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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.Nos. 95, 154 and 155 of 2007
Cuttack, this the 23rd day of March, 2011

Mukunda Behera Applicant

-v-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? *yy*
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not? *yy*.

A.K.
(A.K.PATNAIK)
Member(Judl)

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(C. R. MOHAPATRA)
Member (Admn.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A Nos. 95,154 and 155 of 2007
Cuttack, this the 23rd day of March, 2011

CORAM:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)
A N D
THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

OA No.95 of 2007

Shri Mukunda Behera, Aged about 53 years, Son of Govinda Behera, Bhachhara, PO:Jatni, Dist:Khurda, working as OS Gr.II, under Senior DEN/Co-Ord/KURs Office (Under order of punishment of dismissal).

.....Applicant

By legal practitioner: M/s.Achintya Das,D.K.Mohanty, Counsel.

-Versus-

1. Union of India represented through its General Manager, East Coast Railway, Chandrasekharapur, Bhubaneswar, Dist. Khurda.
2. The Divisional Railway Manager, East Coast Railway, Khurda Road, Jatni, Dist.Khurda.
3. The Senior Divisional Personnel Officer, East Coast Railway, Khurda Road, Jatni, Dist.Khurda.
4. The Senior Divisional Engineer (Coordination), East Coast Railway, Khurda Road, Jatni, Dist. Khurda.
5. Shri P.K.Jena, Senior Divisional Engineer (Coordination), East Coast Railway, Khurda Road, Jatni, Dist. Khurda.
6. Shri M.Srinivas Rao, AEN-I, ECoRly, Khurda.

....Respondents

By legal practitioner: Mr.P.C.Panda, Counsel.

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OA No.154 of 2007

Shri Mukunda Behera, Aged about 53 years, Son of Govinda Behera, Bhachhara, PO:Jatni, Dist:Khurda, working as OS Gr.II, under Senior DEN/Co-Ord/KURs Office (Under order of punishment of dismissal).

.....Applicant

By legal practitioner: M/s.Achintya Das,D.K.Mohanty, Counsel.

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1. Union of India represented through its General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
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3. The Senior Divisional Personnel Officer, East Coast Railway, Khurda Road, Jatni, Dist.Khurda.
4. The Senior Divisional Engineer (Coordination), East Coast Railway, Khurda Road, Jatni, Dist. Khurda.
5. Shri P.K.Jena, Senior Divisional Engineer (Coordination), East Coast Railway, Khurda Road, Jatni, Dist. Khurda.
6. Shri B.K.Jain,AEN/Central, Cuttack cum IO, East Coast Railway, Station Bazar, Cuttack.

....Respondents

By legal practitioner: Mr.P.C.Panda, Counsel.


OA No.155 of 2007

Shri Mukunda Behera, Aged about 53 years, Son of Govinda Behera, Bhachhara, PO:Jatni, Dist:Khurda, working as OS Gr.II, under Senior DEN/Co-Ord/KURs Office (Under order of punishment of dismissal).

.....Applicant

By legal practitioner: M/s.Achintya Das,D.K.Mohanty, Counsel.

-Versus-

1. Union of India represented through its General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
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2. The Divisional Railway Manager, East Coast Railway, Khurda Road, Jatni, Dist.Khurda.
3. The Senior Divisional Personnel Officer, East Coast Railway, Khurda Road, Jatni, Dist.Khurda.
4. The Senior Divisional Engineer (Coordination), East Coast Railway, Khurda Road, Jatni, Dist. Khurda.
5. Shri P.K.Jena, Senior Divisional Engineer (Coordination), East Coast Railway, Khurda Road, Jatni, Dist. Khurda.
6. Shri N.Sreenivasa Rao, Assistant Divisional Engineer, E.Co.Railway, Cuttack cum Inquiry Officer.

....Respondents

By legal practitioner: Mr.G.Singh, Counsel.

O R D E R

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

Applicant has challenged three consecutive orders of punishment of dismissal and recovery of the loss imposed as a consequence of three separate disciplinary proceedings initiated against the Applicant [who was working as OS Gr.II in the ECoRly posted in Khurda Road] under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1965 'hereinafter called as "Rules". Appeals preferred by the Applicant separately against each order of punishment of dismissal, having been dismissed, by filing the three Original Application he has challenged the manner of initiation of disciplinary proceedings,

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reaching the conclusion by the IO, passing the order of punishment by the Disciplinary Authority and by the Appellate Authority upholding the order of punishment. According to the Applicant, the entire process leading to the order passed by the Disciplinary Authority and Appellate Authority is not sustainable being contrary to Rules, illegal, arbitrary, without due application of mind and non-compliance of the basic principles of natural justice. Further stand of the Applicant is that once an order of punishment is passed against an employee dismissing from service, as per the Rules other proceedings should have abated but in the instant case after the first order of dismissal, imposition of the same punishment in other disciplinary proceedings amounts to imposing death sentence for an offence, on a culprit who exists no more having been hanged earlier.

2. Three separate counters have been filed by the Respondents contesting the case of the Applicant. According to the Respondents there has been no infraction/infringement of any of the provisions of the Rules. The entire proceedings were taken up by following the procedures provided in the Railway Servants (D&A) Rules, 1968. The Applicant was allowed

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adequate reasonable opportunity to defend the case. But either he failed or availed of the opportunity. Since the allegations were proved to the hilt by the Inquiry Officer, the Disciplinary Authority, after considering the reply submitted by the Applicant to the report of the Inquiry Officer and all connected records, in a well reasoned order, imposed the punishment of dismissal. The Appellate Authority also upheld the punishment imposed on the Applicant. As such, the plea taken by the applicant that there was breach of rules and natural justice is far from truth. Accordingly, Respondents opposed the prayers of the applicant made in these three original applications and have prayed for dismissal of the OAs.

3. Rejoinder has been by the applicant more or less reiterating the stand taken by him in his OA.

4. Since grounds of challenge in OA Nos. 95 and 155 of 2007 are same, for the sake of clarity and convenience, we deal with both the cases in one order which would govern both the cases. By drawing our attention to the charge sheet it was contended that Article 1 of the charge sheet would establish that the charge sheet was framed on the basis of Special Stock Verification conducted in April 1995 wherein "A huge

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discrepancy was noticed in the stores". The word "Discrepancy" does not mean shortage. However, the cost of shortage has been estimated to be Rs. 37, 86,429/-. Nowhere the quantity of shortages has been described. Unless, the quantity of shortage is established, it cannot be converted in terms of money. The Charge sheet is totally vague and shows that the same has been prepared without due application of mind; because the Applicant has been asked to show cause for the shortage of the stores amounting to Rs. 37, 86,429/- without mentioning the description of Stores items with quantity, which is alleged to have been found deficient, date of alleged transaction or the period of the shortage and the incumbency of the Applicant during that period. Even a copy of the "Special Stock Verification Report", which is the foundation of the Charge sheet, being a vital document, has not been cited and what to speak of citing the author of the Special Stock Verification as a Prosecution Witness to place the Report in the D & A Inquiry. In the circumstances the documents based on which the charge sheet was drawn up and the witness who prepared the documents having not been cited in the charge sheet, by applying the law laid down by the Hon'ble Apex Court in the

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case of **Hardwari Lal vs. State of U.P. and others** 2000 SCC (L&S) 85, the charge sheet is liable to be set aside.


4-i. Despite existence of provision the Railway Board's instruction vide their letter No. E (D&A) 83 RG 6-14 dated 24/29.3.1985 and despite request of the applicant in letter dated 28.12.95 (Annexure A/2), RUD was not supplied to the applicant and therefore, he was highly prejudiced to defend his case. Hence, for non-supply of the RUD, by applying the law laid down by the Hon'ble Apex Court in the case of **State of UP vs. Shatrughan Lal and Another**, AIR 1998 SC 3038 the proceeding is vitiated.

4.ii. Appointment of the IO before submission of the reply to the charge sheet by the applicant is contrary to Rule 9(9)(a)(i) of Railway Servants (D&A) Rules 1968. Hence, the proceeding is vitiated.

4.iii. By drawing our attention to the report of the IO, it was submitted by Learned Counsel for the Applicant that the report of the I.O is not sustainable being sketchy and non-speaking and has been made in utter violation of Rule 9(25)(i) of Railway Servants (D&A) Rules 1968, which provides that after the conclusion of the inquiry, a report shall be prepared and it

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shall contain (i) the articles of charge and the statement of imputations of misconduct or misbehavior; (ii) the defence of the Railway servant in respect of each article of charge; (iii) an assessment of the evidence in respect of each article of charge; and (iv) the findings on each article of charge and the reasons therefore. The Disciplinary authority accepted the report of the IO and imposed the punishment by observing **“after going through the entire case file”** but without making detailed discussion as required under Rules. Hence the report of the IO as also DA, by applying the ratio of the decision of the Hon'ble Apex Court in the case of **Sher Bahadur vs. Union of India and others**, 2002 SCC (L&S) 1028, are not sustainable. To buttress the above stand, it has been contended by Learned Counsel for the Applicant that suspicion cannot be allowed to take the place of proof even in domestic enquiry and when the Inquiry Committee in conducting the departmental proceedings had left an indelible stamp of infirmity, then such proceedings cannot be upheld merely because higher authority later had approved its decision/findings. In other words, when the I.O. commits an illegality and irregularity, which left an indelible stamp of infirmity, then the DA as well as the AA cannot cure



the same as it affects the basic structure of the proceedings. To strengthen the above submission, Learned Counsel for the Applicant has relied on the decisions of the Hon'ble Apex Court in the case of **Union of India and others v H.C.Goel**, AIR 1964 SC 156 and **Rattan Lal Sharma v. Managing Committee Dr. Hari Ram (Co-education) Higher Secondary School and others** (1993) 4 SCC 10

4.iv. Further it was contended by Learned Counsel for the Applicant that no detail reason was assigned by the DA while imposing the harsh punishment of dismissal and recovery for the alleged offence. It was contended by him that giving of reasons is one of the fundamentals of good administration. Failure to give reasons amounts to denial of justice. Reasons are live links between the minds of the decision taker to the controversy in question and the decision or conclusion arrived at. In this connection he has placed reliance on Rule 10 of the Rules *ibid*, 1968 (corrected vide Railway Board's notification No. E (D&A) 87 RG 6-151 dated 8.8.2002), Railway Board instructions issued vide No. E (D & A) 78 RG 6-11 dated 3.3.1978, No. E (D&A) 86 RG 6-1 dated 20.1.1986, No. E (D & A) 2002/RG 6-27 dated 24.09.2002 as also the on the decision of the Hon'ble Apex



Court in the case of **Chairman and Managing Director, United Commercial Bank and others vrs. P.C.Kakkar** 2003 (4) SCC 364. This apart it is the contention of the Applicant that the DA without due application of mind imposed double punishment one under Rule 6 (ix) and the other one under Rule 6 (iii) of RS (D&A) Rules, 1968 contrary to the law laid down in the cases of **Naveen Kumar vs. P & H High Court and Another** SLR 2011(1) page 115, **UOI & Another vs. S.C.Parashar** decided by the Hon'ble Supreme Court of **India** 2006 SCC (L&S) 496. Hence, according to the Applicant, the order of punishment imposed by the DA is not sustainable.

4.v. Applicant's counsel also attacked the order of the Appellate Authority on the following grounds:

The Appellate Authority in his order has stated the following inter-alia:

"From the perusal of the above, it is seen that the charge sheet was issued basing on the special stock verification and verification of stock ledger."

The copy of the Special Stock Verification report has not been cited as RUD neither a copy thereof has been supplied to the Applicant. This is an extraneous document which has been considered by the D.A. and A.A. at the back of the Applicant.


The Appellate Authority has further mentioned the following in the last but one Para:

"I, as Appellate Authority under Rule – 22 of R.S. D&A Rules, 1968, considering all the above facts and keeping in view the gravity of offence committed by you, have decided to uphold the penalty of "dismissal from Railway service w.e.f. 01.12.06 as per


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Rule-6(ix) of R.S. (D&A) Rules, 1968 and recovery of the amount of Rs. 37,86,429/- from your Railway dues if any as per Rule 6(iii) of R.S. (D&A) Rules, 1968” as imposed by Disciplinary Authority.”


4.vi. As such, it was contended by Learned Counsel for the applicant that the Appellate Authority upheld the order of punishment passed by the DA without due application of mind and without discussing the materials that too in a cryptic order reiterating the orders passed by the disciplinary Authority which is against Rule 22 (2) of the Railway Servants (D&A) Rules, 1968 and law enunciated by the Hon'ble Apex Court in the case of **Director (Marketing) Indian Oil Corporation Ltd. And another v. Santosh Kumar**, (2007) 1 SCC (L&S) 388. Further it was contended that the Appeal of the Applicant was rejected even without affording any opportunity of hearing to the Applicant as provided in Rule 22(2) of R.S. (D&A) Rules, 1968 and has the sanction of law in the case of **Ramchander vs. UOI & Others**, AIR 1986 SC 1173. Hence, Learned Counsel for the Applicant vehemently argued that as miscarriage justice was caused to the applicant in the decision making process of the matter, the entire proceedings are liable to be set aside.



5. Per contra, it was submitted by Learned Counsel for the Respondents that shortage of store having been detected by a three member committee constituted during verification of the store materials, the applicant prima facie was held responsible. Accordingly on the basis of the report submitted by the Committee charge sheet under Rule 9 of the Railway Servants (D&A) Rules, 1968 was issued to the applicant requiring him to submit his reply. On receipt of the reply to the charge sheet, the Disciplinary Authority appointed IO to enquire to the matter. Enquiry was conducted in accordance with the Rules. The Applicant was afforded all reasonable opportunities to prove his innocence. The IO submitted its report holding the charge as proved. After considering the defence statement submitted by the applicant to the report of the IO, the DA imposed the punishment of dismissal from Railway service w.e.f. 01-12-2006 and further to make good of the shortage, the DA ordered recovery of an amount of Rs.86,984/- from the applicant. Appeal preferred by the Applicant was duly considered but the Appellate Authority did not find any valid reason to interfere in the order of punishment which was passed based on the report of the IO proving the charge framed against the Applicant.



Hence, according to the Respondents' Counsel as the charge sheet was issued to the applicant based on the fact finding report of the Committee, the allegation that the charge sheet was issued *mala fide* exercise of power by the DA is far from truth. Applicant was noticed sufficiently before the date fixed for holding the enquiry. The IO has not put the applicant to anything unrelated to the charges as pointed out by the Applicant. The IO examined the witness whose names appeared in the charge sheet. The Applicant never submitted any request to the IO for calling for any of the Defence witness. The IO being a quasi judicial authority, there is no provision for examining him by the Applicant. Rather the IO conducted the enquiry in a free and fair manner by giving adequate opportunity to the Applicant. It is the prerogative of the authority to decide appointment of the PO and in absence of how non-appointment of the PO prejudiced the applicant, this cannot be a ground to nullify the proceedings. The Applicant did not attend the enquiry despite repeated notices. As such he abandoned his right to challenge the action of the authority taken in accordance with Rules. Applicant has inspected all the documents cited in the



charge sheet. On the above ground Respondents' counsel has prayed for dismissal of this OA.

6. After considering the rival submissions of the parties, perused the materials placed on record. It is seen that the alleged shortage for which charge sheet was issued in Annexure-A/1 dated 10.3.2005 was of the year 1992-93. But no explanation is forthcoming either in the charge sheet or even in the counter for issuing the charge sheet belatedly. As admitted by the Respondents the charge sheet was issued to the applicant based on the report of the fact finding enquiry conducted by a duly constituted committee in the absence of the applicant. On perusal of the report of the IO it is seen that the IO also reached the conclusion based on the said fact finding report but at no point of time neither such report was made available to the applicant nor the author of the report was cited and examined during enquiry. The report of the IO seems to be prepared in a perfunctory manner without any detailed discussions or even containing the statement of the witness or the points raised by the applicant although rule and judge made laws mandate for doing so. The Disciplinary Authority in a casual manner passed the order of punishment of dismissal simultaneously ordering

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recovery without due application of mind firstly because the order of DA is a cryptic one as it does not contain details of the charge framed, how the IO came to the conclusion of guilty, the finding of the IO, what the rule provides and how according to the DA this case comes under rarest of the rate so as to be visited with the punishment of dismissal and recovery. Further once an employee is visited with the punishment of dismissal he/she forfeits his/her right to get pension and other pensionary dues. Therefore, the authority while ordering recovery should have made it clear from which amount this recovery should be effected- this is lacking in the order of punishment. On going through the order of the Appellate Authority vis-à-vis the order of the DA there can be no second opinion that the Appellate Authority order is the replica of the order of the DA which is not the aim and object of the Rule vesting power with the Appellate Authority to consider the appeal of an employee. From the above, it is established that none of the legal requirements has been fulfilled by the Respondents while imposing the punishment on the Applicant. Neither in the counter nor in course of hearing, the short comings pointed out by citing Rules

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and Law, by the Applicant in the OA as also in his rejoinder have successfully been met by the Respondents.

7. Legal position is well settled that the charge sought to be proved must be supported by statements made in the presence of the person against whom the enquiry is held and that statements made behind the back of the person charged are not to be treated as substantive evidence. This is one of the basic principles which cannot be ignored on the mere ground that domestic tribunals are not bound by the technical rules of procedure contained in the Evidence Act (**Ramesh Chandra Behera v State of Orissa**, 40 (1974) CLT (notes 125) 90. No evidence having been led and certain documents having been led and certain documents having only been placed at the enquiry, the applicant was denied the opportunity of being told what were the materials sought to be utilized against him and as such the delinquent was deprived of the opportunity of defending himself (**Bishnu Charan Swain v District Magistrate and Collector, Ganjam**, 44 (1977) CLT 241. The officers who had conducted the audit/inspection of the stores and who had succeeded the applicant in that post are the key witnesses whereas neither they were called to be the witness to lead

evidence and thereby giving an opportunity to the applicant to cross examine them nor the AEN (Spl) who had conducted the inspection at a later stage had been asked to be present in the enquiry. Therefore holding the applicant guilty is against the law enunciated in the case of **Hardwari Lal v State of UP and others**, 2000, SCC (L7S) 85, **Shri Mangal Singh v Commissioner of Himachal Pradesh Govt**, 1975 (1) SLR 500(HPHC), and **Hari Giri v Union of India through Secretary, Ministry of Labour and others**, 1991 (2) ATJ 580. Without discussing the evidence/materials as to how it is related only making observations 'after going through the documents', imposition of punishment is bad in law(**Sher Bahadur v Union of India and others**, 2002 SCC (L&S) 1028). Similarly, it is trite law that in appeal against order of dismissal passed by disciplinary authority, Appellate Authority by simply adopting the language employed by disciplinary authority, refusing to interfere with the dismissal order-Held order of appellate authority vitiated by total non application of mind [**Director (Marketing) Indian Oil Corporation Ltd. And another v. Santosh Kumar**, (2007) 1 SCC (L&S) 388].

Keeping in mind the facts and law stated above, the report of the IO dated 24.07.2006 (Annexure-A/9), order of punishment dated 01-12-2006 (Annexure-A/11) and the order of the Appellate Authority dated 20-02-2007 and communicated in letter dated 22-02-2007 (Annexure-A/14) in OA No. 95 of 2007 and the report of the IO (Annexure-A/5, order of punishment dated 01-12-2006 (Annexure-A/10) and the order of the Appellate Authority dated 10-03-2007 in OA No. 155 of 2007 communicated in letter dated 19-03-2007 (Annexure-A/13 are hereby quashed. As a consequence the Applicant is entitled to be reinstated to service but without any back wages. Liberty is granted to the Respondents to proceed with the enquiry from the stage of appointment of the IO, as per Rules/Law, if they so like.

8. In the result, with the observation and direction given above, OA Nos. 95 & 155 of 2007 stand allowed by leaving the parties to bear their own costs.

9. In so far as OA No. 154 of 2007 is concerned, the prayer of the Applicant is to quash the charge sheet dated 20-12-1995 (Annexure-A/1; to quash the report of the IO dated 22-12-1999 (Annexure-A/4), the order of punishment dated 01-12-

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2006 (Annexure-A/9), the order of the appellate authority under Annexure-A/12 and to direct the Respondents to reinstate him to service with all consequential service and financial benefits. The grounds of challenge of the aforesaid orders are as under:

- (a) The charge sheet was vague and unspecific in absence of the years during which shortage was noticed that too without explaining the delay in issuing the charge sheet. He was never noticed about the shortage of the store materials when periodical audit of the stores is provided in the Rules. Hence, charge sheet is not sustainable he has relied on the Decisions of the Hon'ble Apex Court in the cases of **State of Andhra Pradesh v N.Radhakishan**, (1998) 4 SCC 154; **State of Madhya Pradesh v Bani Singh and another**, AIR 1990 SC 1308; **Hari Giri v UOI and others**, 1991 (2) ATJ 580 and the decision of this Bench dated 23.05.2003 in OA No. 304 of 1997 in the case of **K.L.Sharma v Union of India and others**;
- (b) The IO held the charge proved based on the documents cited in the charge sheet and the report of the fact finding enquiry conducted behind his back, without making those documents available to the applicant despite his request. Hence the punishment imposed on the basis of the said report of the IO is not sustainable [Ref. **State of UP v Satrugan Lal and another**, 1999 (1) AISLJ 213; and **Union of India and others v Ramzan Khan**, AIR 1991 SC 471;
- (c) IO proceeded with the enquiry, without considering the specific request of the applicant for adjournment of the sitting of the enquiry due to his illness and accordingly submitted the



report ex parte. The DA without considering this aspect of the matter imposed the harsh punishment of dismissal on the applicant which is not sustainable [Ref. **Ministry of Finance and another v S.B.Ramesh**, 1998 SCC (L&S) 865 and **R.C.Guptam, UDC v Lt. Governor of National Capital Territory of Delhi and others**, 2001(3) (CAT) 333];

- (d) The entire gamut was started and concluded with mala fide and bias manner was raised by applicant but was not considered by the DA & AA;
- (e) IO proceeded with the enquiry without affording any opportunity to the applicant to be heard in person or through defence counsel;
- (f) The IO acted as a nodal officer of the Department instead of performing his duty as a quasi judicial authority in absence appointment of any PO;
- (g) The author of the report and the person who subsequently took charge of the store from the applicant were not cited as witness nor they were examined during enquiry;
- (h) Neither applicant was allowed opportunity to cross examine the cited witness nor the CO himself was examined after the closure of the enquiry as mandated under the Rules;
- (i) No opportunity was allowed to the applicant to submit his defence statement after closure of the enquiry as required under the Rules; especially when the IO closed the hearing exparte;
- (j) IO report was perfunctory as it was not prepared in accordance with rules inasmuch

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containing the charge, statement of witness, detailed discussion on the documents etc;

- (k) The DA acted like a post office in forwarding the report of the IO to the applicant without examining whether the report was in accordance with Rules;
- (l) The order of the Hon'ble High Court acquitting the applicant on the self same charge was not taken into consideration either by the IO or by the DA;
- (m) Applicant visited with the harsh punishment of dismissal and recovery by a cryptic and unreasoned order of the DA;
- (o) IO took into consideration some extraneous materials neither formed part of the enquiry nor produced during the enquiry;
- (p) The order of punishment is contrary to the law laid down by the Hon'ble Apex Court in the case of **Sher Bahadur v Union of India and others**, 2002 SCC (L&S) 1028;
- (q) This is a case of no evidence.
- (r) No personal hearing was afforded to the applicant before passing the order of punishment as provided under Rule 22 (2) of RS (D&A) Rules, 1968;
- (s) There was gross violation of the principles of natural justice;

10. Respondents filed their counter in which it has been contended that while the Applicant was working as DSC/CTC misappropriated 50000 nos of tetal liners for which major


penalty charge sheet was issued to him. In spite of repeated attempts by the IO the applicant did not attend the enquiry. Therefore, exparte enquiry was conducted and the IO came to the conclusion that the charges levelled against the applicant are proved. After submission of the report by the IO, the DA supplied copy of the report to the applicant. Applicant submitted his representation and after going through all the records the DA in order dated 01-12-2006 imposed the punishment of **dismissal and recovery of Rs.2, 50,000/-** from the applicant. Applicant preferred appeal but the appellate authority upheld the order of punishment imposed on him by the DA. It has been stated that charge sheet was received by the applicant on 30.12.1995 and he submitted reply on 8.1.1996. If the applicant needed any document he could have sought the same from the IO but he never asked for any such document. Applicant never attended the enquiry despite due information. Hence the IO proceeded in the matter exparte and submitted his report holding the applicant guilty. Further stand of the Respondents is that the criminal case instituted against the applicant has nothing to do in regard to the charge levelled in the DP. While denying the allegation of the applicant it was contended by the Respondents that the IO

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allowed the applicant to submit his final defence which the applicant availed of. Opportunity of personal hearing was also allowed to the Applicant. Lastly it was contended by the Respondents that there was no breach of any of the rules nor was there any violation of the principles of natural justice in the matter. Hence, the Respondents have prayed for dismissal of this OA.

11 Applicant filed his rejoinder more or less reiterating the same stand taken in his OA as also notes of arguments.

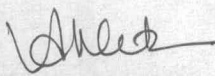
12 Learned Counsel appearing for both sides have reiterated the stand taken in their respective pleadings and having heard them at length perused the materials placed on record. We have also gone through the decisions relied on by Learned Counsel for the Applicant. It is seen that despite adequate opportunity to be present and have his say, the applicant failed to avail of the said opportunity. Therefore, on the basis of the materials and defence submitted by the Applicant, the IO held the applicant guilty. The Disciplinary Authority after taking into consideration all aspects of the matter imposed the punishment of dismissal which was upheld by the Appellate Authority. No document has been filed by the




applicant in support of his stand that he was really sick and his absence was unintentional and the sickness disabled him to attend the enquiry. Normally, we would not have intervened in this matter as the applicant cannot claim equity having spurned the opportunities afforded by the IO. But certain glaring omissions by the IO like non-compliance of the provisions of Rule 9(12), 9(20) and 9(21) of the Railway Servants (Discipline & Appeal) Rules stares^{at} us. Failure to comply with the above provisions would amount to serious error as has been held in the case of **Ministry of Finance v S.B.Ramesh**, 1998 (2) SLJ 67 (SC)=(1998)3 SCC 227. Non-adherence to the provisions of Rule 9(12) of the Railway servants (Discipline and Appeal) Rules has been held to have vitiated the ex parte enquiry [Ref: **Moti Singh v Union of India**, (1987) 2 ATC 334 (Jab.) and **Hari Prasad Billore v Union of India**, 1989(2) SLJ 292(CAT-Jabalpur). This being the position of Rule and law and the report of the IO, order of the DA and AA being conspicuously silent about the compliance of the Rules, we have no hesitation to quash the report of the IO dated 22-12-1999 (Annexure-A/4), order of punishment dated 01-12-2006 (Annexure-A/9) and the order of the appellate Authority under Annexure-A/12. Hence

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Annexure-A/4, Annexure-A/9 and Annexure-A/12 are hereby quashed. The matter is remitted back to the Disciplinary Authority to start de novo enquiry from the stage of appointment of the IO and complete the proceeding within a period of 180 days from the date of receipt of this order. The position of the Applicant shall be as he was prior to passing the order of dismissal and recovery. However, in any event the applicant shall not be entitled to any back wages for the intervening period.

13. In the result, with the aforesaid observation and direction this OA No. 154 of 2007 stands disposed of by leaving the parties to bear their own costs.


(A.K.PATNAIK)
MEMBER(JUDL.)


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