CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

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Original Application No. 533 of 2011
Cuttack, this the 09th day of July, 2014

Abhimanyu Sethy ..... Applicant

Versus

Union of India & Others ..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? Yes
2. Whether it be referred to PB for circulation? Yes

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

(A.K.PATNAIK)
Member (Judicial)

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# CENTRAL ADMINISTRATIVE TRIBUNAL
# CUTTACK BENCH, CUTTACK

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CORAM
HON'BLE MR. A.K. PATNAIK, MEMBER (Judl.)
HON'BLE MR. R. C. MISRA, MEMBER (Admn.)

.....

Abhimanyu Sethy,
aged about 61 years,
Son of Late Mohan Sethy,
At/PO- Pandia, Via- Purusotompur,
Dist.– Ganjam
presently retired as Head Goods Clerk,
Under Station Manage,
E.Co.Rly, Cuttack.

...Applicant

(Advocates: M/s. U.Sahoo, S.M.Behera )

VERSUS

Union of India Represented through

1. Senior Divisional Commercial Manager-cum-Appellate Authority,
   East Coast Railway, Khurda Road,
   Jatani, Dist- Khurda.

2. Disciplinary Authority -cum- Divisional Commercial Manager,
   East Coast Railway, Khurda Road,
   Jatani, Dist- Khurda.

3. Senior Divisional Personnel Officer,
   East Coast Railway, Khurda Road,
   Jatani, Dist- Khurda.

... Respondents

(Advocate: Mr. S.K.Ojha )

## ORDER

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

While the applicant was continuing as a Head Goods Clerk in East Coast Railways, Nirgundi, alleging certain omission and commission a chargesheet under Rule 11 of the Railway Servants (D&A) Rules, 1968 was issued vide memorandum dated 28.09.2006/

03.10.2006. Applicant submitted his reply denying the allegation labeled therein on 20.10.2006. Thereafter, the disciplinary authority, i.e. Divisional Commercial Manager, E.Co.Rly., Khurda Road, issued punishment notice No. SDCM/Con/Vig-06 dated 25.01.2007, relevant portion of which is quoted herein below:

> "Accordingly decided to impose the punishment of stoppage of increment for a period of 02 (two) years without cumulative effect which will meet the ends of justice.
>
> Appeal against this order lies with Sr. DCM within a period of 45 days from receipt of this letter."

2. On receipt of said notice of punishment, the applicant submitted representation to the Sr. Divisional Commercial Manager, E.Co.Rly., Khurda Road, Jatni on 14.02.2007 praying for his exoneration. Again, he has reiterated the same in his representation dated 14.10.2010. The Sr. Divisional Commercial Manager, Khurda, i.e. Appellate Authority, vide order dated 17.09.2010 rejected the appeal of the applicant thereby upholding the punishment notice dated 25.01.2007. In the meantime, the applicant retired from service on 31.10.2010 and approached this Tribunal in the instant O.A. on 18.05.2011 praying for the following reliefs:

> i) .....to set aside the punishment order 17.09.2010 passed by the Appellate Authority (Annexure-A9) and also be pleased to quash the Disciplinary Authority's order 25.01.2007 (Annexure-A4);
>
> ii) .....order(s) directing to the Respondent No-3 for allow correct pension taking into account of his real salaries and to pay all other retirement benefits such as Gratuity, Leave Salaries and Commutation Pension within a specific time limit....."

3. The grounds set forth in support of his prayer are that the applicant has been imposed with the punishment without affording him any opportunity either by the Disciplinary Authority or the Appellate Authority. No definite conclusion has been derived on the basis of any findings or supporting documents for which the applicant has been chargesheeted for certain misconduct, which is in contravention of Rule No. 3.1 (i) and (ii) of the Railway Service Conduct Rules 1968. The Disciplinary Authority has acted as a judge of his own cause of action and, therefore, impugned punishment order passed on the finding of the disciplinary authority is perverse. Both the orders of Disciplinary Authority as well as Appellate Authority are non-speaking orders and no single point raised by the applicant has been considered and answered.

4. Respondents by filing their counter have submitted that while the applicant was working as Head Goods Clerk at Nergundi Station, on 02.08.2006 committed irregularities in the matter of detention of rakes which were detected during a vigilance check conducted on 02.08.2006 and, accordingly, the applicant was issued with a minor penalty chargesheet on 03.10.2006. The applicant submitted his explanation, which was duly examined and the applicant was found guilty of the charges by the Disciplinary Authority. Accordingly, Disciplinary Authority decided the case imposing minor penalty of stoppage of increment for two years without postponing the future increments on restoration vide Punishment Notice dated 25.01.2007. Challenging the said order dated 25.01.2007, the applicant preferred an appeal on 28.10.2009, which was duly

examined and the Appellate Authority vide order dated 17.09.2010 upheld the punishment imposed by the Disciplinary Authority with observation that there as no cogent reason to make any modification/reduction in the form of punishment awarded by the Disciplinary Authority. Preliminary objection has been raised by the Respondents on the point of judicial review stating therein that it is very much limited and can only be exercised in the event it is proved that principle of natural justice has been violated. Since, the case in hand is related to imposition of minor penalty and there is no allegation by the applicant regarding violation of natural justice, this Tribunal may not interfere with the same as the Court cannot come to a different finding by re-appreciating the evidence while exercising the judicial review. As regards merit of this case, it has been stated that as the applicant was found to be detaining the rake unduly for 2.35 hours in excess of the prescribed time limit on account of commercial placement and plot clearance of previous rake, although the consignee and commodity are in same rakes and, therefore, the Commercial Circular No. 184[G]/125 relied on by the applicant has no application. It has been stated that total 21 hours was allowed covering the period of unloading and removal of consignment within 9 and 12 hours respectively whereas the applicant detained the rake for an extra time of 2.35 hours though the second rake was placed on line and ready for unloading. which was made over for unloading at 10.15 hours instead of 7.40 hours, which is a gross irregularity and, therefore, the applicant has been imposed with the minor penalty. Regarding the allegation of violation of natural justice, the

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Respondents have stated that as per the provisions enumerated under Rule 11 of Railway Servants (D&A) Rules, 1968, no such provision has been provided for inquiry by giving a personal hearing, moreover, when the applicant has never raised any such demand in writing. On the above ground, Respondents have prayed for dismissal of this instant O.A.

5. No rejoinder has been filed by the applicant.

6. We have heard Mr. U.Sahoo, Ld. Counsel for the applicant, and Mr. S.K.Ojha Ld. Panel Counsel for the Railways, and perused the materials placed on record vis-à-vis the rule position.

7. Mr. Sahoo, Ld. Counsel for the applicant, at the outset, brought to our notice the Punishment Order passed at the verge of the retirement of the applicant and, besides reiterating the points raised in the O.A., has submitted that the said punishment of stoppage increment for two years without cumulative effect for irregularities detected on 02.08.2006 has been imposed for no fault of the applicant and without due application of mind. The Disciplinary Authority reached the conclusion without taking into consideration the relevant instruction of the Railway Board. By drawing our attention to the punishment notice dated 25.01.2007, Mr. Sahoo submitted that no punishment was awarded by the Disciplinary Authority yet the Appellate Authority uphold under misconception that the order dated 25.01.2007 is a punishment imposed by the Disciplinary Authority. Besides, it has been submitted that the applicant has taken all the points in his appeal submitted on 28.10.2009. But the Appellate Authority came to the conclusion upholding the punishment notice

without meeting/answering all those points of the applicant. In this connection, Mr. Sahoo submitted that the order of Appellate Authority being a non-speaking one, without meeting/answering all the points stated by the applicant in support of his innocence, the same is also liable to be set aside.

8. On the other hand, Mr. Ojha, Ld. Panel Counsel for the Railways, have submitted that the punishment inflicted on the applicant is on the basis of minor penalty proceeding. The punishment so imposed has lost its force by 2009, i.e. before retirement of the applicant. The orders of the Disciplinary Authority and the Appellate Authority are cogent and they have reached the conclusion after taking into consideration/examining all the points raised by the applicant with reference to the rules and materials available on record. Therefore, merely because the Appellate Authority failed to give parawise remarks in his order in a minor penalty proceedings the same cannot be hold unreasonable or illegal. The punishment imposed on the applicant is proportionate and commensurate with the gravity of misconduct committed by him, which needs no interference. Mr. Ojha further submitted that the question of affording personal hearing though became a part of the natural justice but same can be given only on demand and since the applicant at no point of time demanded such personal hearing he is estopped to raise such question before the Tribunal at this belated stage. He has also by placing reliance on the decision of the Hon'ble Apex Court in the case of Chairman Ganga Yamuna Gramin Bank & Ors. Vrs Devi Sahai (reported in AIR 2009 SC 2126) submitted that the issuance of second show cause notice is

not necessary unless such provision is available in the statute. Since no such provision is available under the Railway Servants (D&A) Rules, 1968, question of issuance of second show cause notice does not arise. It has been stated by him that from the explanation given by the applicant to the chargesheet it would clearly establish that the applicant has violated the provision of IRCM Vo.II para 1708 while delivering the consignment to the consignee. However, the applicant has clearly explained that looking into the practical difficulties and anticipating objections from Accounts side, he has taken some steps which are necessary for practical purpose even if opposed to the Rules. Therefore, taking into consideration all aspects of the matter, the Disciplinary Authority imposed the punishment which was upheld by the Appellate Authority and the Tribunal being not the Appellate Authority over the decision of the competent authority cannot sit over the decision of the Appellate Authority and, accordingly, Mr. Ojha has prayed for dismissal of this OA.

9. We have considered the rival contentions of the parties with reference to their respective pleadings and materials placed in support thereof. It is well settled principle of law that if initial action is not in consonance with law, subsequent order/proceedings would not sanctify the same. In such a fact situation, the legal maxim "*Sublato fundamento cadit opus*" is applicable, meaning thereby, in case a foundation is removed, the superstructure falls (Ref.**Chairman Cum MD Coat India Ltd & Ors v Ananta Saha & Ors** Civil Appeal No. 2958 of 2011 (Arising out of SLP (C) No. 1100 of 2009) dated 06-04-2011). Indisputably as per the rules it is obligatory on the

part of the authority if any misconduct is alleged, to furnish the delinquent employee Memorandum of charge sheet alleging such misconduct which should contain Article of Charge, statement of imputation of misconduct, list of documents and list of witness, if any, giving the employee concerned opportunity to submit his reply. In the instant case we find that the Memorandum of charge has been issued to the applicant on 28.09.2006/03.10.2006 without containing any Article of charge or list of witness/document. However, applicant submitted his reply on 20.10.2006 denying the allegation leveled against him. The Disciplinary Authority issued order on 25.01.2007 which reads as under:

> "I have carefully gone through the charges, your explanation dated 20.10.2006 and all other papers connected with the case.
>
> It is alleged that while working as Head Goods Clerk at NRG, you have detained some rakes for commercial placement at NRG on 2.8.06. The rake NRG-I 58 N. Box placed on route No.6 at NRG yard at 7.40 hours and made over unloading at 10.15 hours on 2.8.06 and the rake was detained for commercial placement due to plot clearance of previous rake NRG-16. In both the cases of NRG-16 & NRG-1 the commodities (coal) was same and the consignee (Ariti Steel Ltd) was same.
>
> Though you have been (sic) explained the details of fact in your explanation dt. 20.10.06 is not satisfactory and you have failed to observe the rules laid down vide IRCM Vol.II (Para-1708) while maintaining placement of timings of NRG-I for unlading but acted on your own without remarks in the T-39 register and immediately countersigned by S.M on duty as correctness of such timings. Hence I have found you guilty of the charges.
>
> Accordingly **decided to impose** the punishment of stoppage of increment for a period of 02 (two) years without cumulative effect w hic will meet the ends of justice. (*emphasis supplied*)
>
> Appeal against this order lies with Sr.DCM within a period of 45 days from receipt of this letter.
>
> Please acknowledge the receipt."

10. The order of the disciplinary authority must indicate as to what charges against the charged employee have been established failing which, as in the instant case, the said order cannot be capable of being upheld is no more *res integra* and suffice to place one such decision rendered by the Hon'ble Apex Court in the case of **State of Punjab Vrs Bakhtawar Singh,** 1972 SLR 85 SC.

However, Applicant preferred appeal on 14.02.2007. The Appellate Authority rejected the appeal of the applicant vide order dated 17.09.2010 in which it has been held that the Disciplinary Authority after going through the explanation of the applicant and case records awarded the punishment of stoppage of increment for 02 (two) years without cumulative effect whereas the order of the Disciplinary Authority clearly speaks that he has only "decided to impose" but no such order has been passed awarding the punishment as held by the Appellate Authority. In effect there is no such order ex facie imposing the punishment on the applicant. Besides, Rule 22 of RS (D&A) Rules, 1968 deals with regard to consideration of the appeal by the appellate authority sub rule (2) of Rule 22 is relevant for the purpose which provides as under:

> "22. **Consideration of appeal -**
>
> (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..."

11. On examination of the order of the Appellate Authority with reference to the aforestated Rule, we have no hesitation to hold that the order of the appellate authority is not sustainable, apart from being unreasoned, it is de hors the Rules. Recording of reasons in support of decision provides adequate protection and safeguard to the employee concerned. It is now well settled that reasons so recorded must be cogent and sufficient. Satisfaction to be arrived at by the disciplinary authority or appellate authority for the aforementioned purpose cannot be arbitrary. It must be based on objectivity (Ref-Southern Railway Officers Association and Another Vrs Union of India and others (2009) 2 SCC (L&S) 552 (paragraph 19). An illegal order passed by disciplinary authority does not assume the character of legality only because it has been affirmed in appeal or revision unless the higher authority is found to have applied its mind to the basic infirmities in the order (ref: **Union of India-Vrs-R.Reddappa,** 1994 SCC (L&S) 142 (paragraph 5)).

12. Further in the case of **Ram Chander Vrs Union of India**, reported in AIR 1986 SC 1173 it has been held by the Hon'ble Apex Court as under:

"24. Xx xx xx. Such being the legal position, it is of utmost importance after the Forty Second Amendment as interpreted by the majority in Tulsiram Patel's case that the Appellate Authority must not only give a hearing to the

> Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the authority regarding the final orders that may be passed on his appeal. Considerations of fair play and justice also require that such a personal hearing should be given."

13. In the instant case, it is clearly established that both the orders passed by the Disciplinary and Appellate Authority are unreasoned. The Appellate Authority has also reached the conclusion without affording any personal hearing, even if not sought by the applicant, in compliance with the principle of natural justice as held by the Hon'ble Apex Court in the case of Ram Chander (supra).

14. In view of the above, the stand taken by the Respondents in their counter and arguments advanced by Mr. Ojha does not appeal to the judicial conscience so as to uphold the order of the Appellate Authority dated 17.09.2010. On perusal of orders of the Disciplinary Authority and Appellate Authority vis-a-vis the points raised and arguments advanced, it is manifest that there is absence of intellectual objectivity in the decision making process. It is to be kept in mind a constructive intellect brings in good rationale and reflects conscious exercise of conferred power. Hence the order of the Appellate Authority dated 17.09.2010 rejecting the appeal is quashed and we hold that withholding of increments based on the order of the Appellate Authority in absence of the specific order of the Disciplinary Authority is held to be illegal and consequently Respondents are hereby directed to sanction/release the withheld

increments of the Applicant within a period of 60(sixty) days from the date of receipt of copy of this order.

15. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.

(R.C.Misra)
Member (Admn.)

(A.K.Patnaik)
Member (Judicial)

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