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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O. A. NO. 616 of 2013

Cuttack the 11th day of September, 2013

CORAM

HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL.)

HON'BLE MR. R. C. MISRA, MEMBER (ADMN.)

.....

Sudarsan Bhui, aged about 55 years, Son of Late Rankanidhi Bhui at present working as Technician, Grade II, JE/TRS/Talcher, East Coast Railway, At/Po/Ps. Talcher, Dist. Angul.

...Applicant

(Advocates: M/s. Saswata Pattanaik, S.N. Rath, L. Mishra, N.C. Das)

VERSUS

Union of India Represented through –

1. The Additional Divisional Railway Manager, East Coast Railway, Khurda Road, Dist. Khurda.
2. Senior Divisional Electrical Engineer (OP), East Coast Railway, Khurda Road, Dist. Khurda.
3. The General Manager, East Coast Railway, Rail Bhawan, Chandrasekharapur, Bhubaneswar, Dist. Khurda.

..... Respondents

(Advocate: Mr. T. Rath)

ORDER

(Oral)

A.K. PATNAIK, MEMBER (JUDL.)

The Applicant in this Original Application filed under section 19 of the Administrative Tribunals Act, 1985 challenges the action of the Respondent No.1 in imposing the punishment of reduction from the post of Senior Technician to Technician II



and sitting over the appeal preferred by him till date with prayer to quash the order dated 20.3.2013 of the Respondent No.2 and to direct the Respondent No.2 to restore him to the post of Senior Technician with pay ^{band} ~~band~~ as admissible to the said post. Copy of this OA has been served on Mr.T.Rath, Learned Standing Counsel for the Railway.

2. We have heard Mr.N.C.Das, Learned Counsel appearing for the Applicant and Mr.T.Rath, Learned Standing Counsel appearing for the Railway-Respondent and perused the records. Mr.Rath vehemently opposed the maintainability of this OA on the ground of pendency of the appeal and has submitted that as the appeal is dated 29.4.2013 the applicant should not have approached this Tribunal without waiting ^{for} ~~r~~ reasonable time to take a decision on the said appeal. Further it was contended by Mr.Rath that the instructions for disposal of appeal governing the field is advisory in nature and therefore, non-disposal of appeal within a short time cannot give a right to the applicant

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^{to} ~~not~~ approach this Tribunal without waiting ^{for} the result thereof.

However, Mr. Rath has fairly submitted that he has no immediate instruction as to whether any decision has been taken on the said appeal of the Applicant. Mr. Das, contested the stand taken by Mr. Rath by stating that as per the rules the appellate authority should have taken decision on the appeal within a period of thirty days and having not done so the applicant is/was compelled to approach this Tribunal for removal of the injustice caused to him in the decision making process of the matter.

3. Railway Board instruction issued vide RB's No.E (D&A) 71 RG 6-22 dated 11.6.1971 (NRSL.No.5391) ^{fixes} ~~fixing~~ a specific time limit for disposal of the Appeal. It provides as under:

“Disposal of Appeal – The Appellate Authority **should** give high priority to the disposal of appeals and to ensure that **no appeal suffers delay in disposal beyond a period of one month** from the date of its receipt by the appellate authority. In case the appellate authority anticipates delay in disposal of certain appeals beyond a period of one month he should submit to the next higher authority a detailed

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statement of such appeals together with reasons for delay beyond one month. The said next higher authority should go into the reasons for the delay and take immediate steps wherever necessary to have the pending appeals disposed of, as far as possible within a period of one month, even if it is required to relieve the appellate authority of his normal work so as to enable him to dispose of the appeals within one month. This review where appropriate should be done by Divisional Railway Manager in Divisions and by Heads of the Department in Headquarters. Where the appellate authority is the General Manager himself, he should submit the statement of such pending appeals as are likely to be delayed beyond one month together with the reasons of such delay to the Railway Board for information of such action as the Board may consider necessary." (emphasis added)

4. Where the Rule clearly mandates for taking ^{action} ~~action~~ in a particular manner, no discretion is left with the authority except to act in the same manner as law is well settled that there is nothing like unfettered discretion or unaccountable ^{action} ~~action~~. The ^{He} Hon'ble Apex Court have held in the case of Railway Board and Another Vrs. P.R.Subramaniam, AIR 1978 SC 284 that instructions/circulars/guidelines issued by the Railway Board are

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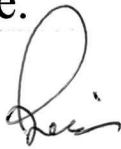
statutory in nature and statutory order is binding on the subordinate concerned.


5. In view of the above we do not accept the contentions advanced by Mr.Rath that the Railway Board's instruction is advisory in nature rather than statutory in character. Be that as it may ^{as} it is the specific case of the applicant that no decision has been communicated on his appeal dated 29.4.2013, in view of the Railway Board's guidelines, quoted above, if no decision has been taken on the appeal of the applicant dated 29.4.2013 till date and communicated in the meantime, the Respondent No.1 is directed to take a decision on the appeal of the applicant dated 29.4.2013 and communicate the result thereof in a well-reasoned order to the Applicant in a reasoned/speaking order within a period of 30(thirty) days from the date of receipt of copy of this order.

Alor

6. In the result, without expressing any opinion on the merit of the matter, this OA is disposed of at this admission stage with the observation and direction made above. No costs.

7. As prayed for by Mr.Das, Learned Counsel for the Applicant, copy of this order along with OA be sent to the Respondent No.1 for compliance at his cost for which he undertakes to furnish the required postal requisite within three days hence.


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


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