

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Reserved on 01.07.2014.

Pronounced on 15th July 2014.

Original Application No.259/2009

Hon'ble Shri Navneet Kumar, Member (J)

Hon'ble Ms. Jayati Chandra, Member (A)

Prakash Chandra, aged about 60 years S/o Sri Lautu Ram, R/o 556/75/GA/3, Sujanpura, Alambagh, Lucknow.

-Applicant.

By Advocate: Sri A. Moin.

Versus.

Union of India through

1. General Manager, Northern Railway, Baroda House, New Delhi.
2. Chief Works Manager, Northern Railway, Loco Workshop Charbagh, Lucknow.
3. Deputy Chief Mechanical Engineer (Diesel), Northern Railway, Loco Workshop, Lucknow.

-Respondents.

By Advocate: Sri S. Verma.

Alongwith

Original Application No.353/2009

K.K. Meo age about 58 years S/o Sri Late Shadi Khan R/o Type IV 36-A, New Diesel Colony, Langra Pathak, Manaknagar, Lucknow.

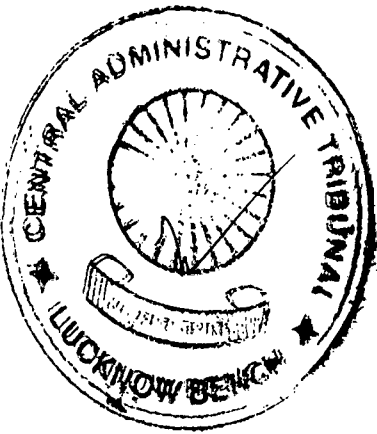
-Applicant.

By Advocate: Sri A. Moin.

Versus.

Union of India through

1. General Manager, Northern Railway, Baroda House, New Delhi.
2. Chief Works Manager, Northern Railway, Loco Workshop Charbagh, Lucknow.



3. Deputy Chief Mechanical Engineer (Works),
Northern Railway, Loco Workshop, Lucknow.

-Respondents.

By Advocate: Sri B.B. Tripathi.

Alongwith

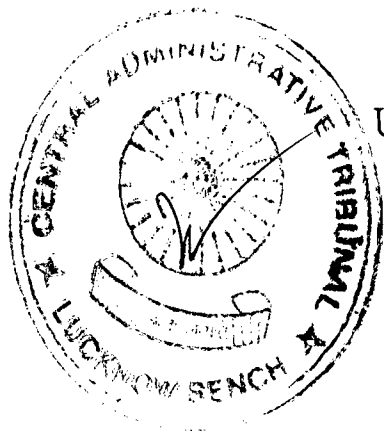
Original Application No.359/2009

Shyam Lal, aged about 56 years S/o Shri Doodh Nath,
resident of 51/Chha/114, New Sardarikhera, Alambagh,
Lucknow.

-Applicant.

By Advocate: Sri Praveen Kumar.

Versus.



Union of India through

1. General Manager, Northern Railway, Baroda House,
New Delhi.
2. The Chief Works Manager, Northern Railway, Loco
Workshop Charbagh, Lucknow.
3. The Deputy Chief Mechanical Engineer, Northern
Railway, Loco Workshop, Charbagh, Lucknow.

-Respondents.

By Advocate: Sri S. Verma.

Alongwith

Original Application No.369/2009

Himnalini Sinha, aged about 59 years W/o Late Shri
Brijesh Kumar Sinha, resident of -339, Katra Khuda Yaar
Khan, Saddatganj, Lucknow.

-Applicant.

By Advocate: Sri Praveen Kumar.

Versus.

Union of India through

1. The General Manager, Northern Railway, Baroda
House, New Delhi.
2. The Chief Works Manager, Northern Railway, Loco
Workshop Charbagh, Lucknow.

3. The Deputy Chief Mechanical Engineer (Diesel),
Northern Railway, Loco Workshop, Charbagh,
Lucknow.

-Respondents.

By Advocate: Sri B.K. Singh holding brief for Sri M.K. Singh.

Alongwith

Original Application No.401/2009

Krishna Kumar Misra, aged about 52 years S/o Late
Chandra Bhal Misra, R/o C-5146, Sector 12,
Rajajipuram, Lucknow.

-Applicant.

By Advocate: Sri Praveen Kumar holding brief for Sri M.P. Singh.

Versus.

Union of India through

1. General Manager, Northern Railway, Baroda House,
New Delhi.
2. Chief Works Manager, Northern Railway, Loco
Workshop Charbagh, Lucknow.
3. Deputy Chief Mechanical Engineer (Works),
Northern Railway, Loco Workshop, Lucknow.

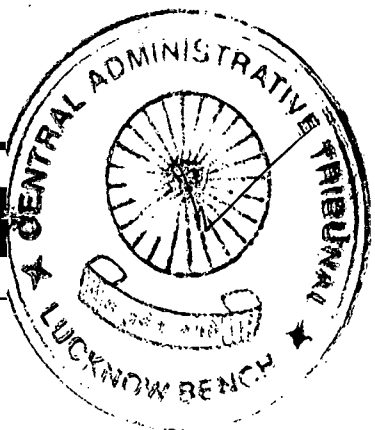
-Respondents.

By Advocate: Sri S. Verma.

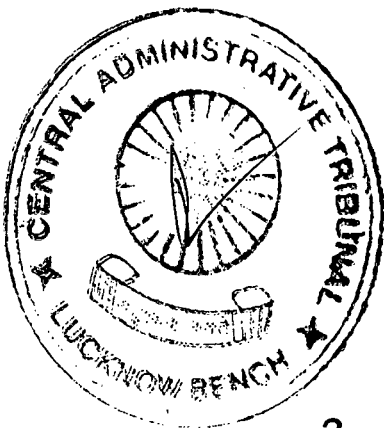
ORDER

By Ms. Jayati Chandra, Member (A)

All these cases were argued by the learned counsel for applicants together on the ground that the legal issue involved in all the cases is same. However, in this judgment, commonly delivered separate analysis of facts in each case is being made and whenever so warranted, distinction is recorded.



2. The facts of O.A.No.259/2009 are that the applicant was initially appointed on 25.08.1971 as Skilled Machine Man under the respondents. A charge sheet dated 22/11/2005 (Annexure-A-3) was served upon the applicant and an enquiry was conducted against the applicant. Thereafter, the applicant was served with the penalty order dated 03.03.2009 (Annexure A-2) by which he was awarded the punishment of reduction of one stage lower than the grade currently drawn for a period of 2 months (upto 31.5.2009) with no cumulative effect and recovery of Rs.5 Lacs. The applicant filed an O.A.No.109/2009, which was disposed of with the following directions:-



"This O.A. is disposed of after hearing both the parties with an observation that in case applicant prefers an appeal within the stipulated period, which is available to him, the appellate authority shall consider the same and pass a reasoned and speaking order within a period of two months from the date of receipt of a copy of this order. Till then minor penalty or recovery imposed upon applicant shall be kept in abeyance till a final order is passed. No costs."

3. In compliance there, the appellate authority passed the following order:-

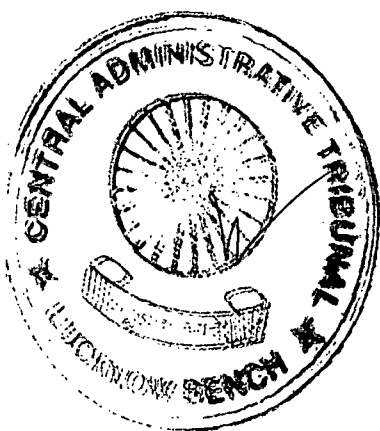
"I have gone through the appeal dt.30.3.09/13/4/09 submitted by Prakash Chand SE & found that he has not mentioned any new facts in his appeal. It is repetition of Statement which was given during the course of enquiry as well as in defence reply. It has been proved beyond doubt in the enquiry that he managed to issue material without taking proper safe guard and due to his negligence railway had suffered pecuniary loss of for which he is proportionately held responsible.

The order passed by the disciplinary authority is not appropriate keeping in view the misconduct committed by the employee and this is a fit case to enhance the penalty. However, a lenient view is being taken as the employee is on the verge of retirement.

It is therefore decided that punishment imposed by the disciplinary authority will stand and appeal is therefore rejected."

अतः आप पर पूर्व में प्रदत्त शक्ति को यथावत रखते हुए अपील रिजेक्ट की जाती है।

4. The facts of O.A.No.353/2009 are that the applicant was initially appointed on 25.01.1978 as Apprentice Mechanic Chargeman 'B' (now Junior Engineer) under the respondents. A charge sheet dated 22/11/2005 (Annexure-A-3) was served upon the applicant and an enquiry was conducted against the applicant. Thereafter, the applicant was served with the penalty order dated 03.03.2009 (Annexure A-1). He was awarded with the punishment of stoppage of increment for three years with cumulative effect and recovery of Rs.5 Lakhs. The applicant filed an O.A.No.105/2009, which was disposed of with the following directions:-



"This O.A. is disposed of after hearing both the parties with an observation that in case applicant prefers an appeal within the stipulated period, which is available to him, the appellate authority shall consider the same and pass a reasoned and speaking order within a period of two months from the date of receipt of a copy of this order. Till then minor penalty or recovery imposed upon applicant shall be kept in abeyance till a final order is passed. No costs."

5. The applicant gave his appeal to Appellate Authority under Rule-17 of Railway Servant (Discipline & Appeal) Rules, 1968 on 10.04.2009, who was passed on 13.08.2009, which reads as follows:-

"I have gone through the appeal submitted by Sh. K.K. Meo against the order of disciplinary authority and have come to the conclusion that Sh. K.K. Meo has signed the demand letter, gate pass and other relevant paper which was not supposed to be signed when proper authority i.e. SSE was present on these dates. The action on his part to sign the document point towards his involvement in issue of railway material on fake demand generated from TKD Shed. He failed to maintain proper safe guard in issue of railway material.

In view of the above it is not acceptable that he was only chance signatory on gate passes and other papers.

Keeping in view the above fact I do not find any reason to reduce the punishment imposed by Disciplinary authority, and appeal is therefore rejected.

अतः आप पर पूर्व में प्रदत्त शास्ति (तीन वर्ष तक भावी वेतनवृद्धियों सहित रोके जाने की तथा रु० पाँच लाख की रिकवरी) समसंख्यक पत्रांक दिनांक 03-03-09 को यथावत रखा जाता है तथा अपील रिजेक्ट की जाती है।

6. The facts of O.A.No.359/2009 are that the applicant was initially appointed in July 1979 as Apprentice Mechanic Charge Man -B under the respondents. A charge sheet dated 25/01/2006 (Annexure-A-2) was served upon the applicant and an enquiry was conducted against the applicant. The applicant submitted his explanation and denied the allegations. The enquiry reported was submitted on 25.08.2008. Thereafter, the applicant was served with the penalty order dated 02.01.2009 (Annexure A-1) imposing a punishment of withholding of increments of pay for a period of three years with cumulative effect and in its addition recovery of Rs.5 lakhs. Thereafter, the applicant preferred an appeal dated 24.02.2009 (Annexure A-5) which is still pending for consideration. As the penalty order covered both miner and major penalties, he filed an O.A.No.136/2009, which was disposed of by this Tribunal on 26.03.2009 (Annexure A-6) with the following directions:-

"When the appeal is still pending, issuing of any direction in respect of the claim of the applicant is not maintainable at this stage and as such, the O.A. is disposed of with a direction to the respondent No.2 to dispose of the pending appeal dated 24.2.2009 (Annexure-5) within a period of two months from the date of supply of copy of this order. In the meantime, the authorities are directed not to implement the impugned punishment order dated 02.01.2009. No costs."

7. The Appellate Authority was passed on 13.08.2009, which reads as follows:-



"I have gone through the appeal submitted by Sh. Shyam Lal SSE/DEMU against the order of the Disciplinary authority and find that charges framed against him were serious in nature, During the course of enquiry every aspect was examined by the Enquiry Officer and it was proved beyond doubt that Sri Shyam Lal was involved in issue of railway material with connivance of Sh. M.L. Arora the then SSE of TKD. Shed & Sh. Brijendra Kumar Kh of TKD. It is not acceptable that Smt. Himnalini Sinha prepared papers and got the signature of Shyam Lal on false demand generated from TKD Shed. Even if it was so, then he should have checked before signing the papers which was his primary duty and due to his negligence railway has suffered loss of material costing over Rs.26 Lacs.

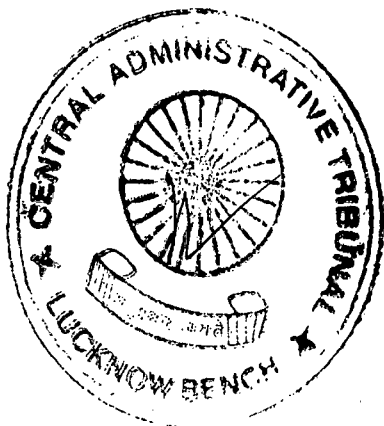
Smt. Himnalini Sinha's role is only preparing papers on the basis of instruction given to her by supervisors/Officers and it is unfortunate that these documents are missing from record but this does not mean that the offence has not been committed.

As regard delivery of material is concerned the existing procedure might have been followed on false documents which also does not prove that Sri Shyam Lal was not involved in whole episode.

Keeping in view the above facts I do not find that the D.A. has not considered the above facts before imposition of penalty and I do not find any justification to reduce the penalty.

The appeal is therefore rejected.

अतः आप पर पूर्व में प्रदत्त शास्ति 03 वर्ष तक भावी वेतनवृद्धियों सहित रोके जाने की तथा रु० पाँच लाख की रिकवरी समसंख्यक पत्रांक दिनांक 02-01-09 को यथावत रखा जाता है तथा अपील रिजेक्ट की जाती है।



8. The facts of O.A.No.369/2009 are that the applicant was initially appointed on compassionate ground on account of death of her husband on the post of Sr. Clerk w.e.f. 31.08.1991 under the respondents. A charge sheet dated 17/11/2005 (Annexure-A-2) was served upon the applicant and an enquiry was conducted against the applicant. Thereafter, the applicant was served with the penalty order dated 04.03.2009 (Annexure A-1) as the penalty order covered both minor and major penalties, he filed an O.A.No.143/2009, which was disposed of with the following directions:-

"In view of the above circumstances, OA is disposed of with an observation that in case the applicant prefers an appeal against the impugned order dt.04.03.2009 within the stipulated time, the appellate authority is

directed to consider and dispose of the same within a period of two months from the date of supply a copy of this order, with a reasoned order as per rules. Till then the minor penalty to recovery imposed upon applicant shall be kept in abeyance. No costs."

9. The applicant gave his appeal against the order of the disciplinary authority on 08.04.2009 (Annexure-7) on which the following order was passed on 12.08.2009, which reads as follows:-

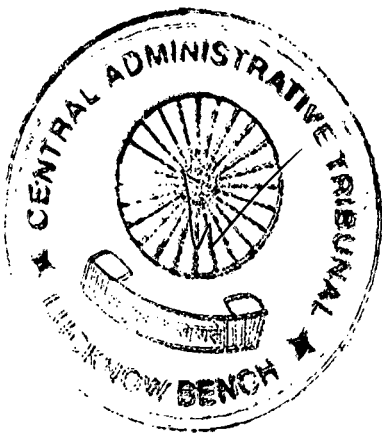
"I have gone through the appeal submitted by Smt. Himnalini Sinha and come to the conclusion that Smt. Sinha Hd. Clerk was solely responsible for preparing documents of issue of material on fake demands generated by Dsi shed TKD in fictitious name of Sri Ram Kumar and handed order to Sh. Brij Mohan Kh of TKD. Material issued on these fake document was never deposited at TKD Shed. It is established that Smt. Sinha was known to Sh. Brij Mohan Kh even though she prepared documents in the fictitious name of Sri Ram Kumar and documents were handed over to Sh. Brij Mohan. This act of Smt. Sinha shows involvement in issue of railway material on the fake demand generated in the name of TKD Shed.

Smt. Sinha is working as of Hd. Clerk since long and was aware of the fact that how demands from other unit are to be dealt and was responsible to keep the records but she failed to do so. These documents have been misplaced deliberately to hide the crime and to provide help to other responsible persons.

Keeping in view of the above facts I do not find any reason to reduce the punishment imposed by the DA and therefore appeal is rejected.

Accordingly the punishment of WIP three years and Rs. Two Lac recovery is imposed by the DA vide this office order even No. dated 04.3.2009 will no change."

10. The facts of O.A.No.401/2009 are that the applicant was initially appointed in the year 1976 on the post of Diesel Cleaner under the respondents. A charge sheet dated 23/11/2005 (Annexure-A-4) was served upon the applicant and an enquiry was conducted against the applicant. Thereafter, the applicant was served with the penalty order dated 03.03.2009 (Annexure-1) as the penalty order covered both minor and major penalties, he



filed an O.A.No.142/2009, which was disposed of with the following directions:-

"In view of the above circumstances, OA is disposed of with an observation that in case the applicant prefers an appeal against the impugned order dt.03.03.2009. within the stipulated time, the appellate authority is directed to consider and dispose of the same within a period of two months from the date of supply a copy of this order, with a reasoned order as per rules. Till then the minor penalty to recovery imposed upon applicant shall be kept in abeyance. No costs."

11. The applicant filed his appeal on 15.04.2009 on which the following orders were passed by the appellate authority on 12.08.2009, which reads as follows:-

"I have gone through the appeal submitted by Sri K.K. Mishra Tech. Gr.I against the orders of DA and have come to the conclusion that Sri Mishra while working in the spare cell prepared gate pass, adjustment name and issue note, which ought to have not been made by him as this was not his duty. Even if he prepared such documents no orders passed by supervisor, there were on a fake demand generated by Dsl Shed/TKD. The proper safe guard was to be maintained which he failed to. This shows his involvement in issue of railway material in the name of Dsl Shed /TKD while the material never reached there.

Keeping in view of the above fact I do not find any reason to reduce the penalty imposed by the Disciplinary authority.

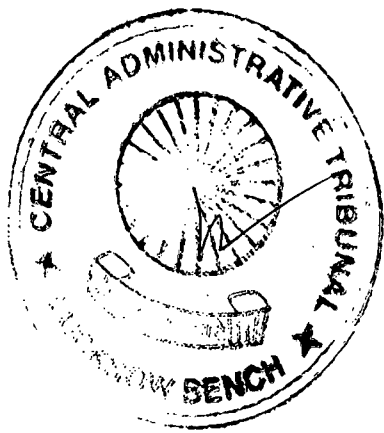
The appeal is therefore rejected.

अतः आप पर पूर्व में प्रदत्त शास्ति (तीन वर्ष तक भावी वेतनवृद्धियों सहित रोके जाने की तथा रु० एक लाख पच्चीस हजार की रिकवरी) समसंख्यक पत्रांक दिनांक 03-03-09 को यथावत रखा जाता है तथा अपील रिजेक्ट की जाती है।



12. The orders of the Disciplinary Authority and the Appellate Authority in all the cases have been challenged on the ground that the charge sheet was only issued to the applicant/s whereas, the persons more responsible for the alleged loss to Railways such Assistant Workshop Manager at Loco shop have been omitted from the disciplinary proceedings. The entire episode i.e. the alleged conspiracy to defraud the Railways by supplying material to Sri Brij Mohan from the Workshop for Diesel Loco Shed, Tuglaqabad was interrogated into by the CBI

and nothing was found against the applicant/s. The Appellate Authority has failed to take into account the judgment of Hon'ble Supreme Court in the case of Union of India & Another vs. S.C. Parashar [(2006) 2 UPLBEC 1429] that two penalties one minor and one major passed by the disciplinary authority cannot be upheld by the appellate authority. Moreover, the appellate authority has fail to take into consideration Rule 22 (2) (b) of the Railway Servants (Discipline & Appeal) Rules, 1968 to indicate whether the finding of the disciplinary authority are warranted by evidence of record inasmuch as he has failed to discuss the evidence on record or not. In fact the appellate authority has failed to discuss the evidence on record.



13. The respondents have filed their Counter Affidavit by which they have upheld the action of the Appellate Authority inasmuch as the orders are based on logical appreciation of the points raised in the respective O.As. Further, they have stated that although charge sheet was issued for major penalty (para-11 of CA in O.A.No.259/2009) the punishment awarded by the Disciplinary Authority fall under minor category. The Railway Board vide letter No.E(D&A)62 RGE-26 dated 17.05.1962 [Northern Railway Printed Serial No.1613] had deliberated over the issue whether the penalty of recovery from pay on account of loss caused to the Government can be imposed in addition to another penalty and had decided that in such type of cases it will be open to the competent authority to inflict, in addition. to the penalty of recovery from the charged officer any of the penalties specified in Clause (i) to (vi) of Rule 6 of Railway Servants (Discipline & Appeal) Rules, 1968. This

decision has also been supported by the Tribunal in, **O.A.No.570/1997: Gyan Prakash vs. Union of India & Others** decided on 20.01.2004.

14. The applicants have filed Rejoinder to the Counter Affidavit filed by the respondents reiterating the crux of the issue as discussed above.

15. We have heard the learned counsel for both the parties and seen the records.

16. The **Hon'ble Apex Court in the case of B.C. Chaturvedi v. U.O.I. & Ors. reported in 1995(6) SCC 749** again has been pleased to observe that "the scope of judicial review in disciplinary proceedings the Court are not competent and cannot appreciate the evidence." Much of the case made out against the order of the disciplinary authority relates re-appreciation of the enquiry held against the charged officials and the decision arrived at by the Disciplinary authority. The Rule-22 of the Railway Servants (Discipline & Appeal) Rules, 1968 lays down the points to be looked into by the Appellate Authority. Rule-22 reads as follows:-



"22. CONSIDERATION OF APPEAL:

(1)

(2) *In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rules, the appellate authority shall consider-*

(a) *whether the procedure laid down in these rules have been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;*

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders-

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the cases:

Provided that-

(i) the Commission shall be consulted in all cases where such consultation is necessary;

(ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in Clauses (v) to (ix) of Rule 6 and in inquiry under Rule 9 has not already been held in the case, the Appellate Authority shall, subject to the provisions of Rule 14, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 14 and thereafter, on a consideration of the proceedings of such inquiry and make such orders as it may deem fit:

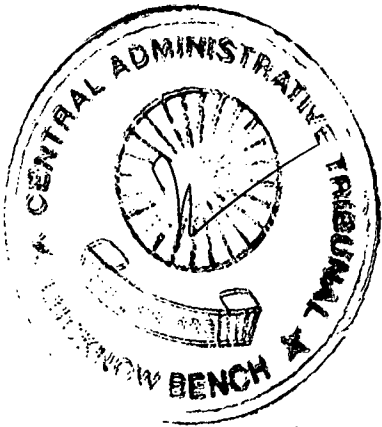
(iii)

(iv)

(3)"

Similar procedure has been prescribed under Rule 27 (2) of CCS (CCA) Rules, 1965. Moreover, in this particular case by an earlier order passed in the earlier O.As. the Respondent No.2 in his capacity of appellate authority was required to consider all the grounds of appeal made by the applicants.

17. In this case the Appellate Authority has passed the orders already quoted in the preceding pages. These orders are examined in the light of the Rule 22 of Railway Servants (Discipline & Appeal) Rules, 1968 and in the



light of various pronouncements of the Hon'ble Supreme Court and High Court.

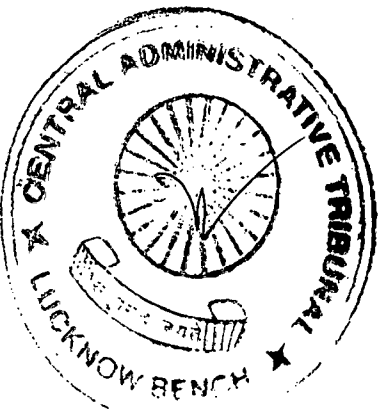
18. The **Full Bench of the Hon'ble Punjab & Haryana High Court in C.W.P.No.4929/1986 Ram Niwas Bansal vs. State Bank of Patiala & Another** had gone into the issue of role to be played by the appellate authority in detail and had held that the appellate authority has keep in mind three points these are;

(1). *There should be proper application of mind and scrutiny of records before it, by the appellate authority to enable it to record its satisfaction in terms of the rules.*

(2). *It should pass a speaking order which would at least prima-facie show that the authority concerned has applied its mind to the various contentions or points of determination raised before it. Further that it has particularly examined whether the penalty imposed is excessive and /or inadequate.*

(3). *The scope of applicability of the maxim Audi Alteram Partem before the appellate authority depending upon the language of relevant regulation/rule.*

19. It is very clear from the order passed by the Appellate Authority that none of these principles as also the provisions as provided under Rule 22 of Railway Servants (Discipline & Appeal) Rules, 1968 has been observed by him. Moreover, as the legal combination of major and minor penalties was raised in the earlier OAs, the appellate authority ought to have separately analyzed the punishment/s awarded and given his views/conclusions in the light of the specific Railway Servants (Discipline & Appeal) Rules. Therefore, these orders deserve to be set-aside and are accordingly set-aside. The matter is remanded back to the Appellate Authority to decide afresh on the representations made



by the applicants against the order of Disciplinary Authority dated 03.03.2009 in O.A.No.259/2009, O.A.No.353/2009 and O.A.No.401/2009 and order dated 02.01.2009 in O.A.No.359/2009 and order dated 04.03.2009 in O.A.No.369/2009 respectively in the light of all the issues raised by them and in the light of the statutory rules and regulations of the department. This exercise shall be completed within a period of four months from the date of receipt of the copy of this order.

No order as to costs.



GC
(Ms. Jayati Chandra)
Member (A)

SC
(Navneet Kumar)
Member (J)

OK

Amit/-

R. Singh
Section Officer
Central Administrative Tribunal
Lucknow Bench
Lucknow
18-7-2014