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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**O.A. NO. 2863/2003
M.A.2498/2003**

New Delhi this the 21st day of August, 2006

**Hon'ble Mr. V.K. Majotra, Vice Chairman (A)
Hon'ble Mrs. Meera Chhibber, Member (J)**

Shri Bhawani Lal,
Ex-Material Checking Clerk,
Under Chief Mechanical Engineer,
North Eastern Railway Workshop,
Izatnagar,
Bareilly. ... **Applicant.**

• (By Advocate Shri B.S. Mainee)

Versus

Union of India: Through

1. The General Manager,
North Eastern Railway,
Gorakhpur.
2. The Chief Mechanical Engineer,
North Eastern Railway Workshop,
Izatnagar,
Bareilly. ... **Respondents.**

(By Advocate Shri Rajinder Khatter)

ORDER

Hon'ble Mrs. Meera Chhibber, Member (J)

By this O.A., applicant has challenged order dated 30.11.1977
whereby he was removed from service (page 22) as also order
dated 02.08.2000 passed by the Chief Works Manager, Izatnagar,
Bareilly in compliance with the orders passed by Hon'ble High Court
of Allahabad in Second Appeal No. 139 of 1982 (page 23).



2. The brief facts as narrated by the applicant are that he was given a charge-sheet under Rule 9 of the Railway Servants (D&A) Rules, 1968, on 6.8.1976 (page 24) with the allegation that,

"Shri Bhawani Lal S/o Sh. Jagan Lal M/CT/1238 of TSS IZN(s) is held responsible for shortage of under noted claims as per stock sheet (copy enclosed) which shows his gross neglect & carelessness in discharging his duty.

1. Bearing Brass Bronze 7x4" = (-) 10
(Non. 2R/S)
2. Bearing Brass Bronze 7x3" Non 9 RS (-) = 3
3. S.G.C. 1 Axle bearing 7x4 1/2" (-) = 269
4. S.G.C. 1 Axle bearing 7x4" (-) 75
5. Bronze lump scrap (-) 844 KGS"

It is submitted by the counsel for applicant that this charge sheet was incomplete, inasmuch as neither it contained list of witnesses nor imputation of allegations nor list of any documents. Moreover, this charge sheet was issued by AWM (L)/IZN without any directions from the disciplinary authority. The competent authority did not appoint him as Inquiry Officer yet he conducted the inquiry on his own and gave his report holding the applicant guilty of the charges.

The disciplinary authority gave Memorandum dated 7.10.1977 to the applicant giving him an opportunity to give representation on the proposed penalty, on the basis of evidence adduced during the inquiry (page 29). It is submitted by the counsel for applicant that even this show cause notice was bad in law because it shows that disciplinary authority had already made up his mind to remove him from service before even looking at his representation. He gave a detailed representation (page 27) but without considering his



representation, the disciplinary authority removed the applicant from service vide order dated 30.11.1977 (page 22) by absolutely a non-speaking order. Being aggrieved, applicant filed the appeal on 15.12.1977 to the Dy. Chief Mechanical Engineer (page 36) but that was also rejected vide order dated 15.5.1978 by a non-speaking order (page 39). However, the order of recovery was reduced to Rs.3000/- only.

3. Being aggrieved, applicant challenged both these orders dated 30.11.1977 and 15.5.1978 by filing a suit bearing No.

• 372/1978 in the lower court which was decreed in favour of applicant on 30.8.1979 after quashing both the orders dated 30.11.1977 and 15.5.1978. It was also directed that applicant would be deemed to be working on the same post on which he was working prior to 30.11.1977 with all consequential benefits (page 46 at 53). However, Union of India filed first appeal before the ADJ bearing Civil Appeal No. 165/1980 against the judgment and decree dated 30.8.1979 passed by the former Munsif, Hawali, Bareilly in O.S. No. 372/1978. After discussing all the points, the appeal was dismissed with costs vide judgment dated 14.8.1981 (page 54 at 69). Being aggrieved, Union of India filed second appeal before the Hon'ble High Court of Alahabad. However, since no stay was granted in second appeal, applicant herein filed Execution Application, which was transferred to the Tribunal (TA No. 172/1987) because in the meantime, Central Administrative Tribunal

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had come into existence. The said TA 172/1987 was disposed of by giving the following directions:

"There is no stay order. The offer made by the learned counsel for the applicant is very reasonable, so the applicant may report for duty within 15 days and the respondent will take him on duty and pay the salary according to rule from the date he takes over charge. The payment of salary prior to this date will not be made till the disposal of the second appeal in the Hon'ble High Court and the directions we are giving will also be subject to the final decision of the second appeal by the Hon'ble High Court". (page 71 at 72)

Thereafter, applicant was allowed to join the duties and was paid

- ◆ the salary as well w.e.f. 1.3.1988 till he retired on attaining age of superannuation i.e. 31.5.1996.

4. The second appeal filed by the Union of India was finally decided by the Hon'ble High Court of Allahabad, vide judgment dated 9.4.1999. The second appeal was partly allowed and decree was modified as follows:-

"The suit for quashing the order dated 30.11.1977 is set aside but the decree regarding quashing of the order dated 15.7.1978 is maintained".

The appellate authority was directed to reconsider the appeal after giving opportunity of hearing and to decide the appeal by a reasoned order. It was also stated that since plaintiff has retired, the appellate authority shall also pass consequential orders regarding his salary and post retirement order, if any (page 73 at 77).

5. Pursuant to the said directions, since no order was being passed, applicant gave a representation to decide his appeal

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whereupon respondents passed order dated 2.8.2000 (page 23) but unfortunately once again a non-speaking order was passed inasmuch as his appeal was not even taken into consideration, nor applicant was given any hearing before passing the said order nor the evidence which had come on record was discussed by the appellate authority nor any order was passed with regard to his salary or other retiral benefits. Counsel for the applicant thus submitted that not only order dated 2.8.2000 is liable to be quashed but even the order passed by disciplinary authority is liable to be quashed.

6. On the question of limitation, counsel for applicant submitted that after the second appeal was decided, the Additional District Judge once again opened the appeal even though directions were given to the appellate authority by the Hon'ble High Court of Allahabad and not to the appellate court. However, final orders were passed by the Additional District Judge only, on 29.01.2002 wherein it was made clear that no directions were given to the Additional District Judge for reopening the case. In case applicant is not satisfied by the orders passed by the appellate court, it is open to the applicant to take recourse to the legal proceedings in accordance with law (page 83 at 85). It is stated by the applicant that it is thereafter, that applicant gave a revision petition to the General Manager on 28.4.2002 (page 86) but since no reply was given to the applicant, therefore, he had no other option but to file the present O.A.

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7. Applicant has also filed MA 2498/2003 also seeking condonation of delay in filing the O.A., on the ground that till 29.1.2002, matter was pending in the court of ADJ. Thereafter, he filed revision petition on 28. 4. 2002. There has been a short delay in filing the present O.A. but that is on account of old age and poor health of the applicant and not on account of carelessness and negligence on the part of the applicant, therefore, delay may be condoned.

8. Respondents, on the other hand, have opposed this O.A.

They have taken preliminary objections to the maintainability of the O.A. on the ground that (i) this O.A. is barred by principles of res judicata as all the points raised herein have already attained finality and the appellate order dated 2.8.2000 has been passed in compliance with the orders passed by the Hon'ble High Court of Allahabad; (ii) they have also submitted that applicant had acquiesced to the situation inasmuch as he was reappointed in service on 1.3.1988. On attaining the age of superannuation, applicant was retired from service, on 31.5.1996. Applicant had even been paid the retiral benefits for the service from 1.3.1988 to 31.5.1996, which was accepted by him, therefore, now he cannot reopen the whole matter again. The second appeal was decided by the Hon'ble High Court of Allahabad subsequently on 9.4.1999 whereby the appeal filed by Union of India was allowed partly and only appellate authority order was quashed with a direction to pass reasoned order. Accordingly, order dated 2.8.2000 was passed in

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compliance with High Court orders. They have also stated that this O.A. is barred by limitation inasmuch as the order impugned by the applicant is dated 02.8.2000 whereas OA has been filed only in November, 2003. Therefore, it is liable to be dismissed on this ground also.

9. On merits, they have submitted that after the orders were passed by the Hon'ble High Court of Allahabad, applicant was called for personal hearing vide letter dated 03.4.2000 but he did not turn up. Thereafter, he was informed vide letters dated 15.4.2000, 3.6.2000 and 20.6.2000, he finally came on 21.6.2000 and it was only after hearing him that the appellate authority passed orders on his appeal which were communicated vide letter dated 2.8.2000. Therefore, it is wrong to suggest that applicant was not given personal hearing. They have also stated that as per the available records no revision petition is available with the respondents, as alleged by the applicant. They have thus prayed that the O.A. may be dismissed with costs.

10. Both the counsel have relied on number of judgments, on the ground of delay and other points. While counsel for the applicant has submitted that if there is substance in the case filed by the applicant, he should not be thrown out on the ground of delay whereas counsel for the respondents has produced judgments to show that since Administrative Tribunals Act, 1985 is a complete code in itself and specific provision has been made in it providing for limitation, the same cannot be extended unless reasonable cause is

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shown by the applicant. Counsel for the respondents also submitted that neither any medical certificates have been annexed by the applicant nor the order passed by the ADJ can extend the period of limitation inasmuch as the order which is sought to be challenged in this O.A. is dated 2.8.2000 and at best applicant could have approached this Tribunal within one year from that date.

11. We have heard both the counsel and perused the pleadings as well as relied upon judgments. Though the plea of limitation was not taken by the respondents in their counter affidavit but since

it is a legal plea, it can always be taken up at the time of arguments.

Moreover, respondents have also taken the objection of res judicata. In this case, there is a chequered history inasmuch initially applicant had challenged orders dated 30.11.1977 and 15.5.1978 in the trial court which suit was decreed in his favour and both the orders were quashed. Applicant was deemed to be in the same post which he was holding before the orders of removal was passed by the disciplinary authority. The matter was carried by the Union of India in first appeal but that was also dismissed. Being aggrieved, Union of India filed second appeal before the Hon'ble High Court of Allahabad, which is very relevant and crucial in this case. We would, therefore, like to quote the operative portion of the said judgment which, for ready reference, reads as under:

"The appeal is partly allowed. The decree awarded is modified. The suit for quashing the order dated 30.11.77 is set aside. The decree regarding quashing of the order dated 15.5.78 is maintained. The appellate authority is directed to reconsider the appeal after giving opportunity of hearing and to

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decide the appeal by a reasoned order. As the plaintiff has retired the appellate authority shall also pass consequential orders regarding the salary and post retirement benefits, if any".

12. The above paragraph clearly shows that Hon'ble High Court set aside the suit as far as it related to quashing of the order dated 30.11.1977 passed by disciplinary authority, meaning thereby the order dated 30.11.1977 was allowed to remain as it was. However, the decree regarding quashing of the order dated 15.5.1978 was maintained, meaning thereby that it was only the appellate order dated 15.5.1978, which was finally held to be quashed. The Hon'ble High Court of Allahabad also directed the appellate authority to reconsider the appeal after giving opportunity of hearing to the applicant and to decide the appeal by a reasoned order.

13. It goes without saying that the pleadings, all the documents and judgments in trial court, appellate court were placed before their Lordships but Hon'ble High Court still deemed it fit, only to quash the appellate authority's order and disciplinary authority's order was maintained as it was. In these circumstances, we are convinced that applicant cannot be allowed to challenge the order dated 30.11.1977 passed by the disciplinary authority in this O.A again. To this extent, we would agree with the counsel for respondents that the matter would be barred by res judicata, therefore, applicant can only challenge order dated 2.8.2000 now, as that was passed after the 2nd appeal was decided.

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14. The second point is whether the order dated 2.8.2000 could be challenged on 25.11.2003 or not?

15. Perusal of OA shows that immediately after the order dated 2.8.2000 was passed, applicant gave a representation on 12.9.2000 taking certain objections (page 79) but this cannot be said to be either a revision or review petition because after recording six objections therein, applicant stated as under:

"For all these aforesaid reasons, letter sent by you cannot be deemed in compliance of the Hon'ble High Court's order nor any reasoned order has been passed or communicated to me in pursuance of the Hon'ble High Court's order".

Therefore, his cause of action would have started from 2.8.2000 in normal course. As per Section 21 of Administrative Tribunals Act. 1985, the period of limitation is one year from the date of cause of action and maximum 18 months in case statutory appeal or revision is filed, which is not disposed of by the competent authority. In this case, there is nothing to show that applicant had either filed any statutory review or revision petition within the stipulated period under the Rules. Therefore, if his limitation was to be computed from 2.8.2000, he could have filed the O.A. before this Tribunal latest by 1.8.2001 but it was filed only on 25.11.2003..

16. In normal course, we would have taken the above view. However, in this case, the circumstances are very peculiar inasmuch as perusal of order dated 29.1.2002 (which was passed by the A.D.J.) shows that after the second appeal was decided by Hon'ble High Court, the matter was again reopened by the A.D.J.

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even though no such direction was given to the ADJ by the Hon'ble High Court. Finally, it was only on 29.1.2002 (page 83), that order passed on 7.10.1999 for re-arguments was recalled by observing that directions were given to the appellate authority by the Hon'ble High Court of Allahabad and not to the appellate court. It was also observed in the order that if applicant feels that appellate authority has not passed the orders in accordance with the directions given by the Hon'ble High Court of Allahabad, he may take recourse to the legal proceedings in accordance with law. It is thus clear that

- ◆ the matter was pending before the court of ADJ till about 29.1.2002. The law is well settled that if proceedings are taken in a wrong court of law, the said period has to be excluded while computing the period of limitation. Therefore, in this case period upto 29.1.2002 has to be excluded while computing the period of limitation. Thereafter, applicant has stated that he had filed revision petition on 28.4.2002, filing of same has not been denied by the respondents specifically B specially in their counter affidavit. They have merely stated that said revision petition is not available in their records, which is not specific denial to the filing of revision. Therefore, period of limitation will have to be counted from 28.4.2002 and if counted from 28.4.2002, period of 18 months would have to be counted because revision petition was not decided. 18 month comes to an end on 27.10.2003 whereas the present O.A. has been filed on 25.11.2003, meaning thereby that there is delay of only about one month in filing the present O.A.



17. In the application for condonation of delay, applicant has stated that this delay has taken place on account of his old age and poor health but respondents have not even filed reply to the said MA. Under Section 21 (3) of the A.T. Act, 1985, Tribunal has the power to condone the delay. In these circumstances, the delay of about one month is condoned. M.A. is accordingly allowed.

18. Coming to the merits of the case, we would like to make it clear ~~that~~ even at the cost of repetition, ^{that is} we are looking into the correctness of order dated 2.8.2000^{July 2000}. The order passed by the

1 appellate authority on 2.8.2000 reads as under:

"Sub : Consequent to Hon'ble Court's, Allahabad decision in Appeal No. 139/1982 Second Appeal – Shri Bhawani Lal...

Ref : Your letter dated 25.06.2000

From the case it is evident that there was definitely a shortage of SOCI Boarin – As Material Clerk of the concerned shop where shortage occurred, Shri Bhawani was definitely guilty of improper accountal of stores in his custody. However, there is no proven case of theft of material against him.

So, though he is proved to be guilty of incompetence and his negligence at work, he is not proved to be guilty of lack of integrity.

Thus the punishment of removal from service is upheld on grounds of incompetence and negligence at work causing financial loss to the organization. However, the punishment of recovery of Railway loss is waived off as the employee has not been guilty of stealing Railway material".

19. The question is, whether this order can be said to be in true compliance of the directions given by the High Court of Allahabad or not. Therefore, it would be relevant to quote the operative portion



of the judgment dated 9.4.1999 passed by the Hon'ble High Court of Allahabad in Civil Appeal also which, for ready reference, reads as under

"The appellate authority is directed to reconsider the appeal after giving opportunity of hearing and to decide the appeal by a reasoned order. As the plaintiff has retired the appellate authority shall also pass consequential orders regarding the salary and post retirement benefits, if any. In view of partial success and failure, the parties are directed to bear their own costs of the appeal.

20. Perusal of the above judgment shows that appellate authority was directed to:

- (1) reconsider the appeal;
- (2) after giving opportunity of hearing;
- (3) to decide the appeal by a reasoned order;
- (4) to pass consequential orders regarding salary and post retirement

benefits, if any, because in the meantime, plaintiff has retired.

can be 8

Therefore, the directions ~~were~~ bifurcated in four parts, as mentioned above. The perusal of order dated 2.8.2000 as quoted above shows that reference has been done to the letter dated 25.6.2000 whereas applicant's appeal was dated 15.12.1977 annexed at page 36 of the O.A., meaning thereby that appellate authority had not even referred to the appeal filed by the applicant whereas there was a specific direction to reconsider the appeal. Therefore, on this ground alone, the order dated 2.8.2000 is liable to be quashed. It clearly shows non-application of mind. The Hon'ble High Court had

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also directed the appellate authority to decide the appeal after giving opportunity of hearing to the applicant and decide the appeal by a reasoned order. As far as the opportunity is concerned, respondents have explained that applicant was called for personal hearing vide letter dated 3.4.2000 but he did not turn up. He had been informed by letters dated 15.4.2000, 3.6.2000 and 20.6.2000. He was finally heared on 21.6.2000. This specific averment has not been rebutted by the applicant as he has not even filed any rejoinder. Therefore, second direction stood already complied with. ^{with point B} ~~But the question~~ is whether the order dated 2.8.2000 can be termed as a reasoned order. We have no hesitation in saying that the order dated 2.8.2000 cannot be termed as a reasoned order by any stretch of imagination because in the appeal, applicant had taken number of grounds, which have not even been referred to or considered by the appellate authority whereas when a direction is given to reconsider the appeal, it was obvious that the appellate authority was required to look into the grounds taken by the applicant in his appeal. This once again shows non-application of mind.

21. At this juncture, it would be relevant to quote from the judgment given by Hon'ble Supreme Court in the case of State of Punjab Vs. Bhag Singh (JT 2004 (5) SC 482) wherein speaking order has been explained. Reference was made to Lord Denning in respect of administrative orders when his Lordships had observed "The giving of reasons is one of the fundamentals of good



administration". Failure to give reasons amounts to denial of justice. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. One of the salutary requirements of natural justice is spelling out reasons for the order made. In other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance. It was also held that reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at.

22. From the above judgment, it is clear that the reasoned order must show application of mind of the decision making, whereas in the impugned order dated 2.8.2000, we find that there is inherent contradiction in the order itself, inasmuch as appellate authority has categorically stated that though Shri Bhawani was definitely guilty of improper accountal of stores in his custody but there is no proven case of theft of material against him. He was proved to be guilty of incompetence and his negligence at work, though not proved to be guilty of lack of integrity. The question arises, when integrity of a person is not doubtful, could the applicant still be removed from service for his incompetence and negligence at work. In the appeal

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filed by the applicant, he has taken number of grounds to show that it was the applicant, who had, in fact, given the report dated 12.3.1976 wherein he had stated that the material was actually lying on the shop floor under the direct charge of the chargeman. He had categorically stated that the Foreman made no enquiries to find out the truth. He had also stated that appellant had served the administration for the past 16 years and his work and conduct have always been beyond reproach. Neither any punishment was ever indicted nor inflicted against him. On the other hand, he had received commendations for his honesty, loyalty and devotion to duty. Therefore, these were the aspects, apart from other points raised by the applicant, in his appeal, which were required to be looked into by the appellate authority but unfortunately no such effort has been done by the appellate authority even the second time, when opportunity was given to them by the Hon'ble High Court of Allahabad. It is also seen that respondents have stated in the counter affidavit that applicant has been paid retirement benefits for the service from 01.3.1988 (date of reinstatement) to 31.5.1996 (date of retirement) as per Railway Rules but no such order was passed by the authorities even though positive direction was given by the Hon'ble High Court of Allahabad.

23. Even under Rule 22 of the Railway (Discipline and Appeal) Rules, 1968, the duties ^{are} cast on the appellate authority, to consider whether the procedure laid down in these rules has been complied with or not 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, whether the findings of the disciplinary authority are warranted by the evidence on the record and whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe and then to pass orders confirming, enhancing, reducing or even setting aside the penalty. From the perusal of the order dated 2.8.2000, it is seen that it does not ^{even} ~~not~~ conform to the requirement of Rule 22 of the Rules, 1968 at all. It looks as if appellate authority has only concentrated on the quantum of punishment and with regard to the recovery, which was ordered against the applicant for causing financial loss to the Government. therefore, by no stretch of imagination can the order dated 2.8.2000 be said to be a speaking and reasoned order. We have, therefore, no option but to quash the order dated 2.8.2000. The same is accordingly quashed and set aside. We remit the matter back to the appellate authority because even if the appellate order is quashed by the Tribunal, it would not give any relief to the applicant so long the order of removal passed by the disciplinary authority remains on record. We are anguished at the way respondents have dealt with this case. If only Hon'ble High Court of Allahabad had not maintained the order passed by the disciplinary authority, we would have passed different orders but our hands are tied. therefore, we have no other option but to remit the matter back to the appellate authority again with a direction to consider the appeal dated 15.12.1977 annexed with this petition at page 36 and to pass



a reasoned and speaking order after dealing with all the points raised by the applicant in his appeal and keeping in view Rule 22 of the Railway Servants (Discipline and Appeal) Rules, within a period of three months from the date of receipt of a copy of this order, under intimation to the applicant.

24. In this case, we have to remit the matter back to the appellate authority a second time because in spite of specific directions given by the Hon'ble High Court of Allahabad, to pass a reasoned order, authorities have failed to pass a reasoned order, we ^{therefore B} grant a cost of Rs.5000/- in favour of applicant and against the respondents. O.A is accordingly disposed of with cost of Rs 5000/- in favour of applicant B

Meera Chhibber
21/8/06.

(Mrs. Meera Chhibber)
Member (J)

V.K. Majotra

(V.K. Majotra)
Vice Chairman (A)

'SRD'