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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

**O.A.No.632 of 2011**

Cuttack this the 2<sup>nd</sup> day of March, 2016

Keshab Chandra Patra...Applicant

**-VERSUS-**

Union of India & Ors ...Respondents

**FOR INSTRUCTIONS**

1. Whether it be referred to reporters or not? *Yes*
2. Whether it be referred to CAT,PB, New Delhi for being circulated to various Benches of the Tribunal or not? *Yes*

*R.C. Misra*  
**(R.C.MISRA)**  
**MEMBER(A)**

*A.K. Patnaik*  
**(A.K.PATNAIK)**  
**MEMBER(J)**

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

**O.A.No.632 of 2011**

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CORAM

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

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

Keshab Chandra Patra,  
Aged about 63 years  
S/o-Late Damodar Patra  
At/PO-Madhupur  
Dist-Cuttack

...Applicant

By the Advocate(s)-Mr.G.Rath

**-VERSUS-**

Union of India represented through

1. The General Manager  
E.Co.Railway,  
Mancheswar  
Rail Vihar  
Bhubaneswar,  
Dist-Khurda  
PIN-751 017
2. The Divisional Railway Manager,  
E. Co. Railway,  
Khurda Road  
PO-Jatni  
Dist-Khurda  
PIN-752050
3. Sr.Divisional Operations Manager,  
ECoRailway,  
Khurda Road  
Khurda  
PIN-752 050
4. Divisional Operations Manager  
E.Co.Railway  
Khurda Road  
PO-Jatni  
Dist-Khurda  
PIN-752 050



5. Smt.Snehalata Beura  
Wife of Sri Bejay Kumar Beura  
Qr.No.A-60/C,  
Loco Colony  
Jatni  
Khurda  
PIN-752 050

...Respondents

By the Advocate(s)-Mr.T.Rath

**ORDER**

**R.C.MISRA, MEMBER(A)**

The applicant in filing this Original Application under Section 19 of the A.T.Act, 1095, has challenged the punishment of dismissal from service imposed on him by the disciplinary authority by order dated 27.7.2007, as confirmed by the appellate authority by order dated 23.1.2009. His prayer is for setting aside the charge sheets, the report of the I.O., the orders of the disciplinary authority, and the orders of the appellate authority, his further prayer being to treat him to be in service till his age of superannuation and release consequential financial benefits.

**Brief facts of the case:**

2. The applicant was a Senior Peon working under Senior Divisional Operations Manager, E.Co. Railway. Khurda Road. There was an allegation of receipt of illegal gratification for arranging employment in the Railways made against him, which formed the basis of a disciplinary proceeding under Rule-



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9 of the Railway Servants (D&A) Rules, 1968. A Memorandum of Charge dated 29.5.2007 was issued to the applicant, and an Inquiry Officer was appointed to inquire into the charges. The inquiry report dated 9.7.2007 was submitted by the IO proving the charges, on considering which the disciplinary authority imposed the punishment of removal from service with effect from 28.7.2007. However, the Disciplinary Authority, considering the length of service rendered by the applicant to the Railways, sanctioned two third of compassionate allowance of pension and gratuity. The applicant filed an appeal against the order of punishment, which was not disposed of in time. The applicant approached the Tribunal for relief. In the meantime, appellate authority disposed of the appeal petition, and rejected the same. On getting this communication, applicant being permitted to withdrawn the O.A., filed a better application in the form of the present O.A. bringing the order of the appellate authority under the purview of the O.A.

3. The allegation against the applicant was that he had abused the official position and committed misconduct prejudicial to the reputation of the Railways by accepting pecuniary gratification from one Smt.Snehalata Beura luring her for employment of her daughter and son-in- law in the Railways. Applicant was having a causal relationship with the family of Smt.Snehalata Beura residing at A-60/C, Loco Colony, Jatni, Khurda, as Smt.Beura's husband was working in the

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Railway Protection Force. A written test for recruitment of Group - C posts was held in November, 2003. The applicant posturing himself as close to the appointing authorities of Railways, persuaded Smt.Beura to part with a sum of Rs.1,10,000/- with an assurance of obtaining a job for her daughter in the Railways. On the basis of complaint received, the conversation between the applicant and Smt.Beura was captured in an audio CD. Against such allegation, the version of the applicant was that he had taken this amount from Smt.Beura's husband as interest-free loan for construction of his house, which he repaid on 2.12.2007.

4. The applicant has challenged the disciplinary proceedings on the ground that although he submitted written statement of defence dated 7.6.2007 denying the allegations, before receipt of such written statement, the Disciplinary Authority appointed Inquiry Officer & Presenting Officer by an order of the same date, i.e., 7.6.2007, in contravention of Rule-9 (a)(i) and (ii) of Railway Servants (D&A) Rules, 1968. The applicant alleges that the proceedings are further vitiated by the fact that the Appellate Authority did not pass a speaking order, and therefore, had not complied with the statutory provision of Rule-22(2) of RS(D&A) Rules, 1968. It is also the submission of the applicant that the order of the Disciplinary Authority and the report of I.O. are also afflicted with the deficiency of violation of natural justice since reasons have not been adduced

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for conclusions arrived at, and the statutory authorities have failed to abide by the statutory principles.

**Submissions of respondents in their counter-affidavit:**

5. The Railways-respondents submit that the allegation against the applicant was brought to the notice of Vigilance, and thereafter, major penalty charge sheet was issued. As a result of the inquiry, the charges against the applicant were proved, and the Disciplinary Authority imposed punishment of removal on the applicant. The allegation of applicant that inquiry was conducted in a novel or perfunctory manner is denied. Respondents submit that allegation of accepting illegal pecuniary gratification by luring an innocent lady by giving false promise of employment for her daughter and son-in-law in the Railways was proved against the applicant through a process of departmental inquiry conducted as per statutory provisions.

6. The respondents have denied the allegation that before receipt of the defence statement of the applicant, IO and PO were appointed. The defence statement was received on 7.6.2007, and on the same day the Disciplinary Authority appointed the IO and PO, since he did not find the explanation to be satisfactory. With regard to the charges, it is submitted that verification of bank statement was not necessary, since giving and accepting of money was an admitted fact, the only



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issue being the purpose for which applicant had received the amount. Smt.Beura had contended before the Inquiry Officer that when her daughter and son-in-law did not qualify in the recruitment to Group D, she demanded the money back from the applicant. The applicant did not return the money, because of which she complained to the railway authorities. During inquiry, she categorically denied to have sent any letter to prove the innocence of the applicant.

7. The respondents have further contended that the inquiry report is based upon evaluation of evidence and the order of both Disciplinary Authority and Appellate Authority are speaking orders in which all points raised by the applicant had been addressed. There is no evidence of violation of statutory provisions, and the principles of natural justice have been fully complied with.

8. Applicant has not filed rejoinder to the counter-affidavit. Private Respondent No.5, Mrs.Snehalata Beura has also not filed counter-affidavit.

**Submissions in the Written Notes**

9. The learned counsel for applicant in his written notes has alleged that the inquiry in this matter was conducted in a perfunctory manner, the principles of natural justice were violated, and concerned authorities have imposed the punishment of removal from service by passing an unreasoned

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order. It is specifically alleged that the applicant had submitted a written statement of defence in response to the charge sheet on 7.6.2007. But without taking that into account, Sr.Divisional Operation Manager on the very same day, i.e., 7.6.2007, appointed the IO and the PO in violation of Rule-9(a)(i) of the Railway Servants (&A) Rules, 1968. The argument is that Rule-9(a)(i) lays down that "on receipt of the written statement of defence, the Disciplinary Authority shall consider the same and decide whether the inquiry should be proceeded with this Rule". In the order of appointment of IO in the present case, nothing is mentioned about consideration of the defence statement and no reason is assigned regarding rejection of the defence statement and proceeding with the inquiry.

10. The second important argument of learned counsel is that the Appellate Authority without considering all the <sup>8</sup> ~~ap~~ points of submission in the appeal petition, passed a cryptic order, confirming the punishment imposed by the Disciplinary Authority. Therefore, the order of appellate authority is not sustainable under the law.

11. Learned Standing Counsel for Railways on the other hand, in his written notes countered the argument of learned counsel for the applicant by stating that the Disciplinary Authority received the written statement of defence of applicant on 7.6.2007, and on that very day appointed the I.O.

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Therefore, it is denied that IO was appointed before receipt of written statement of defence of the applicant. It is further submitted that even assuming but not admitting that Disciplinary Authority appointed the IO without considering the written statement of defence, this matter cannot be agitated now, since applicant participated in the inquiry without any protest, and no prejudice was caused to him. Therefore, this issue cannot be taken as a ground for nullifying the process of inquiry. It is cited that in the case of **State Bank of Patiala vs. S.K.Sharma (AIR 1996 SC1669)**, the Hon'ble Apex Court decided that an order passed imposing a punishment on an employee consequent upon a disciplinary/departmental proceeding in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court/Tribunal should inquire whether the provision violated is of a substantive nature or whether it is procedural in character. Violation of any and every procedural provision cannot be said to automatically vitiate the inquiry. Except cases <sup>falling</sup> ~~following~~ <sup>R</sup> under the 'no notice', 'no opportunity' or 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself effectively and properly. Whether any prejudice is caused to the applicant is the ultimate test. It is emphasized by the Hon'ble Apex Court

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that while applying the rule of "*audi alteram partem*", the Court or Tribunal must bear in mind the ultimate and over-riding objective underlying the said rule, i.e., to ensure a fair hearing and to ensure that there is no failure of justice.

12. It is also the contention of learned Standing Counsel in the written notes that the Appellate Authority has passed a reasoned order. The applicant had not raised any new point going beyond the defence before the enquiry officer. In the absence of any new material placed before the appellate authority, he was well within his jurisdiction to agree with the order of Disciplinary Authority and report of the I.O. The Hon'ble Apex Court in the matter of ***Forest Officer vs. Madhusudan Rao [2008 (3) SCC 469]*** has held that Appellate authority need not give detailed reasons, but brief reasons should be given even if the order given by the authority below is affirmed. Similar view has been taken in the case of ***Ram Kumar vs. State of Haryana*** reported in ***1987(5) SLR SC 286***.

13. The learned Standing Counsel has further argued that the contention of the applicant that there was no concrete evidence with regard to his receiving money from the complainant is far from being true. The claim of the applicant that he borrowed the money from the complainant has been proved wrong by both oral inquiry and materials like the CD and documents.



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14. The respondents have cited decisions of the Hon'ble Apex Court in the case of Union of India vs. **Sardar Bahadur** reported in **(1972)4 SCC 618** in which it was held that where there are relevant materials which support the conclusion that the officer is guilty, it is not the function of the High Court to arrive at an independent finding. It is also laid down by the Hon'ble Apex Court that if two views are possible, Court shall not interfere by substituting its own satisfaction or opinion for the satisfaction or opinion of the authority exercising the power. In the case of **SBI vs. Samarendra Kishore Endaw, 1994(1)SLR SC 516**, it has been laid down by the Hon'ble Apex Court that power of judicial review is meant to ensure fair treatment and not to ensure that the authority reaches a conclusion which is correct in the eyes of the Court.

15. Based upon above arguments, learned counsel for the Railways argued that the O.A. being devoid of merit should be dismissed.

**Discussion:**

16. Having perused the records in the case, we have heard learned counsels for both parties, and gone through the written notes of submission filed by both the learned counsels.

17. The first issue to be discussed is the point raised by the applicant that without consideration of written notes of submission submitted by the delinquent, the Disciplinary

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Authority went ahead to appoint the IO and PO, in violation of Rule-9(a)(i) of the RS(D&A), Rules, 1968. The delinquent had submitted his written statement of defence on 7.6.2007, a copy of which is placed at A/2 of this O.A. By an order of the same date, i.e., 7.6.2007, the Disciplinary Authority appointed the IO, this order is placed at A/3. This order states that the Disciplinary Authority considered that an inquiry officer should be appointed to enquire into the charges framed against the delinquent. There is however, no mention about the Disciplinary Authority receiving and considering the written statement of defence. The learned counsel for the Railways submitted that the Disciplinary Authority had considered the written statement of defence received on the very same day before appointing the IO. But non-mention of this in the order renders the submission of respondents ineffectual. The order should have specifically mentioned that the D.A. has considered the written statement of defence before appointing the I.O. Further, although it is possible that the D.A. considered the written statement of defence on the day on which it was received and decided to appoint the IO, it is quite improbable considering the normal period of time that is taken in the Government for disposal of such matters. There is a grave area of doubt in this regard, and therefore, prima facie, we have to take that written statement of defence was not considered,



because had it been considered, a noting to that effect would have found place in the order appointing the I.O.

18. The next point to be decided is in the event when the written statement of defence was not considered, thereby resulting in a procedural violation, whether it is serious enough to vitiate the entire process of inquiry. In the written statement of defence, delinquent has denied the charges. After the appointment of IO, the delinquent has participated in the inquiry and has raised no further issues. He has submitted a defence statement dated 7.7.2007 to the Enquiry Officer copy of which is placed at A/4. A copy of enquiry report was forwarded to the delinquent vide letter dated 10.7.2007(A/5). In the inquiry evidence from both prosecution witness and defence witnesses were collected and examined by the IO. After receiving the report of inquiry, the delinquent has given his final written statement of defence by is letter dated 18.7.2007. The Disciplinary Authority has issued punishment notice dated 27.7.2007 in which he mentions that he has gone through the charge sheet, the delinquent's explanation dated 7.6.2007, the inquiry report submitted by IO and the final defence statement of the delinquent after receiving the enquiry report. All the above mentioned facts go to prove that the delinquent has been provided opportunity of being heard at every stage. The principle of '*audi alteram partem*' has been complied with. There is no instance in which such opportunity has been denied

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to the applicant. This issue of violation of Rule-9(a)(i) of the Railway Servants (D&A) Rules was also not agitated by the delinquent/applicant before the Appellate Authority. This alleged violation has not acted to the prejudice of the delinquent/applicant in the various stages of the enquiry, and a case could not be made out that principle of natural justice was not followed in conducting the departmental enquiry. Therefore, following the ratio of decision in the case of **State Bank of Patiala vs. S.K.Sharma**, cited by the learned Standing counsel of Railways, we are of the opinion that the alleged violation is not of such substantive nature that it would be interpreted as to have vitiated the entire proceeding.

19. The learned counsel for the applicant has raised the second important issue that the orders of statutory authorities in this case, especially the appellate authority, are not detailed in nature. It is specifically alleged that appellate authority's order is not a '**speaking order**' and is not in consonance with Rule 22(2) of RS(D&A) Rules, 1968. It is submitted that according to this statutory provision, the appellate authority should cover the following aspects in his order.

- i) Whether the procedure laid down in the Rules has been complied with.
- ii) Whether the findings of the disciplinary authority are warranted by the evidence on record.
- iii) Whether the penalty or enhanced penalty is adequate, inadequate or severe.



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20. The Railway Board has in letter dated 24.9.2002 emphasized the importance of passing of reasoned and speaking orders by the Disciplinary Authority and Appellate Authority. In the present case, the Appellate Authority's order is alleged to be unreasoned and it is alleged that failure to give reasons amounts to denial of justice.

21. We agree with the point made that reasons should be given while passing orders by the administrative authorities, especially when they are discharging statutory functions as Disciplinary Authority and Appellate Authority. An unreasoned order smacks of arbitrariness. An order supported by reasons makes the process of thinking of the authority passing such order, transparent. In the opposite scenario, an order unsupported by reasoning makes the thinking process opaque. Passing of a speaking order is an important part of process of justice, since it gives an opportunity to the person affected by the order to further agitate his grievances based upon that part of the reasoning which he considers to be prejudicial and repugnant to his rights.

22. Against this touchstone, we need to examine the order of the Appellate Authority with specific reference to whether it is a reasoned and speaking order, and whether it addresses the objections raised by the delinquent in his appeal petition. In the appeal petition dated 14.8.2007(A/8), the delinquent/applicant



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raised issues with regard to factual aspects of the charges; mainly that he was in fact black-mailed by the complainant's family, that it was a private transaction, and that the punishment was imposed just before four days of his retirement. The Appellate Authority's order is dated 23.1.2009(A/9) to which a speaking order is enclosed. The appeal petition has been disposed of by six '**bullet points**'. The Appellate Authority should have specifically dealt with issues raised by the applicant, and then given his finding. Even if there were no brand new points, natural justice requires that every issue raised should have been addressed. The order should have clearly brought out that there has been application of mind. We have considered the submission of learned Standing Counsel for Railways that since the Appellate Authority agreed with the order of the Disciplinary Authority, detailed order was not required. We can agree with him only partially. The order may not be too exhaustive, but it should not be so cryptic that it will look like an order written in a casual attitude. In a proceeding in which the Disciplinary Authority has imposed the punishment of removal from service, the Appellate Authority should have been careful to examine every issue in detail, and "**to speak out**" his mind before conveying his decision. We are of the opinion that the Appellate Authority's order has fallen short of requirements of natural justice. We are not making observations on the conclusion that he has reached. It will

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depend on his consideration, and in this regard we follow the ratio of judgment in the decision of Hon'ble Apex Court in **SBI vs. Samerendra Kumar Endao** which lays down that power of judicial review is meant to ensure fair treatment and not to ensure that the authority reaches a conclusion which is correct in the eyes of the court. But the standard of consideration as well as communication expected of an Appellate Authority is conspicuous by its absence in this case, and therefore, the same could not be sustained under the law.

23. At this stage of discussion, we would like to pause for a while and reckon the scope of interference of Courts and Tribunals in a matter of disciplinary proceedings. The Hon'ble Apex Court in the case of **B.C.Chaturvedi vs. UOI & Ors.** reported in **AIR1996 SC 484** has ruled that "*judicial review is not an appeal from a decision but a review of the manner in which the decision is made*". Further, "*the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with*". It is further laid down that "*a review of the above legal position would establish that the disciplinary authority and on appeal, the appellate authority, being fact-finding authorities have the exclusive power to consider the evidence with a view to maintain discipline*".



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24. Viewed in the light of aforesaid discussions, we are of the considered opinion that the orders of Appellate Authority dated 23.1.2009 is inadequate, unsatisfactory, and not conforming to the principles of natural justice. Therefore, we quash and set aside the order dated 23.1.2009, and remit the matter back to the Appellate Authority with a direction that he will consider the appeal petition afresh on the basis of issues raised in the appeal petition, and also in consonance with Rule-22(2) of the Railway Servant(Discipline & Appeal) Rules, 1968, and communicate his decision to the applicant within a period of ninety days of receipt of this order.

25. The O.A. is accordingly disposed of with the above observations and directions, with no order as to costs.

  
**(R.C.MISRA)**  
**MEMBER(A)**

  
**(A.K.PATNAIK)**  
**MEMBER(J)**

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