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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

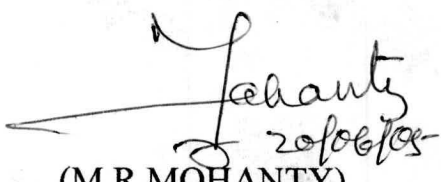
ORIGINAL APPLICATION NO. 437 OF 2003
Cuttack, this the 20th day of June, 2005.

N. MADHAB RAO. APPLICANT.
 VERSUS
UNION OF INDIA & ORS. RESPONDENTS.

FOR INSTRUCTIONS

1. Whether it be should be referred to the reporters or not? *yes.*
2. Whether it be circulated to all the Benches of CAT or
not? *yes.*


(B.N.SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER(JUDICIAL)

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**CENTRAL ADMINISTRATIVE TRIBUNAL:
CUTTACK BENCH: CUTTACK.**

ORIGINAL APPLICATION NO. 437 OF 2003.
Cuttack, this the 20th day of June of 2005.

C O R A M:-

***THE HON'BLE MR. B.N.SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR.M.R.MOHANTY, MEMBER(JUDL.)***

N. Madhab Rao, aged about 51 years,
S/o. Late Karrena, AT/PO: Kalupadaghat,
DIST. KHURDA.

..... APPLICANT.

By the Applicant:- M/s. J.M.Pattnaik, S.Mishra, P.K.Rout,
Advocates.

- VERSUS -

1. Union of India represented by General Manager,
South Eastern Railway, Garden Reach, Kolkata.
2. The Chief Commercial Manager,
South Eastern Railway,
14-Strand Road, Kolkata.
3. The Chief Personnel Officer, S.E. Railways,
Gardenreach, Kolkata – 700 043.
4. The Senior Divisional Commercial Manager,
East Coast Railway, Khurda Road Division,
Khurda Road, Puri.
5. The Commercial Manager, E.C. Railway,
Khurda Road Division, Khurda Road, Puri.
6. The Assistant Commercial Manager,
East Coast Railway, Khurda Road Division,
Khurda Road, Puri.

..... RESPONDENTS.

By legal practitioner:- R.C.Rath, Standing Counsel.

ORDER

MR.MANORANJAN MOHANTY, MEMBER(JUDICIAL)

Applicant, N.Madhab Rao, while working as Junior Booking Clerk at Kalupadaghat Railway Station (in the erstwhile South Eastern Railway) under the immediate administrative control of the Respondent No.4, was served with a set of charges (under Annexure-1 dated 17.02.1994) under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 on the allegation of short remittance/misappropriation of an amount of Rs.23,775.50 during his incumbency from September, 1991 to December,1993. Ultimately, the said departmental proceedings ended with imposition of punishment of removal from service under Annexure-6 dated 03-11-1995. It revealed from the records that the Applicant under Annexure-7 dated 13.3.1996 submitted an appeal against the said order of removal from service. Since his appeal did not receive prompt consideration by the Appellate Authority, the Applicant had also submitted two reminders under Annexure-8 dated 18.06.1996 and under Annexure-9 dated 28.01.1997. However, the Senior Divisional Manager of Khurda Road Division of South Eastern Railways (now under East Coast Railways) by his letter under Annexure-10, dated 20.09.1997 (i.e., after a lapse of one year and six

months) intimated to the Applicant that as his original appeal was not available with the Appellate Authority, he should submit a fresh appeal. Thereafter, Applicant submitted a fresh appeal under Annexure-11 dated 07-10-1997; which was rejected under Annexure-12 dated 04.12.1997. Hence, the Applicant, by filing this Original Application under Section 19 of the Administrative Tribunals Act, 1985, on 23.07.2003, has impugned the enquiry report under Annexure-3, orders of the disciplinary authority under Annexure-6 and that of the Appellate Authority order under Annexure-12. At the same time, the Applicant has also filed a Miscellaneous Application No. 554 of 2003 praying for condonation of delay in preferring this Original Application belatedly. In his application for condonation of delay, he has assigned the reason of illness, supported by Medical Certificate.

2. Respondents/Railways have filed a counter to the OA as also an objection to the Application seeking condonation of delay filed by the Applicant. The main ground urged in the counter, by the Respondents, is that since the Applicant has approached this Tribunal belatedly, this Original Application, being barred by limitation, is liable to be dismissed. On the merit of this case, the Respondents/Railways have pointed out that the power of judicial review of the administrative action in a disciplinary proceedings

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by this Tribunal being limited and there being neither denial of reasonable opportunity nor any infringement of the Rules, while conducting the departmental proceedings, there is hardly any scope for this Tribunal to interfere in the matter.

3. We have heard the learned Counsel appearing for both sides and perused the materials placed on record. Though various submissions have been made by the parties during the course of hearing, it is needless for us to record all those submissions vividly; because, on perusal of the orders of Disciplinary as well as Appellate Authorities, it is explicitly clear that while passing the impugned orders, neither of them have applied their mind and they have passed those orders not as per Rules/various Judge-made-laws. Law is well settled that each and every order of the Administrative Authorities must be a speaking one and in the present case, the order of the Appellate Authority is bereft of reasons. For the sake of clarity, the order of the Disciplinary authority under Annexure-6 and the order of the Appellate Authority under Annexure-12 are quoted herein below:-

“ANNEXURE-6: (Passed by Disciplinary Authority)

After careful consideration of the enquiry report of E.O., your defence statement and all other evidence on record, I have come to the conclusion that you were guilty of the following charges:-

“made short remittance of Rs.23,755.50 paise during the period

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from Sept'01 to Dec.'93 while
working in KAPG as Jr. BC"

and the same charges were established during the course of enquiry by the EO. I have, therefore, decided that you are not a fit person to be retained in service. As such, I hereby order for your removal from service with effect from 03-11-1995".

"ANNEXURE-12.(Passed by the Appellate Authority):-

In terms of Rule-25 of R.S.(D&A) Rules, 1968, I have gone through your revision petition dated 7-10-1997 and have carefully perused the entire D&A proceedings as Revising Authority.

Having considered all aspects of the case, I find no fresh points for consideration. The punishment to stand."

4. It is needless to quote the Rules requiring the authorities as to how they should deal with the grievances of the delinquent employees in the matter of appeal against the order of punishment imposed on the conclusion of disciplinary proceedings; as the same is no more res integra in view of the decisions rendered by the Hon'ble Supreme Court of India in the case of **RAM CHANDER vrs. ^DUNION OF INDIA AND OTHERS** (reported in *AIR 1986 SC 1173 = 1986 (2) SLR 608(SC)* wherein Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, were interpreted and held as under:-

"In the absence of a requirement in the statute or the rules, there is no duty cast on an appellate authority to give reasons where the order is one of affirmance. But Rule 22 (2) of the Railway Servants Rules in express

terms requires the Railway Board to record its findings on the three aspects stated therein. Rule 22(2) provides that in the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall "consider" has different shades of meaning and must in Rule 22(2), in the context in which it appears, mean an objective consideration by the Railway Board after due application of mind which implies the giving of reasons for its decision.

It is of utmost importance after the Forty-Second Amendment as interpreted by the majority in *Tulsiram Patel's Case* (1985) 3 SCC 398 that the Appellate Authority must not only given a hearing to the Government Servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. Reasoned decisions by Tribunals, such as the Railway Board in the present case, will promote the public confidence in the administrative process. An object consideration is possible only if the delinquent servant is heard and given a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fair play and justice also require that such a personal hearing should be given."

Recording of reasons by every authority entrusted with quasi-judicial functions and communications thereof to the affected party has been read as an integral part of the concept of fair procedure and failure to do so can be construed as noncompliance of one of the facets of natural justice. The necessity of giving reasons flows from the concept of rule of law which constitutes one of the corner stones of our constitutional set up. The administrative authorities chartered with the duty to act judicially cannot decide the matters on considerations of policy or expediency. It introduces

clarity, checks the introduction of extraneous or irrelevant considerations and minimizes arbitrariness in the decision making process. Another reason which makes it imperative for the quasi judicial authorities to give reasons is that their orders are not only subject to the right of the aggrieved persons to challenge the same by filing statutory appeal and revision etc.

5. As we find, in the instant case, neither the disciplinary authority nor the Appellate Authority have passed the final orders according to Rules far less to speak of giving a personal hearing to the Applicant (by the Appellate authority) as envisaged under the Rules and in view of the fact that the Applicant has been visited with the severe punishment of removal (after putting about 19 years of service in the Railways), there is every reason for this Tribunal to interfere in this matter.

6. As regards the point of delay in approaching this Tribunal, it is the case of the Applicant that the delay was occasioned not deliberately or on account of culpable negligence or on account of mala fide but to due his illness. It is to be mentioned here that an employee does not stand to benefit by resorting to delay. In fact he runs a serious risk. Power to condone the delay in approaching the authorities has been conferred upon to enable them to do substantial justice to parties by disposing of matters on merit. Sufficient cause employed by the legislature in imposing Limitation is

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adequately elastic to enable the authorities to apply the law in a meaningful manner; which sub-serves the ends of justice – that being the life purpose for the existence of the citizens. It was also observed by different courts that a liberal approach is adopted on principle as it is realized that “ordinarily a litigant does not stand to benefit by lodging an appeal late”. Refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned (in a case of present nature) the highest that can happen is that a cause would be decided on merits after hearing the parties. The authorities are respected not only on account of its power to remove injustice (by ignoring the technicalities) but because it looks forward to grant justice at each stage.

7. Though, during the course of the hearing, learned counsel for the Applicant has pointed out in a seriatum about the procedural irregularities in the proceedings against the Applicant, we are not inclined to go into details as those are the matters to be considered, at the first instance, by the Appellate Authority.

8. As discussed above, admittedly, the appeal of the Applicant was entertained after one and half years and the same was rejected by a non speaking order even without giving a personal hearing, as provided under

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the Rules. As evident from the pleadings, by the time, the Applicant was visited with the severe punishment of removal, he had already put in about 19 years of service in the Railways. On perusal of the records it is seen that certain extraneous consideration like " he is a habitual absentee" were weighed in the mind of the I.O. while recording his findings; which was not a part of the charges, nor the Applicant was given any opportunity to have his say in the matter.

9. In view of the discussion made above, the ends of justice would be met if we quash the order of the Appellate Authority under Annexure-12 dated 04-12-1997 and remit the matter back to the Appellate Authority for reconsideration of the Appeal of the Applicant, on merits, and to pass a speaking order after giving him a personal hearing. We order accordingly. Liberty is also given to the Applicant to place such of the additional materials, if any, before the Appellate Authority in support of his case and, we are sure, the Appellate Authority will take into consideration such materials, if filed within a period of 15 days from the date of this order, while dealing with the appeal petition of the Applicant. The entire exercise shall be completed within a period of 120 days from the date of receipt of a copy of this order.

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10. In the result, this O.A. is disposed of accordingly. No costs.


(B.N.SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER(JUDICIAL)