

7

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A Nos. 328 of 2008  
Cuttack, this the 22<sup>nd</sup> day of December, 2010

Bipin Bihari Patnaik .... Applicant  
-Versus-  
Union of India & Others .... Respondents

FOR INSTRUCTIONS

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

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

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

8

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A No. 328 of 2008  
Cuttack, this the 22<sup>nd</sup> day of December, 2010

C O R A M

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

.....  
Bipin Bihari Pattnaik, aged about 51 years, Son of Late  
Jadumani Pattnaik, presently working as Station  
Superintendent, Humma Railway Station, Dist. Khurda.

.....Applicant

By legal practitioner: Mr.B.S.Tripathy, Counsel.

-Versus-

1. Union of India represented through General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Divisional Railway Manager, East Coast Railways, Khurda Road, Dist. Khurda.
3. Senior Divisional Operating Manager, East Coast Railways, Khurda Road, Dist. Khurda.

....Respondents

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

O R D E R

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

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

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

2. On receipt of the aforesaid charge, the Applicant submitted his reply under Annexure-3. The Disciplinary Authority under Annexure-4 imposed the punishment of **“reduction to a lower stage in the time scale of pay for a period of three years without cumulative effect.”** Applicant submitted his appeal under Annexure-6. The Appellate Authority vide Annexure-8/9 modified the punishment imposed by the Disciplinary Authority to the extent **‘Reduction to a lower stage in time scale for a period of three years without cumulative effect and not adversely affecting the pension’.** Hence, this OA seeking the following relief:

- “(i) Hold and declare that the impugned proceeding as well as resultant punishment as well as order of the Appellate Authority as bad, illegal and violative of the provisions of Rules, 1968;
- “(ii) and violative of orders dated 05.05.08 in OA No.659/2006;
- “(iii) quash them with grant of all consequential service and monetary benefits;

(iv) Pass such other order(s) as would be deemed fit and proper in the facts and circumstances of the case."

3. Respondents by giving precise reasons have contested the case of the Applicant. The reasons assigned by them are that Shri B.B.Pattnaik, SS/HMA has been charge-sheeted for minor penalty. The vigilance Branch of East Coast Railway received a written complaint dt. 18.2.2005 lodged in the name of Sri Pradeep Kumar Martha against staff of BALU Railway Station, Balugaon. In course of investigation, it was revealed that the complainant had not lodged the said complaint. The complaint was lodged by Sri B.B.Pattnaik, SS/HMA (Applicant) in the name of Sri Pradeep Kuamr Martha soon after he got transferred from Balugaon Railway Station dated 10.2.2005. The Applicant has admitted the above fact in his statement dated 27.06.2005. He has also submitted his explanation on 26.7.2006, and the Disciplinary Authority (Sr. Divisional Operations Manager) after considering his case imposed the punishment of "**Reduction to a lower stage in the time scale of pay for a period of three years without cumulative effect on 6.7.06**". Thereafter, the Applicant preferred an appeal to Appellate Authority i.e. DRM, KUR against the order of punishment and the Appellate



Authority upheld the punishment imposed by Disciplinary Authority with certain modification i.e. "**Reduction to a lower stage in time scale for a period of three years with non-cumulative effect and not adversely affecting the pension.**"

The Respondents had also denied violation of the Rules of the Railway and the principle of natural justice in course of the disciplinary proceedings and have stated that as the punishment was on the basis of his own admission to the charge, there is hardly any scope for this Tribunal to interfere in the matter.

This Tribunal heard the matter at length and upon perusal of the materials placed on record disposed of the matter on 5<sup>th</sup> May, 2008. Relevant portion of the order reads as under:

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

12 (5)  
79 (2006) 1 SCC 589, and **Union of India v Dwarka Prasad Tiwari**, (2006) 10 SCC 388.

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

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

10. The Appellate Authority is bound to consider all the points raised by a delinquent in his appeal against an order of punishment imposed by the Disciplinary Authority which would not only satisfy the person concerned but also meet the ends of justice. Non-consideration of all the points amounts to denial of justice. Similarly non-consideration of the issues/points raised makes an order nullity. In this connection I would like to refer to the decision of the Hon'ble Supreme Court rendered in the case of **Bhartesh C. Jain and Others v Shoaib Ullah and another**, (2008) 1 SCC (L&S) 616. In the said case the Hon'ble High Court of Allahabad dismissed the Writ Petition without meeting/answering issues raised. But on appeal the Hon'ble Apex Court remitted the matter to the High Court on the ground of not meeting/answering the issues raised.

11. In the light of the discussions made above since the appellate order under Annexures-7 & 8 do not contain all the points raised by Applicant in his appeal, by applying the ratio of the decisions of the Hon'ble Apex

13

6

Court in the case of **Bhartesh C.Jain and others** (supra), the order passed by the Appellate Authority under Annexures-7 & 8 are hereby quashed. The matter is remitted back to the Appellate Authority for reconsideration of the appeal of Applicant under Annexure-6. While doing so, the Appellate Authority may keep the averments made in the present OA in mind; notwithstanding the views expressed in the counter by the Respondents. A reasoned order shall be passed by the Appellate Authority within a period of two months from the date of the receipt of the copy of this order.

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

4. The DRM, ECoRly, KUR as an Appellate Authority, in compliance of the order of this Tribunal dated 5<sup>th</sup> May, 2008 passed the order afresh rejecting the appeal of the Applicant under Annexure-8 dated 25.6.2008. Hence this OA with the following relief:

“(i) Hold and declare that the impugned proceeding as well as resultant punishment as well as order of the appellate authority under Annexures – 4,5,8 & 9 as bad, illegal and violative of the provisions of Rules, 1968 and violative of orders dated 05.05.08 in OA No. 659/06; and thereby;

(ii) Quash the them with grant of all consequential service and monetary benefits;

(iii) Pass such other order(s) as would be deemed fit and proper in the facts and circumstances of the case.”

Grounds in support of the aforesaid as raised in this Original Application are as under:

1

(a) Rule 6 stipulates various penalties which *inter alia* include Rule 6(iii) (b), reduction to a lower stage in the time scale not exceeding 3 years without cumulative effect and not adversely affecting his pension. Rule 11 deals with the procedure for imposing minor penalties. Rule 11 (1) (b) stipulates for holding an inquiry in the manner laid down in Sub Rules (6 to 25) of Rule 9 in every case. But none of the above procedure/principles have been followed while imposing the penalty on the Applicant;

(b) Charges were vague and imprecise. Applicant was served with the charge sheet without any statement of allegation and list of documents based on which charge sheet was framed. The basic document i.e. written complaint dated 18.2.2005 was not served on the Applicant. Hence entire proceeding was vitiated by application of Rules and Railway Board's Circular No. E (1) RA 66 RG 6-7 OF 30.12.68 (nr 457) SC 4/69-Hindi 75/G33/1 dated 02.07.1976 NR 6575;

(c) The charge does not come within the purview of misconduct attracting the conduct Rule 3(1)(3) of Rules, 1968 as per the decision of the Hon'ble Apex Court in the case of A.L.Kalra v Project & Equipment Corporation of India Ltd., AIR 1984 SC 1461. Hence punishment imposed on the basis of the said charge is vitiated;

(d) The disciplinary as well as Appellate Authority imposed the punishment without application of mind. Orders passed by both the others are cryptic and unreasoned without meeting/answering the points raised by the Applicant. Hence both the orders are liable to be set aside;

(e) Unreasoned order of the Appellate Authority even after the orders of this Tribunal dated 5<sup>th</sup> May, 2008 in OA No. 659 of 2006 also is one of the grounds taken by the Applicant in this OA.

5. Respondents filed their counter contesting the case of the Applicant by assigning the reason in the same manner as in the earlier case. Their stand is that since there was no violation of any of the provisions of the Rules of the Railway and principles of natural justice were fully complied with there is hardly any scope for this Tribunal to interfere in the order of punishment. Further stand of the Respondents that the scope of judicial review in matters relating to disciplinary action against an employee has been well settled by a catena of decisions of the Hon'ble Apex Court. The Hon'ble Apex Court unequivocally précised the law that the Tribunals exercising jurisdiction are not hearing an appeal against the decision of the Disciplinary Authority imposing punishment upon the delinquent employee. The Jurisdiction exercised by the Tribunal is a limited one and while exercising the power of judicial review, they cannot set aside the punishment altogether or impose some other penalty unless they find that there has been a substantial non compliance with the rules or procedure or a

gross violation of principles of natural justice which has caused prejudice to the employee and has resulted in miscarriage of justice. Since in the instant case Rule and principles of natural justice have scrupulously been followed by the Respondents and in a reasoned order the Disciplinary Authority imposed the punishment this OA is liable to be dismissed. No rejoinder has been filed by the Applicant despite adequate opportunity being granted to him.

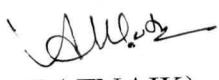
6. On a cursory glance on the appeal preferred by the Applicant, previous order of this Tribunal dated 5<sup>th</sup> May, 2008 and the order of the Appellate Authority under Annexure-8 dated 25.6.2008 vis-à-vis the points raised by the Applicant in this OA as noted above and after hearing Learned Counsel for the Applicant and Mr. P.C.Panda, Learned Counsel appearing for the Respondents, we are convinced that the Appellate Authority's order is not in accordance with the Rules/Law. Because 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

1

17 (10)

Appellate Authority. 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 penalty. In view of the above and keeping in view of the decision of the Hon'ble Apex Court in the case of **Ram Chander v Union of India** (1986) 3 SCC 103 as also the ratio of the decision of the Hon'ble Apex Court in the case of **Bhartesh C.Jain and others v Shoaib Ullah and Another**, (2008) 2 SCC 180, we quash the order of the Appellate Authority under Annexure-8 dated 25.6.2008 and the remit the matter back to the Appellate Authority to consider the appeal of the Applicant in the light of the discussions made above and pass orders within a period of 60(sixty) days from the date of receipt of this order.

7. In the result, this OA stands disposed of. There shall be no order as to costs.

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

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