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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

1. O.A.No.491 of 2010
P.Nanda Applicant
Versus
NALCO & Ors Respondents
2. O.A.No.492 of 2010
V.Kumar Applicant
Versus
NALCO & Ors Respondents
3. O.A.No.493 of 2010
R.K.Sahu Applicant
Versus
NALCO & Ors Respondents
4. O.A.No.494 of 2010
A.B.Gajbhiye Applicant
Versus
NALCO & Ors Respondents
5. O.A.No.495 of 2010
S.K.Sahu Applicant
Versus
NALCO & Ors Respondents
6. O.A.No.496 of 2010
B.P.Behera Applicant
Versus
NALCO & Ors Respondents
7. O.A.No.497 of 2010
Dr.S.C.Pattnaik Applicant
Versus
NALCO & Ors Respondents
8. O.A.No.498 of 2010
D.Choudhury Applicant
Versus
NALCO & Ors Respondents
9. O.A.No.499 of 2010
Dr.P.K.Behera Applicant
Versus
NALCO & Ors Respondents
10. O.A.No.500 of 2010
S.C.Das Applicant

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Versus
NALCO & Ors Respondents

11. O.A.No.501 of 2010

C.M.Padhy Applicant

Versus

NALCO & Ors Respondents

12. O.A.No.502 of 2010

N.K.Sahoo Applicant

Versus

NALCO & Ors Respondents

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Order dated : 9-8-2011.

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THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

AND

THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDL.)

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Since common question of facts and law are involved in all these OAs, though we heard the matter one after the other, this common order is passed which will govern all the above cases.

2. In all the above cases the Applicants challenge the orders imposing the punishment of "censure" on the conclusion of the disciplinary proceedings initiated against them under Rule 28 of the NALCO Conduct, Discipline and Appeal Rule, 1984. They have also challenged the orders of the rejection of the appeal preferred by the Applicants individually against the orders of punishment of "Censure". In support of the above, it was the

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contention of the applicant that the charge sheet was supplied to each of the applicants without containing the name of the witness and the list of witness was supplied to them in course of the enquiry proceedings. The IO exonerated the applicants in his report submitted to the DA. But the DA/Respondent NO.2 had adopted a novel procedure in forwarding the copy of the report with all documents to the Respondent No.4/CVC for advice. As the charge sheet was issued at the behest of the CVC/Respondent No.4, even after exoneration by the IO, the Respondent No.4/CVC advised without assigning any reason for imposition of major penalty on the Applicants. On receipt of the advice from the Respondent No.4/CVC, Respondent No.3 furnished copy of the report of the IO without any note of disagreement or copy of the advice of the CVC though it was very much available with the Respondent No.3 by the time the applicants were furnished with the report of the IO. No reason was assigned by the Disciplinary Authority while imposing the punishment on the Applicants. The DA has acted on the aid and advice of the CVC. Further stand of the Applicants is that from 2003 onwards the PDI teams were sent to Katni to inspect the materials procured from that place and every time, there is a fall in the CaO percentage on the Lime but it is surprising that at no point of time anybody was proceeded

against and the applicants who went as member of the PDI team were proceeded against that too when they were ripe for promotion. Their contention is that although the Applicants have prayed for annulment of the orders of punishment, by stating all these points in their appeal, the Appellate Authority rejected the appeal of the Applicants without assigning any reason. Hence, besides attributing mala fide exercise of power, the Applicants' counsel contended that there was violation of principles of natural justice and such violation of natural justice caused miscarriage of justice to the applicants in the decision making process of the matter and as such, the orders of the disciplinary authority imposing the punishment and rejecting the appeal of the applicants without assigning any reason are liable to be set aside.

3. Respondents, by filing their counter, have opposed the contentions of the Applicants and have prayed that these OAs being devoid of any merit are liable to be dismissed. In support of their stand it was contended that the applicants have failed to discharge their onerous duty and responsibility entrusted to them to point out the short comings of the material. Though the inspection was carried out during the year 2005-06, the lapses on the part of the PDI team came to the light by CVC later on. Thereafter the matter was investigated and referred to CVC and

domestic enquiry was conducted and finally culminated with the imposition of penalty on 12.5.2010. Hence delay in initiating the proceeding as pointed out by the Applicants does not make them free from the lapses. It was further pointed out that the IO conducted the enquiry but submitted the report holding the charge not proved without appreciating/taking note that the charges framed against the applicants had already been established as per the material available on record. Hence the Disciplinary Authority after careful examination of the report of the IO and advice of the CVC, ^{Statement} defence of the applicants imposed the minor penalty of 'Censure' on the applicants. It was contended that there was no violation of the procedure prescribed in the rules and the principles of natural justice were strictly adhered to in the matter. In the above circumstances by placing reliance on the decision of the Hon'ble Apex Court in the case of **The High Court of Judicature at Bombay V Shashikant S.Patil and another, AIR 2000 SC 22**, Respondents have reiterated their prayer for dismissal of these OAs.

4. We have considered the rival submission made with reference to the respective pleadings by the Counsel appearing for the parties and perused the materials placed in support thereof. We observe that charge sheet was drawn and served on the

applicant as per the letter of the CVC. The matter was enquired into by the IO who submitted its report holding the charge not proved. Copy of the said report was sent by the DA to the CVC. The CVC advised imposition of major penalty. Thereafter the DA forwarded copy of the report of the IO to the applicants without recording any tentative view or disagreement note nor even copy of the CVC was supplied to the applicant. The Applicants submitted their defence. Thereafter, as it appears from the counter, apparently the DA being influenced by the advice furnished by the CVC disagreed with the report of the IO and imposed the punishment of 'Censure'. It is trite law that the Disciplinary Authority has to indicate the detailed reasons for disagreement with the findings of the IO, if there is a disagreement with the findings of the IO -vide-**Punjab National Bank v K.B.Mishra, JT 1998 (5) SC 548, Yoginath D.Bagde v State of Maharashtra and another, AIR 1999 SC 3734**. The same is conspicuously missing in this case. Therefore, it can safely be held that the procedure adopted by the DA has neither the sanction of the rules nor various judge made laws on the subject available in the field.

5. This apart, as per the Rules, the Commission is being consulted at two stages in disciplinary proceedings, i.e. first stage advice is obtained on the investigation report before issuing the

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charge sheet and the second stage advice is obtained either on receipt of the reply to the charge sheet or on receipt of the report of the IO. It, however, does not seem necessary to call for the representation of the concerned employee on the first stage advice as the concerned employee in any case gets an opportunity to represent against the proposal for initiation of departmental proceedings against him. Therefore, a copy of the Commission's first stage advice may not be made available to the concerned employee along with a copy of the charge sheet for his information. However, when the CVC's second stage advice is obtained, a copy of thereof needs to be made available to the concerned employee along with IO's report to give him an opportunity to make representation against IO's findings and the CVC's advice, if he desires to do so.

6. Besides the above, it is observed that recording of reasons in support of a decision in a quasi judicial proceeding is obligatory, as it ensures that the decision is reached according to law and not due to caprice, whims or fancy or reached on ground of policy or expediency. The necessity to record reasons is greater if the order is subject to appeal. In the instant case neither the DA while imposing the punishment nor the AA while accepting the order of the DA, in other words, rejecting the appeal of the

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Applicant has assigned any reason in support of their decision. The order is non-speaking/laconic. In this connection the order of the DA in Annexure-A/8 and the order of the AA in Annexure-A/10 (in OA No. 491 of 2010) are quoted herein below:

The order under Annexure-A/8 dated 12th May, 2010 reads as under:

“ORDER

WHEREAS, Shri N.Panda, P.No.01175, Dy.Manager (Chemical), M&R Complex, Damanjodi was charge sheeted vide Memorandum No. CHRD/E-01175/1974/2008, dated 21.06.2008 for certain alleged misconduct and a domestic inquiry was conducted under Rule 28 of NALCO Conduct, Discipline & Appeal Rules to inquire into the charges.

WHEREAS, on completion of the inquiry, the inquiring Authority has submitted his report on 11.04.2009.

WHEREAS, I being the Disciplinary Authority have carefully examined the report of the Inquiring Authority, related documents, advice of CVC and keeping in view all facts of the case & other extenuating circumstances conclude that imposition of minor penalty would meet the end of justice in the instant case.

Accordingly, in view of the circumstances stated above, I, in exercising the powers of Disciplinary Authority conferred on me under Nalco Conduct Discipline & Appeal Rules impose minor penalty of “Censure” on Shri P.Nanda, P.No.01175, Dy.Manager (Chemical), M&R Complex, Damanjodi with immediate effect under the said Rule.”

The Order of the AA under Annexure-A/10 dated 07-07-2010 reads as under:

DA

"Please refer to your appeal preferred before the Appellate Authority vide letter dasted 07.06.2010.

In this context, we would like to inform you that the Appellate Authority has considered your appeal and confirmed the penalty imposed on you by the Disciplinary Authority."

7. Law is well settled that 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. 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.

8. We have gone through the decision relied on by the Respondents and we find that the said decision would more or less rather support the case of the applicant. Hence viewed the matter from any angle, the stand taken by the Respondents cannot be accepted as tenable. In view of the above, ends of justice would be met if the orders of the DA imposing the punishment of 'Censure' and the orders of the AA rejecting the appeal of the

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applicants impugned in all these OAs are quashed/set aside and we do so.

9. In the result, all these OAs stand allowed to the extent stated above. No costs.


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


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