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**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK**

**ORIGINAL APPLICATION NO. 841 OF 2010**  
**CUTTACK, THIS THE 8<sup>th</sup> DAY OF October, 2013**

Sruti Ranjan Sahoo.....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 ? ✓



(R. C. MISHRA)  
MEMBER (ADMN.)



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

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**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK**

**O. A. No. 841 OF 2010**

**Cuttack, this the 8<sup>th</sup>, day of October, 2013**

**CORAM**

**HON'BLE MR. A.K. PATNAIK, MEMBER (J)**

**HON'BLE MR. R.C. MISRA, MEMBER (A)**

.....

Sruti Ranjan Sahoo, aged about 39 years, Son of Sri Debaraj Sahoo presently working as Booking Clerk, Brajrajnagar, South East Central Railway, At present residing at Qrs. No. 9/2, Railway Colony, Brajrajnagar, Dist- Jharsuguda

.....Applicant

(Advocate(s) : M/s. G. Rath, Achintya Das)

**VERSUS**

**Union of India represented through -**

1. The General Manager, South East Central Railway, Bilaspur, Chattisgarh, PIN- 751023.
2. The Chief Commercial Manager, South East Central Railway, Bilaspur, Chattisgarh, PIN- 751023.
3. The Additional Divisional Railway Manager, South East Central Railway, Bilaspur, Chattisgarh, PIN- 751023.
4. The Sr. Divisional Commercial Manager, South East Central Railway, Bilaspur, Chattisgarh, PIN- 751023.
5. Divisional Commercial Manager, South East Central Railway, Bilaspur, Chattisgarh, PIN- 751023.
6. Deputy Chief Vigilance Officer (E), South East Central Railway, Bilaspur, Chattisgarh, PIN- 751023.

..... Respondents

(Advocate(s)- Mr. S.K.Ojha )



## O R D E R

### **A.K.PATNAIK, MEMBER (JUDL.):**

The applicant, who is working as Booking Clerk, Brajrajnagar, South East Central Railway, has filed this O.A. with the following relief(s):

“(i) Respondents may be directed to put up the D.A. file along with correspondences with the GM (Vigilance), Bilaspur and Railway Board Vigilance.

(ii) To quash the show cause notice dated 21.07.2007 under Annexure-A/10; Punishment Notice Dt. 06.08.2007 under Annexure-A/12, order Dt. 09.01.2009 of the Appellate Authority under Annexure-A/14, order of the Revisional Authority dated 09.07.2010 in Annexure-A/17 and as a consequence direct the Respondents to restore the place and position of the applicant forthwith and pay him all his service and financial benefits retrospectively;

(iii) To direct the Respondents to pay the applicant all his consequential service and financial benefits retrospectively;”

2. Facts of the case, in a nutshell, are that the Applicant while working as a Booking Clerk under Divisional Commercial Manager, S.E.C.Railway, Bilaspur, was served with a Memorandum of charges dated 15/19-7-2004 under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 giving him an opportunity to submit his reply. Applicant submitted his reply refuting the allegations leveled against

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him in the said Memorandum of charge. Not being satisfied with the reply, the Disciplinary Authority directed the matter to be enquired into by appointing the IO. On conclusion of the Inquiry, the IO submitted its report holding as under:

“Hence the **article of charge No.1** that “his non cooperative attitude as he refused to sign the column of his actual private cash on hand which was Rs.390/- excess” **has not been substantiated** in absence of valid evidence.

Hence the **Article of Charge No.2** that “creating the shortage of Rs.135/- Rs.400/-, Rs.62/- and Rs.30/- in the months of June-03, July-03, Aug-03 and Sept-03 and not depositing the same on time” is **substantiated** as it is the recorded document, however the willful shortage in cash may not be attributed to CO.”

Copy of the Inquiry Report was supplied to the delinquent/Applicant by the Disciplinary Authority vide letter dated 19.9.2005 and after receipt of the same, the Applicant submitted his reply on 29.9.2005. On receipt of the reply, the Disciplinary Authority informed the GM (Vigilance), Bilaspur intimating imposition of minor punishment on the applicant. The GM (Vigilance), Bilaspur in turn informed the Railway Board Vigilance vide letter dated 26.12.2005. The Railway Vigilance advised the GM Vigilance Bilaspur vide letter dated 21.2.2006 to refer the matter to the competent authority for revisionary





action and accordingly the GM (Vig.), Bilaspur referred the matter to the Sr. Divisional Commercial Manager, SECRly, Bilaspur vide letter dated 14.3.2005 for imposition of a suitable major punishment. The matter was placed before the Disciplinary Authority who in turn informed the Dy Chief Vigilance Officer (E) Bilaspur vide letter dated 27.4.2006 that imposition of punishment of stoppage of increment for a period of six months with NCE should stand good. Based on the aforesaid communication, the Disciplinary Authority issued notice dated 28.3.2007 stating therein as under:

“Your next increment raising from Rs. 4305/- to Rs. 4390/- due on 01.01.2009 in scale Rs. 3200-4900/- shall be withheld for a period of 06 (six) months. The period of punishment as aforesaid shall not operate to postponement of your future increment on expiry of this punishment”

Thereafter, the next superior officer of the DCM/ Disciplinary Authority i.e. the Sr. Divisional Commercial Manager, Bilaspur in the capacity of Revisionary Authority vide letter dated 21.7.2007 issued another show cause notice to the applicant as to why the punishment by the Disciplinary Authority shall not be enhanced which was replied by the applicant on 2.8.2007 questioning the competence and authority of issuing such a notice. On receipt of the reply, the Sr.DCM/BSP who had



issued the said showcause notice in the capacity of Revisionary Authority issued punishment notice dated 6.8.2007 in the capacity of the Disciplinary Authority which reads as under:

“Reduction of his pay by three stages below i.e. from Rs. 4220/- to Rs. 3965/- in the time scale of Rs. 3200-4900/- by fixing at stage Rs. 3965/- for a period of 24 months with CE. The punishment shall take with immediate effect. The original punishment imposed by DA vide Notice No. Con/BSP/C/6/04 28.03.2007 will be quashed.”

The Applicant preferred appeal on 31.8.2007 against the said punishment notice dated 6.8.2007 which yielded no result as the Appellate Authority vide order dated 9.1.2009 upheld the punishment imposed by the Disciplinary Authority. The Applicant preferred Revision Petition and as no action was taken thereon, he approached this Tribunal in OA No.23 of 2010 which was disposed of on 6.5.2010 with a direction to the Revisional Authority to consider and dispose of the Revision Petition of the Applicant within a period of 45 days. The Revision Petition having been rejected vide letter dated 9.7.2010, the Applicant has filed the instant OA with prayer to quash the show cause Notice dated 21.7.2007, punishment notice dated 6.8.2007, order dated 9.1.2009, order dated 9.7.2010 and as a consequence direct the

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Respondents to restore the place and position of the Applicant forthwith and pay him all his service and financial benefits retrospectively.

3. Respondents by filing counter opposed the prayers of the Applicant by taking the stand that the charges were framed based on documentary evidence and as per the basic principle of service law no fact finding enquiry is necessary where sufficient grounds or documentary proof are available against the delinquent for taking a decision by the Disciplinary Authority for initiation of proceedings. The evidence of PW-III, Sri P.Kujur, is very much significant and important to substantiate the allegation leveled against the Applicant. As per Sri Kujur's statement, RUD-2, an excess private cash of Rs. 390/- was detected with the applicant by the Vigilance Team. So also the applicant refused to fill the column "on hand personal cash" in the cash proceedings Memo in spite of request made by the Vigilance team as well as Sri Kujur. The Applicant repeatedly stated that Rs. 400/- was of his friend and the same cannot be declared in the memo as it will cause problem. During enquiry, Sri Kujur submitted that his statement given at the time of preventive check was dictated by the Vigilance Team though at the same time, during enquiry he confirmed the third aspect of his earlier statement, while answering to Q.No. 10, during his examination



by PO that he has not seen Rs.400/- but just heard that Sri Sahoo was saying that Rs. 400/- is not his money. This clearly proves the 'existence' of the excess private cash in the possession of the applicant at the time of preventive check. Submission of Mr. Kujur that his statement given at the time of vigilance check was dictated by the vigilance team was not convincing as he being a Sr. Clerk was supposed to act independently and his submission was an afterthought to save the applicant. It is further submitted that this is the duty of the applicant to substantiate his stand whether he has been prejudiced due to any wrong act or action of any authority related to the proceeding and, without doing so, the applicant is trying to get compassion from this Tribunal on the basis of some internal correspondences which were never communicated to him at any point of time. Before finalization of the matter, the Disciplinary Authority has a right to discuss/consult with various authorities, but the applicant cannot take the assistance of such letters to make out a case in his favour. Since, it is an admitted fact that the applicant has caused shortage of cash in various occasions; same cannot be brushed aside on the ground that Brajarajnagar is a busy Booking office. The Respondents have also averred that Disciplinary Authority after accepting the inquiry report issued notice to the applicant



for imposition of minor penalty but Revisionary Authority exercising power conferred upon him issued show cause notice to the applicant for enhancement of the punishment. As per the direction of this Tribunal, the Revisional Authority had gone through the entire matter, enquiry proceedings, enquiry report and views taken by the Disciplinary Authority as well as the Appellate Authority and found that during the vigilance checkup at Brajarajnagar on 10.10.2003 the applicant was on duty in the booking office and in possession of excess cash of Rs.390/- over and above the declared private cash of Rs.23/-. The Applicant refused to fill up his excess private cash in the cash proceeding memo as directed by the vigilance team. Presence of excess cash with applicant was adequately proved in the statement of Shri P.Kujur Head Booking Clerk besides the two Inspectors of the Vigilance Team and after taking into consideration all aspects of the matter the Revisionary Authority did not find any flaw in the matter to interfere with the punishment imposed by the and affirmed by both the Disciplinary Authority and Appellate Authority. Accordingly, Respondents have prayed for dismissal of this OA.

4. We have heard Mr. G. Rath Learned Senior Counsel for the applicant assisted by Mr. D.K.Mohanty, Ld. Counsel, and Mr. S.K.Ojha,



Ld. Panel Counsel for the Railways and perused the materials placed on record.

5. Relying on the grounds stated in the OA in support of the relief and by drawing our attention to the order at Annexure-A/1, A/4, A/8, A/9 and A/12 it was contended by Shri Rath as under:

Neither the Rule nor Law authorizes concurrent jurisdiction to the Divn. Commercial Manager & Sr. Divn. Commercial Manager to act as the Disciplinary Authority against the applicant in the proceedings initiated, in pursuance of the Memorandum of charge dated 15/19.7.2004. The Sr Divn. Commercial Manager, Bilashpur issued the order at Annexure-A/10 in the capacity of Revisionary Authority and Annexure-A/12 in the capacity of Disciplinary Authority which is not permissible and sustainable in the eyes of law.

Though the Inquiry Officer in his detailed order held that the allegation leveled in Article I is not substantiated and shortage in cash may not be attributed to the Applicant in so far as Article II is concerned yet the Disciplinary Authority imposed the punishment without giving opportunity by way of disagreement notice to the applicant. The show cause notice dated 21.7.2007 issued by the Sr Divn. Commercial Manager, Bilaspur was the result of the letter of Railway

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Board Vigilance forwarded by the GM (Vigilance), Bilaspur. The Sr. Divn. Commercial Manager, Bilashpur has not issued the said notice by application of mind and therefore the action taken at the instance of an alien agency is impermissible being colourable exercise of power. In this connection Mr. Rath placed reliance on the decision of the Hon'ble Apex Court in the case of **Satyendra Chandra Jain Vrs Punjab National Bank and others**, reported in **1998 SCC (L&S) 211** wherein the Hon'ble Apex Court quashed the order of punishment imposed on the recommendation of the Chief Vigilance Officer who was an authority alien to the competent authority to decide and impose the punishment after due application of mind. He has also relied on the decision of the Hyderabad Bench of the Tribunal rendered in the case of **D.S.R.Anjaneyulu Vrs Chief Engineer (Civil)**, reported in **SLJ 2002 (1) (CAT) 216**.

In order to justify an order of punishment the authority empowered to do so must record reasons in writing. By drawing our attention to the provision under **Rule 22 (2) of the Indian Railway Servants (Discipline & Appeal) Rules, 1968**, Railway Board's instruction No. E (D&A) 78 RG 6-11 dated **3.3.1978**, E(D&A) 86 RG 6-1 dated **20.1.1986**, E (D&A) 91 RG 6-122 dated **21.2.1992**,

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E(D&A) 2002/RG dated **24.9.2002** and the decisions of the Hon'ble Apex Court in the cases of **Mahavir Prasad Vrs State of UP** reported in AIR 1970 (SC) 1302, **Ram Chander Vrs UOI and Others** reported in AIR 1986 SC 1173 and **Director (Mkt), Indian Oil Corporation and Another Vrs Santosh Kumar** reported in 2007 (I)SLJ 46 (SC) vis-à-vis the order of the Disciplinary Authority and Appellate Authority it was contended by Mr.Rath that as the orders of the Disciplinary Authority, Appellate Authority and Revisionary Authority are bereft of any reason or the reason recorded are thoroughly incapable enough to come to conclusion as reached by the above authorities, the orders of the Disciplinary Authority, Appellate Authority and Revisionary Authority are liable to be set aside.

Mr.Rath strenuously argued that though there was no truth on any of the allegations yet the Disciplinary Proceedings were drawn up against the applicant at the behest of the vigilance department in the absence of any such provision in the rules for drawing up disciplinary proceedings. This is a clear case of no evidence or the evidence which is available is thoroughly useless based on which disciplinary proceedings ought not to have been initiated or punishment ought not to have been imposed on the Applicant. If something was found wrong by the



Vigilance, then a Vigilance case could have been initiated instead of a disciplinary proceedings as has been done. Hence this being a case of surrendering the discretion on the external dictation the entire proceedings is not sustainable in the eyes of law. In this context by placing the decisions, in the cases **Hari Prakash Mishra Vrs Union of India and others**, reported in 2000 (2) SLJ (CAT) 89 and by the Hon'ble Apex COurt in the case of **Anirudhsinji Karansinji Jadeja and another Vrs State of Gujurat**, reported in AIR 1995 SC 2390, Mr.Rath prayed for quashing of the entire proceedings.

By submitting that since the exercise of power starting from initiation of the proceedings till rejection of the revision petition of the applicant was not in accordance with rules, Mr.Rath contended that the entire action is forbidden as per the judgments of the Hon'ble Apex Court rendered in the cases of **Nazir Ahmed Vrs Emperor**, reported in AIR 1936 Privy Council 253 (2), **Ramchandra Keshav Adke (Dead) by Lrs V.Govind Joti Chavare and others**, reported in AIR 1975 SC 915.

By submitting that the Disciplinary Authority while imposing punishment, major or minor, cannot act on material which is neither supplied nor shown to the delinquent and imposition of punishment on

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employee on material which was not supplied/disclosed to the delinquent cannot be countenanced in law, Mr. Rath highlighted the principle of Procedural fairness is as much essence of right and liberty as the substantive law itself. And accordingly he submitted that as such revising the order of punishment without competence, jurisdiction and authority is a nullity in the eye of law and hence the same is liable to be set aside same being done behind the back of the applicant and utilised in imposing the punishment on the applicant. Hence the orders of the DA, AA and RA are liable to be set aside.

The last plank of arguments advanced by Mr. Rath was on the competency of the authority that passed the order. He submitted that once an authority in exercising quasi-judicial power takes a final decision, the said authority cannot review its own decision unless relevant statute or statutory rule permits such review and no such provision exists in the RS (D&A) Rules. Once an order is passed/pronounced/published/notified/communicated the authority passes the order became *functus officio*. In this connection by placing reliance on the decision of the Hon'ble Apex Court in the case of **State Bank of India and others Vr.S.N.Goyal** reported in **(2008) 2 SCC**



(L&S) 678 Mr.Rath contended that the revision of the punishment being not sustainable in the eyes of law is liable to be set aside.

6. On the other hand Mr.S.K.Ojha, Learned panel counsel appearing for the Respondents Railways has vehemently opposed the contentions advanced by Mr.Rath. According to Mr.Ojha, the grounds advanced by Mr.Rath are of no help to annul the proceedings and punishment imposed on the applicant based on documentary evidence. It was contended by him that the grounds advanced in the OA were never urged before the Departmental authorities at any point of time by the Applicant. The Authorities proceeded against the applicant following the rules and procedures and passed suitable order on the basis of facts and documentary evidence available on records. The Sr. Divn Commercial Manager Bilashpur modified the punishment assuming himself as Disciplinary Authority granting liberty to the applicant to avail of the opportunity of appeal. Hence there is no scope left out for this Tribunal to interfere with the orders passed by the competent authority.

7. We are aghast to note that there has been breach/abridge of the Rules/law envisaging the manner of initiation and conclusion of the disciplinary proceeding against a Railway Servant. Admittedly, memorandum of charge was issued to the applicant on 15/19.07.2004 by



the **Divisional Commercial Manager** as his **Disciplinary Authority** giving him to submit his reply and after getting the reply the Divisional Commercial Manager appointed IO to enquire into the allegations. The IO after enquiry submitted its report copy of which was supplied to the applicant by the said Divisional Commercial Manager as Disciplinary Authority vide letter dt.19.9.2005. There were two Articles of Charges.

The IO in his report held as under:

“Hence the **article of charge No.1** that “his non cooperative attitude as he refused to sign the column of his actual private cash on hand which was Rs.390/- excess” **has not been substantiated** in absence of valid evidence.

Hence the **Article of Charge No.2** that “creating the shortage of Rs.135/- Rs.400/-, Rs.62/- and Rs.30/- in the months of June-03, July-03, Aug-03 and Sept-03 and not depositing the same on time” **is substantiated** as it is the recorded document, however the willful shortage in cash may not be attributed to CO.”

8. The applicant in his reply dated 29.9.2005 prayed for exoneration from the charges and dropping up the disciplinary proceedings. As it appears from the record, instead of taking decision on the basis of the Inquiry Report and reply of the Applicant, the matter was referred to General Manager (Vig), SE Railway, Bilaspur who in turn referred the matter to the Railway Board and the Deputy Director Vigilance (SS), Ministry of Railway, Railway Board, New Delhi in

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letter dated 21.2.2006 informed the GM (Vig) that the punishment imposed on the applicant does not appear to be commensurate with the gravity of offence and, therefore, the same needs to be reviewed. On receipt of the said letter the Dy. Chief Vigilance Officer € Office of the GM (Vigilance) informed the Sr. Divisional Commercial Manager, SEC Railway, Bilashpur vide letter dated 14.3.2006 to impose a suitable major punishment on the applicant. With reference to the above letter dated 14.3.2006, the Divisional Commercial Manager as Disciplinary Authority informed the Dy. Chief Vigilance Officer ( E), S.E.C. Railway, Bilashpur the proposal to impose minor punishment is justified. Thereafter, as it appears, the Divn. Commercial Manager, Bilashpur vide order dated 28.3.2007 imposed the punishment withholding one increment for a period of six months with further order that this will not postpone his future increment on expiry of the period of punishment. Thereafter, the Sr. Divn Commercial Manager, Bilashpur in the capacity of Revisionary Authority issued show cause notice for enhancement of the punishment already imposed by the Disciplinary Authority vide notice dated 21.7.2007 to which the Applicant submitted his reply on 2.8.2007. Thereafter the said Sr. Divn. Commercial Manager, Bilashpur

**designating himself to be the Disciplinary Authority issued notice for imposition of punishment** vide letter dated 6.8.2007 as under:

“Your pay is reduced by three stages below i.e. from Rs.4220/- to Rs.3965/- in the time scale of Rs.3200/- 4900/- by fixing at stage Rs.3965/- for a period of 24 months with immediate effect. The period of punishment shall operate to postpone your future increment. The original punishment imposed by DA vide Notice No.Con/BSP/C/6/04 dated 28.3.2007 is quashed.”

9. Applicant submitted appeal dated 31.8.2007 to the ADRM, SEC Railway, Bilashpur who has rejected the appeal thereby upholding the punishment dated 6.8.2007 in a cryptic order without meeting and answering the points raised by the Applicant and without stating as to whether exercise of power in enhancing the punishment was in accordance with Rules and after complying with the principles of natural justice as required under the Rules. The Revisional Authority also rejected the revision petition in a cryptic manner without examining the Rule position and compliance of natural justice etc. so to say in a cryptic/bald order and communicated the same to the applicant in letter dated 9.7.2010.

10. Rule 10 of the RS (D&A) Rules, 1968 and the Railway Board's instructions reads as under:

**“10. Action on the inquiry report :-**

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(2) The disciplinary authority:-

(a) shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority a copy of the report of the inquiring authority, its findings on further examination of witnesses, if any, held under sub-rule(1) (a) **together with its own tentative reasons for disagreement**, if any, with findings of the inquiring authority on any article of charge to the Railway Servant, who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Railway Servant;

11. The Railway Board's vide RBE No.33/96 (RB No.E(D&A)

87 RG 6-15 dated 4.4.1996 made abundantly clear as under:

"It has been decided that where the Inquiring Authority holds a charge as not proved and the Disciplinary Authority takes a contrary view, the reasons for such disagreement must be communicated, in brief, to the charged officer along with the report of the Inquiry so that the charged officer can make an effective representation. This procedure would require the Disciplinary Authority to first examine the report as per the laid down procedure and formulate its tentative views before forwarding the report of inquiry to the charged officer."

12. Law is well settled in the case of **Railway Board and another Vrs. P.R.Subramaniam** reported in AIR 1978 SC 284 that circular issued by the Railway Board are statutory in nature.

13. In view of the Rule and law quoted above, the Disciplinary Authority is under obligation to communicate the delinquent officer the

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‘TENTATIVE’ reasons for disagreeing with the findings of the Inquiry Authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the Inquiry Authority are not germane and the finding of that charge is not substantiated already recorded by the Inquiry Authority needs interference. The Disciplinary Authority disagreed with the conclusions and findings arrived at by enquiry officer required to record its tentative reasons for disagreement and reasons should be given to the delinquent officer to represent before ultimate finding is recorded. Non furnishing of reasons to delinquent officer is fatal and vitiates ultimate order of punishment -, **S.B.I. and others Vrs. Arvind K.Shukla** , reported in **AIR 2001 SC 2398 & Punjab National Bank and others Vrs Kunj Behari Misra**, reported in **1998 SCC (L&S) 1783**. In the instant case after going through the rules, judge made laws and the findings arrived at by the IO vis-à-vis the punishing authority, we have no hesitation that imposition of punishment though was contrary to the Inquiry Report yet punishment was imposed without affording prior opportunity to the applicant.





14. Now coming to the order of the Appellate Authority we find that Rule 22 of the Rules, 1968 deals with regard to consideration of appeal. It provides as under:

**“22. Consideration of appeal -**

(1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Rule 5 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) 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 Commission shall be consulted in all cases 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;

(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.

(3) In an appeal against any other order specified in Rule 18, the appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable.”

15. The meaning of consideration embodied in the Rules by the Appellate Authority came up for consideration in the case of **Narinder Mohan Arya v United India Insurance Co.Ltd and others**, reported in **2006 SCC (L&S) 840**. The relevant portion of the observation of the

Hon'ble Apex Court (paragraph 36) which has bearing for taking a decision in the instant case is quoted herein below:

“The order of the Appellate Authority demonstrates total non-application of mind. The Appellate Authority when the rules require application of mind on several factors and serious contentions have been raised, was bound to assign reasons so as to enable the writ court to ascertain as to whether he had applied his mind to the relevant factors which the statute requires him to do. The expression “consider” is of some significance. In the context of the Rules, the Appellate Authority was required to see as to whether (i) the procedure laid down in the Rules was complied with; (ii) the enquiry officer was justified in arriving at the finding that the delinquent officer was guilty of the misconduct alleged against him and (iii) whether penalty imposed by the disciplinary authority was excessive.”

16. In the case of **Ramchander Vrs Unoin of India and others**, reported in **AIR 1986 SC 1173** while interpreting Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules, 1968 it has been held by the Hon'ble Apex Court as under:

“It is of utmost important<sup>ce</sup> after the 42<sup>nd</sup> Amendment as interpreted by the majority in the Tulsiram Patel case (1985) 3 SCC 398 that the appellate authority must not only give a hearing to the Govt. servant concerned, but also pass a reasoned order dealing with the points raised by him in the appeal. Reasoned decisions by the Tribunals such as the Railway Board in the present case will promote 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 authorities regarding the final order that may be passed on his appeal. Considerations of fair play and justice also require that such a personal hearing should be given”.

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17. On examination of the of the order of the Appellate Authority with reference to the Rule 22 vis-a-vis various judge made laws quoted above, we cannot but ~~to~~ hold that the consideration given to the appeal of the Applicant is not in accordance with the Rules and as such the same is held to be bad in law. We also feel that had the Revisional Authority taken the lapses pointed out by the Applicant, instead of passing an order in a cavalier manner; he would not have upheld the order/action of the Inquiry Officer, Disciplinary Authority as well as the Appellate Authority as has been done in the instant case.

18. The great flaw which we have noticed in this OA is that the Divisional Commercial Manager/Disciplinary Authority should not have consulted with the GM (Vigilance) as to what punishment should be imposed on the applicant or the GM (Vigilance) in turn should not have taken up the matter with the Railway Board as to what punishment should be imposed on the Applicant as Rule clearly empowers the Disciplinary Authority to decide the matter without being influenced by the higher authority. It is a matter of regret to note that when Divisional Commercial Manager imposed the punishment in the capacity of Disciplinary Authority and notice of enhancement was issued by the

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Revisional Authority how the punishment was enhanced by the Senior Divisional Commercial Manager, Bilaspur designating himself to be the Disciplinary Authority which is unknown to Rule and law Laid down by the Hon'ble Apex Court in the cases of **Satyendra Chandra Jain Vrs Punjab National Bank and others**, reported in **1998 SCC (L&S) 211**, **Anirudhsinji Karansinji Jadeja and another Vrs State of Gujurat**, reported in **AIR 1995 SC 2390** and Hyderabad Bench of the Tribunal in the case of **D.S.R.Anjaneyulu Vrs Chief Engineer (Civil)**, reported in **SLJ 2002 (1) (CAT) 216**, and **Hari Prakash Mishra Vrs Union of India and others**, reported in **2000 (2) SLJ (CAT) 89**.

19. As a model employer the Government must conduct itself with high probity and candour with its employees as held by the Hon'ble Supreme Court of India in case of **Balram Gupta Vrs. Union of India and Anr**, reported in **AIR 1987 SC 2354**.

20. The main concern of the court in such matters is to ensure the rule of law and to see that the Executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16 of the Constitution of India as decided by the Hon'ble Apex Court in case of **State of Harayana vrs. Piara Singh and Others**, reported in **AIR 1992 SC 2130**.

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21. It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself as has been ruled by the Hon'ble Apex Court in case of **Commissioner of Income Tax, Mumbai v. Anjum M.H.Ghaswala and others**, reported in (2002) 1 SCC 633/ **Ram Phal Kundu v.Kamal Sharma** reported in (2004) 2 SCC 759.

22. If a thing is required to be done in a particular way it should be done in that way by strictly complying with the requirement of law and failure to comply with such requirement was held to be fatal to the prosecution as per the judgment of the Supreme Court of India in case of **Prabha Shankar Dubey v. State of Madhya Pradesh** reported in (2004) 2 SCC 56.

23. Keeping in view the Rule and judge made laws discussed as above after examining the case in hand we do not hesitate to nullify the orders of the Disciplinary, Appellate and Revisional Authorities respectively. Accordingly, we quash the notice of punishment dated 28.3.2007, notice to show cause dated 21.7.2007, notice of punishment dated 6.8.2007, order of appellate authority dated 9.1.2009, order of revisionary authority dated 9.7.2010 and consequently direct the



Respondents to restore the place and position of the applicant forthwith and pay him all his service and financial benefits retrospectively by issuing appropriate order to the above extent within a period of 45 (forty five) days from the date of receipt of copy of this order. In the result, with the aforesaid observation and direction this OA stands allowed to the extent stated above. There shall be no order as to costs.



(R.C.MISRA)  
Member (Admn.)



(A.K.PATNAK)  
Member (Judl.)