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

O.A. No. /338/89  
T.A. No.

DATE OF DECISION 08-11-1993

G.H.A. Malik Petitioner

P IN P Advocate for the Petitioner(s)

Versus

Union of India & others Respondent

Mr R. M. Vin Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. M.R. Kolhatkar : Member (A)

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 ? ✗

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G.H.A.Malik,  
Indian Inhabitant of Surat,  
residing at Near Tadwali Masjid.  
Surat

: applicant

( P IN P )

versus

1. Union of India,  
represented by General Manager,  
Western Railway, H.Q.Office,  
Churchgate,  
Bombay.
2. Divisonal Rail Manager,  
Bombay Central,  
Bombay
3. Chairma Railway Board,  
Rail Bhavan,  
Baroda House,  
New Delhi

: respondents

Advocate : Mr.R.M.Vin

ORAL JUDGEMENT

O.A.338 of 1989

Date: 08-11-1993

Per : Hon'ble Shri M.R.Kolhatkar, Member (A)

This is an original application  
under section 19 of the Administrative Tribunals Act, 1985.  
The applicant has challenged Disciplinary proceedings  
against him based on the charge relating to serious mis-  
conduct by deliberately interfering with the authorised  
loading work being carried out and demanding Rs.300/- for  
allowing the loading. The Disciplinary Authority imposed

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a penalty of removal from service on 31.7.1986 against which the applicant filed an appeal on 11.11.1986 and the Appellate Authority by his order dated 06.5.1988 Annexure A-7, ~~z~~ reduced the penalty to that of "reduction in time scale by one stage for a period of one year with the effect of post<sup>poning</sup> future increment." The applicant had approached the Tribunal impugning the proceedings leading to the penalty as well as the action of non-promotion. This Tribunal by its order dated 05-12-1989 directed the applicant to file a fresh application for seeking the relief regarding non-promotion. Therefore, we are required to consider only the cause relating to Disciplinary proceedings.

2. The respondents have filed written statement.

3. Today, we have heard the party in person as well as learned advocate Mr. Vin for the respondents. The applicant has challenged Disciplinary proceedings on several grounds. One of the grounds is as below:-

" General D A R proceedings was conducted by Division Safety Office of BCT, Mr. Malhotra, who did not allow my defence witness, Exhibit A-4, who asserted in his findings on page-3 Exhibit A-5 .This violates Article 311 of Constitution of India."

4. The Inquiry Office in his report has stated on this point as below:-

" Shri G.H.A.Malik had asked for additional documents and witnesses as per his letter placed at 32 C, and in view of this, the records as mentioned vide item Nos.1,2,& 4 were made available to him. He had also asked for some witnesses vide his application dated 24-6-86 placed at CP 32, but the same were not considered necessary and he has accepted that the necessary opportunities as admissible under DAR to examine and cross-examine has been afforded to him and what is due as principal natural justice in the conduct of the enquiry was offered to him."

5. In the written statement, the defence taken by the Railway Administration is as below:-

" As regards defence witnesses not allowed by E.O. It is submitted that the E.O. did not consider it necessary. It is pertinent to note that the applicant has categorically stated that all the reasonable opportunities as admissible under DAR to examine and cross-examine has been afforded to him. It is submitted that the Rly. Board vide letter dated 08.12.70 has laid down that E.O. is the best judge to decide the issue regarding summoning of defence witnesses cited by the delinquent employee. It is submitted that E.O. has conducted the enquiry as regards defence witnesses in terms of the said letter of Rly. Board dated 08.12.1970."

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6. Without considering other grounds, we feel that the action of the Inquiry Officer in refusing permission to the applicant to examine defence witnesses by ~~itself~~ is sufficient to hold the inquiry as vitiated. The statement of the Inquiry Officer that the applicant has accepted that the necessary opportunities as admissible under DAR to examine and cross-examine has been afforded to him and what is the due as principle of natural justice in the conduct of the inquiry was offered to him cannot be accepted in extenuation of the failure of the I.O. to examine defence witnesses. Neither has the Inquiry Officer any power or discretion to refuse to examine defence witnesses nor can he do so even if the applicant allegedly offered to forego the right. This is a constitutional right under Article 311 as well as a statutory right under Rule 9(20) of Railway Servants (Discipline and Appeal) Rules 1968. It is now well settled vide Behram Khurshid v/s State of Bombay (AIR 1955 SC 123) and Olga Teelis case (1985) 3 SCC 545- that the doctrine of waiver can have no application to the provision of law which have been enacted as a matter of constitutional policy. The relevant portion of Railway Servants (DAR) Rules 1968 is reproduced below for ready reference.

" The evidence on behalf of the Railway servant shall then be produced. The Railway servant may examine himself in his own behalf, if he so prefers. The witnesses produced by the

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Railway servant shall then be examined by or on behalf of him and shall be cross-examined by or on behalf of the Presenting Officer, if any. The Railway servant shall be entitled to re-examine the witnesses on any point on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit."

7. In view of this discussion, we hold the inquiry vitiated from the stage of refusal of the Inquiry Officer to permit the applicant to examine defence witnesses with an opportunity to the presenting officer to cross-examine them. The report of the inquiry and the penalty imposed on the applicant on the basis of that report are also vitiated. We note that the Appellate Authority has not thought it fit to consider this point, although it was referred to by the applicant in his appeal in the following terms.

" The Inquiry Officer did not afford full opportunity to defend by not calling the defence witness of my choice as mentioned in my application dated 24.6.86 addressed to Sr.DOS BCT."

8. The Appellate order, therefore, is also vitiated. We, therefore, set aside the Disciplinary proceedings and dispose of this application by passing the following order.

9.

ORDER

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1. The application is partly allowed.
2. The Disciplinary proceedings from the stage of refusal of the Inquiry officer to allow the applicant to examine the defence witnesses, the Inquiry Report, the order of penalty and the Appellater order are hereby quashed and set aside. The respondents if they so desire/<sup>may</sup> hold the inquiry ~~afresh~~ afresh from the stage ~~of~~ as indicated above. The application is disposed of accordingly.
3. No order as to costs.

*R.C. Bhatt*

( R.C.BHATT )

Judicial Member

Date: 8-11-93

*M.R. Kolhatkar*

( M.R.KOLHATKAR )

Administrative Member

Date : 8-11-93

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