CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.No. 430 of 2007
Cuttack, this the 20th day of September, 2010

N. Madhab Rao .... Applicant
Versus
Union of India & Ors. .... Respondents

1. Whether it be referred to the reporters or not?

2. Whether it be circulated to all the Benches of the Tribunal?

(M.R.Mohanty)
Vice-Chairman(J)

(C.R.Mohapatra)
Member (Admn.)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A. No.430 of 2007
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CORAM
THE HON'BLE MR.M.R.MOHANTY, VICE-CHAIRMAN (J)
AND
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

Shri N.Madhab Rao, aged about 51 years, Son of Late Karrena, At/o.Kalupadaghat, Dist. Khurda. .... Applicant

By legal practitioner: M/s. J.M.Pattanaik, S.Mishra, Counsel

-Versus-

1. Union of India represented through its General Manager, South Eastern Railways, Gardenrich, Kolkata.
2. The Chief Commercial Manager, South Eastern Railways, 14, Strand Road, Kolkata.
3. The Chief Personnel Officer, South Eastern Railways, Gardenrich, Kolkata-43.
4. The Senior Divisional Commercial Manager, East Coast Railways, Khurda Road Division, Khurda Road, Puri.
5. The Commercial Manager, East Coast Railways, Khurda Road Division, Khurda Road, Puri.
6. The Assistant Commercial Manager, East Coast Railways, Khurda Road Division, Khurda Road, Puri.
7. The Divisional Railway Manager, East Coast Railways, Khurda Road, Division, Khurda Road, Puri. .... Respondents

By legal practitioner: Mr.S.K.Ojha, SC (Rly.)

ORDER

MR. C.R.MOHAPATRA, MEMBER(A):

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 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, by filing OA No. 437 of 2003 Applicant, 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. The said OA was disposed of on 20.06.2005 with the following direction:

> "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."

The appeal of the applicant was considered but the same was rejected and reason of such rejection was communicated to the Applicant in letter under Annexure-A/16 dated 28.2.2006. It reads as under:

> "In obedience to Hon'ble CAT/CTC's order dt. 20.6.2005 passed in OA No.437/03, I as a Appellate Authority (since the present ADRM/KUR has already acted as Disciplinary Authority i.e. as Sr.DCM/KUR) have gone through the entire case including the following documents and available papers in the file:
>
> 1. Major Penalty Charge sheet dt.17.02.94.

2. DAR proceedings and Inquiry Report;
3. Punishment Notice of DA along with speaking order dt. 03.11.95;
4. Appeal dt.15.11.95;
5. Decision of Appellate Authority dt.26.12.95;
6. CCM/SERly"s remarks on revision petition dt.4.12.97.

From the perusal of the inquiry report, it is seen that you have been held responsible for short remittance of railway cash to the tune of Rs.23,755/-. It was also concluded that you were also punished for similar charges earlier.

Based on the DAR enquiry findings and your reply to the Show Cause Notice dt.31.8.05, the Disciplinary Authority decided to impose the following penalty.

"removal from service with effect from 03.11.1995".

Your appeal dt. 15.11.95 was put up to ADRM/KUR. ADRM/KUR as a Appellate Authority after going through all the documents and has passed the following orders.

"The case does not call for any further review as the staff was misappropriating the Railway cash for a long period and thus unbecoming of a Rly Servant."

In view of the Hon'ble CAT/CTC's order dt. 20.06.05, you have been given an opportunity by way of personal hearing on 02.01.06. During personal hearing with the undersigned, you have admitted the charges. I have also gone through your representation dt.07.07.05 and do not find any clear reasons nor any merits for refuting the charge mentioned in the charge memorandum as also the findings of Inquiry Officer.

As alleged in your representation dt.07.07.05 that there were procedural lapses etc. It is to inform you that entire proceedings of the case were as per provisions of RS D&A Rules, 1968. No deviation at any stage was noticed.

Moreover, the gravity of the misconduct is totally inexcusable as it has involved in a huge misappropriation of railway cash.

Considering all the above facts and keeping in view the gravity of offence committed by you, I have decided to uphold the penalty of removal from Railway Service as imposed by Disciplinary Authority."

In the aforesaid circumstances, by filing this second round litigation, the Applicant has sought the following relief:

"...to admit this Original Application and issue notice to the respondents to file counter within a reasonable period and after hearing both the parties this Hon'ble Tribunal may quash the inquiry report vide Annexure-A/3, the order of removal vide Annexure-A/6 and the order passed by the appellate authority vide Annexure-A/16.

And be further pleased to direct the respondent to reinstate the applicant in his service along with all consequential benefits as per the settled position of law and

further be pleased to any other order(s) as this Hon'ble Tribunal deems fit and proper for the interest of justice."

The reasons in support of the non-sustainability of the report of the IO, under Annexure-A/3, the order of removal from service under Annexure-A/6 and the order of the Appellate Authority under Annexure-A/16 adduced by the Applicant are as under:

A. One cannot be punished twice for one offence. For the alleged allegation of short remittance, since January, 1993, formed as a part of the charge sheet whereas for the same alleged allegation, the applicant has already visited with the punishment of reversion. Hence taking into consideration the said allegation and thereby imposition of punishment is bad in law;

B. No leave was granted to the applicant, as provided in the Rules, for preparing and submission of his defence to the show cause notice;

C. The charge sheet was bereft of the documents relied on therein;

D. The observation of the IO in his finding that "**the Applicant is a habitual absentee from duty without any information: without affording any reasonable opportunity to the applicant and without** reference of the said charge in the charge sheet vitiated the report of the IO. Hence imposition of punishment based on the said findings of the IO being bad in law the report of the IO as well as order of punishment and order of the Appellate Authority are liable be set aside;

E. The IO reached to the conclusion without perusing the materials in support of the short remittance. As such the report of the IO being based on conjecture and surmise, the disciplinary authority ought not to have imposed the punishment without verifying the same. Hence, the order of punishment is liable to be set aside;

F. The IO examined Shri S.N.Gupta, Dy. SS/KAPG without allowing the applicant to cross examine him during enquiry;

G. The report prepared and submitted by the IO was not in accordance with Rules inasmuch as

   ii. In terms of the Rules the findings of the IO must be based on evidence adduced during the enquiry.

   iii. The assessment of the documentary evidence may not present much difficulty.

iv. As regards evaluation of oral testimony, the evidence has to be taken and weighed together; including not only what was said and who said it but also when and in what circumstances it was said and also whether what was said and done by all concerned was consistent with the normal probabilities of human behaviour.

v. The IO who actually records the oral testimony is in the best position to observe the demeanour of a witness and to form a judgment as to his credibility.

vi. Where necessary he should record the demanour of the witness and discuss the same in his report.

vii. Taking into consideration all the circumstances and facts, the IO as a rational and prudent man has to draw inference and to record his reasoned conclusion as to whether the charge is proved or not.

viii. The report of the IO must contain (i) an introductory para indicating appointment of the IO and the dates of hearing; (ii) Charges that were framed; (iii) Charges that were admitted or dropped or not pressed; (iv) charges actually inquired into; (v) brief statement of the case of disciplinary authority in respect of the charge enquired into; (vi) brief statement of facts and documents admitted; (viii) brief statement of the case of the government servant; (ix) assessment of evidence in respect of each point; (x) finding on each charge.

ix. The order sheet of the day to day happenings or recording of the witnesses were also not provided to the Applicant.

x. No notice was sent to the applicant to attend the enquiry or informing the applicant that the enquiry is fixed to particular date.

As such the report of the punishment imposed based on the said report is not sustainable in the touch stone of judicial scrutiny;

H. Without **making the report of the IO available to the applicant in compliance with the Rules and principles of natural justice, the Revisionary Authority in exercise of power available under Rule 25 of the Railway Service D&A Rules, 1968 issued the notice to the applicant under Annexure-A/4 dated 31.8.1995, calling upon him to file his show cause as to why the punishment of removal from service shall not be imposed on him**;

I. The disciplinary proceedings are of quasi judicial in nature and as such it is necessary that orders in such proceedings are issued only by the competent authorities who have been specified as disciplinary authorities under the rules and the orders issued by such authorities should have the attributes

of a judicial order. As such recording of reasons in support of the decision is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy or reached on ground of policy or expediency. Reasons are the links between the materials on which conclusion is based and the actual conclusion. They reveal a rational nexus between the fact considered and the conclusion reached. Final orders made without mention of reasons for the conclusions reached will be of little assistance to authorities who have powers to decide. Failure to give reasons amounts to denial of justice "Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi judicial performance." Reasons is the heart beat of every conclusion, without the same it becomes lifeless as held by Hon'ble Supreme Court in the case of **Raj Kishore Jha v State of Bihar** reported in (2003) 11 SCC 519. How to consider the case is as directed by the Hon'ble Supreme Court in the case of **R.P.Bhatt v Union of India** reported in (1986) 2 SCC 651 and **Divisional Forest Officer, Kothagundum & Ors v Madhusudan Rao** reported in 2008 (2) SC 253.

But in gross violation of the Rules and various judge made laws, the Revisionary Authority [Sr. Divisional Commercial Manager] imposed the punishment of removal from service under Annexure-A/6 dated 03.11.1995 even without affording any personal hearing as required under the Rules and various judge made laws;

J. The imposition of punishment in exercise of the Revisionary power is bad in law as the Sr. Divisional Commercial Manager is not the appointing authority of the Applicant;

K. For the reason of rejection of the appeal in a non speaking order without affording any personal, this Hon'ble Tribunal quashed the order of the appellate authority in order dated 20th June, 2005 in OA No. 437 of 2003 earlier filed by the applicant and remitted the matter back to the Appellate Authority for giving fresh consideration;

L. Without taking note of the points raised by the Applicant and recorded in the order, the Appellate Authority, DRM, Khurda Road, rejected the appeal of the Applicant in Annexure-A/16 in an unreasoned order;

M. The order of punishment is too harsh, in contravention of rules and principles of natural justice;

N. The Revisionary Authority has also issued notice under Annexure-A/4 without making any discussion and as such the said order being bad in law is liable to be set aside;

O. The Applicant sought certain information under RTI Act, 2005. Those information though vital for a decision in this OA the same was denied to the applicant vide letter dated 26.7.2010 on the ground that records are not available. But on the other hand by filing counter, the Respondents contest the case of the applicant. Therefore, the averments made in the counter need to be ignored.

2. Respondents' contention, in the counter filed in this case is that, before removal of the applicant from Railway service w.e.f. 3.11.1995,he was working as Junior Booking Clerk at Kaluparaghat Station. During the period from September, 1991 to December, 1993, the applicant committed serious misconduct of misappropriating the Railway cash to the tune of Rs.23,755.50 by not remitting the Railway cash collected against the sale of tickets. The applicant resorted to such misdeeds as a regular measure by short non-remittance of Railway cash thereby grossly violated the Railway Services Conduct Rule, 1966. Accordingly charges were drawn and the applicant was served with major penalty charge sheet dated 17.2.1994 by the Assistant Commercial Manager. As per the procedures, the charges were duly enquired into by nominating an IO who after enquiry submitted his report dated 15.5.1995 holding the charges proved. Such finding was arrived at by the IO based on the deposition of the applicant who himself during preliminary hearing admitted the charges. It is further stated that as the charges were serous in nature warranting exemplary punishment thereon, the disposal of the same was beyond the power of the Assistant Commercial Manager, the case

was dealt by Senior Divisional Commercial Manager as Revisionary Authority who made a *suo motto* review of the case in terms of Rule 25 (1(v) of Railway Servants D&A Rule, 1968 and issued show cause notice dated 31.8.1995 to the applicant with the proposal to remove him from Railway service. Applicant submitted his reply dated 16.9.1995. After going through all the materials, the Senior Divisional Commercial Manager found no cogent reason to impose any lesser punishment than the punishment of removal from service. Accordingly imposed the punishment of removal from service on the applicant. However, it was admitted by the Respondents in paragraph 5 of their counter that for such short cash remitted for the period from 1987 to 1993, applicant has been visited with the punishment of reversion vide order dated 3.8.1993. Despite the punishment as the applicant did not change his erratic attitude thereby failed to act as true custodian of the railway cash, and repeated the same misconduct for short remittance of railway cash a major penalty charge sheet was issued to him. Further is the contention of the Respondents that the power of judicial review of the administrative action in a disciplinary proceedings 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. Further stand of the Respondents is that as misappropriation of Government money is a serious offence and such misappropriation having been proved in enquiry after giving due opportunity to the applicant, this Original Application is liable to be dismissed.

3. Besides reiterating the points taken in his pleading, Mr. Patnaik, Learned Counsel for the Applicant contended that the charge sheet was served by the Commercial Manager as could be evident form Annexure-A/1 but not by the Assistant Commercial Manager as stated by the

Respondents in their counter and also disputed that the applicant has admitted short remittance during preliminary enquiry. Rather applicant has taken the stand during preliminary enquiry that such short remittance of railway cash was duly reported to the Sr DCM, CMI of the section and TIA. He was sending the outstanding list to Sr. DCM Office every month. The TIA and CMI have reported this matter in their inspection report also. None of the officers named by the applicant was called upon to the witness box during enquiry for examination and cross examination. No action has also been taken against them for their lapses of such short remittance. In relying on the contentions made in the counter by the Respondents, it was contended by Learned Counsel for the Applicant that it was beyond the power of the Assistant Commercial Manager, the Senior Divisional Commercial Manager as revisionary authority *suo motto* to review the case and issued show cause notice for imposition of punishment of removal to the Applicant. In this connection it is submitted that a novel procedure was adopted by the authority in the present case. If the Assistant Commercial Manager was not competent then the initiation of disciplinary proceedings by issuing the charge sheet is itself bad in law. Even if conceding for a moment that the procedure adopted is sustainable, then utilization of *suo moto* power by the Revisionary Authority is bad in law. The power of Revisionary Authority comes to play only after the order of the appellate authority. But certainly not in between as has been done in the present case. Hence, the entire proceeding being a nullity in the eyes of law is liable to be set aside. Great emphasis has also led by the Learned Counsel for the Applicant that he was highly prejudiced for not giving reason in the order passed by the DA as well as AA. On this score, Learned Counsel for the Applicant sincerely prayed for allowing the relief prayed for in this OA.

Mr. Ojha, Learned Standing Counsel appearing for the Respondents on one hand filed a Memo seeking time to take instruction on the rejoinder filed and served on him by Learned Counsel for the Applicant and on the other hand contested the matter by filing a written note of submission stating that the applicant is estopped to challenge the Annexure-A/3 and the order of removal under Annexure-A/6 as the aforesaid orders/documents were subject matter in OA No. 437 of 2003 earlier filed by the Applicant before this Tribunal. This Tribunal while adjudicating the matter confirmed the report of the IO and the DA. As such there is no scope left for the applicant to challenge the report of the IO or the order of the DA in this OA. In so far as merit of the matter is concerned, it is contended by him that the applicant himself admitted before the Appellate Authority regarding misappropriation of the public money while acting as a public officer. No where in the pleading the applicant has ever denied or challenged such admission nor he has disputed anything regarding his admission before the Appellate authority and despite his punishment for the same offence he could not improve. The appellate authority afforded him opportunity of personal hearing before passing the order. By relying on the decision of the Hon'ble Apex Court in the case reported in (2003) 3 SCC 605 & (2003) 4 SCC 364 it was contended by him that for the misappropriation of government money by a public officer dealing with public money punishment of removal or dismissal is not unjustified. Accordingly, Learned Counsel for the Respondents reiterated that this OA being devoid of any merit is liable to be dismissed.

4. After considering the rival submissions of the parties, we have gone through the materials placed on record including the order dated 20th June, 2005 in OA No.437 of 2003. But we do not agree with the Learned Standing Counsel for the Respondents that in view of the earlier order of this

Tribunal the Applicant is estopped to challenge the said order because while disposing of the earlier order, this Tribunal did not hold that the report of the IO or the DA were in any manner justified. Relevant portion of the order is quoted herein below:

> "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. UNIN OF INDIA AND OTHERS** (reported in *AIR l986 SC 1173 = l986 (2) SLR 608*(SC) wherein Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, l968, were interpreted and held as under:-
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> > "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 stone of our constitutional set up. The administrative authorities charted with the duty to act judicially cannot decide the matters on considerations of policy or expendiency. 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 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 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.

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

5. We find no difference between the order passed by the Appellate Authority earlier and the present one which was after the order of this Tribunal. Even then we do not like to take any final decision on the merit of the matter as it is seen that the order of the Appellate Authority under Annexure-A/16 passed after the order of this Tribunal, referred above, is not in accordance with Rules or law/ in compliance with the principles of natural justice. Power/discretion is always available with the Appellate Authority to remedy the injustice caused to an employee in disciplinary proceedings. It is noticed that the order of the Disciplinary Authority is cryptic so also the order of the Appellate Authority; because the order of the Dictionary Authority reads as under:

"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 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".

Earlier order of the Appellate Authority was as under:

"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."

Present order of the Appellate Authority reads as under:

"In obedience to Hon'ble CAT/CTC's order dt. 20.6.2005 passed in OA No.437/03, I as a Appellate Authority (since the present ADRM/KUR has already acted as Disciplinary Authority i.e. as Sr.DCM/KUR) have gone through the entire case including the following documents and available papers in the file:

7. Major Penalty Charge sheet dt.17.02.94.
8. DAR proceedings and Inquiry Report;
9. Punishment Notice of DA along with speaking order dt. 03.11.95;
10. Appeal dt.15.11.95;
11. Decision of Appellate Authority dt.26.12.95;
12. CCM/SERly"s remarks on revision petition dt.4.12.97.

From the perusal of the inquiry report, it is seen that you have been held responsible for short remittance of railway cash to the tune of Rs.23,755/-. It was also concluded that you were also punished for similar charges earlier.

Based on the DAR enquiry findings and your reply to the Show Cause Notice dt.31.8.05, the Disciplinary Authority decided to impose the following penalty.

"removal from service with effect from 03.11.1995".

Your appeal dt. 15.11.95 was put up to ADRM/KUR. ADRM/KUR as a Appellate Authority after going through all the documents and has passed the following orders.

"The case does not call for any further review as the staff was misappropriating the Railway cash for a long period and thus unbecoming of a Rly Servant."

In view of the Hon'ble CAT/CTC's order dt. 20.06.05, you have been given an opportunity by way of personal hearing on 02.01.06. During personal hearing with the undersigned, you have admitted the charges. I have also gone through your representation dt.07.07.05 and do not find any clear reasons nor

any merits for refuting the charge mentioned in the charge memorandum as also the findings of Inquiry Officer.

As alleged in your representation dt.07.07.05 that there were procedural lapses etc. It is to inform you that entire proceedings of the case were as per provisions of RS D&A Rules, 1968. No deviation at any stage was noticed.

Moreover, the gravity of the misconduct is totally inexcusable as it has involved in a huge misappropriation of railway cash.

Considering all the above facts and keeping in view the gravity of offence committed by you, I have decided to uphold the penalty of removal from Railway Service as imposed by Disciplinary Authority."

6. It is trite law that every step that makes the rights of appeal fruitful is obligatory and every action or inaction which stultifies it is unfair and ergo, unconstitutional -**Madhav H.Hosket v State of Maharashtra**, AIR 1978 SC 1548. When the duty of deciding an appeal is cast, those whose duty it is to decide it must deal with the question referred to them without bias, and they must give to each of the parties the opportunities of adequately presenting the case made. The decision must come in the spirit and with the sense of responsibility of the Authority whose duty it is to meet out justice. In terms of the Rule the appellate authority while deciding the appeal must consider and decide all the grounds raised in the memo of appeal. The order of the appellate authority should be a complete and self-contained order so that there is no necessity of referring to any other order to find out the reasoning of the Appellate Authority. When this Tribunal earlier remanded the matter with reason to consider, such consideration implies 'due application of mind. As per Rules, the appellate authority is required to consider (i) 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; (ii) whether the findings of the disciplinary authority are warranted by the evidence on record; and (iii) 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. The Appellate Authority is thus mandated to consider the relevant factors set forth in clause (a), (b) and (c) thereof.-**R.P.Bhatt v UOI,** AIR 1986 SC 1040. It is trite law that judicial review is not an appeal from a decision but a review of the manner in which the decision is made. The absence of arbitrary power is the first essential ingredient of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is if a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law which is lacking in this case in the order of the Appellate Authority. Because it is noticed that provisions of the following Rules which vested powers with the Appellate as well as Revisional Authority as to how to consider the appeal and revision of an employee. It provides as under:

> **22(2). CONSIDRATION OF APPEAL:**
>
> (1) 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-
>
> (a) Whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
>
> (b) Whether the findings of the disciplinary authority are warranted by the evidence on the record; and
>
> (c) Whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders –
>
> (i) confirming, enhancing, reducing or setting aside the penalty; or
>
> (ii) remitting the case to the authority which imposed or enhanced the penalty or to any

other authority with such directions as it may deem fit in the circumstances of the case.

Provided that –

(i) the Commissions shall be consulted in all case where such consultation is necessary;

(ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of Rule 6 and an inquiry under Rule 9 has not already been held in the case, the appellate authority shall, subject to the provisions of Rule 14, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 9 and thereafter on a consideration of the proceedings of such inquiry make such orders as it may deem fit;

(iii) if the enhanced penalty which the appellate authority proposes to impose, is one of the penalties specified in clauses (v) to (ix) of Rule 6 and an inquiry under Rule 9 has already been held in the case, the appellate authority shall, make such orders as it may deem fit; and

(iv) subject to the provisions of Rule 14, the appellate authority shall –

(a) where the enhanced penalty which the appellate authority proposes to impose, is the one specified in clause (iv) of Rule 6 and falls within the scope of the provisions contained in sub rule (2) of Rule 11; and

(b) where an inquiry in the manner laid down in Rule 9, has not already been held in the case, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 9 and thereafter, on a consideration of the proceedings of such inquiry, pass such orders as it may deem fit; and

(v) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of Rule 11, of making a representation against such enhanced penalty."

25. REVISON:

(1) Notwithstanding anything contained in these rules-

(i) the President; or

(ii) the Railway Board; or

(iii) the General Manager of a Railway Administration or an authority of that status in the case of a Railway servant under his or its control;

(iv) the appellate authority not below the rank of a Divisional Railway Manager, in cases where no appeal has been preferred;

(v) Any other authority not below the rank of a Deputy Head of a Department in the case of a Railway servant serving under its control may at any time, either on his or its own motion or otherwise, call for the records of any inquiry and revise any order made under these rules or under the rules repealed by Rule 29, after consultation with the Commission where such consultation is necessary, and may-

(a) Confirm, modify or set aside the order; or

(b) Confirm, reduce, enhance, or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or

(d) Pass such other orders as it may deem fit."

7. The Appellate Authority has to consider the case of the applicant as a quasi judicial authority as per the decision of the Hon'ble Supreme Court in the case of **Ram Chandra –v- Union of India** reported in 1986 (2) SLR 608, **Apparel Export Promotion Council-v-A.K.Chopra,** reported in 1999 SCC (L&S) 405 and **Narinder Mohan Arya –v-United India Insurance Co. Ltd**, reported in (2006) 4 SCC 713. The Appellate Authority must give reasons even while affirming the order of the Disciplinary Authority. In our opinion, an order of affirmation need not contain elaborate reasons, but that does not mean that the order of affirmation need not contain any reasons whatsoever. The order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming or reversing or modifying the order of the Disciplinary Authority. The purpose & disclosure of reasons is that the people must have confidence in the judicial or quasi-judicial authorities, unless the reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons at least in brief must be disclosed in a judicial or quasi judicial order, even if it is an order of

affirmation. The reasoned order should be in accordance with the judgment of the Hon'ble supreme Court reported in 2004 (7) SCC 431 –**Cyril Lasrado (Dead) by Lrs and Others –v-Juliana Maria Lasrado & Another.**

> "12. Even in respect of administrative orders Lord Denning M.R. in Breen v. Amalgamated Engineering Union (All ER p.115) "the giving of reasons is one of the fundamentals of good administration" In Alexander Machinery (Dudley) Ltd. Vrs. Crabtree it was observed "Failure to give reasons amounts to denial of justice "Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi judicial performance."

Reasons is the heart beat of every conclusion, without the same it becomes lifeless as held by Hon'ble Supreme Court in the case of **Raj Kishore Jha v State of Bihar** reported in (2003) 11 SCC 519. How to consider the case is as directed by the Hon'ble Supreme Court in the case of **R.P.Bhatt v Union of India** reported in (1986) 2 SCC 651 and **Divisional Forest Officer, Kothagundum & Ors v Madhusudan Rao** reported in 2008 (2) SC 253.

It is also noticed that the Applicant has taken several grounds in support of his plea that there has been gross injustice caused to him in the decision making process of the matter by the Disciplinary Authority (quoted above). But the Appellate Authority rejected such contentions in general without meeting/answering as to how the points raised by him are not sustainable. This is a serious lacuna in the orders of the Appellate as well as Revisional Authority being opposed to the Rules/instructions as well as law

laid down by Their Lordships of the Hon'ble Apex Court **Bhartesh C.Jain and others v Shoaib Ullah and Another,** (2008) 1 SCC (L&S) 616.

8. Above being the position of facts and law, we are of the considered opinion that the order of the Appellate/ Revisional Authority are not in accordance with Rules and law cited above. Hence the order under Annexure-A/16 is hereby quashed with direction to the Appellate/Revisional Authority to reconsider the appeal of the Applicant on the points raised by the Applicant and noted in paragraph 1 (A to O) with reference to the Rules and take a decision and communicate the decision in a reasoned order within a period of 45 days from the date of receipt of copy of this order.

9. In the result, with the aforesaid observation and direction this OA stands disposed of. No costs.

Mohanty 20/09/2010

(M.R.Mohanty)
Vice-Chairman(J)

(C.R.Mohapatra)
Member (Admn.)