

Penalty (No)

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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**

O.A. No. 222 of 1989  
T.A. No.

DATE OF DECISION 18.2.1992

Shri R.A. Vyas Petitioner

Shri U.M. Shastri Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri N.S. Shevde Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.Y. Priolkar : Member (A)

The Hon'ble Mr. R.C. Bhatt : Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓

(4)

Shri R.A. Vyas,  
Fireman,,  
Godhra,  
now working as Cleaner  
Western Railway,  
BARODA

: Applicant

(Advocate : Shri U.M. Shastri)

VS.

1. Union of India, through  
The General Manager,  
Western Railway,  
Churchgate,  
BOMBAY-20.
2. The Divisional Mechanical Emgg.,  
(Establishment) Baroda Division,  
Pratapnagar,  
BARODA.
3. Chief Operating Superintendent,  
Head Quarters Office,  
Churchgate,  
BOMBAY-20.

: Respondents

(Advocate : Shri N.S. Shevde)

O R A L - O R D E R

O.A.No.222 of 1989

Date : 18.2.1992

Per : Hon'ble Shri R.C. Bhatt

: Member (J)

This application under Section 19 of the Administrative Tribunals Act, 1985, is filed by the applicant, Fireman, now working as Cleaner with the respondents Western Railway, challenging the order of the disciplinary authority dated 8.1.1988, vide annexure A/2, and the penalty imposed on the applicant by which following order was passed by the disciplinary authority:

"Reduction with immediate effect to the lower post of Cleaner in Scale Rs.750-940 (RP)

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on Rs.750/- per month for a period of three years postponing your future increments."

The disciplinary authority had accepted the finding of the enquiry officer. The learned advocate for the applicant submitted that the applicant in rejoinder affidavit has relied on the decision of the Hon'ble Supreme Court in the case of Union of India & Ors. Vs. Mohammed Ramzan Khan, that in case of dismissal, removal or reduction in rank of the employee, the report of the enquiry officer in disciplinary proceedings must be supplied before the disciplinary authority awards punishment. It is not in dispute that in this case, the disciplinary authority was different from the enquiry officer and also it is not in dispute that the enquiry officer's report was not communicated to the applicant delinquent before the disciplinary authority inflicting the punishment of reduction in rank. The order of punishment, annexure A/2, was sent to the applicant along with the copy of the findings of the Enquiry Officer, as appears from annexure A/2. Learned advocate for the applicant submitted that, in view of the judgement of the Hon'ble Supreme Court, the order of the disciplinary authority should be quashed. The applicant feeling aggrieved by the order of the disciplinary authority preferred appeal before the Chief Operating Superintendent, Churchgate, Bombay, who decided the appeal and dismissed the same confirming

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the punishment given by the disciplinary authority on 6.3.1989, produced at annexure A/4. The applicant has mentioned in his application that this appellate order also should be quashed.

2. The respondents have ~~also~~ filed reply contending that there is no illegality in the order passed by the disciplinary authority or by the appellate authority, nor is the punishment made with any malafide intention, as alleged. It is contended that the procedure laid down in disciplinary rules has been followed.

3. At the time of hearing of this application, learned advocate Mr. Shevde submitted that, the decision of the Hon'ble Supreme Court in Mohammed Ramzan Khan's case has no retrospective effect but it is prospective in nature. We have carefully read the decision in Mohammed Ramzan Khan's case and we do not agree with the submission of learned advocate Mr. Shevde that it has no retrospective effect. The order of the disciplinary authority confirmed by the appellate authority suffers from serious infirmity of non-supply of the report of enquiry officer before the disciplinary authority inflicted punishment on the applicant. As per the decision in Mohammed Ramzan Khan's case (Supra), the disciplinary authority ought to have given an opportunity to the applicant to represent against the findings on the enquiry report before inflict-

ing the punishment. As the order of the disciplinary authority merges with the appellate order, both the order<sup>re</sup> shall have to be quashed and the direction shall have to be given to the disciplinary authority to give an opportunity to the applicant to submit his representation against the findings of the enquiry report. It is not in dispute that the applicant has received enquiry report by now. Hence the following order :-

O R D E R

The application is partly allowed. The order of the disciplinary authority, dated 8.1.1988 vide annexure A/2, and the order of the appellate authority, annexure A/4 dated 6.3.1989, are quashed and the disciplinary authority is directed to give opportunity to the applicant to make his representation against the enquiry officer's report and then the disciplinary authority may proceed further in the enquiry matter if the said authority so desires. The applicant is in service at present and therefore no further relief is necessary. The application is disposed of accordingly. No order as to costs.



(R.C. Bhatt)  
Member (J)



(M.Y. Priolkar)  
Member (A)