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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No. 659 of 2006  
Cuttack, this the 05<sup>th</sup> day of May, 2008

Bipin Bihari Patnaik .... Applicant.  
Versus  
Union of India & Ors. .... Respondents

For instructions

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

(C.R.MOHAPATRA)  
MEMBER (ADMN.)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No.659 of 2006  
Cuttack, this the 05<sup>th</sup> day of May, 2008

C O R A M:  
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (ADMN.)

Bipin Bihari Patnaik .... Applicant.  
Versus  
Union of India & Ors. .... Respondents

(For Full details, see the enclosed cause title)  
By legal practitioner: Ms.B.S.Tripathy, J.Mohanty, A.Mishra, Counsel.  
By legal practitioner: Mr. P.C.Panda, Counsel.

O R D E R  
MR.C.R.MOHAPATRA, MEMBER(A):  
Applicant while working as Station Superintendent in the Humma  
Railway Station, vide Annexure-2 dated 18.07.2005 was issued with a  
Memorandum of charge under Rule 11 of the Railway Servant (D&A) Rules,  
1968 giving him an opportunity to show cause on the following charge:

“That during course of investigation into a written complaint dtd.  
18.2.2005 lodged in the name of Sri Pradeep Kumar Martha  
against staff of BALU Railway Station, it was revealed that, the  
complainant had not lodged the said complaint. This was lodged by  
Sri B.B.Patnaik, SS/HMA in the name of Sri Pradeep Kumar  
Martha soon after he got transferred from BALU R.S. on date  
10.02.2005. Shri Patnaik has admitted the above fact in his  
statement dtd. 27.06.2005.”

2. On receipt of the aforesaid charge, the Applicant submitted his  
reply under Annexure-3. However, in consultation with the relevant papers and

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the reply furnished by Applicant, the Disciplinary Authority under Annexure-4 imposed the punishment of "reduction to a lower stage in the time scale of pay for a period of three years without cumulative effect." Being aggrieved by the aforesaid order of punishment, the Applicant submitted his appeal under Annexure-6. The Appellate Authority on consideration of the appeal of the Applicant and all connected materials available on record has ordered "to restore the penalty imposed by Disciplinary Authority i.e. 'Reduction to a lower stage in time scale for a period of three years without cumulative effect and not adversely affecting the pension'. Hence, this OA seeking the following relief:

- "(i) Hold and declare that the impugned proceeding as well as resultant punishment as well as order of the Appellate Authority as bad, illegal and violative of the provisions of Rules, 1968; and thereby;
- (ii) quash the them with grant of all consequential service and monetary benefits;
- (iii) pass such other order(s) as would be deemed fit and proper in the facts and circumstances of the case."

3. The Respondents, in paragraph 3 of their counter filed in this case, have precisely given the reason of issuing the charge sheet and the order of punishment which runs thus:

"Shri B.B.Patnaik, SS/HMA has been charge-sheeted under minor penalty. The vigilance Branch of East Coast Railway has received a written complaint dt. 18.2.2005 lodged in the name of Sri Pradeep Kumar Martha against staff of BALU Railway Station, Balugaon in short hereinafter will be referred as, In course of investigation, it was revealed that the complaint had not lodged the said complaint. The complaint was lodged by Sri B.B.Patnaik, SS/HMA in the name of Sri Pradeep Kuamr Martha soon after he

*[Signature]*

got transferred from Balugaon Railway Station on dated 10.2.2005. Sri Pattanaik has admitted the above fact in his statement dated 27.06.2005. Sri Pattnaik submitted his explanation on 26.7.2006, and the Disciplinary Authority (Sr. Divisional Operations Manager) after considering his case imposed the punishment of "Reduction to a lower stage in the time scale of pay for a period of three years without cumulative effect on 6.7.06". Shri Pattnaik preferred an appeal to Appellate Authority i.e. DRM/KUR against the order of punishment and the Appellate Authority decided to uphold the punishment imposed by Disciplinary Authority with some modification i.e. "Reduction to a lower stage in time scale for a period of three years with non-cumulative effect and not adversely affecting the pension."

4. They have also denied any violation of the Rules of the Railway and the principle of natural justice in the matter and have stated that as the punishment was on the basis of the own admission of the applicant to the charge, there is hardly any scope for this Tribunal to interfere in the matter.

5. Heard the submissions put forth by Learned Counsel for both sides and perused the materials placed on records.

6. By relying on various averments made in the Original Application in support of his contention that the punishment was imposed on the Applicant without following due procedure of Rules and laws, the Applicant has submitted that though the Applicant had raised those points also in his appeal, the appellate authority has only picked up one or two points from his appeal and has slightly modified the order of punishment to some extent. Had he applied his mind to all the points raised before him, he would have certainly quashed the entire order of punishment. On the other hand learned Counsel appearing for the

Respondents has stated that it is incorrect to say that the Appellate Authority did not take into consideration all the points raised in his appeal. The Appellate Authority summarized the points raised in the appeal and ultimately, for the ends of justice, reduced the punishment. Since there has been no wrong committed by the disciplinary authority as well as the appellate authority, the order of punishment needs to be sustained.

7. The common thread running through in all the decisions of the Hon'ble Apex Court is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court in the sense that it was in defiance of logic or normal standards (**V.Ramana v. S.P. SRTC and Others** [2005] 7 SCC 338). It is also stated law that Courts/Tribunal should not go into the correctness of the choice made by the administrator and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision". [See also **Hombe Gowda Edn. Trust & Anr v. State of Karnataka and Ors**(2005 (10) SCALE 307=2006(1) SCC 430; **State of Rajasthan and another v. Mohammed Ayur Naz** (2006 (1) SCALE 79= (2006) 1 SCC 589, and **Union of India v Dwarka Prasad Tiwari**, (2006) 10 SCC 388.

8. Further in the case of **State of Tamil Nadu and another v S. Subramaniam, 1996 SCC (L&S) 627** it has been held by the Hon'ble Apex Court that Courts or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. **Judicial review is not an appeal from a decision but a review of the manner in which the decision is made.** It is meant to ensure that the delinquent receives fair treatment and not that the conclusion which the authority reaches is necessarily correct.

9. On the specific submission of Applicant that the Appellate Authority did not look to all the points raised by the applicant in his appeal, I have gone through the appeal of applicant as also on the order of appellate Authority. It is seen that though the applicant raised several points, in support of his stand that the punishment suffers from Rules and certain procedures, the Appellate Authority has led emphasis on the admission of applicant during enquiry and non-supply of the document.

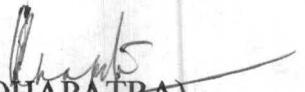
10. The Appellate Authority is bound to consider all the points raised by a delinquent in his appeal against an order of punishment imposed by the Disciplinary Authority which would not only satisfy the person concerned but also meet the ends of justice. Non-consideration of all the points amounts to denial of justice. Similarly non-consideration of the issues/points raised makes an order nullity. In this connection I would like to refer to the decision of the

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Hon'ble Supreme Court rendered in the case of **Bhartesh C. Jain and Others v Shoaib Ullah and another**, (2008) 1 SCC (L&S) 616. In the said case the Hon'ble High Court of Allahabad dismissed the Writ Petition without meeting/answering issues raised. But on appeal the Hon'ble Apex Court remitted the matter to the High Court on the ground of not meeting/answering the issues raised.

11. In the light of the discussions made above since the appellate order under Annexures-7 & 8 do not contain all the points raised by Applicant in his appeal, by applying the ratio of the decisions of the Hon'ble Apex Court in the case of **Bhartesh C.Jain and others** (supra), the order passed by the Appellate Authority under Annexures-7 & 8 are hereby quashed. The matter is remitted back to the Appellate Authority for reconsideration of the appeal of Applicant under Annexure-6. While doing so, the Appellate Authority may keep the averments made in the present OA in mind; notwithstanding the views expressed in the counter by the Respondents. A reasoned order shall be passed by the Appellate Authority within a period of two months from the date of the receipt of the copy of this order.

12. In the result, this OA stands allowed to the extent ~~s~~tated above. There shall be no order as to costs.

  
(C.R.MOHAPATRA)  
MEMBER(ADMN.)