

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

OA No.989 of 2012

Reserved on: 19 /09/2016
Pronounced on: 6 :10.2016

Present:

THE HON'BLE MR. JUSTICE VISHNU CHANDRA GUPTA, JUDICIAL MEMBER
THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

.....

Sri Raja Ray, son of Late Pramatha Bhusan Ray, aged about 56 years, working as Ex Additional General Manager (Civil) R.I. Division, RITES Ltd, Kalighat Metro Station Complex, 2nd Floor, 156, S.P.Mukherjee Road, Kolkata-700 026, residing at Flat No.336, Block III, Rail Vihar, Kolkata-700 107.

.....Applicant

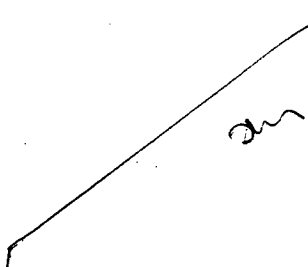
For the Applicant: Mr.S.K.Datta, Counsel

-Versus-

1. RITES Ltd, represented through its Chairman having its Corporate Office at RITES Bhawan, No. 1, Sector-29, Gurgaon-122 001.
2. The Chairman, RITES Ltd., RITES Bhawan, No.1, Sector-29, Gurgaon-122 001.
3. The Managing Director, RITES Bhawan, No.1, Sector-29, Gurgaon-122 001.
4. Sri Kamal Kumar Mitra, retired Financial Advisor & Chief Accounts Officer, South Eastern Railway & Inquiry Officer, 15/2, Sarat Bose Road, Kolkata-700 020.

.....Respondents

For the Respondents: Mr.M.K.Bandyopadhyaya, Counsel.



ORDER

MS. JAYA DAS GUPTA, AM:

The Applicant, Sri Raja Ray, has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"a. An order quashing and/or setting aside the charge memo dated 16.11.2008 and the entire departmental inquiry and the proceeding held thereunder;

b. An order quashing and/or setting aside the report of the Inquiry Officer dated 14.6.2010 order of the Disciplinary Authority dated 8.6.2011 and the Appellate Order dated 28.12.2011;

c. An order directing the respondents to reinstate the applicant in service with full back wages as well as other consequential benefits;

d. An order directing the respondents to produce/cause production of all relevant records;

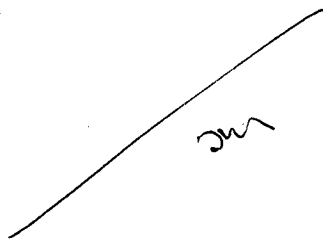
e. Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."
(extracted as such)

2. The case of the Applicant, in brief, is that while he was holding the post of Additional General Manager (Civil), R.I. Division, RITES Ltd., at Kolkata, he was removed from service in pursuance of a disciplinary proceedings initiated against him through Charge Memorandum dated 16.11.2008. There were two articles of charges and the applicant at that point of time was working as Joint General Manager/C/Project Office/Kolkata and

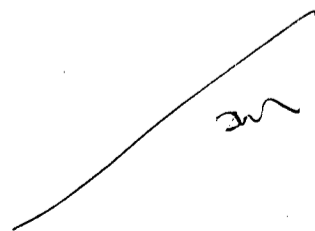
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Convener of Tender Committee during the period 2004 to 2005. The allegation against him was that the applicant committed gross misconduct in the evaluation of tender papers as he failed to follow the instruction/guidelines stipulated in paras 1215 of Railway Engineering Code with ulterior motive to favour and cause undue pecuniary gain to the Contractors. It is the case of the applicant that in the reply submitted by him to the charge memorandum, he has specifically prayed for supplying the certified copy of each of the listed documents as the same was not enclosed to the charge sheet. He has also pointed out that there was no nomenclature and/or assignment known as Convener of the Tender Committee in respect of the tenders which were the subject matters of the Memorandum of charge sheet. But the authorities without supplying him the documents and stating anything on the points raised by him in his reply proceeded with the enquiry. Ultimately, after enquiry, the Disciplinary Authority passed an order of removal from service. He preferred appeal against the said order of punishment but the appellate authority in a cryptic order upheld the order of the Disciplinary Authority. Therefore, he has filed the instant OA seeking the aforesaid reliefs.

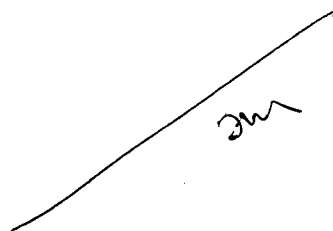
3. The Respondents have filed their reply contesting the case of the applicant. In nut shell, it is the case of the Respondents



that arising out of a Vigilance investigation, disciplinary proceedings for major penalty under Rule 25 of the RITES Ltd (Conduct, Discipline and Appeal) Rules, 1980 were initiated against the applicant by issuing charge Memorandum dated 16.11.2008 for the irregularities committed by him while working at Project Office/Kolkata inasmuch as he failed to follow the instructions/guidelines stipulated in para 1215 of the Indian Railway Engineering Code to ensure that no work or supply is ordinarily entrusted for execution to a contractor whose capability and financial status have not been investigated. It is also the case of the Respondents that when the recommendation of the Tender Committee, where the applicant was the Convener of the Tender Committee, in bids against tender No. 88/OT/DPL/Civil/2002 was put up to the Accepting Authority for acceptance, the Accepting Authority recorded that "Credential in support of 'similar nature of work' should be got verified from issuing authority in case of M/s. Modern Enterprise". Subsequently, Tender Committee in response to the direction of the tender Accepting Authority, in his minutes dated 04.04.2005, stated that "Credential in support of execution of similar nature of work has been verified from the issuing authority i.e. the Managing Director, West Bengal Mineral Development & Trading



Corporation Ltd (A Government of W.B. Undertaking) who has certified as genuine and further recommended for acceptance of his recommendations. It was, subsequently, found that the applicant had connived with the contractor and in spite of the clear instructions of the Tender Accepting Authority it was proved that the so called credential actually turned out to be forged and the applicant being the Convener of the Tender Committee for the tender NO. 88/OT/DPL/Civil/2004 cannot absolve himself from the misconduct for the same. In the case of another tender i.e. M/s. Snehashis Das & Co in Tender No. 70/WPDCL/SAGARDIGHI/Civil/2004, the applicant did not ensure proper verification of credentials and took shelter under the defence that the documents submitted by the Contractor were verified from originals by the Finance Member of the Tender Committee which was rebutted by Shri Snehashis Das & Co himself that the originals did not exist. Subsequently when these documents were got cross checked by the Vigilance Organization for their authenticity they were found to be forged. Thus, the respondents' authorities observed that the applicant being a member of the Tender Committee failed to get the documents verified of M/s. Snehashis Das and Co and because of such misconduct, the work was awarded to an ineligible contractor.



Based on the above allegation, regular enquiry, in accordance with Rules was held giving adequate opportunities to the applicant to defend his case. The IO submitted his report holding the charges, proved copy of which was supplied to the applicant to submit his defence. The applicant had submitted his defence. The Disciplinary Authority considered the disciplinary records, report of the IO and the defence of the applicant and imposed the punishment of removal from service. The applicant preferred appeal. The appeal was duly considered but rejected by the appellate authority. Accordingly, the respondents plead that this case lacks any merit and is liable to be dismissed.

4. The applicant also submitted rejoinder and we have gone through the same.

5. We have heard the learned counsel for both sides and perused the records.

6. There are two article of charges framed against the applicant under Annexure-A/1 dated 16.11.2008 which are set out below:

"Article-I

That Shri Raja Roy, the then JGM/C/Project Office/Kolkata and Convener of TC for Tender No.88/OT/DPL/Civil/2004, while working as such, during the period from 2004 to 2005 committed gross misconduct in as much as Shri Roy failed to follow the instructions/guidelines stipulated in Para 1215 of Railway Engineering Code, to ensure that no work or

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supply should ordinarily be entrusted, for execution, to a contractor whose capability & financial status has not been investigated before hand and found satisfactory.

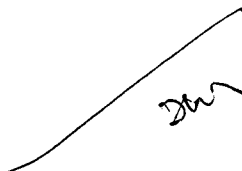
In connivance with the contractor and with a view to favour and cause undue pecuniary gain to the contractor, the said Shri Raja Roy, while evaluating the bids against Tender No. 88/OT/DPL/Civil/2004 failed to get the credentials of M/s. Modern Enterprise verified in accordance with Para 1215 of the Railway engineering Code. The tender Accepting Authority had specifically directed the T.C. to get the credentials of M/s. Modern Enterprise verified. The said Shri Raja Roy followed unusual channels to get the documents submitted by M/s. Modern Enterprise verified and thereby enabled/facilitated it to submit forged documents.

The aforesaid acts of omission and commission on the part of the said Shri Raja Roy resulted in award of work against Tender No. 88/OT/DPL/Civil/2004 to an otherwise ineligible firm M/s Modern Enterprise, who had submitted forged documents.

Article-2

That the said Shri Raja Roy while evaluating Tender No. 70/OT/ WBPDC/ SAGARDIGHI/ CIVIL/ 2004 committed gross misconduct in as much as, Shri Roy failed to follow the instructions/guidelines stipulated in Paras 1215 of Railway Engineering Code that while evaluating the tender documents/credentials to ensure that no work or supply should ordinarily be entrusted, for execution, to a contractor whose capability & financial status has not been investigated before h and found satisfactory.

In connivance with the contractor and with a view to favour and cause undue pecuniary gain to the contractor, the said Shri Raja Roy failed to get the credentials of M/s. Snehashis Das & Co verified in accordance with Para 1215 of the Railway Engineering Code. The aforesaid acts of omission and commissions

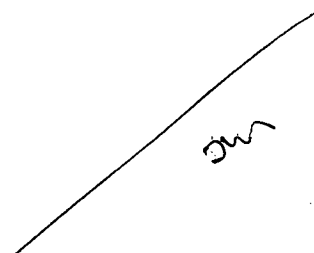


on the part of the said Shri Raja Roy resulted in award of work against Tender NO. 70/OT/WBPDCL/SAGARDIGHI/ CIVIL/2004 to an otherwise ineligible firm M/s. Snehashis Das & Co, who had submitted forged documents.

Thus, Shri Rja Roy, the then JGM/C/Project Office/Kolkata now AGM/C/T&S/Gurgaon by his aforesaid acts of omission and commission has failed to maintain absolute integrity, devotion to duty and acted in a manner prejudicial to the reputation of the company thereby violating Rules 4 (1) (i) and (ii) of RITES Limited (Conduct, Discipline & Appeal) Rules, 1980."

7. It is noteworthy that the fundamental question of evaluation of the credentials of the contractor regarding their credentials and financial status is expected to be looked into by the Members of the Tender Committee and the plea of unawareness of the Instructions/Guidelines stipulated in para 1215 of the Railway Engineering Code is hardly of a matter to be accepted. It was t he personal responsibility of the members of the Committee to know the Instructions/Guidelines stipulated in para 1215 of the Railway Engineering Code; especially, as the applicant was a senior officer being the Joint General Manager of the RITES Ltd at that point of time.

8. A preliminary enquiry was held in this case before the start of regular enquiry. The Presenting Officer who conducted the preliminary enquiry submitted his report on 29.3.2010. Relevant



portion of the said report is extracted hereunder for ready reference:

"Article-I

Provisions laid down in the clause 4.5 of RITES document DOC: C/P/12 Issue No.1 dated 24.01.2003 stipulate that while dealing with the tenders, wherever applicable, guidelines/instructions issued by CTE Organisation in Central Vigilance Commission, Railways, CPWD and RITES Internal Circular with respect to inviting of tenders, receipt and opening of bids, scrutiny of bids, techno commercial evaluation, justification etc should be followed. Despite the clear instructions, Shri Raja Roy, while functioning as Convener Member of TC Pertaining to Tender No. 88/OT/DPL/Civil/2004 failed to follow the instructions laid down under Para 1215 of Railway Engineering Code which provides that no work or supply should ordinarily be entrusted, for execution, to a contractor whose capability and financial status has not been investigated before hand and found satisfactory.

M/s. Modern Enterprise submitted Technical Bid/PQ against Tender No. 88/OT/DPL/Civil/2004. Before M/s Modern Enterprise was declared as eligible in the technical bid, the Tender Committee was required to verify the documents submitted by the aforesaid contractor to ensure its capability and financial status. The Tender Committee failed to verify the authenticity or otherwise of the documents submitted by the firm in accordance with Para 1215 of the Railway Engineering Code.

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Subsequently, when these documents were cross checked for their authenticity or otherwise, the same were found forged/non genuine. Thus, it is observed that Shri Raja Roy as Convener of the Tender Committee failed to get the documents verified and detect ;the submission of forging and declared M/s Modern Enterprise as qualified for technical bid/PQ due to which an otherwise ineligible contractor M/s

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Modern Enterprise became eligible for the commercial bid. Shri Raja Roy, thus failed to maintain absolute integrity, devotion to duty and showed undue favour to M/s Modern Enterprise and put the interests of RITES in jeopardy.

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.....As per the prevailing practice in Govt. Offices the letter for verifying the authenticity of certificate ar sent through Registered post to certificate issuing authority. In this case, Sri Rja Roy deputed one Manager to personally handover the letter to M/s. WBMDTC and the Manager handed over the letter in general dak receiving counter of M/s. WBMDTC. The lapse in this case is, if Sri Raja Roy preferred to send Manager to ensure the fool proof system than by sending the letter trough Registered post, he should have directed the Manager to meet the concerned Officer of M/s. WBMDTC in person and get the confirmation from him. Instead the letter was handed over to general dak counter of M/s. WBMDTC which subsequently facilitated in submission of forged documents. Later on, during the Vigilance investigation by sending the enquiry letter through Registered Post, it was found that certificate submitted by M/s Modern Enterprise was false.

Article -2.

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Subsequently, when these documents were cross checked for t heir authenticity or otherwise, the same were found forged/non genuine. Thus, it is observed that Sri Raja Roy as Convener of the Tender Committee failed to get the documents verified and detect the submission/forging and declared M/s. Snehashis Das & Co as qualified for technical bid/PQ due to which an otherwise ineligible contractor M/s Snehashis Das & Co became eligible for the commercial bid. Shri Raja Rao, thus, failed to maintain absolute integrity, devotion to duty and showed undue favour to M/s. Snehashis Das & Co resulting in undue pecuniary gain to ineligible contractor and put the interests of RITES in jeopardy.

/s/

As per the prevailing practice in Government Offices the letter for verifying the authenticity of certificate are sent through Registered post to certificate issuing authenticity. Instead, the TC recorded that the certificates submitted by M/s. Snehasis Das & Co were verified from the originals brought by the bidder (Please refer Para 10.1 of Exhibit P.11). In this regard it may be mentioned that there are no originals at all and hence the contention of verifying with the originals is not correct. In the answer to question no.4 of cross examination of PW 1 on 29.10.2009 it was stated by PW1 that the credentials submitted with the tender were photocopies and because the credentials were created by forging with the directions/advice of Sri Raja Roy, there are no original documents for the same. Further PW1 added that he explained the situation in which he was compelled to create forged documents in exhibit P/16.

The connivance with the contractor is proved by the complaint of M/s Snehasis Das vide Exhibit P-16. Refer answer given to Q 10 during cross examination of PW 2 on 29.10.2009 and answer to question no. 15 & 16 given by PW 3 during examination on 22.12.2009.

..... "....."

The said preliminary enquiry report was made available to the applicant before start of the final enquiry.

9. The allegation of the applicant is that out of the 16 documents relied on in the charge sheet by the department, four (at Sl. Nos. 8, 9, 11 and 13) documents were not supplied to him.

They are as under:

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8. AGM/Vigilance's letter No.V/ R/CO/2007/ 10/C-378-5 dated 15.10.2007 addressed to M/s. WBMDTC;
9. WBMDTC's letter No. MDTC/CMT/1163 dated 08.11.2007;

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11. Minutes of TC pertaining to Tender No. 70/OT/WBPDCL/SAGARDIGHI/CIVIL/2004 and OT/BR-Misc/2004 (Technical bid);
13. AGM/Vig's letter No. V/R/CO/2007/10/C-378-7 dated 15.10.2007."

But the applicant failed to plead or at least indicate how he has been prejudiced by non supply of those documents. Also at paras 4 (g) of the pleadings the applicant has submitted "copies of relied upon documents were also sent."

10. It is well settled law that the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts. The Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. The court has to see whether there is evidence on record to reach the conclusion that the delinquent had committed a misconduct. However, the said conclusion should be reached on the basis of test of what a prudent person would have done. Further it is trite law that Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which

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the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence.

11. Nowhere in the pleadings nor even before the Disciplinary Authority while submitting the defence to the report of the IO nor even before the appellate authority, the applicant himself has spelt out how he was prejudiced by the non-supply of documents. Also there is no such specific plea about how he has

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been handicapped in his defence by the non-supply of the documents to him. Moreover, this is a case where many of the documents had already been supplied to him. The question is not so much whether the documents as prayed for were given to the petitioner. The question is whether on the basis of the documents produced at the enquiry the case was proved and here the case was adjudicated on the basis of the documents copies of which have been supplied to the applicant.

12. The applicant did not produce any defence witness during the enquiry. We find from the record that after service of the charge memo, the applicant was allowed opportunity to submit his reply and opportunity of engagement of his defence assistant was also allowed to him. The report of the preliminary enquiry as well as the report of the IO was supplied to the applicant giving him opportunity to rebutt the findings of the DA. Also opportunity to cross examine the PWs was allowed to the applicant. In substance, we find that the disciplinary proceedings were conducted and concluded strictly as per rules after giving the applicant adequate opportunity to defend his case.

13. It is also well settled law that the Tribunal while sitting in judicial review cannot substitute penalty except in very rare cases. In this regard we would like to place reliance on the three

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judges Bench of the Hon'ble Apex Court rendered in the case of **B.C.Chaturvedi vs Union of India and others** (AIR 1996 SC 484), relevant portion of which is quoted herein below for ready reference:

"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. **The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty.** If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

19. The Tribunal in this case held that the appellant had put in 30 years of service. He had brilliant academic record. He was successful in the competitive examination and was selected as a Class I Officer. He earned promotion after the disciplinary proceeding was initiated. It would be difficult to get a new job or to take a new profession after 50 years and he is "no longer fit to continue in government service". Accordingly, it substituted the punishment of dismissal from service to one of compulsory retirement imposed by the disciplinary authority. We find that the reasoning is wholly unsupportable. The reasons are not relevant nor germane to modify the punishment. In view of the gravity of the misconduct, namely, the appellant having been found to be in possession of assets disproportionate to the known source of his income, the interference with the imposition of

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punishment was wholly unwarranted. We find no merit in the main appeal which is accordingly dismissed with no order as to costs.

20. Consequently, the appeal of the Union of India is allowed. The order of the Tribunal modifying the punishment is set aside and that of the disciplinary authority is maintained. In the circumstances parties to bear their own costs."

14. In view of the facts and law stated above, we are not inclined to interfere in the manner in which disciplinary proceedings have been conducted or with the order of punishment imposed by the Disciplinary Authority.

However, it is the grievance of the applicant that he had submitted an exhaustive appeal dated 18.07.2011 but the appellate authority without considering all the points raised by him rejected his appeal in a cryptic order. The order of the appellate authority is dated 28.12.2011 which was communicated to the applicant in letter dated 30.12.2011. For the sake of clarity the order of the appellate authority dated 28.12.2012 is reproduced herein below:

"I have carefully gone through the appeal dated 18.07.2011 of Shri Raja Ray, Emp No. 6124, Ex. AGM (Civil)/RI/Kolkata against the penalty of 'removal from service' imposed on him by MD, the Disciplinary Authority, vide order of even No. dated 08.06.2011 and other relevant records/aspects of the case.

I observe from the records that Inquiry Officer has examined the case at length before arriving at his judicious findings that both Articles of charges are

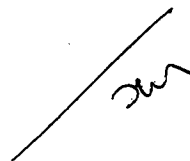
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proved against Shri Ray. The findings of Inquiry Officer are warranted by evidence on record and Shri Ray's contention that prosecution failed to prove his guilt is not justified. It is the duty of Inquiry Officer to find truth of allegations and Presenting Officer assists him in doing that. In these circumstances, the findings of the Inquiry Officer being supported by evidence on record are reasonable, just and hence acceptable. The Disciplinary Authority, while accepting the findings of the Inquiry Officer, as indicated reasons for arriving at the decision. I am convinced that the disciplinary authority has applied its mind before arriving at its decision. The Disciplinary Authority's findings being based on records adduced during inquiry and reasonable, I accept the same. As regards Shri Ray's request for personal hearing, I am of the view that reasonable opportunity of defence has already been given to Shri Ray during inquiry, which was held as per rules. Accordingly, Shri Ray's request for personal hearing is not agreed to.

In view of my aforesaid observations and findings I am of the considered view that Shri Ray has not been able to bring home his point that the charges are not proved against him. Accordingly, I have decided to reject the appeal of Shri Ray being devoid of merit, which is hereby done.

Shri Ray is required to acknowledge receipt of this order in writing."

15. After going through the appeal of the applicant, the aforesaid order of the appellate authority vis-a-vis the rules and operating laws, we feel the order of the appellate authority is not in accordance with Rules and Law. Undoubtedly, the statutory authorities are under the legal obligation to decide the appeal and revision dealing with the grounds taken in the appeal/revision etc., otherwise it would be a case of non-application of mind as



held by the Hon'ble Apex Court in the case of **Vijay Singh v State of Uttar Pradesh and others**, (2012) 5 SCC 242 (P.17).

16. Similarly, allowing opportunity of being heard is a part of compliance of principles of natural justice and, as such, the appellate authority ought not to have denied the applicant the said opportunity on the ground that opportunity of defence was given to the applicant during enquiry. In this context, the decision of the Hon'ble Apex Court rendered in the case of **Ram Chander vs Union of India and others**, (1986) SCC 103 has much relevance. The operative part of the decision is quoted hereunder for ready reference:

"25.Such being the legal position, it is of utmost importance after the Forty-Second Amendment as interpreted by the majority in **Tulsiram Patel [(1985) 3 SCC 398]** case that the appellate authority must not only give a hearing to the government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the authority regarding the final orders that may be passed on his appeal. Considerations of fair play and justice also require that such a personal hearing should be given.

26. In the result, the appeal must succeed and is allowed. The judgment and order of a learned Single Judge of the Delhi High Court dated August 16, 1983 and that of the Division Bench dismissing the letters patent appeal filed by the appellant *in limine* by

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its order dated February 15, 1984 are both set aside, so also the impugned order of the Railway Board dated March 11, 1972. We direct Railway Board to hear and dispose of the appeal after affording a personal hearing to the appellant on merits by a reasoned order in conformity with the requirements of Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, as expeditiously as possible and in any event not later than four months from today."

17. In the aforesaid circumstances, we have absolutely no hesitation in our mind to hold that the order of the appellate authority dated 28.12.2011 communicated in letter dated 30.12.2011 is not sustainable in the litmus test of judicial scrutiny. Hence, the order of the appellate authority, supra, is hereby quashed and the matter is remitted back to the Appellate Authority to consider the appeal of the applicant, afresh, after giving him an opportunity of being heard and intimate the result of such consideration to the applicant in a well reasoned/speaking order meeting/answering all the points raised by him and without being influenced by the discussions/observations made above, within a period of 03(three) months from the date of receipt of a copy of this order.

18. With the aforesaid observation and direction this OA stands disposed of. No costs.

(Jaya Das Gupta)
Member (Admn.)

(Justice V.C.Gupta)
Member (Judl.)