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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 404 of 1995  
Cuttack, this the 7th day of August, 2002

Bijali Bikash Bharosa .... Applicant

Vrs.

Union of India and others ..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? No
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No

*(M.R. Mohanty)*  
(M.R. MOHANTY) 07/08/2002  
MEMBER (JUDL.)

*(S.K. Hajra)*  
(S.K. HAJRA)  
MEMBER (ADMN.)

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 404 OF 1995

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CORAM:

HON'BLE MR.S.K.HAJRA, MEMBER(ADMN.)  
AND  
HON'BLE MR.M.R.MOHANTY, MEMBER(JUDL.)

.....  
Bijali Bikash Bharosa, son of late S.C.Bharosa,  
At-Gopalpur, P.O-Jajnagar, Dist. Midnapur, West Bengal,  
At present Electrical Locoshed, S.E.Railway,  
At/PO-Baramunda, Dist.Sundargarh, working as Electrical  
Chargeman(B)..... Applicant

Advocates for applicant - M/s K.Ray & A.K.Baral

Vrs.

1. Union of India, represented through its Secretary,  
Ministry of Railways, Railway Board, New Delhi.
2. General Manager, South Eastern Railway, Garden Reach,  
Calcutta-43.
3. Divisional Railway Manager, S.E.Railway,  
Chakradharpur Division, Chakradharpur,  
Dist.Singhbhum, Bihar.
4. Senior Divisional Electrical Engineer, South Eastern  
Railway, At/PO-Bondamunda, District-Sundargarh.
5. Assistant Electrical Engineer, S.E.Railway, Traction  
Rolling Stock, At/PO-Bondamunda, District-Sundargarh

..... Respondents

Advocate for respondents - Mr.Ashok Mohanty,  
Sr.Panel Counsel (Railways)

.....  
O R D E R

MR.S.K.HAJRA, MEMBER(ADMN.)

Departmental enquiry was instituted  
against the applicant, an employee of S.E.Railway, for  
his <sup>alleged</sup> unauthorised absence from duty from 18.5.1991 in  
violation of R.S.(Conduct)Rules, 1964, by memorandum  
dated 8.8.1991 (Annexure A/5). The disciplinary  
authority passed order on 15.2.1993 (Annexure A/10)

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stopping the applicant's promotion for ten years. The applicant filed an appeal (Annexure A/12) against the punishment. The appeal was rejected by the appellate authority. The applicant filed this Original Application with the prayer to quash the order dated 15.2.1993 (Annexure A/10) and direct the respondents to give him all consequential benefits.

2. Shri K.Ray, learned counsel for the applicant, contended that the applicant was not furnished with the enquiry report based on which the penalty was imposed on him, that this enquiry was marred by this procedural irregularity, that Hon'ble Supreme Court in the case of Union of India and others v. Mohd. Ramzan Khan, AIR 1991 SC 471, held that the delinquent is entitled to a copy of the enquiry report, that the applicant was not allowed to avail himself of the option of having his own defence counsel, and that the enquiry was conducted in violation of the principles of natural justice.

3. Shri Ashok Mohanty, learned Senior Panel Counsel (Railways), appearing for the respondents, contended that the applicant was given sufficient opportunity, that instead of attending the enquiry the applicant remained absent, and that the applicant was directed to arrange defence counsel who did not have more than two D&A cases. It was, however, admitted by the respondent-Department, during hearing, that a copy of the enquiry report was not furnished to the applicant.

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4. We heard both sides and perused the records. It is indisputable that copy of the enquiry report was not given to the applicant. Hon'ble Supreme Court in Mohd. Ramzan Khan's case (supra), held as follows:

"18. We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter."

Thus, the enquiry against the applicant is vitiated by failure of the respondent-Department to make available a copy of the enquiry report to the applicant.

5. This apart, the applicant filed an appeal against the major penalty imposed by the disciplinary authority (Annexure A/10). The appellate authority dismissed the appeal with the remarks: "Appeal is rejected". The appellate authority is required to pass a reasoned order in the appeal. No reasons were assigned by the appellate authority for his decision to reject the appeal. Therefore, the order of the appellate authority is liable to be set aside.

6. For the reasons given above, we allow the Original Application. The order dated 15.2.1993 (Annexure A/10) imposing penalty on the applicant by the disciplinary authority and the order of

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the appellate authority are set aside. The case is remitted to the disciplinary authority to institute enquiry afresh in accordance with RS (D&A) Rules, 1968, giving the applicant an opportunity in the light of the observations made above. No costs.

*M.R. Mohanty*  
(M.R. MOHANTY) 07/08/2002

MEMBER (JUDL.)

*S.K. Hajra*  
(S.K. HAJRA)

MEMBER (ADMN.)

AN/PS