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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

O.A.No. 545 of 2006

Thursday, this the 22nd day of November, 2007

CORAM:

**HON'BLE DR K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR TARSEM LAL, ADMINISTRATIVE MEMBER**

Shri K.Ramulu
Residing at : M/s Sai Mini Diary
Door No.20/26, Engineering College Road
Sunkarapeta P.O, Malicherla
Dist Vizianagaram – 3 (Andhra Pradesh) : Applicant

(By Advocate M/s B.S.Tripathy, M.K.Rath & J.Pasi)

v.

1. Union of India represented through the
General Manager, East Coast Railway
Rail Vihar, At/PO Chandrasekharapur
Bhubaneswar, Dist. Khurda
2. The Divisional Railway Manager
East Coast Railway, Khurda Road
District Khurda
3. The Senior Divisional Commercial Manager
East Coast Railway, Khurda Road
District Khurda
4. The Senior Divisional Personnel Officer
East Coast Railway, Khurda Road
District Khurda
5. The Divisional Commercial Manager
East Coast Railway, Khurda Road
District Khurda
6. The Assistant Commercial Manager
East Coast Railway, Khurda Road
District Khurda (The Inquiry Officer) : Respondents

(By Advocate Mr. P.C.Panda, (R1-3 & 5 & 6))

ORDER
HON'BLE DR K.B.S.RAJAN, JUDICIAL MEMBER

The applicant was, while working as a Booking Clerk at Khurda Road, provided Railway Quarters No. 435/A at Retang Colony Khurda Road. On 27th July, 1990 he was compulsorily retired from service against which he filed OA No. 531/1991 and the Tribunal quashed the order of compulsory retirement vide order dated 23-07-1993. The applicant was reinstated into service w.e.f. 27.07.1990, but was posted to Berhampur. The applicant was not afforded any accommodation at the new place of posting. Vide Annexure A-1 order dated 10-07-1996, the applicant was temporarily transferred to Khurda Road. The applicant continued to serve at Khurda Road. On 13-12-2000 the applicant was directed by the Senior Divisional Commercial Manager to vacate the quarters and also to pay rent for unauthorized occupation of the said quarters since 1998. The applicant represented stating that all his transfers had been only temporary and at no point of time he was provided with any transfer grant etc., as for a permanent transfer. Yet the Sr. Div. Commercial Manager issued order dated 22nd January, 2001 to vacate the said quarters. This led to another OA No. 442/2001 filed by the applicant. During the pendency of the OA, a preliminary inquiry was conducted and as per the report vide (Annexure A-2) dated 13th November, 2001, that the unauthorized occupation and sub letting had been found correct. In the wake of the above preliminary report, the applicant was served with a charge sheet dated 26-12-2001 (Annexure A-3) with two charges, one as to unauthorized occupation of the said quarters and the other as to the sub-letting of the same for ten years. These charges were denied by the applicant vide Annexure A-4 representation dated 29-12-2001. The quarter was however, vacated by the applicant on 08th January, 2002. While so, the applicant was prematurely retired in March, 2002. In view of the surrendering of

the accommodation, OA No. 442/2001 was rendered infructuous and order accordingly was passed vide Annexure A-5 order dated 6th August, 2003. Thereafter, the proceedings were continued and according to the applicant, he was deprived of the opportunity to engage a defence assistant and again, though 7 witnesses were enlisted, two vital witnesses did not attend, that two of the witnesses were working in the very office of the Sr. Div. Commercial Manager, one of whom was dealing with the disciplinary case of the applicant. The applicant filed his written brief dated 13th May, 2005 (Annexure A-7) and the inquiry authority rendered its finding on 30th June, 2005 vide Annexure A-6. As per the report, the charges remained proved. Copy of the Inquiry Report was made available to the applicant on 14th July, 2005 and the applicant had submitted the Annexure A-8 representation dated 29th July, 2005. It was on the very same day i.e. 29th July, 2005 that the disciplinary authority had passed the Annexure A-9 order, as per which the applicant was held guilty of the charges and was held liable to pay damage rent from 27-12-1991 to 07-10-2002. Against the said order of the Disciplinary authority, appeal dated 12-08-2005 was filed vide Annexure A-10 and the Appellate Authority, vide order dated 27th September, 2005 (Annexure A-11) upheld the order of the Disciplinary Authority. Against the said order of the Appellate authority, the applicant filed review application dated 22nd October, 2005 before the D.R.M. And the said authority had only upheld the order of the disciplinary authority, vide order dated 30th May, 2006 (Annexure A-13). The applicant has filed this OA against the said order of the D.A., the A.A. and the Revisional Authority. Various grounds as in para 5 of the OA have been taken in support of the case of the applicant.

2. Respondents have contested the OA. They have stated that the entire proceedings were conducted in accordance with the rules. As regards written

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submission by the applicant to the Disciplinary authority, the respondents have stated that the applicant was served with a copy of the inquiry report under covering letter dated 30th June, 2005 on 14th July, 2005 and was to furnish his representation within 15 days from the date of receipt of the same. He had furnished his representation dated 29th July, 2005 which was received in the office of the Disciplinary Authority on 01-08-2005. Hence the representation was time-barred.

3. Arguments were heard and documents perused. Counsel for the applicant submitted written submissions as well.

4. Though the applicant has contended in his OA that the inquiry officer has not conducted the inquiry properly, inasmuch as while 7 witnesses were enlisted two important witnesses had not been examined, it is seen from the inquiry report that the Inquiry report is not based only on the written statement of those witnesses who were not available to cross examination. Nothing much turns around in regard to any illegality in the conducting of the inquiry by the Inquiry Officer.

5. Coming to the next stage, the applicant had acknowledged receipt of copy of the inquiry report on 14-07-2005 and admittedly, fifteen days time has been granted to file any representation. The applicant did file his representation dated 29th July, 2005 and Annexure A-8 clearly contains the endorsement indicating that the same was forwarded to the Sr. DCM, East Cost Railway on 29th July, 2005 itself. The disciplinary authority had vide the penultimate paragraph of his order dated 29-07-2005 stated as under:-

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"It is seen from the records that you acknowledged the inquiry report on 14-07-05, but you have failed to submit any representation till date, which indicates that you have nothing to state in respect of the findings of the I.O."

6. The question then is whether the representation filed by the applicant is time-barred and whether the Disciplinary Authority has not waited till the limitation period was over.

7. When 14th July, 2005 is the date of receipt of the inquiry report and fifteen days' time is available to the applicant, the period of fifteen days expires only on 29th July, 2005, as the date of service of the notice has to be excluded while reckoning the period of limitation. See (**State of Bihar vs Rameshwar Prasad, 1994(1) SCC 574**). Thus, the order of the Disciplinary Authority had been passed without waiting for the receipt of the representation of the applicant.

8. The next question is what is the effect or impact of such an omission to consider the representation against the Inquiry Report. The Apex Court in the case of **Union of India v. Mohd. Ramzan Khan, (1991) 1 SCC 588**, has held as under:-

The entire object of supplying a copy of the report of the Inquiry Officer is to enable the delinquent officer to satisfy the punishing authority that he is innocent of the charges framed against him

9. The above would go to show that the object of supplying copy of the inquiry report is to enable the applicant to make representation. And, what is to be done with the representation against the Inquiry Report? Reply to the same is available in the decision of the Apex Court in the case of **Managing Director, ECIL v. B. Karunakar (1993) 4 SCC 727**. The Apex Court has in the case of **South Bengal State Transport Corpn. v. Sapan Kumar Mitra, (2006) 2 SCC**

584, cited the same, wherein the Apex Court has held as under:-

12. As noted, this decision was approved by the Constitution Bench of this Court in *Managing Director, ECIL v. B. Karunakar*. The Constitution Bench has clearly held that in order to impose punishment of removal on a delinquent employee, it is necessary to supply a copy of the inquiry report to him before such punishment is imposed by the disciplinary authority. The Constitution Bench on the issue of non-supply of inquiry report, observed as follows:

"26. The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well

as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it." (Emphasis supplied)

10. The above would manifest the importance of the opportunity being provided to a delinquent employee to make representation against the inquiry report and the duty of the Disciplinary Authority to 'consider' the same. The term 'consider' has been explained by the Apex Court in the case of R.P. Bhatt vs Union of India, (1986) 2 SCC 651 as "consider" implies due application of mind. This has been affirmed in the decision of the Apex Court in the case of *Narinder Mohan Arya v. United India Insurance Co. Ltd.*, (2006) 4 SCC 713.

11. Thus, failure on the part of the Disciplinary Authority to wait till the last day for filing representation and to duly consider the representation is fatal to the proceedings from that very stage. This vital flaw in the order of the Disciplinary authority has been reflected in the Appeal dated 12-08-2005 filed by the applicant wherein he has stated, *"Therefore, the Disciplinary Authority (DCM-KUR) ought to have waited till the afternoon of 29-07-2005 for my reply but apparently, he did not wait and passed his final orders on 29-07-2005 without waiting till the completion of the period allowed for my representation and without ascertaining whether I have submitted any representation through proper channel. This is a clear denial of reasonable opportunity and an act of bias with closed mind."* This takes us to the next aspect, as to whether the Appellate authority had applied his mind in confirming the order of the Disciplinary Authority. In *Narinder Mohan Arya* (supra) the Apex Court has held as under:-

"...The Appellate Authority, when the Rules require application of mind on several factors and serious contentions have been raised, was bound to assign reasons so as to enable the writ court to ascertain as to whether he had applied his mind to the relevant factors which the statute requires him to do. The expression 'consider' is of some significance. In the context of the Rules, the Appellate Authority was required to see as to whether (i) the procedure laid down in the Rules was complied with; (ii) the enquiry officer was justified in arriving at the finding that the delinquent officer was guilty of the misconduct alleged against him; and (iii) whether penalty imposed by the disciplinary authority was excessive.

37. In *R.P. Bhatt v. Union of India* this Court opined:

4 . The word 'consider' in Rule 27(2) implies 'due application of mind'. It is clear upon the terms of Rule 27(2) that the Appellate Authority is required to consider (1) whether the procedure laid down in the Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing, etc. the penalty, or may remit back the case to the authority which imposed the same. Rule 27(2) casts a duty on the Appellate Authority to consider the relevant factors set forth in clauses (a), (b) and (c) thereof.

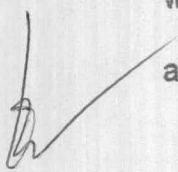
'5 . There is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the Rules had been complied with; and if not, whether such non-compliance had resulted in violation of any of the provisions of the Constitution or in failure of justice. We regret to find that the Director General has also not given any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record. It seems that he only applied his mind to the requirement of clause (c) of Rule 27(2) viz. whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non-compliance with the requirements of Rule 27 (2) of the Rules, the impugned order passed by the Director General is liable to be set aside.'

12. The above clearly goes to show that the Appellate Authority should consider the entire case by due application of mind. In the instant case, on consideration of the point as to the D.A having not considered the representation, the Appellate Authority should have remanded the matter to the Disciplinary Authority for due consideration of the same. Instead of so remitting, the Appellate authority has himself considered the said representation. This is evident from a reference to the said representation in fourth para of the appellate order and also the sixth paragraph. The Appellate Authority has, in para 6 of the order states as under:-

"Further from the records and also from your own submission in last para of the first page of your representation dt 29.7.05, it is the admitted fact that you retained the subject Rly. Qrs unauthorizedly for years together without caring the guidelines under transfer provision and accordingly, recovery of damage rent started thereon for certain period."

13. A perusal of the last para of the first page nowhere indicates that the applicant had admitted the fact of unauthorized occupation. Rather, the last para of the representation at page 2 emphasizes, ***"considering the above I request you to kindly close the above proceedings as I have neither unauthorizedly retained the Railway Quarters nor sub-let the same to any others till the said Quarter was vacated."***

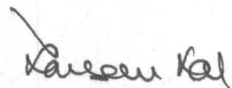
14. Thus, there has been non application of mind at each stage. Hence, the proceedings from the state of the order of the Disciplinary Authority's order are liable to be quashed and set aside and the matter shall have to be remitted back to the Disciplinary Authority for fresh consideration of the Inquiry Report with the representation dated 29-07-2005 of the applicant. We order accordingly.



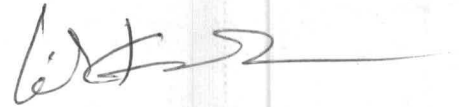
15. In view of the above, the OA is partly allowed. The matter is remitted back to the disciplinary authority for consideration of the inquiry report and the representation dated 29-07-2005 of the applicant and on the basis of the materials on record, and in accordance with the rules, the case shall be decided by the Disciplinary Authority. Should the applicant be aggrieved by the decision so arrived at by the Disciplinary Authority, he shall exhaust his departmental statutory remedies before approaching the Tribunal. Time calendared for completion of action by the Disciplinary Authority is three months from the date of receipt of certified copy of this order.

16. No costs.

(Dated, the 22nd November, 2007)



TARSEM LAL
ADMINISTRATIVE MEMBER



DR. K.B.S. RAJAN
JUDICIAL MEMBER