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Shri Naranbhai Visha,  
Pointsman,  
Bhayavadar,  
Taluka : Jetpur,  
DISS. RAJKOT

: APPLICANT

(Advocate : Mr. M.D. Rana)

VS.

1. Union of India, through  
The General Manager,  
Western Railway,  
Churchgate,  
BOMBAY-400 020
2. The Divisional Railway Manager,  
Bhavnagar Para,  
BHAVNAGAR.

: RESPONDENTS

(Advocate : Mr. R.M.Vin )

CORAM : Hon'ble Mr. M.M. Singh

: Admn. Member

Hon'ble Mr. S.Santhana Krishnan

: Judicial Member

O R A L - O R D E R

O.A. No.3 of 1988

Date :2.8.1991

Per : Hon'ble Mr. M.M. Singh

: Admn. Member

This Original Application under Section 19 of the Administrative Tribunals Act, 1985, has been filed by the Railway Employee, who was in service when the application was filed, and we are informed by learned counsel Mr. M.D. Rana for the applicant that the applicant has since retired from service. The applicant challenges the order dated 27.7.1987, passed by the disciplinary authority, reverting the applicant from the post of Pointsman Scale Rs.950-1500/- to the post of Platform Porter in Pay Scale Rs.750-940/- at the pay of Rs.750/- for two years with future effect. The applicant also challenges the appellate order dated 29.10.1987 by which, the order of disciplinary authority was confirmed.

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2. We have heard learned counsel Mr. M.D. Rana for the applicant and learned counsel Mr. R.M. Vin for the respondents.


3. The two orders are challenged on various grounds, one of which is, that the findings of the Inquiry Officer were not furnished to the applicant before imposition of penalty by the disciplinary authority. The respondents reply on this point is to the effect that, the findings of the Inquiry Officer were sent to the applicant with the final order which was received and acknowledged by the applicant on 22.7.1987. It is therefore not disputed that the Inquiry Officer's Report was not made available to the applicant before the issue of final order of the disciplinary authority. In view of the judgment of the Supreme Court in Mohd. Ramzan Khan's Case (JT) 1991 pg. 456, not furnishing the Inquiry Officer's Report to the applicant when the Inquiry Officer is different from the disciplinary authority, amounts to denial of opportunity to the applicant and therefore breach of Principle of Natural Justice. Because of this basic defect in the Inquiry, the final order of the disciplinary authority and the appellate order of the disciplinary authority have to be held to suffer from this basic infirmity in the inquiry procedure, and the two orders are therefore liable to be set aside and quashed.


4. We therefore set aside and quash the above two orders with direction to the Divisional Railway Manager, Bhavnagar Para, respondent No. 2, that, the final order of the disciplinary authority dated 27.7.87 and the order of the appellate authority dated 29.10.1987 are quashed and set aside as not issued. The respondents shall implement <sup>H</sup> this order within a period of <sup>days 4</sup> thirty of his receiving its copy. If the respondents so desire, they may hold fresh inquiry from the stage of defect.

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5. There are no orders as to costs. The registrar may take steps to return the disciplinary proceedings file acquired from the respondents for this adjudication, immediately.

  
(S. SANTHANA KRISHNAN)  
Member (J)

  
( M.M.SINGH )  
Member (A)

\*Ani.