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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 89 OF 2007  
CUTTACK, THIS THE 22<sup>ND</sup> DAY OF December, 2009

B.B.Martha.....Applicant

Vrs.

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 Central Administrative Tribunal or not ?

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

g  
(K.THANKAPPAN)  
MEMBER (JUDL.)

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CUTTACK BENCH, CUTTACK**

**ORIGINAL APPLICATION NO. 89 OF 2007**  
**CUTTACK, THIS THE 22<sup>nd</sup> DAY OF December, 2009**

**CORAM :**

**HON'BLE MR. JUSTICE K.THANKAPPAN, MEMBER(J)**  
**HON'BLE MR. C.R.MOHAPATRA, MEMBER(A)**

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Sri B.B.Martha, aged about 61 years, son of Late Balabhadra Martha,  
Ex. Cabin Master under Sr. Divisional Operations Manager,  
E.Co.Railway, Khurda Road at present residing At/PO Haripur via  
Singhpura, Dist. Khurda, PIN 752021.

... Applicants

By the Advocates – M/s. Achintya Das, D.Mohanty

**-Versus-**

1. Union of India service through General Manager, E.co. Railway,  
Chandrasekharapur, Bhubaneswar, PIN 751023.
2. Divisional Railway Manager, E.Co. Railway, Khurda Road, P.O.  
Jatni, Dist. Khurda, PIN 752050.
3. Sr. Divisional Operations Manager, E.Co. Railway, Khurda Road,  
P.O. Jatni, Dist. Khurda, PIN 752050.

... Respondents

By the Advocates - Mr. T.Rath

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**ORDER**

**Shri Justice K. Thankappan, Member (J):-**

Assailing the punishment of withholding of increment for two years with cumulative effect, vide Annexure-A/2 order dated 15.12.2003, confirmed by the appellate order dated 22.1.2007 (Annexure-A/12), the applicant has filed this O.A. praying for quashing of the said orders.

2. The factual matrix of the case is as follows:

While the applicant was working as Cabin Master in South Cabin/Bhusandapur, he was served with a memo of charge dated 17.2.2003 (Annexure-A/1) alleging that he committed a misconduct punishable under the provisions of Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter referred as "D&A Rules"). It is alleged in the charge memo dated 17.2.2003 that while the applicant was working as Cabin Master, on 24.10.2002 between 00.00 Hrs and 08.00 Hrs, he failed to operate lever No.8 of X-Over Point No.7 in violation of SR 5.14.03, which caused the derailment of rear engine No. 14604 WDG-2/VSKP after crossing point No. 7 obstructing both Up and Down lines at 07.58 hours and thereby committed a misconduct of unbecoming of a Railway servant. On receipt of that charge memo, the applicant filed his



✓ ○ explanation. However, being not satisfied with the explanation given by the applicant, an inquiry under the provisions of D&A Rules was conducted, along with other two charges. The applicant participated in the inquiry fully. After having considered the inquiry report of the Inquiry Officer, the Disciplinary Authority as per order dated 15.12.2003 imposed a punishment of withholding of increment of the applicant for two years with cumulative effect. Against the said punishment order, the applicant filed an appeal, and the Appellate Authority after considering all the grounds urged in the appeal memorandum, confirmed the order passed by the Disciplinary Authority as per the appellate order dated 22.1.2007. Aggrieved by the said orders, the Applicant filed this O.A. with the prayers as aforesaid.

3. The O.A. has been admitted by this Tribunal and notice ordered to the Respondents on 12.03.2007.

4. Pursuant to the notice ordered by this Tribunal, the Respondents have filed a counter taking the stand that the punishment awarded by the Disciplinary Authority, which was confirmed by the Appellate Authority, is based on the evidence and on the findings entered by the Inquiry Officer. Further, it is stated in the counter that both the Inquiry Authority as well as



Disciplinary Authority have not violated the principle of natural justice or any procedure established for conducting the inquiry. The applicant himself participated in the inquiry and it was admitted by him in the defence statement that he tried to lift the lever, but he failed to do it because of the heaviness. However, it is stated in the counter affidavit that the stand taken by the applicant that the lever could not be pulled by him because of heaviness was also found baseless on the basis of the subsequent inquiry. Further, it is stated in the counter that a fact-finding inquiry was also conducted by a Joint Committee and the report of the said Committee has also been considered by the Appellate Authority. In the above circumstances, the O.A. is devoid of any merit and is liable to be dismissed with cost.

5. We have heard Mr. Achintya Das, Ld. Counsel appearing for the applicant and Mr. T.Rath, Ld. Counsel for the Respondents.

6. Reiterating the averments contained in the O.A. Shri Achintya Das, Ld. Counsel for the applicant contended that the charge sheet given to the applicant was vague and it is only stated that he failed to operate lever No.8 of X-Over Point No.7 in violation of SR 5.14.03 and that charge is not enough to



prove other charges leveled against the applicant. Further Ld. Counsel submits that applicant was not given a chance to cross-examine the members of the Joint Committee, who had given a report against the applicant, which was considered by the Inquiry Authority as a basis for finding the applicant guilty of the charge. The next contention of the Ld. Counsel for the applicant is that the Appellate Authority has not given any reason for confirming the order passed by the Disciplinary Authority and, if so, the Appellate Authority has committed flagrant violation of principle of natural justice. To substantiate this argument, the Ld. Counsel relies on two judgments of the Apex Court and also the circular issued by the Railway Board as RBE No. 168/2002.

7. To the above arguments, the Ld. Counsel for the Respondents, Mr. Rath submitted that all the contentions raised by the Ld. Counsel for the applicant are baseless. The applicant himself has participated in the inquiry conducted by the Inquiry Officer. The only case set up in his written statement, which he has filed before the Inquiry Authority, is that there was no confronted inquiry and that in course of such inquiry some of the employees were examined after about 36 hours of the accident and the members of the Joint Committee, who filed



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joint committee report, had not been cross-examined by him as chance was not given to him. But this position is not correct as the applicant had never taken such a plea before the Inquiry Officer or before the Disciplinary Authority. That apart, according to the Ld. Counsel for the Respondents, the Disciplinary Authority fully considered the Inquiry Report and was convinced that the charges framed against the applicant have been proved fully and the guilt of the applicant has been established on the evidence produced before the Inquiry Officer. That apart, Ld. Counsel submits that though it is stated in the appellate order that he had perused the report filed by the Joint Inquiry Committee, the Inquiry Officer, without basing upon the Joint Committee report, has arrived at the conclusion that the charges leveled against the applicant have been proved. In the above circumstances, the contentions of the Ld. Counsel for the applicant are baseless.

8. After having considered the contentions of the Ld. Counsel appearing for the parties and on perusing the records submitted before this Tribunal, the question to be answered is that whether the contentions raised by the Ld. Counsel for the applicant are correct or not. Admittedly, the applicant was working as Cabin Master on the relevant date and hour and he



failed to operate lever No.8 of X-Over Point No.7 in violation of SR 5.14.03 which chanced him to operate the point prematurely. This resulted in derailment of rear engine No. 14604 WDG-2/VSKP after passing cross over point No.7 obstructing both Up and Down lines at 07.58 hours on 24.10.2002. In the above circumstances, the defence taken by the applicant that he tried to operate the lever No.8 but he failed to do it due to heaviness is also found incorrect, as the report of the experts would show that his plea was incorrect and he was rather admitting the charge. On the second plea that the members of the Joint Committee were not allowed to be cross-examined by the applicant, it is to be noted that the Inquiry Officer never relied on such report to come to his conclusion whereas he has come to his conclusion for finding the applicant guilty of the charges only on the evidence produced before him. Though the list of documents supplied to the applicant before the inquiry contained the statement of the Joint Committee, that does not mean that it was necessary to give an opportunity to the applicant to cross-examine the members of the Joint Committee. The decision relied on by the Ld. Counsel appearing for the applicant, namely, 1980(3)SCC 459 in U. P. Warehousing Corp. & Ors vs V.N.Vajpay has no application to




the facts of the case in hand. In the above case, inquiry has been only based on the report of the Joint Committee or the fact finding inquiry committee. In the same manner, the judgment of the Supreme Court reported in AIR 1958 SC 86, in State of U. P. vs Mohd. Nooh has also no application to the facts of the case in hand, as neither the Inquiry Officer nor the Disciplinary Authority placed any reliance on the report filed by the Joint Committee. In the above circumstances, the above contentions of the Ld. Counsel for the applicant fail.


9. With regard to the reasons to be given by the appellate forum, we have already gone through the order passed by the Appellate Authority and we are of the view that the Appellate Authority has already considered the evidence produced before the Inquiry Officer, which was considered by the Disciplinary Authority and, if so, reasons stated by the Appellate Authority are sufficient to uphold the order passed by the Disciplinary Authority. The circular of the Railway Board relied on by the Ld. Counsel also is of no help to the applicant. In the above circumstances, we are of the view that the orders under challenge are tenable in law and the judicial power given to this Tribunal is limited to go further in the matter as this Tribunal is not expected to reappreciate the entire evidence



considered either by the Inquiry Officer or by the Disciplinary Authority.

10. Accordingly, we see no merit in the O.A. Consequently, the O.A. fails and it stands dismissed without any order for costs.

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

  
(K. THANKAPPAN)  
MEMBER (JUDL.)

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