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**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK**

**O. A. NO. 579 of 2011**

Cuttack, this the 20<sup>th</sup> day of September, 2013

**CORAM**

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

R.V. Kumar, aged about 44 years, Son of Late Eswarappa, Ex. Traveling Ticket examiner under Sr. Divisional Commercial Manager, Waltair, at present residing at Door No.39-22-59/2, Kalinganagar, P.O. Industrial Estate, Madhav Dhara, Visakhapatnam, PIN 530007

.....Applicant  
(Advocate(s)- Ms. S. Mohapatra)

**VERSUS**

**Union of India represented through**

1. The General Manager, East Coast Railway, Mancheswar, Bhubaneswar, PIN- 751017.
2. Divisional Railway Manager, East Coast Railway, Waltair Division, Dondaparthy, Visakhapatnam, PIN 530 004
3. Addl. Divisional Railway Manager, East Coast Railway, Waltair Division, Dondaparthy, Visakhapatnam, PIN 530 004.
4. Sr. Divisional Commercial Manager, East Coast Railway, Waltair Division, Dondaparthy, Visakhapatnam, PIN 530 004.
5. Divisional Commercial Manager, East Coast Railway, Waltair Division, Dondaparthy, Visakhapatnam, PIN 530 004.
6. Sri Niranjan Padhi, Inquiry Officer, Office of Chief Vigilance Officer, East Coast Railway, Mancheswar, PIN- 751017

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



## O R D E R

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

The Applicant, who was working as Traveling Ticket Examiner has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985 with the following reliefs:

“.....to quash and set aside the charge sheet dt. 17.09.2007 (Annexure A/2 Series), Inquiry Officer’s report dated 24.10.2008 (Annexure A/3 Series), Punishment Notice dated 19.03.2009 issued by the Divisional Commercial Manager, Waltair (Annexure A/5), Appellate Authority’s order dt. 11.6.2009 (Annexure A/7) and Revisionary Authority’s order dated 25.1.2010 (Annexure A/9).

.....And to direct the Respondents to reinstate the Applicant on the date he was compulsorily retired with all consequential service and financial benefits within a target date.”

2. The case of the Applicant, in brief, is that while he was working as Traveling Ticket Examiner in Train No.2864, the Railway vigilance, Bhubaneswar conducted a decoy check in the said Train between Brahmapur and Bhubaneswar on 31.05.2007, as a result of which he was issued with major penalty charge memo dt.17.09.07 alleging that he demanded and accepted Rs.37/- as illegal gratification for allotting a berth to the decoy who posed himself as a passenger. His personal cash and railway cash was checked and found to be all right i.e. neither there was any shortage nor was there any excess. Thereby it



was alleged that the applicant has failed to maintain absolute integrity and acted in a manner unbecoming of a Railway Servant in contravention of Rule 3.1 (i) & (iii) of RS (Conduct) Rules -1966. The applicant on receipt of the charge memo submitted his defence brief denying the charges. The Disciplinary Authority appointed Inquiry Officer to inquire into the charges, who in his report has disproved the allegation brought out in the charge sheet. However, the I.O. has extended his jurisdiction by giving a finding that the Applicant pulled out a bunch of currency notes from his pant pocket and threw outside. The Disciplinary Authority forwarded a copy of the Enquiry Report to the Applicant who in turn submitted a written submission. The Disciplinary Authority did not agree with the I.O.'s report and has substantiated the allegation of demand and acceptance of Rs.37/- and has imposed punishment of Compulsory Retirement. The applicant preferred an appeal to the Appellate Authority, who in turn, agreed with the order passed by the Disciplinary Authority. The Appellate Authority himself was the Disciplinary Authority and issued this charge sheet. Now, after getting promotion, the same person has become the Appellate Authority. Hence the Applicant preferred a Revision Petition to the ADRM/WAT, who has also affirmed the punishment. Though the



Applicant alleged that there have been flagrant violations of mandatory provisions for laying a departmental trap and a number of procedural irregularities in the proceedings under RS (D&A) Rules, 1968, but the Respondents did not consider those points raised by the applicant at different stages. Thus, it was alleged that by finding no other alternative, the Applicant has approached this Tribunal seeking the aforesaid reliefs.

3. By filing counter, the Respondent-Railways refuted the averments made in the Original Application by stating that the applicant has failed to make out a case as to at no point of time, either the Disciplinary Authority or the Appellate Authority or the Revisional Authority has committed any mistake or taken any decision against any statutory rules or provisions or they have violated the principles of natural justice while dealing with the case under the D&A Rule, 1968. They have contended that the applicant has tried to establish that the punishment awarded is highly excessive or disproportionate which warrants interference of this Tribunal but in absence of any such grounds as stated above, there has been hardly any scope for this Tribunal to interfere/intervene in the matter. Besides on merit, the Respondents have also opposed the maintainability of this OA on the ground of limitation.



Accordingly, the Respondents have prayed that this OA being devoid of any merit is liable to be dismissed.

4. The Applicant has filed rejoinder opposing the stand taken in the counter by stating, in nutshell, that imposition of punishment without evidence and in gross violation of the principles of natural justice is per se illegal and by stating that the punishment imposed is in order, the Respondents have shown their lack of knowledge on the Rules and procedures to be followed in a Disciplinary proceedings. As regards the point of limitation, it has been stated by the Applicant that there is no limitation and even if there is limitation the same should not stand for dispensation of justice. It has also been stated by the Applicant that the punishment imposed is not sustainable in the eye of law for one more reason i.e. the Respondents have gone beyond the charge sheet by stating that due to persistent allegations received from general public alleging harassment by the applicant cannot be a ground as that was neither a part of the charge sheet nor this point was taken into consideration in course of the enquiry. Accordingly, the applicant submitted that the contentions made by the Respondents are contrary to rule 9(9)(a)(ii) of the RS D&A Rules, 1968 and, therefore, the applicant is entitled to the reliefs claimed in this Original Application.



5. We have heard Ms.Saswati Mohapatra, Learned Counsel for the Applicant and Mr.S.K.Ojha, Learned panel Counsel appearing for the Railway-Respondents and perused the materials placed on record.

6. Ms.Mohapatra, Learned Counsel for the Applicant submitted that the allegation made in the Charge-sheet was for demand and acceptance of Rs.37/- as illegal gratification over and above the actual difference of fare from the decoy to allot him a berth in sleeper Class whereas the Inquiry Officer based on the documentary, oral, circumstantial evidence and pleadings of the prosecution and defence came to a definite conclusion that the said allegations as not proved. It has been argued that the I.O. has travelled beyond the scope of the charges by giving a finding that the applicant is guilty of throwing a bunch of currency notes outside while he was being taken towards the A/C Coach and that the Disciplinary Authority in a preconceived and pre-determined manner imposed the punishment of compulsory retirement without due application of mind and differing with the findings of the Enquiry Report that's too without complying with Rules by way of giving the applicant prior notice on the note of disagreement. The Applicant preferred appeal but the Appellate Authority without due application of mind upheld the order of compulsorily retirement. It has



further been submitted by Ms. Mohapatra that the order of the Appellate Authority (Sri H.L. Luwang) is not sustainable as the charge sheet was issued by him on 17.9.2007 when he (Sri H.L. Luwang) was the Disciplinary Authority of the Applicant and, thereby he has acted contrary to the law that a person should not be the judge of his own action. On the above context, She has prayed for the reliefs claimed in this OA.

7. Per contra, Mr. S.K.Ojha, Ld. Panel Counsel for the Railways vehemently opposed the arguments advanced by Ms.Mohapatra by stating that the Vigilance Branch of E.Co.Rly conducted a decoy check in train No. 2864 between Berhampur and Khurda station. The pre-decoy check memorandum was prepared at Berhampur station and the contents of the memorandum were explained to all the signatories before getting their signatures. One Sri M. K. Panda, Watcher/Vigilance was deployed as the decoy whereas Sri P.K.Patnaik was assigned to remain as an independent witness to the whole check. It has been submitted that the applicant asked Rs. 170/- from the decoy to give him a berth in sleeper class of the train for which the decoy tendered one 100 rupee currency note, one 50 rupee currency note and one 20 rupee currency note to the applicant and received the EFT No. 294835. After such



incident, when the applicant was being taken to the AC Coach being escorted by Sri S.K.Dash, Constable/RPF, he suddenly threw a bunch of currency notes outside just before entering into the S/6 coach. The personal and railway cash in possession of Sri Kumar was checked and one 50/- rupee note and one 20/- rupee note was detected from the railway cash available with the Applicant which proves that the applicant managed to throw away Rs. 100/- from the amount given by the decoy and, therefore, even though, the Applicant accepted illegal gratification, no excess money was available with him at the time of cash check. From the statement of the decoy, it is clear that Applicant allotted the berth No. 22 of S/5 coach to the decoy on the authority of the IIInd S/F ticket No. 37548390 and in lieu of the allotment he demanded and collected Rs 170/- from him, which was in excess of the actual difference of fare i.e. Rs. 133/-. Hence Sri Ojha submitted that the demand and acceptance of excess money by the Applicant is proved from the statement of the decoy and corroborated by the evidence of Sri S.K.Das, Constable/RPF who saw the applicant throwing away excess cash collected illegally from he passengers including that of the decoy. Hence, a major penalty charge sheet was issued to the Applicant as per Rules and on conclusion of disciplinary proceedings, penalty of



Compulsory retirement was imposed on him by the Disciplinary Authority which was upheld by the Appellate Authority as well as by the Revisional Authority.

Besides, reiterating the points raised in the counter, Shri Ojha submitted that the applicant has challenged the order of punishment only on the ground that the conclusion of disciplinary proceeding is based on the circumstantial evidence, hence not acceptable as the settled position of law is to the extent that burden of providing the case in a domestic inquiry is restricted to preponderance of probability and not beyond reasonable doubt. Hence, the entire grounds of the applicant that the proceeding was concluded on the basis of circumstantial evidences have no legs to stand. He has also contended that the Hon'ble Apex Court in the case of the State Bank of Bikaner & Jaipur Vrs Nemi Chand Nalwaya, (2011) 1 SCC (L&S) 721 (Para-7)] held that the courts will not act as an appellate court and reassess the evidence led in the domestic inquiry, or interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly held and the findings are based on the evidence, the question of adequacy of evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental inquires.



Therefore, court will not interfere with findings of fact recorded in departmental inquiries, except where such findings are based on no evidence or where they are clearly perverse. Having stated so, Mr.Ojha prayed for dismissal of this OA.

8. From the record, we find that the allegation in the charge sheet against the Applicant reads as under:

“Shri R.V.Kumar, TTE/VSKP, whole working in Train No. 2864 on 31.5.2007 was detected to have committed the following misconduct during a decoy check conducted by the Vigilance Branch.

That, while issuing EFT No. 294835, he demanded and collected Rs.37/- as illegal gratification over and above the actual difference of fare from the decoy to allot him a berth in sleeper class.

By the above act, Sri R.V.Kumar, TTE/VSKP failed to maintain absolute integrity and acted in a manner unbecoming of a Railway Servant in contravention of Rule 3.1 (i) & (iii) of Railway Services (Conduct) Rules, 196 and therefore rendered himself liable for disciplinary action being taken in terms of the Railway Servants (Disciplinary and Appeal) Rules, 1968 as amended from time to time.”

9. After the denial of the Applicant, the matter was enquired into and the IO submitted its report operative part of which reads as under:

“From the discussion of evidence supra in the instant case basing on the documentary, oral, circumstantial evidence and pleadings of the prosecution and defence, it is felt that the allegation of demand and acceptance of Rs.37/-



as illegal gratification over and above the actual difference of fare from the decoy is hardly sustainable. However, basing on the evidence of the eye witness and circumstantial evidence, it is believed that the act of the CO throwing out some money (a bunch of currency) notes) whether legal or illegal may not be ruled out in order to avoid further complications, if any.

**5. Findings:** In view of the foregoing, it is held that the allegation levelled against Sri R.V.Kumar, TTE/VSKP in the charge in the memorandum that he had pulled a bunch of currency notes from his pant pocket and threw outside while Sri Kumar was being taken towards the A/c coach is proved to this extent.”

10. From the above it is clear that the findings of the Inquiry Officer with regard to throwing the currency notes from his pant pockets while the applicant was taken towards the A/C Coach was not a part of the charge sheet. However, the Disciplinary Authority supplied copy of the enquiry report to the Applicant and after receipt of the reply, the Disciplinary Authority imposed the punishment of Compulsory retirement vide order dated 1.3.2009 by holding as under:

“Therefore, I, as the Disciplinary Authority, after going through the established documentary evidence, evidence adduced during the course of inquiry and for the reasons which the CO has not put forth as he failed to prove his innocence of the charges levelled against him, **I disagree with the findings of Inquiry Officer** “that is hardly sustainable” because, in all preponderance of probabilities, this charge is substantiated and that the CO can never prove his innocence. RUD-8, which the CO has accepted to be authenticated one clearly show that the CO was reluctant to



move from his coach in the first instance and while entering to S/6 coach the CO put his left hand into the left pocket of his pant pulled a bunch of currency notes and at once threw these notes outside and PW also deposed this during the inquiry. Therefore, I agree with the Inquiry Officer that Shri Kumar "threw a bunch of currency notes just before entering into S/6 coach.

Thus, by the above acts, Shri R.V.Kumar, while working in 1864 Express on 31.5.2007 failed to maintain absolute integrity and acted in a manner unbecoming of a Railway Servant in contravention of Rule 3.1(i)&(ii) of R.S (C) Rules, 1966 and he himself is liable for disciplinary action being taken against him.

From the overall circumstances of the case, I as the Disciplinary Authority feel that for the above gross misconduct, Shri R.V.Kumar is not a fit person to be retained in service and as a disciplinary measure punishment of "**COMPULSORY RETIREMENT**" with consequential benefits is imposed on him."

11. The Applicant submitted his appeal but the Appellate Authority who issued the charge sheet in the capacity of the Disciplinary Authority at that point of time, upheld the order of punishment imposed by the DA vide order dated 11.6.2009 which was also subsequently upheld by the Revisional Authority vide order dated 25.1.2010.

12. Before considering the points on merit, we would like to first deal with the points of limitation as raised by the Respondents in their counter and answered by the Applicant. We find that the applicant was charge sheeted vide memorandum dated 17.9.2007, the Disciplinary Authority imposed the punishment vide order dated 19.3.2009 which



was subsequently upheld by the Appellate Authority vide order dated 11.6.2009 and by the Revisional Authority vide order dated 25.1.2010.

The Applicant made a representation on 17.4.2010 to the Gen. Manager (Respondent N.1) and as per the Applicant when he did not receive any response within a period of six months i.e. 17.10.2010 he filed the instant OA on 11.08.2011 (i.e. within a period of one year one year after expiry of the six months as provided in section 21 of the A.T. Act, 1985). Hence it cannot be said that the OA is hit by law of limitation. In view of the above, we would like to proceed to deal with the merit of the matter which is discussed herein below.

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

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

**(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;



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.”

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

15. On the above aspects, law is well settled that the Disciplinary Authority has to communicate to the delinquent officer the ‘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 record by the Inquiry Authority are not germane and the finding of “not guilty” already recorded by the Inquiry Authority needs <sup>no</sup> to interference. 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 -, AIR 2001 SC 2398 **S.B.I. and others**

**Vrs. Arvind K.Shukla & 1998 SCC (L&S) 1783 Punjab National Ban and others Vrs Kunj Behari Misra.**

16. On an analysis to the procedure adopted by the DA with reference to the Rules quoted above, we have no hesitation to hold that the DA has adopted a novel procedure in recording his disagreement to the report of the IO after supplying copy of the report of the IO and getting the reply on the same from the applicant and thereby violating the Rules and principles of natural justice as held by the Hon'ble Apex Court which is therefore, held to be not sustainable in the eyes of Rule/Law.

17. 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

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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 –

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(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.”

18. 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**, 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.”

19. In the case of **Ramchander Vrs Unoin of India and others**, **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 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”.

20. On examination of the of the order of the Appellate Authority with reference to the Rule 22 visi-a-vis various judge made laws quoted above, we cannot but ~~to~~ hold that ~~the~~ the consideration given~~is~~ to the appeal of the Applicant is <sup>not</sup> in accordance with the Rules and as such the same is held to be bad in law. We also feel that that had the Revisional



Authority taken the lapses pointed out by the Applicant, instead of passing order in a caviler manner, he would not have upheld the order/action of the IO, DA and AA as has been done in the instant case.

21. It is also not out of place to mention the law by now well settled that in a democratic polity, justice in its conceptual eventuality and inherent quintessentiality forms the bedrock of good governance. In a democratic system that is governed by Rule of Law, fairness of action propriety, responsibility, institutional impeccability and nonbiased justice delivery system constitute the pillars on which its survival remains in continuum. (Ref. Chandra Kumar Chopra Vrs Union of India and Ors, 2012 (3) SLJ 230 (SC) (paragraph 22). It is well settled that no man should be a judge in his own cause and that justice should not only be done but manifestly and undoubtedly seem to be done. In this connection we would like to place reliance on few decisions of the Hon'ble Apex Court which are stated herein below:

In the case of **Gulluapalli Nageswara Rao and others Vrs Andhra Pradesh State Road Transport Corporation and Another** (1959) Supp.1 SCR 319 it has been held that the principles governing the doctrine of bias vis-à-vis judicial Tribunals are well settled and they



are (1) no man should be a judge in his own cause. Justice should not only be done but manifestly and undoubtedly seem to be done.

**In A.K.Kraipak and others Vrs Union of India and others, AIR 1970 SC 150** the Apex Court was dealing with constitution of a Selection Board. One of the members was to be considered for selection in that context it was observed by the Apex Court that it was against all canons of justice to make a man judge in his own cause.

**In Ramesh Ahluwalia Vrs State of Punjab and Ors, 2012 (3) SLJ 386 (SC)** it has also been held by the Apex Court that one can be a judge in his own cause.

**In the case of Ranjit Thakur Vrs Union of India and others, 1989 (1) SLJ 109 =(1987) 4 SCC 611** the appellant had sent a written complaint complaining ill treatment at the hands of Respondent No.4 directly to the higher officers as a result of which he was punished with 28 days rigorous imprisonment by the said Respondent. Keeping the said fact in view the apex court held that the participation of the Respondent No.4 in the Court martial rendered the proceeding *coram non judice*.

22. We find that the authority <sup>who</sup> issued the charge sheet also decided and rejected the appeal of the Applicant. Therefoore this is one



of the ground or reason to hold that the order of the Appellate Authority is suffered from the vice of arbitrariness.

23. As a model employer the Government must conduct itself with high probity and candour with its employees-**Balram Gupta Vrs. Union of India and Anr**, AIR 1987 SC 2354.

24. 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-  
**State of Harayana vrs. Piara Singh and Others**, AIR 1992 SC 2130.

25. 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-**Commissioner of Income Tax, Mumbai v. Anjum M.H.Ghaswala and others**, (2002) 1 SCC 633)/ **Ram Phal Kundu v.Kamal Sharma** (2004) 2 SCC 759.

26. 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 –**Prabha Shankar Dubey v. State of Madhya Pradesh** (2004) 2 SCC 56.



27. Keeping in view the Rule and judge made laws discussed above when we examine the facts of the matter we do not hesitate to nullify the orders of the Disciplinary, Appellate and Revisional Authorities. Accordingly, we quash the order of the Disciplinary Authority dated 19.3.2009, the order of the Appellate Authority dated 11.6.2009 as well as the order of the Revisional Authority dated 25.01.2010 and consequently direct the Respondents to take back to the Applicant to service forthwith. It is also made clear that the Applicant shall not be entitled to back wages from date of Compulsory Retirement till his date of joining but he would be entitled to count the entire period towards qualifying service towards fixation of pay and pension etc. The amount, if any, received by the applicant following the order of punishment of compulsory retirement shall be refunded by him within a reasonable period to be decided by the competent authority. 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.PATNAK)

Member (Judl.)