passed by the revisional authority rejecting the revision and further sought a direction from this Tribunal to direct the respondents to grant pay scale, increment and revision in pay scale, interest to the tune of 24% per annum, treating the applicant to be in service right from the date of her initial appointment ignoring the orders passed therein along-with 24% interest per annum. Further, to grant consequential benefits along-with interest thereon treating the applicant in service from the date of initial appointment i.e. 7.12.1989 treating the period of suspension and dismissal as the period spent on duty and to count it for the purposes of promotion, pay scale, increments, seniority etc.

2. The facts are to be noticed first:-

The applicant namely Smt. Manju Dixit was given appointment under dying-in-harness scheme (on the demise of her ~~hus~~ ^{hus} father) as Junior Clerk in Jabalpur Division. She joined on 07.12.1989. She was transferred to Jhansi Division in March, 1990. By an order dated 02.05.1997 she was placed under suspension by respondent No.2. She was served with charge sheet on 02.05.1997,

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which was replied on 12.05.1997 denying all the charges, thereafter, one Shri A. K. Jain, C.P.I., Jhansi was appointed as Inquiry Officer on 15.05.1997, who submitted his inquiry report on 09.06.1997 holding the applicant guilty of charges. The applicant submitted objection against the inquiry report on 01.07.1997. The Disciplinary Authority i.e. Respondent No.4 passed an order on 14.07.1997 whereby the applicant was dismissed from service. Aggrieved against the dismissal order the applicant preferred appeal which was rejected by order dated 08.01.1998. Then the applicant preferred revision petition which too was rejected by order dated 28.05.1998. Aggrieved against the above orders the applicant approached this Tribunal by way of O.A. No.956/1998, this Tribunal vide order dated 30.11.2006 set aside the impugned orders and liberty has been given to disciplinary authority to hold afresh inquiry if he think fit from the stage of submission of reply to the charge sheet. Pursuant to which another Inquiry Officer namely Shri Abdul Mazid was appointed as Inquiry Officer, who after conducting inquiry submitted his inquiry report holding that the applicant is not guilty of charges. The disciplinary authority being disagreed with the inquiry report has issued a show cause notice with disagreement note on 25.04.2007 to the applicant. The applicant submitted his reply. The disciplinary authority again passed order of punishment on 22.05.2007 whereby the penalty of

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reduction from the stage of Rs.3,425/- to the stage of Rs.3,350/- in the scale of Rs.3,050-4,590/- has been sough to be imposed for a period of one year. The applicant filed appeal which was rejected by order dated 19.07.007, against which revision petition was preferred which too was rejected by order dated 20.08.2007, hence this Original Application.

3. Pursuant to the notice respondents appeared and resisted the claim of the applicant by filing detailed Counter Affidavit. In which it is submitted that the inquiry proceedings were conducted in a fair manner as has been provided under the railway rules. In paragraph Nos. 9 and 14 respondents have taken the stand which reads as under:-

"9. That the contents of para 4.4. to 4.5. of the OA are the matter of record, however, it is submitted that the applicant was rightly served with the charge sheet of major penalty on the charges of that she failed to maintained absolute devotion of duty and prepared the false payment of Shri Gopal Krishna ASM for the period from 21.3.97 to 30.4.97 where as Shri Gopal Krishna was under sick since 21.3.97 and no leave of any kind was due in his credit. Beside that the maintenance of leave account was also the duty of the applicant. According to the Railway Board's instruction dated 31.12.96 as well as policy letter of the Division dated 25.5.98, which applicant failed to do so. As such the above charge sheet was rightly served upon the applicant for the misconduct.

14. That the contents of para 4.19 to 4.20 of the OA are partly matter of record and partly denied and it is submitted that D.A. rightly issued the show cause notice along with disagreement with the speaking form as per rules, stating therein that the

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Depot Clerk and personnel Branch Clerk are equally responsible for over payment of the staff, further the Enquiry Officer was failed to put forth the facts that applicant was failed to report to the higher authorities with regards to the maintenance of leave record at Depot. Further, the EO was also failed to establish that the maintenance of leave record of the staff concerned was the duty of the applicant being Depot Clerk as per Railway Board's as well as Divisional Instructions. That meaning thereby that there was cogent reason with the DA to disagree with the finding of the Enquiry Officer as such disagreement Note along with show cause notice was served upon the applicant as per procedure laid down in the DAR 1968."

4. Respondents have also relied upon the judgment to the effect that the Tribunal cannot interfere in the disciplinary proceedings.

5. Applicant has also filed Rejoinder Affidavit.

6. We have heard Shri Vikas Budhwar, learned counsel for applicant and Shri Saumitra Singh, learned counsel for respondents.

7. Shri Budhwar, learned counsel for applicant attacked the impugned order on two counts. Firstly, that the order of the appellate authority as well as of the revisional authority is non-speaking, cryptic and has been passed without considering the grounds taken in the appeal as well as in the revision, therefore, same are liable to be quashed. In this regard he placed reliance on the case of Ram Chander Vs. Union of India & Ors. Reported in (1986) 3 SCC 103, Divisional Forest Officer, Kothagudem

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and Ors. Vs. Madhusudhan Rao reported in (2008) 2 SCC 469,

Girish Chandra Singhal Vs. Vidur Gramin Bank, Bijnor and

Ors. Reported in 2009 (2) ESC 980 (ALL) (DB). On merit it is

argued that the inquiry officer in his report has categorically held that the applicant is not guilty of charge whereas, disciplinary authority disagreed with the finding recorded by the inquiry officer and issued the show cause notice along-with disagreement note finally inflicted the punishment of reduction in pay, without seeing that the applicant is not connected with the responsibility of maintaining the Leave Register.

8. On the other hand Shri Singh, learned counsel for respondents supported the impugned order and submitted that impinged order has been passed after applying the principle of natural justice. The show cause notice was issued by the disciplinary authority when he disagreed with the inquiry report. Ultimately the applicant was held guilty, accordingly the punishment of reduction in pay for one year has been imposed. He argued that there is no law that while dismissing the appeal or revision a detailed order is to be passed, because both the authorities have upheld the order of the disciplinary authority, therefore, the orders are just and perfect. He prayed for dismissal of the O.A.

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9. We have given our thoughtful consideration to the entire matter and have gone through the pleadings available on record with the able assistance of the learned counsel for the respective parties.

10. The point raised by the applicant in the present O.A. is that the order of the appellate authority as well as of the revisional authority is non-speaking as both does not contain any reason and points raised by the applicant in the appeal as well as revision and by cryptic order appeal as well as revision petition have been dismissed. We have perused the order of review as well as order in the revision and both cannot sustain in the eyes of law because they did not deal with the points raised by the applicant before the authorities. This Tribunal vide its order dated 30.11.2006 while allowing the earlier Original Application No. 956/1998 of the applicant set aside the impugned order and directed the disciplinary authority to hold afresh inquiry if he thinks so fit, from the stage of submission of reply of charge sheet and thereafter to pass order in accordance with the R.. S. (D&A) Rules, 1968. The disciplinary authority disagree with he findings recorded by the enquiry officer and ultimately pass the impugned order without considering the fact that the applicant was nowhere connected with the responsibility of maintaining the leave register. The appellate authority as well as the revisional authority did not consider the

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grounds taken by the applicant in his appeal and in his revision and have rejected the same without showing anything which to our mind cannot sustain in the eyes of law because it is the settled law that appellate authority has to consider all the points raised in the appeal and cannot straightaway reject the appeal without considering the points taken therein. Reliance in this regard is placed upon the Judgment rendered by the Hon'ble Apex Court in the case of Ram Chander Vs. Union of India and Others reported as (1986) 3 SCC 103, where the Hon'ble jurisdictional High Court after considering the law on the subject has held that the appellate authority has to consider the facts and the grounds taken in the appeal and thereafter to pass an order agreeing or disagreeing with the findings recorded by the disciplinary authority.

11. In view of above, we have no hesitation in our mind to hold that the impugned order passed by the disciplinary authority as well as of appellate authority is non-speaking and thus the same are quashed and set aside. The matter is again remitted to the appellate authority to pass appropriate order afresh after considering the grounds taken in the appeal within a period of three months from the date of receipt of a certified copy of this order.

12. No costs.

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Member-A

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Member-J