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

Original Application No.805 of 2002.
Cuttack, this the 10th day of August, 2005.

M.LAXMI PATI

APPLICANT.

VERSUS

UNIOIN OF INDIA & OTHERS

RESPONDENTS.

FOR INSTRUCTIONS.

1. Whether it 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. 805 of 2002
Cuttack, this the 10th day of August, 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.)**

M.Laxmi Pati, aged about 53 years,
S/o. Late M. Ganapathy, resident of
R.S., Sadasivapur, Baulapur, Dhenkanal. APPLICANT.

For the Applicant. : M/s. V. Prithiviraj, S. V. R. Murthy,
S. Patnaik, S. R. Jena, Advocats.

V E R S U S

1. Union of India represented through the General Manager,
South Eastern Railway, Garden Reach, Kolkata-700 043.
2. The General Manager(Optg), South Eastern Railway,
Garden Reach, Kolkata- 700 043.
3. The Divisional Railway Manager, South Eastern Railway,
Khurda Road.
4. The Divisional Railway Manager (Optg.), S.E.Railway,
Khurda Road.
5. The Divisional Railway Manager (P), S.E.Railway,
Khurda Road. RESPONDENTS.

For the Respondents : Ms. S.L. Patnaik, Advocate.

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O R D E R

MR.M.R.MOHANTY, MEMBER(JUDL.):-

A disciplinary proceedings was initiated against the Applicant (on the allegation of violation of the provisions of Rule 1506(a)(ii) and 1508(a) of the Indian Railway Commercial Manual, (Volume-II) and Rule 3.1(ii) of Railway Servants (Conduct) Rules 1966 (as amended from time to time) and of dereliction of duties) under Annexure-1 dated 11.06.1999; in which an enquiry report was drawn undr Annexure-2 dated 11.04.2000 and punishment was imposed under Annexure-3 dated 8.9.2000. He carried the matter unsuccessfully, in appeal and Revision. Being aggrieved by the said action of the Respondents/Railways, the Applicant, Deputy Station Superintendent of Rambha Railway Station, has approached this Tribunal. He has in the present Original Application , filed under section 19 of the Administrative Tribunals Act, 1985 sought for the following reliefs:-

“... to quash the impugned Charge Sheet dated 11.06.1999 (Annexure-1), the impugned enquiry report dated 11.04.2000 (Annexure-2) and the punishment notice with speaking order (Annexure-3) and the impugned order of the appellate authority dated 13.12.2000(Annexure-5) and the impugned order dated 15.03.2002 of the

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Revisionary Authority under Annexure-7 in the interest of justice and for the ends of justice... and to direct the Respondents to give all consequential service and resultant financial benefits to the applicant".

2. Respondent-Railways have filed their counter; to which the Applicant has also filed a rejoinder.

3. Before proceeding to bring the matter to the touch stone of judicial scrutiny, for the sake of clarity, we note here that it is a well accepted principle that unless there is violation of principles of natural justice and/or the findings arrived at by the IO or for that matter the disciplinary authority is patently wrong/illegal and that due procedure of rules has not followed in course of proceedings, there is hardly any scope for the Tribunal to intervene in the matter; for the basic reason that the Tribunals/courts being not the Appellate Authority to sit over the decisions of the Disciplinary/Appellate Authorities in such matters.

4. With the allegation that the Applicant, while functioning as Deputy Station Superintendent of Rambha Railway Station, allowed loading of 519 bags of Cashew nut Seeds weighing 32 tons (booked Ex. Rambha to MMS) in an unfit VPU No. SR 2180 in 217 UP Passenger, (next to the engine) on 15.05.1999 without ascertaining and getting proper order (either from the Coaching Controller or from the Commercial Controller/KUR) and

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that action of the Applicant resulted in (a) breakage of sole bar causing dislocation in traffic and (b) extensive loss to the Railways; a disciplinary proceedings was initiated against the Applicant and, accordingly, he was charge sheeted under Annexure-1 dated 11.06.1999 under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. Ultimately, vide Annexure-3 dated 08.09.2000, the Disciplinary Authority imposed the following punishment:-

“.....to reduce your pay to 2(two) stages below in the same time scale of pay, i.e., present pay of Rs.6725/- is reduced to Rs.6375/- in the time scale of pay, i.e., Res.5500 – 175-9000/- (RSPS) for a period of 3 (three) years with CUMULATIVE EFFECT (C.E.), as a measure of penalty to meet the ends of justice, with immediate effect”.

5. The grounds of challenge as made by the Applicant, are that (a) wrongful application of Rule 1506(a)(ii) and Rule 1508(a) of Commercial Manual Vol.II by the Respondents (since those Rules deal with loading goods into wagons of Goods Train, but not parcels in the Parcel Van (VPU) of the passenger train); (b) the guard is/was only responsible for loading and he has no role in the matter and, (c) the orders passed by the Disciplinary Authority, Appellate Authority as well as the Revisional Authority are bald, cryptic and bereft of any reason.

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6. We have heard Dr.V. Prithiviraj, the learned counsel appearing for the Applicant and Ms. S.L.Pattnaik, learned Counsel appearing on behalf of the Respondents/Railways and perused the materials placed on record.

7. In order to set the matter at rest, we have perused the relevant provisions in Rules 1506(a)(ii) and 1508(a) of Commercial Manual Vol. II, for violation of which the Applicant has been proceeded against. With regard to wrong application of Rule 1506(a)(ii) and 1508(a) as stated by the Applicant, the Respondents have made the position more conspicuous by filing a note of query dated 6.10.2004. In Para 15 thereof, they have stated as under :

“The stipulation as contained in Para 1506(a)(ii) of IRCM, Vol.II refers to Wagon in general term which includes Parcel Van and all types of goods carrying vehicles. Whether it is ‘Parcel’ or ‘Luggage’ basically these goods are so termed basing on the different traffics and mode of transportation such as whether by goods carrying train or by passenger carrying train”.

The Respondents have also clarified the term ‘WAGON’ which reads as under :

“It is necessary to clarify that as per Para 2301(II) of IRCM the term ‘Wagon’ has been defined as all types of vehicle used for conveyance of goods by the Railway. In the present case the VPU which was being carried in the passenger Train has the same meaning like that of Wagon but

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the use of the same Wagon in different case bears a different term".

They have further stated that "more particularly when a Wagon is attached to a Passenger Train the same is being termed as Van (VPU) and it makes no difference when a particular vehicle is termed Wagon or Van, when the characteristic of both is one and the same".

Thus from the above clarification, the submission of the Applicant that Rules 1506(a)(ii) and 1508(a) should have been applied in case of goods train only and not in case of passenger train(VPU) is not conceivable and out of place, because, as indicated above, the characteristic of both is one and the same and that there is no special yardstick or criterion for loading luggage or parcel in the passengers train. Nothing has been laid down separately. Therefore, application of Rules as aforesaid by the Respondents is not to be faulted.

As regards the second point raised by the Applicant that the Guard is wholly and solely responsible for the lapse does not have any leg to stand in view of Para 2302 of IRCM, Vol.II, as clarified by the Respondents in the notes of query. It is also not the case of the Applicant that he was not authorized in that behalf nor was he responsible for loading of luggage/parcels. Apart from the above, it is the specific case of the Respondents that the said Guard, whose action is called in question by the Applicant herein, has also similarly been punished for the lapse on his part.

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In this view of the matter, the stand taken by the applicant in this regard falls to the ground.

The third and last plea of the Applicant is that the orders passed by the Disciplinary Authority, Appellate Authority as well as the Revisional Authority are not reasoned. We have gone through those orders and we are convinced that the orders passed by the Disciplinary Authority or for that matter of the Appellate Authority as well as of the Revisional Authority are bereft of reasons and not speaking. It is the settled position of law that the authorities, while exercising quasi judicial function should take into account all the points raised by the representationist and pass appropriate orders in accordance with law. Although we are satisfied that the manner of conducting disciplinary proceedings against the Applicant is not vulnerable, but the fact remains that the orders passed by the Disciplinary Authority while imposing punishment is not a speaking one, so also the orders passed by the Appellate Authority while confirming the said punishment and the order passed by the Revisional Authority while rejecting the petition. Even in respect of administrative orders **Lord Denning M.R.** in **the case of BREEN v. AMALGAMATED ENGINEERING UNION** (reported in 1971 (1) All E.R. 1148) observed "*The giving of reasons is one of the fundamentals of good administration*". In **ALEXANDER**

MACHNERY (DUDLEY) Ltd. V. CRABTREE (reported in 1974 LCR

120) it was observed "Failure to give reasons amounts to denial of Justice".

Reasons are live links between the mind of the decision making authority to the controversy in question and the decision or conclusion arrived at".

*Reasons substitute subjectivity by objectivity. Right to reason is an indispensable part of a sound judicial system .It leads the affected party can know as to why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order mad. In a similar matter rendered in the case of **HARMANDER SINGH vrs. G.M. SOUTHERN RLY.** (reported in 1973 SLC 515) it was held that the disciplinary authority is bound to consider the objections and pass a speaking order. Such order should not only be passed on the file but should also be communicated to the employee because recording of reasons and communication thereof to the charged employee is not a mere formality.*

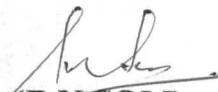
These aspects were also highlighted in the case of **CHAIRMAN AND MANAGING DIRECTOR, UNITED COMMERCIAL BANK AND OTHERS vs. P.C.KAKKAR** (reported in 2003 (4) SCC 364).

The orders itself speak that the competent authorities had not taken into consideration the points raised by the Applicant in his representation. Since the points raised by the Applicant, in his

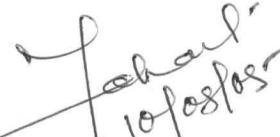
representation, has been left out of consideration, the impugned order of punishment (as well as the orders of the Disciplinary Authority and that of the Revisional Authority) are not sustainable in the eye of law and, therefore, on the said ground alone, those orders are liable to be quashed and accordingly, we quash the impugned order of punishment under Annexure-3 as well as the orders passed by the Appellate Authority and that by the Revisional Authority under Annexures-5 and 7 respectively.

8. In the circumstances, the applicant's pay shall be restored as it were prior to the issuance of orders dated 8/11.9.2000 and dated 8.9.2000 under Annexure-3 and he should be given all the consequential benefits, i.e., annual increments of pay etc. along with arrears of pay. This exercise should be completed by the Respondents within a period of 120(one hundred twenty days) from the date of receipt of copies of this order.

9. In the result the O.A. succeeds. No costs.


(B.N.SOM)

VICE-CHAIRMAN


(M.R.MOHANTY)
MEMBER(JUICIAL)