

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A.No. 364 of 2010
Cuttack, this the 19th day of October, 2011

Bhakta Ch. Behera Applicant

-v-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? ✓
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not? ✓


(A.K.PATNAIK)
Member (Judl.)


(C. R. MOHAPATRA)
Member (Admn.)

**CENTRAL ADMINISTRATIVE TRIBUNAL
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CORAM:

**THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)
AND
THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDL.)**

Bhakta Charan Behera, aged about 38 years, son of Bhagirathi Behera at present working as Khalasi at Raja Athagarh under Section Engineer (JRD) East Coast Railway, Talcher.

.....Applicant

By legal practitioner: M/s.P.K.Chand, D.Satpathy,
J.Mohanty, Counsel.

-Versus-

1. Union of India represented through General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Khurda.
2. The Divisional Electrical Engineer (TRD), East Coast Railway, Khurda Road, Jatni, Dist.Khurda.
3. Assistant Divisional Electrical Engineer (TRD), East Coast Railway, Talcher, Angul.

....Respondents

By legal Practitioner: Mr. S.K.Ojha, Counsel

O R D E R

MR.C.R.MOHAPATRA, MEMBER (ADMN.) :

Applicant is a Khalasi of the ECoRly. Vide Memorandum under Annexure-A/1 dated 20.8.2008 he was served a set of charge under Rule 11 of the Railway Servants & Discipline and Appeal) Rules, 1968. Applicant submitted reply to the Memorandum of charge on 19.9.2008 after which the Disciplinary Authority in order under Annexure-A/3 dated 2/12/2009 imposed the punishment of withholding of two increments for three years with non cumulative effect which

was, while considering the appeal preferred by the Applicant, upheld by the Appellate Authority vide Annexure-A/5 dated 02.02.2010. Hence by filing this OA, the Applicant seeks to quash the orders under Annexure-A/3 & A/5.

2. Respondents filed their counter in which it has been stated that on receipt of the reply to the charge the Disciplinary Authority considered the matter in great detail and having found the charge substantiated, vide order under Annexure-A/3 imposed the punishment which was subsequently upheld by the Appellate Authority in order under Annexure-A/5. The proceeding was conducted in accordance with Rules. The Applicant was also provided opportunity to defend his case. Hence this OA is liable to be dismissed.

3. Heard rival submission of the parties and perused the materials placed on record. By drawing our attention to the order of the DA (Annx/A/3) and the order of the Appellate Authority under Annx.A/5 vis-à-vis the Rules/Railway Board's instructions so also the various judge made laws Applicant's Counsel has contended that both the orders being unreasoned are not sustainable in the eyes of law. In other words, his contention is that the DA issued the order without due application of mind which was upheld by the Appellate Authority without considering the contentions raised by the

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Applicant in his appeal although it is mandatory on the part of the authority considering the appeal to meet and answer all the points raised by party concerned. This was opposed by the Respondents' Counsel. His contention is that the Applicant is estopped to take such plea at this stage when the same was not raised before the Appellate Authority nor even in the OA. We have considered the submissions and we are of the opinion that this being a point of law can be canvassed by the affected party at any point of time even if it is not raised before the Appellate Authority or in the OA.

4. The order under Annexure-A/3 dated 02-12-2009 of the Disciplinary Authority is extracted herein below:

"I have decided that you are responsible in the above case and have passed the following order "withholding of two increments for three years with non-cumulative effect."

The order of the Appellate Authority under Annexure-A/5 dated 02.02.2010 is extracted herein below:

"After careful consideration of the Minor penalty charge sheet and your appeal dtd. 11.01.10 to the appellate authority, I have come to the following conclusion -

1. you have not mentioned anything new in this appeal;
2. In view of the above, I do not see any reason to review the punishment of withholding of two increments for three years with non-cumulative effect;
3. As such, the punishment awarded stands good."

5. In this connection, we may state that recording of reasons by every authority entrusted with quasi-judicial powers and communications thereof to the affected party has been accepted as an integral part of the concept of fair procedure and failure to do so can be construed as noncompliance of the principles of natural justice. The necessity of giving reasons flows from the concept of rule of law which constitutes one of the corner stone of our constitutional set up. The order of DA and AA must manifest the application of mind and unless reasons are given in the order it cannot be said that the authority passing the order has applied his mind. On examination of the orders under Annexure-A/3 and A/5 with reference to the principles/law set out above, we do not see any justification to uphold the orders impugned in this OA. Hence, both the order under Annexure-A/3 & A/5 are hereby quashed. In the result, this OA stands allowed. No costs.


(A.K.PATNAIK)
Member (Judl.)


(C.R.MOHAPATRA)
Member (Admn.)