

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 191 of 2009**

N. S. Rao, aged about 46 years, S/o late Nerella Venkat Rao, Deputy Manager, Tribal Cooperative Marketing Development Federation of India Limited (TRIFED), Resident of C/o Rajesh Mishra, Santoshi Ward, Brindavan Colony, near Chandan Trading, Jagdalpur-495001, District Bastar (CG)

---- Petitioner**Versus**

1. Union of India through the Secretary, Ministry of Tribal Affairs, Govt. of India, Shastri Bhavan, New Delhi
2. The Managing Director TRIFED, Head Office, 3 Siri Institutional Area, NCUI Building, 2nd Floor August Kranti Marg, New Delhi-110016 (India)
3. Appellate Authority TRIFED, Head Office, 3 Siri Institutional Area, NCUI Building, 2nd Floor August Kranti Marg, New Delhi-110016 (India)

---- Respondents

For Petitioner	:	Shri Animesh Verma, Advocate
For Union of India	:	Shri B. Gopa Kumar, Asstt. S.G.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****23.08.2018**

Challenge in the present writ petition is to the order Annexures P-1 & P-2.

2. The facts which led to the filing of the present writ petition are that the petitioner while working as a Senior Manager was subjected to disciplinary proceeding and the Disciplinary Authority vide its order dated 07.04.2008 imposed a major punishment of reduction in lower post to Dy. Manager at

the starting pay of that level from the existing post of Senior Manager with a bar on his promotion for next five years. Against the said order of punishment, the petitioner preferred an appeal before the Appellate Authority. The Appellate Authority consisting of a Committee decided the appeal vide Annexure P-1 dated 16.12.2008. The Committee while considering the appeal found the punishment which was imposed by the Disciplinary Authority to be too mild and therefore, interfered with the order of punishment and enhanced the same to that of compulsory retirement. Pursuant to the order of the Appellate Authority dated 16.12.2008, the respondents have issued Annexure P-2 placing the services of the petitioner under compulsory retirement.

3. Contention of the counsel for the petitioner is that while enhancing the punishment by the Appellate Authority vide Annexure P-1, the Appellate Authority did not care to seek an explanation or provide an opportunity of hearing to the petitioner. Counsel for the petitioner refers to Rule 27 (2) (iii) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 wherein it has been held that if the Appellate Authority proposes to enhance penalty, the same can only be after giving the delinquent employee a reasonable opportunity of making a representation against the proposed penalty. According to the counsel for the petitioner, the Appellate Authority in the department did not care to issue notice to the petitioner nor did they granted reasonable opportunity to represent against the proposed enhanced penalty rather without there being any proposal made by the Appellate Authority, the appeal itself was finally decided without giving any show cause notice to the petitioner. Counsel for the petitioner relied upon the case of Oriental Bank of Commerce and another

Vs. R. K. Uppal, 2011 8 SCC 695 whereby the Supreme Court has not appreciated all the said view taken by the Appellate Authority and has set aside the decision of the Appellate Authority.

4. Counsel for respondent no.1, however, justifying the action on the part of the respondents submits that it is a case where the nature of allegation levelled against the petitioner was too serious and the Disciplinary Authority had given only a lesser punishment as compared to the gravity of misconduct. He further submits that since the Disciplinary Authority's order itself was after a thorough department enquiry, there was no further necessity for the Appellate Authority to have granted an opportunity of hearing to the petitioner as he was heard before the original punishment order itself was passed.

5. The said contention and defence raised by respondent no.1 may not be sustainable for the reason that when the Rule itself stipulates a particular procedure to be adopted by the Appellate Authority i.e. Rule 27 (2) (iii) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 clearly envisaging the fact that before the punishment is enhanced a reasonable opportunity of representation is offered to the petitioner. The Appellate Authority is bound to comply with the above referred rule position as it stands. In the absence of non compliance of the statutory provisions, any decision taken in violation of the same would not be sustainable.

6. In the instant case also considering the fact that the Disciplinary Authority had issued the petitioner with a major penalty of demotion to the lower post and brought in down to the initial stage, the Appellate Authority on an appeal preferred by the delinquent employee if they intended to enhance the punishment, the least that was expected applying the doctrine

of fair play and the principles of natural justice an opportunity of hearing ought to have been given to the petitioner. The Supreme Court in the case of Oriental Bank of Commerce (Supra) referring to a couple of decisions in paragraphs-20, 22 & 24 held as under:

“20. Mr. K.N. Bhatt, learned senior counsel for the appellants cited a Single Bench decision of Andhra Pradesh High Court in [Y. Malleswara Rao v. Chief General Manager, State Bank of India, Hyderabad & Ors.](#) In that case the delinquent was visited with the penalty of removal from service. The concerned delinquent preferred appeal before the appellate authority and one of the contentions raised before the High Court was that the appellate authority failed to afford a personal hearing to the delinquent and, therefore, the order of the appellate authority suffered from transgression of an essential principle of natural justice.

22. It is now fairly well settled that the requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with and so forth. In the words of Ramaswami, J. ([Union of India & Anr. v. P.K. Roy & Ors.](#)) the extent and application of the doctrine of natural justice cannot be imprisoned within the straitjacket of a rigid formula. The application of the doctrine depends upon the nature of jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case.

24. The appeal provision in regulation 17 of the 1982 Regulations does not expressly provide for personal hearing to the appellant. Is the right of personal hearing to the appellant implicit in the provision? We think not. In our considered view, in the absence of personal hearing to the appellant, it cannot be said that the very right of appeal is defeated. One situation is, however, different. Where the appellate authority proposes to enhance the penalty, obviously, the appellate authority must issue notice to the delinquent asking him to show cause why penalty that has been awarded to him must not be enhanced and give him personal hearing. It is so because the appellate authority seeks to inflict such punishment for the first time which was not given by the disciplinary/punishing authority. Although there are no positive words in regulation 17, requiring that the appellant shall be heard before enhancement of the penalty, the fairness and natural justice require him to be heard.”

7. Taking into consideration the aforesaid legal position as has been laid

down by the Supreme Court and also taking the factual matrix of the present case where the Appellate Authority has enhanced the penalty from the order of demotion to the order of compulsory retirement and before issuance of the the order of compulsory retirement while enhancing the punishment, the Appellate Authority having not granted the opportunity of hearing to the petitioner, the same may not be sustainable and the same deserves to be and is accordingly set aside/quashed. The order of appellate authority is also in violation to the provisions of Rule 27 (2) (iii) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965.

8. As a consequence, both Annexures P-1 & P-2 stand set aside/quashed and the matter stands remitted back to the Appellate Authority for taking a decision on the appeal afresh after granting an opportunity of representation to the petitioner and thereafter to pass a fresh order altogether on the appeal of the petitioner.

9. The writ petition accordingly stands allowed.

**Sd/-
P. Sam Koshy
Judge**