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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 211 OF 2010

Cuttack this the 31st day of August, 2012

CORAM:

**HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER**

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K.Rama Rao, aged about 41 years, Son of late K.Krishna Rao, Ex.Diesel Loco Pilot (Goods) at present residing at 58/17/7, Shanti Nagar, NAD Cross Road, PO.NAD, Dist-Visakhapatnam

...Applicant

By the Advocate: Mr.Achintya Das

-VERSUS-

1. Union of India represented through its General Manager, E.Co.Railway, E.Cor Sadan, Samant Vihar, PO-Mancheswar, Dist-Khurda, PIN-751017
2. Chief Personnel Officer, E.Co.Railway, Chandrasekharapur, Rail Vihar, Bhubaneswar
3. The Divisional Railway Manager, East Coast Railway, Khurda Road, Jatni, Dist-Khurda, PIN-752050
4. The Senior Divisional Mechanical Engineer, East Coast Railway, Khurda Road, Jatni, Dist-Khurda, PIN-752 050
5. The Divisional Mechanical Engineer, East Coast Railway, Khurda Road, Jatni, Dist-Khurda, PIN-752 050
6. Chief Crew Controller, East Coast Railway, Khurda Road, Jatni, Dist-Khurda, PIN-752 050

... Respondents

By the Advocate: Mr.S.K.Ojha

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O R D E R

A.K.PATNAIK, MEMBER(J): Applicant, while working as Loco Pilot (G)

under the Respondent-Railways was punished with Removal from service as

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a result of a disciplinary proceedings initiated against him. He preferred an appeal before the Appellate Authority challenging the said punishment order. While the said appeal was under consideration, he moved this Tribunal by filing O.A.No.48 OF 2010 which was disposed of at the stage of admission with a direction to Respondent No.4 therein to consider and dispose of the appeal preferred by the Applicant and communicate the result thereon to him within a stipulated period vide order dated 10.2.2010. In the meantime, the appeal preferred by the applicant having been disposed to his prejudice, this Original Application has been filed seeking the following relief.

- "i) *To quash the charge sheet under Annexure-A/2 being contrary to the letter under Annexure-A/2 or the same was issued without taking into consideration the letter under Annexure-A/1.*
- ii) *To quash the report of the IO under Annexure-A/5 being perverse and contrary to well known and codified rules and law.*
- iii) *To quash the Punishment Notice under Annexure-A/8 & Annexure-A/10.*
- iv) *To quash the order under Annexure-A/18 of the appellate authority and direct the Respondents to reinstate the applicant to his original post with all consequential service and financial benefits retrospectively.*
- v) *To pass any order(s) as deemed fit and proper.*

2. The Respondent-Railways in their counter while opposing the prayer of the applicant, have stated that there being strict adherence to the principles of natural justice during the course of inquiry and that the charges leveled against the applicant having been proved in the disciplinary proceeding, the punishment as imposed by the Disciplinary Authority and modified by the Appellate Authority is in conformity with the gravity of offence and therefore,

and

this Tribunal should not interfere with the matter. In the circumstances, it has been submitted that the O.A. being devoid of merit is liable to be dismissed.

3. We have heard Shri Achintya Das, learned counsel for the applicant and Shri S.K.Ojha, learned Standing Counsel for the Railways and perused the materials on record.

4. It is an admitted fact that the Disciplinary Authority having not been convinced with the 1st inquiry report, ordered fresh inquiry to be carried and in effect appointed one Sri Rajendra Naik ADME (Assistant Divisional Mechanical Engineer), Khurda Road for conducting such inquiry. Thereafter, in consideration of the inquiry report as well as other relevant materials before him, the Disciplinary Authority imposed the punishment of removal from service, which also had formed the subject matter of O.A.No.48/2010 as referred to above. While going through the speaking order of the Appellate Authority dated 3.3.2010 (Annexure-A/18), we found that the Appellate Authority while considering the appeal of the applicant had taken into consideration both the reports submitted by the Inquiry Officer, notwithstanding the fact that the Disciplinary Authority having not appreciated the 1st inquiry report had ordered for conducting a fresh enquiry and accordingly, appointed Sri Rajendra Naik ADME to enquire into the matter. Therefore, cognizance taken by the Appellate Authority on the 1st report of the IO which was no longer in existence, while deciding the appeal, in our considered view, has vitiated the appellate order in its entirety. In this view of the matter, we have no hesitation to quash the impugned appellate authority's order dated 3.3.2010 as at Annexure-A/18 and remand the matter to the *same*

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Appellate Authority, with direction to take a decision on the appeal having regard to what has been observed above and communicate the same to the applicant within a period of two months from the date of receipt of this order.

With the above observation and direction, this O.A. is disposed of. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER
BKS


(A.K. PATNAIK)
JUDICIAL MEMBER