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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.**

Original Application No. 224/2006

Date of Order: 27.03.2009

Hon'ble Dr. Ramesh Chandra Panda, Administrative Member.

Parmeshwar, S/o Shri Amer Chand aged 50 years, Motor Driver,
North Western Railway, Workshops, Jodhpur, R/o L. 12, Railway
Colony Bhagat Ki Kothi Jodhpur.

.. Applicant

(Rep. By Mr. Vijay Mehta : Counsel for the applicant).

Versus

1. Union of India,
through General Manager,
North Western Railway
Jaipur.
2. Works Manager,
North Western Railway workshops,
Jodhpur.
3. Deputy C.M.E.
North Western Railway Workshops,
Jodhpur.

... Respondents.

(Rep. By Mr. Manoj Bhandari : Counsel for the respondents).

ORDER

Per Dr. Ramesh Chandra Panda, Administrative Member.

Shri Parmeshwar working as driver in North Western Railway Workshop Jodhpur, the applicant herein, was issued a charge sheet on 08.02.2006 alleging that he abused and misbehaved with his colleague Shri Ayub Khan. The Disciplinary Authority considered his representation dated 11.04.2006 and held the charges as proved and imposed a penalty of withholding one increment without cumulative effect vide order dated 11.04.2006. The

Ramesh Chandra Panda



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applicant filed an appeal against the said order which was considered by the Appellate Authority and vide his order dated 02.06.2006 the Appellate Authority rejected the appeal confirming the penalty imposed on him by the Disciplinary Authority. Aggrieved by both the orders of Disciplinary and Appellate Authorities, the applicant has, in this O.A challenged both the orders and prayed to quash and set aside the order of the Disciplinary Authority dated 11.04.2006 (**Annex. A/1**) and the Appellate Authority's order dated 02.06.2006 (**Annex. A/2**).

2. I have heard Shri Vijay Mehta, learned counsel for the applicant and without going into the details of the case he raised a point that the applicant has not been heard either by the Disciplinary Authority or by the Appellate Authority. He submitted that the applicant had filed his representation beyond the time prescribed by the Disciplinary Authority. Though the applicant's representation was received before the order was passed, the Disciplinary Authority did not take into account the representation given by the applicant and decided the case ex-parte. Further the applicant has visited 2 to 3 times the Appellate Authority which has been mentioned in his letter addressed to the Appellate Authority. But his was not granted any personal hearing and rejected the appeal. Without giving him an opportunity of personal hearing in the matter of disciplinary case, he contended that both Disciplinary and Appellate Authorities have erred and violated the principles of natural justice. In support of his claim that the Disciplinary and the Appellate Authority should have given the applicant an opportunity of hearing in person even if the punishment was minor,

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he relied on an order of this Tribunal in OA No.223/2003 dated 09.04.2002 between **Gopal Lal vs. UOI and ors.**

3. On the contrary Shri Manoj Bhandari learned counsel for the respondents very strongly objected to the contentions raised by the leaned counsel for applicant. He submitted that the Railway Servants (Discipline and Appeal) Rules 1968, do not provide any personal hearing either by the Disciplinary or by the Appellate Authority in case of minor penalty proceedings. In the present case minor penalty proceedings was initiated and charges were framed against him and representation was called for by the Disciplinary Authority. But the applicant did not submit his representation, as a result of which the Disciplinary Authority passed an order without waiting for the representation. Subsequently the applicant has submitted his representation and that is how his representation was not taken into consideration. In his letter addressed to the Appellate Authority the applicant admits that he wrote his representation but he forgot to submit the same in view of his mental condition due to an accident. [**Page 23** of the paper book-R.3] Shri Bhandari therefore contended that the application does not have any merit and he relied on the following case laws in support of his contention that for minor penalty proceedings personal hearing is not required and that would not violate the principles of natural justice and therefore this application is fit for dismissal. Reliance was placed on the following

1-1996 (7) SCC 509 – State of Tamil Nadu & Anr. Vs. S. Subramanian.

2- 1995 (6) SCC 749 B. C. Chaturvedi Vs. U.O.I.

3-1994 (6) SCC 302 – State of Tamil Nadu Vs. T.V. Venugopalan.

By order



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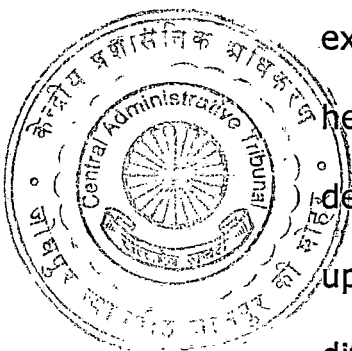
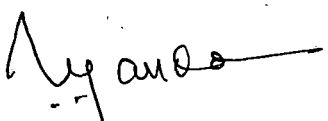
4-1994 (3) SCC 357 - Union of India Vs. Upendra Singh.

5-1995 (1) SCC 216 - Govt. of T.N. Vs. A. Rajapandian.

6-2008 (2) SCC 41 - U.P. State Sugar Corporation LTD & others Vs. Kamal Swaroop Tondon.

7-AIR 1990 - 10 - S.S. Rathore Vs. State of Madhya Pradesh.

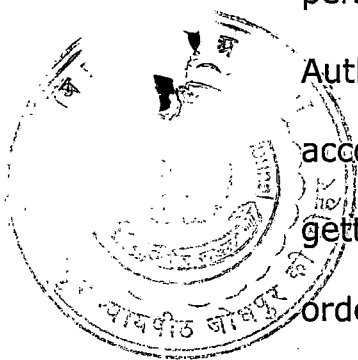
4. After hearing the rival contentions, I find that the applicant was given an opportunity to submit his representation to the Disciplinary Authority. 10 days time was given for the same. He could not submit his representation within that period and the Disciplinary Authority as per rules decided the case and imposed the punishment. The representation made by the applicant was received him subsequent to the decision taken on the disciplinary proceedings. Further the appeal filed by the applicant was considered by the Appellate Authority and decided. The Railway Servants (Discipline and Appeal) Rules, 1968 does not provide anywhere the provision of giving an opportunity of being heard either by the Disciplinary Authority or by the Appellate Authority. But it is to be noted that the applicant has attempted to meet the Appellate Authority 2 or 3 times as per his letter but he could not succeed to represent his case. This aspect has not been disputed by the respondents. It is but natural that the applicant could have explained his position and stand to the Appellate Authority which he could not to the Disciplinary Authority. I have gone through the decisions of the Honourable Apex Court and this Tribunal relied upon by the parties and find the facts in many of those cases are different from the present OA and may not be fully applicable. Since I am not considering the OA on merits, I am therefore not examining the relevance or otherwise of the relied upon cases.

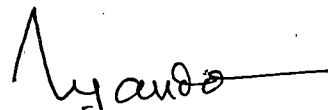


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5. I, therefore, feel that though the orders passed by both the Disciplinary Authority and Appellate Authority are as per rules and do not violate any principles of natural justice but denial of an opportunity sought for by the applicant before the Appellate Authority seems to have caused certain positive prejudice to the applicant. Hence without going deep into the matter and without considering the merits of the case, I find that it would be proper in the interest of Justice, if the Appellate Authority provides the applicant an opportunity of personal hearing and submits fresh representation to the Appellate Authority who will take fresh look at the appeal of the applicant after giving him personal hearing.

6. The O.A is therefore allowed only to the limited extent that the order dated 02.06.2006 Annex. A/2 passed in appeal shall stand quashed and set aside and the Appellate Authority shall decide the appeal afresh after giving reasonable opportunity of personal hearing to the applicant in this case. The Appellate Authority is therefore directed to decide the appeal by taking into account the observations made above and according to law without getting biased or prejudice d and pass a reasoned and speaking order on his appeal within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.




[Dr. Ramesh Chandra Panda]
Administrative Member.

Jsv.

copy received
G. D. M.
20/2/19
for names Bhandari

Heck
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Part II and III destroyed
in my presence on 8/2/15
under the supervision of
section officer () as per
order dated 07/07/15

Section officer (Records)