

Amendment
IN
Review of
Compulsory Retirement

6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

M.A.ST/559/91

R.A.47/90 in

O.A. No. 270/90

~~KAXXNXX~~ 9

DATE OF DECISION 4.8.1992.

Shri ^R P.T. Mochi Petitioner

Mr. B.B. Gogia, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. B.R. Kyada, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.V. Krishnan : Vice Chairman

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 ?

8

Shri R.T. Mochi,

... Applicant

Vs.

1. Union of India,
Representing:
Western Railway,
Through:
General Manager,
Western Railway,
Churchgate,
Bombay- 400 020.

2. Divisional Railway Manager,
Western Railway,
Rajkot Division,
Kothi Compound,
Rajkot- 360 001.

... Respondents.

O R A L J U D G M E N T

M.A.ST/559/91

in

R.A./47/90 in

O.A./270/90

-----9-----

Date: 4.8.1992.

Per: Hon'ble Mr. N.V. Krishnan, Vice Chairman

Present: Mr. B.B. Gogia, Adv./App.
Mr. B.R. Kyada, Adv./Res.


1. M.A.ST/559/91 has been filed by the applicant in the review application no. R.A./47/90 to substitute the legal heirs of the review application, since expired. Heard. M.A. is allowed. Learned counsel for the applicant is directed to carry out the correction in the review application in the Registry.

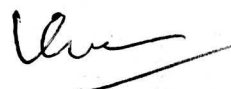
2. We have also heard the learned counsel for the parties, on the Review Application. We notice that the original order is absolutely clear.

...3...

3. In the circumstances, learned counsel for the applicant seeks permission to withdraw the review application. Permission granted. R.A./47/90 is closed.

4. We also make it clear in case the representation as permitted by the original order has not been filed by the applicant, his widow may ^{now} file such representation within one month ~~of~~ ^{it} it should be disposed of by the respondents as directed earlier.


(R.C. Bhatt)
Member (J)


(N.V. Krishnan)
Vice Chairman

*K

(S)

R.A./47/90


in

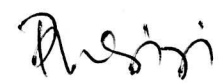
O.A./279/90

CORAM : Hon'ble Mr. P.H. Trivedi .. Vice Chairman
Hon'ble Mr. D.K. Agrawal .. Judicial Member

25.1.1991

Review petition be heard. The case be posted
accordingly.


12.4.91
(D K Agrawal)
Judicial Member


(P H Trivedi)
Vice Chairman

*Mogera

S.O. (C) Sangitaben
12-11-94

D.NO. /SEC. IX
SUPREME COURT OF INDIA
NEW DELHI.

From :-

Dated:- 4/4/94

The Registrar,
Supreme Court of India,
New Delhi.

To,

The Registrar
Central Administrative Tribunal
Ahmedabad Bench,
B.D. Patel House
Near Sardar Patel Colony,
Ahmedabad - 380 014.

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL/CRL.) NO. 2903/94

(Petition under Article 136(1) of the Constitution of India
from the judgment and order dated 23.10.90

of the High Court of Judicature at CAT of Ahmedabad
Bench in O.A. No. 279/90.

R.T. Mehta (d) by hrs.

...Petitioner(s)

Versus

Union of India & Anr.

.....Respondent(s)

Sir,

I am directed to inform you that the petition above
mentioned filed in the Supreme Court was dismissed
by the Court on 2.2.94.

Yours faithfully,
FOR REGISTRAR

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD.

Submitted ;

C.A.T./JUDICIAL SECTION.

Original Petition No.: 279 of 90

Miscellaneous Petition No. of

Shri R J Modi Petitioner(s).

Versus.

Union of India & Ors Respondent(s).

This application has been submitted to the Tribunal by

Shri B B Goga

UNDER Section 19 of the Administrative Tribunal Act, 1985.

It has been scrutinised with reference to the points mentioned in the check list in the light of the provisions contained in the Administrative Tribunals Act, 1985 and Central Administrative Tribunals (Procedure) Rules, 1985.

The application has been found in order and may be given to concerned for fixation of date.

The application has not been found in order for the reasons indicated in the check list. The applicant may be advised to rectify the same within 21 days/Draft letter is placed below for signature.

Asstt. :

S.O. (J) :

Dy. R. (J) .:

✓ VP not duly stamped
✓ Dated 8/12, do not tally with Index
✓ Documents as per Rule paying.

may inform accordingly.

mpl a
11/6/90

1/3 Sawe
11-06-90

CA

12/6/90
1/3 Sawe
12-06-90

in my issue of 11/6/90

GAC/11/6/90

11/6/90
11/6/90

~~Stamp~~
ANNEXURE I.
11

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

APPLICANT (S) R T Machi

RESPONDENT(S) Union of India &

PARTICULARS TO BE EXAMINED

ENDORSEMENT AS TO
RESULT OF
EXAMINATION.

1. Is the application competent ?
2. (A) Is the application in the prescribed form?
(B) Is the application in paper book form ?
(C) Have prescribed number complete sets of the application been filed ?
3. Is the application in time ?

If not, by how many days is it beyond time ?

Has sufficient cause for not making the application in time stated ?
4. Has the document of authorisation/ Vakalat Nama been filed.?
5. Is the application accompanied by B.D./I.P.O. for Rs.50/-? Number of B.D./I.P.O. to be recorded.
6. Has the copy/copies of the order(s) against which the application is made, been filed ?
7. (a) Have the copies of the documents relied upon by the applicant and mentioned in the application been filed ?
(b) Have the documents referred to in (a) above duly attested and numbered accordingly ?
(c) Are the documents referred to in (a) above neatly typed in double space ?
8. Has the index of documents has been filed and has the paging been done properly ?

PARTICULARS TO BE EXAMINED

ENDORSEMENT AS TO BE
RESULT OF EXAMINATION.

9. Have the chronological details of representations made and the outcome of such representation been indicated in the application ?
10. Is the matter raised in the application pending before any court of law or any other Bench of the Tribunal ?
11. Are the application/duplicate copy/spare copies signed ?
12. Are extra copies of the application with annexures filed.
 - (a) Identical with the original.
 - (b) Defective.
 - (c) Wanting in Annexures
No. _____ Page Nos. . . _____ ?
 - (d) Distinctly Typed ?
13. Have full size envelopes bearing full address of the Respondents been filed ?
14. Are the given addressed, the registered addressed ?
15. Do the names of the parties stated in the copies, tally with hope those indicated in the application ? *name*
16. Are the transactions certified to be true or supported by an affidavit affirming that they are true ?
17. Are the facts for the cases mentioned under item No.6 of the application.
 - (a) Concise ?
 - (b) Under Distinct heads?
 - (c) Numbered consecutively?
 - (d) Typed in double space on one side of the paper ?
18. Have the particulars for interim order prayed for, stated with reasons ?

*100
checked.
11/6/90*

Slip - 249/90
6/6/90

(12)

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD

ORIGINAL APPLICATION NO:

279 /90

R.T.
Shri M.D. Mochi
Rajkot

:: APPLICANT

V/s

Union of India & one another

:: RESPONDENTS

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Rajkot/Ahmedabad

Date: 6/6/90

R.T. Mochi
(APPLICANT)

For use in Tribunal's Office

Date of filing

or

Date of receipt by post

Registration No.

Signature
for Registrar

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BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD

ORIGINAL APPLICATION NO: 279 '90

Shri R.T.Mochi,
Slum Quarter No.111,
Jamnagar Road,
RAJKOT

:: APPLICANT

Versus

- 1) Union of India,
Owning & Representing
Western Railway,
Through:
General Manager,
Western Railway,
Churchgate,
BOMBAY - 400 020
- 2) Divisional Railway Manager,
Western Railway,
Rajkot Division,
Kothi Compound,
RAJKOT - 360 001

:: RESPONDENTS

DETAILS OF APPLICATION

1. Particulars of the order against which the application is made.

- | | |
|----------------------|--|
| i) Order No. | : E.308/ED/89/XR/3 |
| ii) Date | : 10.8.1989 |
| iii) Passed by | : ADRM, Western Railway,
: Rajkot |
| iv) Subject in brief | : Awarding the punishment
: of compulsory retirement
: to the applicant. |

2. Jurisdiction of the Tribunal

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

3. Limitation

The applicant further declares that the application is within the limitation period prescribed in section 21 of the Administrative Tribunals Act, 1985.

4. Facts of the case

The applicant was originally appointed as a Clerk in scale Rs.110-180(AS)/Rs.260-400(R) in the year 1963 on the Rajkot Division of the Western Railway. He was subsequently promoted as Senior Clerk on 22nd Dec. 1981 in scale Rs.330-560(R) on clearing the seniority - cum - suitability test. He was promoted as Head Clerk according to his turn on 12th March 1982 in scale Rs.425-700(R). He was subjected to the selection for the post of the Chief Clerk in scale Rs.550-750(R)/Rs.1600-2660(RP) and on his clearance of the said selection ~~xxxxx~~ he was promoted and posted as Chief Clerk on 6th April 1985. The Chief Clerk's posts carries a pay scale of Rs.1600-50-2300-EB-60-2660 and he was every year granted his due increments. At the time of his compulsory retirement he was drawing a monthly salary of Rs.1900.00 per month.

11) The applicant submits that while he was working as Chief Clerk, he was placed under suspension on ADRM's verbal orders in terms of Superintendent, Store's Branch's No.Stores/Estt/1/Vol.II dated 21.3.1989. The formal orders of suspension was issued by the competent authority i.e. ADRM RJT only on 30.3.1989 vide No.E/308/Sus/89/R/11 dated 30.3.1989. The said suspension order was revoked on the same date i.e. 30.3.1989, with effect from

28.3.1989. Thus it will be seen that he was placed under suspension for about a week's time without any purpose or use of suspension. Copy of Note dated 21.3.1989 is annexed herewith as Annexure A/1, copy of formal suspension order dated 30.3.1989 issued by the ADRM RJT is annexed herewith as Annexure A/2 and copy of Revocation of suspension order dated 30.3.1989 is annexed herewith as Annexure A/3.

iii) On the day the revocation of suspension was ordered, i.e. 30.3.1989, a charge sheet was served upon the applicant vide Memo No.E 308/ED/89/XR/3 by ADRM RJT enclosing statement of imputations. The charge sheet dated 30.3.1989 with statement of imputation is annexed herewith as Annexure A/4. In the statement of imputations it was alleged that because the applicant did not issue regular reminders and put up the files to SDEN(II) occasionally, Stock Sheet No. PWI/PTN/Stores/1-17/86-87 dated 27.2.1987, Stock Sheet No. IOW/RJT/WC/Stores/1-3/86-87 dt.24.5.1986 and Stock Sheet No. CIOW/RJT/Stores/1-69/87-88 of 20.8.1987 were not finalised. The statement of imputations are mainly alleging negligence on the part of the Applicant resulting into non-clearance of the stock sheets pertaining to the Engineering Department of Rajkot Division. According to this charge sheet and statement of allegations, the main fault on the part of the employee/applicant was that he did not issue regular reminders and failed to put up the file or did not point out the facts that these stock sheets were pending to the concerned Sr.DENs. This clearly implies that he had

reminded the authorities/section/personnel concerned either on phone or in writing or verbally, though the same was not in frequent intervals. The applicant submitted his representation against the above charge sheet wherein he had attributed ~~to~~ the delay in clearance of the stock sheet to his indifferent health. It was also indicated by him in his representation that he was repeating on phone to AEN's and clerks concerned to close these items. Copy of the representation submitted by the applicant in reply to charge sheet dated 30.3.1989 is annexed herewith as Annexure A/5.

A/5

iv) An enquiry was ordered to be held by appointing the Enquiry Officer in terms of order dated 11/30.5.1989. Copy of order dated 11/30.5.1989 is annexed herewith as Annexure A/6. In the enquiry the statement of the delinquent/applicant alone was recorded by the Enquiry Officer. Except the recorded statement of the applicant, no other evidence either oral or documentary was laid by the Department or by the EO. The statement of the delinquent/applicant is annexed herewith as Annexure A/7.

A/6

A/7

He received the punishment order No.E.308/ED/89/XR/3 dated 10.8.1989 imposing the punishment of compulsory retirement from Railway Service. Copy of the punishment order dated 10.8.1989 is annexed herewith as Annexure A/8.

A/8

Along with the said Punishment Order, he was also sent a findings of the Enquiry Officer. Copy of the Findings of the Enquiry Officer is annexed herewith

A/9

as Annexure A/9. The applicant was served upon with a formal order in terms of Memorandum No.ED/R/89 dt. 7.9.1989 by which he was retired with effect from 6.9.1989. Copy of Memorandum dated 7.9.1989 is annexed

A/10

herewith as Annexure A/10. Against this punishment order he has filed an appeal to Chief Personnel Officer,

Western Railway, Churchgate, Bombay vide his application dated 7.10.1989, copy of which is annexed

A/11

herewith as Annexure A/11. He was called for personal hearing before the Chief Personnel Officer on 18.1.1990, which he attended. Copy of such letter calling him for personal hearing by CPO is annexed

A/12

herewith as Annexure A/12. However, he has not heard anything thereafter about the fate of his appeal. Therefore he has been compelled to file the present petition.

v) The applicant submits that more than six months have passed after he filed the appeal and there is no decision on the appeal. The present petition is filed as per provisions of Administrative Tribunals Act, 1985.

vi) The applicant submits that the main charge against him and also what is found during the course of the enquiry by the EO is that he failed to issue regular reminders to get the remarks of the Engineering Department for getting the stock sheets closed and he failed in putting up the cases to Sr.DEN occasionally and that he failed to obtain remarks to the queries raised by the SAO by issuing regular remarks. It is implied from the charges and the findings he has been issuing reminders and putting up the papers to the authorities concerned, but not at the frequent intervals. He has stated the same in his defence also, in reply to the charge sheet dated 30.3.1989. The applicant submits that to clear the stock sheets the remarks of the Engineering Department were required. The Engineering Department and its concerned officials were expected and required to discharge their duties

without reminders. Giving reminders is not mandatory. However even after giving reminders by the applicant The officials in the Engineering Department did not take any action and this resulted into delaying finalisation of the stock sheets. The applicant submits the officials in the Engineering Department had a major contribution to delay finalisation of the stock sheet, yet no action whatsoever has been initiated/taken against the real persons whose negligence caused the delay and only the applicant was hand picked for awarding punishments for the delay. Thus it can be seen that he has been meted out discriminatory treatment by the respondents.

vii) The applicant submits that he ~~is now working~~ was working as a Chief Clerk under the direct supervision of the Superintendent(Stores). Since the Superintendent (Stores) was directly supervising the works of the applicant he was aware of the non-co-operative attitude of the Engineering Department and its officials. In spite of this, no actions whatsoever were taken by the Superintendent. As in charge of the section, it was the responsibility of the Superintendent to put up the files to the concerned officers. However, no action has been taken against the Superintendent(Stores) for dereliction of duties on his part.

viii) The applicant submits that according to the charge sheet certain stock sheet was delayed for over 3 years. He submits every year, confidential reports on him was initiated and maintained. He was never informed of any adverse remarks passed in his annual confidential reports during the above period. Hence no such adverse remarks exist in his CR. The applicant submits that if he was directly ~~responsibility~~ responsible

for the delay as sought to be made out against him, certainly the controlling officer writing the confidential reports, i.e. DCOS RJT and the reviewing/accepting authority i.e. ADRM RJT, who is also the authority issued the above charge sheet and punishment orders, would have passed strictures/adverse remarks in the annual confidential reports during the said period. The applicant also submits he was not even warned either by the Superintendent (Stores) under whose direct supervision he was working, or by the Branch Officer, i.e. DCOS or by the disciplinary authority i.e. ADRM against the above lapses on his part.

ix) The applicant submits if the entire episode is taken in its totality it can be seen that the contribution of the applicant for delaying the stock sheets is quite negligible. The big sharks are left scot free. The applicant submits that it should have been the Engineering Department or its officials to be dealt with severely for the delay. It is quite surprising and astonishing that no actions whatsoever have been taken against any such erring persons of the Engineering Department, but the applicant was picked up for such harsh punishment. This aspect was required to be considered by the Disciplinary Authority at the time of imposing the punishment. This is admittedly not done. Therefore there is an element of arbitrariness and discrimination in imposition of the punishment upon the applicant. The applicant further submits that there is no evidence whatsoever laid by the department to prove the charges. The department was required to prove the charges by examining the witnesses, who could have been cross-examined and then the real reasons for the delay and the place where the delay exists would have come out in more details.

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x) The applicant submits that the Disciplinary authority and Enquiry Officer have erred and taken erroneous views that the applicant had admitted the charges, during the course of the Enquiry. What he had stated during the enquiry is as under:-

"As per my statement submitted in reference to the charges, I shall like to note that due to maintaining indifferent health I could not cope up the work but after receiving the Standard Form 5 I have brought necessary improvement in my method of working. As I accepted the charges so at this stage I cannot deny them."

In the statement (defence) submitted by the applicant in reference to the charges, it was brought out by the he applicant that he did not get response from the Engg. Department to the reminders requesting for remarks to close the stock sheets. The applicant submits that all the documents right from the issue of charge sheet upto the imposition of penalty will form part of the documents related to the Discipline & Appeal Rules. If the above statement is read with the defence submitted by the applicant it can be seen that the above admission is not an unqualified one. As such, such admission cannot be, in the eyes of law, used against the applicant so as to dispense with the requirement of leading evidence in the enquiry against the delinquent. Even this is taken as admission only for the sake of arguments, the negligence on his part is that he did not send regular reminders to the Engineering Department. But the main fault and negligence remained with the Engineering Department, which was the counter part for the delay and the fault/negligency on the part of the officials in the Engg. Department remained unnoticed and the erring officials in that department left unpunished.

(21) 9

xi) The applicant submits that in his statement during the course of enquiry and also while submitting the defence in response to the charge sheet, the applicant stated that during the period, he was sick and this was also one of the reasons for the alleged delay in sending frequent reminders. The applicant submits that he had no control over his health condition. he also submits that non-sending of frequent reminders cannot constitute a misconduct so as to impose the major penalty of compulsory retirement, which means loss of livelihood to the persons for further three years and further consequential loss in retirement benefits including monthly pension etc. The applicant also submits that while arriving at the quantum of penalty, no thought whatsoever was given to the fact that he was sick ~~for~~ frequently during the above period and he had to remain on leave. Even this fact could have been verified from the office records. However, the disciplinary authority ~~is~~ in its eagerness to ease out the applicant, has not done any such exercise to come to the real reason for the alleged delay or to give a thought to the just adequate penalty for such alleged lapses.

5. Grounds for relief with legal provisions

- 1) The punishment imposed is too arbitrary, disproportionate and violative of articles 16 of the constitution of India.
- 2) The punishment imposed is also in violation of article 311(2) of the Constitution of India.
- 3) No enquiry has been held on wrong assumption in as much as no evidence is laid by the department either oral or in document.

- 4) That the principles of natural justice required that the applicant should be supplied with copy of the findings of EO before issue of penalty has been imposed. The applicant relies upon the judgement of Supreme Court of India as also different Administrative Tribunals ~~in Ahmedabad~~ wherein it has been held that to fulfil the constitutional requirement of affording reasonable opportunity it is necessary that in all cases enquiries where the disciplinary authority is not enquiry authority a copy of the enquiry report should be furnished to the charged employee to enable him to give his submission in regard to findings of the enquiry officer before the disciplinary authority passes its orders imposing punishment. ~~Some of the extracts are as under:-~~ The applicant respectfully reproduces herein below some of the extracts from judgement delivered by honourable CAT Ahmedabad Bench in TA No.1293 of 1986 - Shri TA Pawadai versus Union of India decided on 20.5.1988, Coram honourable Mr. P.H. Trivedi, Vice Chairman and hon'ble Mr. P.M. Joshi judicial member.....

Para.6. The only crucial question for our consideration is whether the impugned order passed by the disciplinary authority is vitiated because the petitioner was not given a copy of the report of the ~~inquiry~~ inquiry officer and was not ~~given a copy of the report of the inquiry officer~~ heard before arriving at the findings. Relying on the case of Nibaram Chandra Bose V/s Union of India & Ors. (1988 Lab I.C.12(CAT Calcutta)) it has been vehemently contented by Mr. Gogia that the imposition of penalty suffers from a serious infirmity as the petitioner has not been furnished with a copy of the enquiry report along with notice imposing penalty of reduction in rank as required under law.

7. In the instant case, the disciplinary authority on accepting the findings of the inquiry officer decided to impose a penalty of "reversion for a period of two years ~~or~~ as Permanent Way Mistry with future effect." Admittedly, the disciplinary authority has not taken care to furnish a copy of the report of the Inquiry Officer ~~or~~ to the petitioner delinquent, either even prior to the passing of the impugned order or ever thereafter. In M.A. Khalsa

V/s Union of India & Ors. TA No.463/86 & OA No.257/86 decided on 1.12.1986 by this Bench, we found that when the petitioner delinquent had been informed of the charges against him and given a reasonable opportunity of being heard and he had been supplied with a copy of the report of the inquiry officer and the disagreement note which enabled him to prefer an appeal to the appellate authority against the order of dismissal, it cannot be said that the order of dismissal was vitiated in any manner. While reaching to this decision we had mainly relied on the proposition of law laid down by the Supreme Court in Secretary, Central Board of Excise & Customs and Ors. V/s K.S.Mahalingam (ATR 1986 (2) SC4). The said case of Mahalingam, came up for consideration before the Bench of the Supreme Court consisting of M.P. Thakkar & N.D.Ojha JJ.,. While hearing the case of Union of India & Ors. V/s E. Bashyan, decided on 11.3.1988 (JT 1988 (1) SC 627) ., his Lordship Mr. Justice Thakkar, speaking for the Bench observed as under:-

It is thus evident that the findings recorded by the Enquiry Officer become infused with life only when the Disciplinary Authority applies his mind to the material which inter-alia consists of the report of the Enquiry Officer along with the evidence and the record etc. If therefore the basic material comprising of the report of the Enquiry Officer, which has been taken into consideration by the disciplinary authority for holding that the delinquent is guilty as per the view expressed by his delegate, namely, Enquiry Officer, is not made available to the delinquent till the axe falls on him, can it be said that the Principles of Natural Justice have been complied with? Can it be said that the delinquent had an opportunity to address the mind of the Disciplinary Authority who alone in reality found him guilty. Since it cannot be so asseverated it will be difficult to resist the conclusion that principles of natural justice have been violated and the delinquent has been denied reasonable opportunity.

8. While referring the case to a larger Bench of the Supreme Court, it was further observed that in Mahalingam case this question was not directly in issue as neither been presente nor discussed in all its ramification and it is therefore futile on the part of the petitioners to contend that the point is covered and decided in their favour.

9. In this context we feel our duty ~~xxxx~~ refer to the decision of the Full Bench of the Tribunal (CAT New Bombay) in Premnath K Sharma V/s Union of India (1988 ATC 904) rendered 6.11.1987. In the judgement of the Full Bench delivered by Mr. Justice K. Madhava Reddy, Chairman, having noted the changes made in Article 311 of the Constitution after 42nd Amendment Act 1976 and the

Railway Servants (Discipline & Appeal) Rules, 1968, he has extensively discussed the case law on the issue. While quashing the order imposing the penalty of removal from service it was held that the findings of the disciplinary authority as bad in law and is vitiated because the applicant was ~~not~~ not given a copy of the report of the Inquiry Officer and was not heard before arriving at the findings. The dictum in the decision puts the point amply clear that "the limited departure made by the 42nd amendment Act 1976, is that no second show cause is necessary with respect to the penalty proposed to be imposed. But the obligation to afford a reasonable opportunity to defend himself and to observe the principles of natural justice by supplying all the materials sought to be put against the charged officer which includes the Inquiry Report is not in any way whittled down. The denial of copy of the enquiry report and opportunity to make representation against it offends the principle of natural justice and violates the provisions of Article ~~322~~ 311(2) itself.". In all propriety, we respect the most considered view taken by the Full Bench in the said case. "

A copy of the judgement in TA No.1293 of 1986 decided by the honourable Tribunal, Ahmedabad Bench is annexed herewith as Annexure A/13.

5. Even the Railway Board have in terms of their letter No.E(D&A)87 RG 6-151 dated 10.11.1989, circulated by General Manager, Western Railway, Bombay in terms of letter No.EP/DAR/308/14/9 dated 1.2.1990 have directed that in cases ~~where~~ where enquiry has been held under rule 9 the disciplinary authority if it is different from the enquiry authority, shall before making a final order in ~~the~~ the case, forward a copy of the enquiry report to the charged railway servant concerned. This order has been given effect by the Rly.Board from 10.11.89. Full text of the circular is requested to be produced by the Railway Administration along with their reply. In the submission of the applicant the important thing is not the date from which it has been given effect by the respondents but the principle which they have accepted. Therefore there has been flagrant violation of principles of natural justice in the case of the applicant.

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6. That there has been no application of mind on the punishment by the concerned authority or on the merits of the case. The order is passed very mecha-nically.

6. Details of the remedies exhausted

The applicant declares that he has availed of all the remedies available to him under the relevant service rules etc.

7. Matters not previously filed or pending with any other court.

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any court or any other authority or any other Bench of the Tribunal nor any such application or suit is pending before any of them.

8. Reliefs sought

- A) It is prayed that the Notice of Imposition of Penalty bearing No.E.308/ED/89/XR/3 dt.10.8.89 passed by Additional Divisional Railway Manager, Western Railway, Rajkot by which the applicant was ordered to be retired compulsorily from railway service may be declared as illegal, ineffective and may be qualished by directing the railway administration to reinstate the applicant with continuity of service, full back wages and all other consequential benefits.
- B) Any other better relief/s may be granted looking to the circumstances of the case.
- C) ~~Copy of Copy~~ Cost of the petition may be granted to the Applicant from the Respondents.

9. Interim relief if any prayed for

NIL

10. In the event of any application being sent by the registered post, it may be stated whether the applicant desires to have oral hearing at the admission stage and if so, he shall attach a self-addressed post card or Inland Letter, at which ~~xx~~ intimation regarding the date of hearing could be sent to him.

" NOT APPLICABLE "

11. Particulars of Postal Order filed in respect of the application fee.

- 1) Number of Indian Postal Order(s) : *DP 227998*
2) Name of the issuing Post Office : *Rejhad*
3) Date of issue of Postal Order(s) : *18/5/90*
4) Post Office at which payable : *A'bad*

12. List of enclosures

- 1) Postal Orders as per the details given in para 11 above.
2) Vakalatnama
3) Copies of documents relied upon enlisted from A/1 to A/13

VERIFICATION

I, R. T. Mochi, son of Shri *Trilokhans*

aged about 55 years, working as: Compulsorily retired

15
27

Railway servant, who was working in the office of Divisional Railway Manager, Western Railway, Rajkot, resident of Rajkot do hereby verify that the contents of paras 1 to 3 and 6 to 12 are true to my personal knowledge and paras 4 to 5 believed to be true on legal advice and that I have not suppressed any material fact.

Rajkot/Ahmedabad

Date: 6/6/90

R. T. Mochi
(APPLICANT)

Through:

B.B. Gogia
B.B. Gogia,
Advocate,
RAJKOT

Filed by Mr. *V.B. Vozani for B.B. Gogia*
Learned Advocate for Petitioners
with second set of 2 copies
copies copy served/not served to
other side

C. H. Chauhan
Dt. 6/6/90 By Registrar C.A.T.
A'bad Bench

Annex A/1

16
28
76

WESTERN RAILWAY

NOTE

No. Stores/Estt/1 Vol. II

Divisional Office,
Rajkot,
Date. 21.3.89

Sub:-Suspension -Clerk class III staff
Works Group- Shri R.T.Mochi, Chief
Clerk- Scale Rs. 1600-2660 (Rs)

....

As per ADEM's verbal orders, you are
hereby placed under suspension with immediate effect.

Shri R.T.Mochi,
CC /Store.

[Signature]
Supdt./Store Branch

c/-ADEM -RJT,
DCOS -RJT,
DFO -RJT.

Conquered

200002

21/3
ADEM

Ref at 16-30 hrs

True Copy

[Signature]

Advocate

1

Annex A/2

प. र. W. R.

जी 317 एफ G 317 F

मानक फार्म संख्या 1 Standard Form No. 1

निलम्बन आदेश का मानक फार्म—रेल सेवक (अनुशासन और अपील) नियम, 1968 का नियम 5 (1)
Standard Form of Order of Suspension under Rule 5 (1) of the RS (D & A) Rules, 1968.

संख्या No. ४/२०८/SUS/८९/R/11

दिनांक Dated. 30/1/31/1989

रेल प्रशासन का नाम..... Rm. office
Name of Rly. Admn.

निगम स्थान Place of issue. Rajkot

आदेश ORDER

यतः श्री

(रेल कर्मचारी का नाम और पदनाम) के विरुद्ध अनुशासनिक कार्रवाई
अवेक्षित/अनिर्णीत है।

Whereas a disciplinary proceeding against Shri R.T.

Mochi cc/stores
(Name & Designation of the railway servant) is contemplated/
pending.

यतः श्री

(रेल कर्मचारी का नाम और पदनाम) के विरुद्ध एक दण्डिक अपराध के
सम्बन्ध में जांच/पुछताछ की जा रही है/मुकदमा चल रहा है।

Whereas a case against Shri

(Name and designation of the railway servant) in respect of a
criminal offence is under investigation/inquiry/trial.

अतः अब निम्नहस्ताक्षरी [रे. से. (अनु. और अ.) नियम, 1968 के साथ संलग्न अनुसूची I, II और III की शर्तों के अनुसार रेल कर्मचारी
को निलम्बित करने वाला सक्षम प्राधिकारी/रे. से. (अनु. और अ.) नियम, 1968 के नियम 5 (1) के परन्तुक में उल्लिखित प्राधिकारी,
रे. से. (अनु. और अ.) नियम, 1968 के नियम 4/नियम 5 (1) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एतद्वारा उक्त
श्री को तत्काल/तारीख २१/३/८९ से निलम्बाधीन रखते हैं।
a (क्. पू. उ. P. T. O.)

48

Now, therefore, the undersigned [the authority competent to place the railway servant under suspension in terms of the Schedules I, II and III appended to RS (D & A) Rules, 1968 / an authority mentioned in proviso to Rule 5 (1) of the RS (D & A) Rules 1968] in exercise of the powers conferred by Rule 4 / proviso to Rule 5 (1) of the RS (D & A) Rules, 1968, hereby places the said Shri. R. T. Mechi under suspension ~~with immediate effect~~ / with effect from 21/3/89

यह भी आदेश दिया जाता है कि जिस अवधि में यह आदेश प्रभावी रहेगा उक्त श्री R. T. Mechi सक्षम प्राधिकारी की अनुमति के बिना मुख्यालय (स्टेशन) नहीं छोड़ेगा।

It is further ordered that during the period this order shall remain in force, the said Shri R. T. Mechi shall not leave the headquarters without obtaining the previous permission of the competent authority.

हस्ताक्षर Signature [Signature]

नाम Name (C. K. Mahesana)

निलम्बन प्राधिकारी का पदनाम Designation of the Suspending Authority. HRM/RJR

प्रतिलिपि Copy to—

श्री Shri. R. T. Mechi, Stores (H.O. Supdt./Stores)
(निलम्बित रेल सेवक का नाम और पदनाम Name & Designation of the suspended railway servant)

निलम्बन की अवधि में उसे स्वीकार्य निर्वाह-भत्ते के सम्बन्ध में अलग से आदेश जारी किये जायेंगे।

Orders regarding subsistence allowance admissible to him during the period of suspension will be issued separately.

WRP. MX. 11/05/214/4; 10-81; 37,000.

True Copy

[Signature]

Advocate

८. रे./W. R.

Annex A/3

जी 320 एफ/G 320 F
मानक फार्म 4 / Std. Form 4

निलम्बन आदेश के प्रतिसंहरण के लिए आदेश का मानक फार्म
[रेल सेवक (अनुशासन और अपील) नियम, 1968 का नियम 5 (5) (ग)]

Standard Form of Order for Revocation of Suspension Order under
Rule 5 (5) (c) of RS (D & A) Rules, 1968

संख्या/No. २/३०८/SUS/८९/R/11

दिनांक / Dated 30/8/1989

रेल प्रशासन का नाम
Name of Rly. Administration } RRM office

निर्गम स्थान / Place of Issue Raykot

आदेश / ORDER

यतः श्री (रेल कर्मचारी का नाम और पदनाम)
को द्वारा दिनांक को निलम्बित
करने का आदेश दिया गया/दिया गया समझा जाता है।

Whereas an order placing Shri R.T. Mochi, ccf/stores
(name and designation of the railway servant)

under suspension was made / was deemed to have been made by AARM
on 21/3/89

अतः अथ निम्नहस्ताक्षरी (वह प्राधिकारी जिसने निलम्बन आदेश दिया है या जिसके द्वारा दिया गया समझा जाता है या कोई अन्य प्राधिकारी जिसका वह प्राधिकारी अधीनस्थ है) रेल सेवक (अनुशासन और अपील) नियम, 1968 के नियम 5 के उप नियम (5) के खण्ड (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एतद्वारा उक्त निलम्बन आदेश को तत्काल / दिनांक से प्रतिसंहरित करते हैं।

Now, therefore, the undersigned (the authority which made or is deemed to have made the order of suspension or any other authority to which that authority is subordinate) in exercise of the powers conferred by Clause (c) of Sub-Rule (5) of Rule 5 of the RS (D & A) Rules, 1968, hereby revokes the said order of suspension with immediate effect / with effect from 21/3/89

हस्ताक्षर / Signature C. K. Mahiana

नाम / Name C. K. Mahiana

आदेश देने वाले प्राधिकारी का पदनाम।
Designation of the authority making this order. AARM/R.T.

प्रतिलिपि / Copy to:

श्री R.T. Mochi, ccf/stores (theo. Supdt / stores)
Shri (निलम्बित रेल कर्मचारी का नाम और पदनाम)
(Name & designation of the suspended Rly. servant).

cf-ATO; ccf/ed, ccf/BB

True Copy
B. V. Ram

(3)

Annex A/4

(20)

(4)

Standard form No.5 STANDARD FORM OF CHARGE SHEET.

(Rule 9 of Rly. Servants(Discipline & Appeal Rules,1968).

No. E/308/EDP/89/XR/3

Office of Rly. Adm. Div. Office,
Place of issue, Rajkot.

Dated:- 30/3/89

MEMORANDUM:-

The undersigned propose (s) to hold an inquiry against Shri Raman
T. Mechi, CC under Rule 9 of the Rly. Servants(Discipline & Appeal) 1968. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles charge (Annexure I), A statement of the amputation of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure II). A list of documents by which and a list of witnesses by whom the articles of charge are proposed to be sustained are also enclosed (Annexure III & IV). Further Annexure III are enclosed.

2. Shri R-T Mechi is hereby informed that if he so desire, he can respect & take from the documents mentioned in the enclosed list of documents(Annexure III) at any time during office hours within ten days of receipt of this Memorandum.

3. Shri R-T Mechi is further informed that he may, if so desires, take the assistance of an other Rly. Servant/an Official of Rly. Trade Union (who satisfies the requirements of Rule 9(13) of the Rly. servant (Discipline & Appeal) Rules, 1968 and Note 1 and/or Note 2 thereunder as the case may be) for inspecting the documents and assisting him in presenting his case before the Inquiring officer in the event of an oral inquiry being held. For this purpose, he should nominate one or more persons in order of preference. Before nominating the assisting Rly servant (s) Rly. Trade Union official(s) Shri R-T Mechi should obtain an undertaking from the nominee (s) that he(they) is(are) willing to assist him during his disciplinary proceedings. The undertaking should also contain the particulars of other case (s) if any, in which the nominee (s) had already undertaken to assist and the undertaking should be furnished to the undersigned along with the nomination.

4. Shri R-T Mechi is hereby directed to submit to the undersigned a written statement of his defence within ten days of receipt of this Memorandum, if he does not require to inspect any documents for the preparation of his defence and within 10 days after completion inspection documents if he desires to inspect documents and also.

- a) to state whether he wished to be heard in person and
- b) To furnish the names and addresses of the witnesses, if any, whom he wished to call in support of his defence.

(21)

...2,,

5. Shri R-T. Mechi is informed that in ~~an~~ inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or/deny each articles of charge.

6. Shri R-T. Mechi is further informed that if he does not submit his writing statement within the period specified in para 2 or does not appear in person before the inquiring authority of otherwise failure refuses to comply with the provisions of Rule 9 of the Railway Servent (Discipline and Appeal) Rules 1969, or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry ex-parte.

7. The attention of Shri R-T. Mechi is invited to rule 20 of the Rly. Servent (Conduct) Rules, 1966, under which no Rly. Servent shall bring or attempt to bring and political or other influence to bear upon any superior authority to further his instests in respect of matters pertaining to his service under the Government. If an representation is received on his behalf from another person in respect of any matter dealt within these proceedings. It will be presumed that shri R-T. Mechi is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the Rly. Service (Conduct) Rules, 1966.

8. The receipt of this Memorandum may be acknowledged.

Signature

Name & Designation
of Competent authority

C. K. Mahuram
Asst. Secy. / Rly.

Encl: Statement of Imputation.

To.

Shri R-T. Mechi,
Designation:-

Place

Copy to Shri

Designation of leading authority)

For information (Name and

4/8/69

True copy
@ B. Vasanth
Advocate

(32)
(22)
(3)

Statement of allegation.

dt. 30.3.89.

Shri Raman T.Mochi,
CC/Stores,
DRM's Office, Rajkot.

Article of charges.

While working as Chief Clerk/Stores for Engineering Branch in Divisional Office, Rajkot, Shri Raman T.Mochi showed gross negligence in his working which resulted into heavy accumulation of outstanding stock sheets.

Statement of imputation.

Shri Raman T.Mochi is working as Chief Clerk in Divisional Office. He is entrusted with the work of Stores section pertaining to Engineering Branch which also included clearance of stock sheets.

Due to his gross negligence, the No. of outstanding stock sheets pertaining to Engg. Branch increased upto 9 Nos. at the end of November 88. He could hardly clear 1 stock sheet and these figures remained as 8 Nos. as on 31.1.89.

Stock Sheet No.PWI/PIN/Stores/1-12/86-87 dt. 27.2.87 of PWI-PIN was received in Divisional Office on 29.6.87. Initial remarks were given on 1.7.1987. Subsequently, he failed to obtain remarks for the queries raised by SAO(WS) SBI. He did not issue regular reminders to CCO nor did he put up the case to SDEN(II) occasionally for his orders with the result that this stock sheet is still remaining outstanding on 20.3.89.

Stock Sheet No.IOW/RJT/WC/Stores/1-3/86-87 of 24.5.86 with remarks was received in this office on 11.6.86 for which initial remarks were sent on 16.6.86. Subsequently, he failed to get the remarks for the queries raised by SAO(WS)SBI. He failed to issue regular reminders and also failed in putting up the case to SDEN(I) occasionally with the result this stock is still not finalised and is pending as on 20.3.89.

Stock sheet No.CIOW/RJT/Stores/1-69/87-88 of 20.8.87 with remarks from CIOW-RJT was received in this office on 22.10.87 which was sent to SAO(WS) SBI on 10.12.87. He failed to obtain remarks to queries raised by SAO by ~~not~~ issuing regular reminders. He also did not point out regularly to SDEN(I) that remarks are not forthcoming from the subordinates and other offices. This stock is still pending on 20.3.89.

Shri Raman T.Mochi has showed gross negligence in his working. This has resulted into arrears of outstanding stock sheets pertaining to Engg.Branch. Out of total 8 Nos. pending stock sheets of more than 1 year, 7 Nos. pertain to Engineering Branch for which Shri Raman T.Mochi is responsible.

Penalty proposed: Major (SF-5)

List of witness: Shri Mayatra, OS/Stores.

List of documents: DRM(G)RJT's No.G/382/1 dt. 12.12.88
LRM(G)RJT's No.G/382/1/Vol.II of 15.2.89.
File No.S/12/3/14/88-89
File No.S/607/3/5/86-87
File No.S/607/3/9/87-88

True Copy

B. N. Sarm

Advocate

93 23

ANNEXURE-A/5

From : R.T. Mochi
CC-Stores

To
Shri C.K.Makwana
ADRM Rajkot.

Sub : Standard Form No.5
Ref : Your No.E/308/ED/X/89/8 dt.30-3-89.

In connection with your above form I
have to state my defence as under

I have resumed as Chief Clerk from
APR-85 in stores section, Though I am weak
in health since 2-9-85 upto this date, and due
to over burden of work this thin has been
happened.

Moreover I was repating on phone to
AEN's or Clerk governed to close there items
in stock sheet and reminders have been issued
to CCO CCG for the accepting the liabilities
of shortages and there was no response received
from them. So this already is occured and not
finalised stock sheet.

You are requested to appologe my above
fact.

I will be more careful in the future.

Yours sincerely,

R.T. Mochi

(R.T. MOCHI)
CC-Stores.

*True copy
B.N. Vasani
Advocate*

प. रे. / W. R.

जी 323 एफ / G 323 F
मानक फार्म 7 / Standard Form 7

जांच अधिकारी/जांच बोर्ड की नियुक्ति से संबंधित आदेश का मानक फार्म—रेल सेवक (अनु. और अपी.) नियम, 1968 का नियम 9 (2)
Standard Form of Order relating to Appointment of Inquiry Officer/Board of Inquiry
[Rule 9 (2) of R. S. (D & A) Rules, 1968]

क्रमांक / No. ६/३०८/६०/८९/४४/३

रेल प्रशासन का नाम DRM office
Name of Railway Administration
निर्गम-स्थान / Place of Issue Rajkot
दिनांक / Dated 11/5/89

आदेश / Order

यतः रेल सेवक (अनुशासन और अपील) नियम, 1968 के नियम 9 के अंतर्गत श्री

(रेल कर्मचारी का नाम और पदनाम) के विरुद्ध जांच की जा रही है।

WHEREAS an Inquiry under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968, is being held against
R. T. Mechi, CC/stores (Name and Designation of Railway Servant)

और यतः निम्नहस्ताक्षरी का यह विचार है कि उनके विरुद्ध विरचित आरोपों की जांच के लिए एक जांच बोर्ड/जांच अधिकारी की नियुक्ति की जानी चाहिए।

And whereas the undersigned considers that a Board of Inquiry/an Inquiry Officer should be appointed to enquire into the charges framed against him.

अतः अब, निम्नहस्ताक्षरी उक्त नियम के उप-नियम (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, एतद्वारा नीचे लिखे व्यक्तियों का एक जांच बोर्ड नियुक्त करते हैं :-

Now, therefore, the undersigned, in exercise of the powers conferred by Sub-rule (2) of the said Rule, hereby appoints :—
A Board of Inquiry consisting of —

- | 1. | नाम/Name | पदनाम/Designation |
|----|------------------------------------|-------------------|
| 2. | Ref:- This office SF-5 of even No. | |
| 3. | dt: 30/8/89 | |

अथवा / OR

उक्त श्री के विरुद्ध विरचित आरोपों की जांच के लिए श्री

जो जांच अधिकारी के रूप में नियुक्त करते हैं।

Shri. M. F. Baig as Inquiry Officer to enquire into the charges framed against the said Shri. R. T. Mechi

हस्ताक्षर/Signature

नाम/Name

अनुशासन प्राधिकारी का पदनाम

Designation of the Disciplinary Authority

प्रतिलिपि/Copy to ६/४४-४५-४६, CC/stores (Sup/stores) (रेल कर्मचारी का नाम और पदनाम)।

प्रतिलिपि/Copy to ६/४४-४५-४६, CC/stores (Sup/stores) (Name & Designation of the Railway Servant)।

प्रतिलिपि/Copy to ६/४४-४५-४६, CC/stores (Sup/stores) (जांच बोर्ड के सदस्यों/जांच अधिकारी का नाम और पदनाम)।
(Name & Designation of the Members of the Board of Inquiry/Inquiry Board).

* प्रतिलिपि/Copy to (उधारदाता प्राधिकारी का नाम और पदनाम) को सूचनाई प्रेषित।
for information (Name and Designation of the Lending Authority).

* टिप्पणी :—यह पृष्ठोंकल अपेक्षित होने पर ही किया जाय। रेल कर्मचारी को भेजी जाने वाली प्रतिलिपि में इसे शामिल न किया जाये।

Note :—To be used wherever applicable. Not to be inserted in the copy sent to the railway servant.

WRP, MX. 61/05/132/1; 4-76; 15,000.

True Copy

D. Vasam

Advocate

Annex A/7

35
25
7

Statement No.1

Dt : 30-6-1989

Name : R.T.Mochhi.
Designation : Chief Clerk(Stores)
Station : Rajkot
Date of appointment : 15/12/1957
Pay : Rs.1900/-
Conduct : As per service sheet.

Q.No.1 You have been issued SF-5 No.E/308/ED/89/XR/3 dated 30.3.1989 by ADRM-Rajkot for the following charges -
(1) Due to your gross negligence, the no. of outstanding stock sheets pertaining to Enng. Branch increased upto 9 nos. at the end of Nov.88. You could hardly clear 1 stock sheet and these figures remained as 8 nos as on 31.1.89.

Stock sheet No.PWI/PTN/Stores/1-17/86-87 dt.27.2.87 of PWI-PTN was received in Divisional Office on 29.6.1987. Initial remarks were given on 1.7.1987. Subsequently you failed to obtain remarks for the queries raised by SAO(WS) SBI. You did not issue regular reminders to CCO nor did ~~xxxxxxx~~ you put up the case to SDEN(II) occasionally for his orders with the result that this stock sheet is still remaining outstanding on 20.3.89.

Stock sheet No.CIW/RJT/Stores/1-3/86-87 of 24.5.86 with remarks was received in this office on 11.6.86 for which initial remarks were sent on 16.6.86. Subsequently you failed to get the remarks for the queries raised by SAO(WS) SBI. You failed to issue regular reminders and also failed in putting up the case to SDEN(II) occasionally with the result this stock sheet is still not finalised and is pending as on 20.3.89.

Stock sheet No.CIW/RJT/Stores/1-86/87-88 of 20.8.87 with remarks from CIW-RJT was received in this office on 22.10.87 which was sent to SAO(WS) SBI on 10.12.87. You failed to obtain remarks to queries raised by SAO by issuing regular reminders. You also did not point out regularly to SDEN(I) that remarks are not forthcoming from the subordinates and other office. This stock is still pending on 20.3.89.

Shri Raman T.Mochi has showed gross negligence in your working. This has resulted into arrears of outstanding stock sheets pertaining to Enng. Branch. Out of total 8 nos. pending stock sheets of more than 1 year, 7 nos pertain to Engineering branch for which you are held responsible.

Do you accept the charges levelled against you at this stage?

Ans. AS per my statement submitted in reference to the charges I shall like to quote that do to maintaining indifferent health I could not cope up the work but after receiving the Standard Form 5 I have brought necessary improvement in my method of working. As I accepted the charges so at this stage I cannot deny them.

True Copy

B.N. Sen

Advocate

EO & DCOS-RJT

Defence Counsel

R.T. Mochhi
(R.T.Mochhi)
Chief Clerk

W.R.

Amrta 1/8

(26)

(3)

तब तक (अज्ञात और शरीर) नियम, 1968 के नियम 6 के अंतर्गत दे लिये जाने की प्रतीति (अ. म. प्र.)

Notice of Imposition of a Penalty (N.I.P.) under Rule 6 of the Railway Servants (Discipline and Appeal) Rules, 1968.

पत्रा सं. H. 308/MD/89/XR/3

Shri R T Mechl

CC/Stores br R.T.

(Through.. Supdt.-Stores. के द्वारा)

इसके द्वारा आपको सूचित किया गया है कि आपके नियम निर्धारित दे लिये जाने की प्रतीति प्राप्त हुई है :-
You are hereby informed that the following penalty has been awarded to you :-

'Compulsory retirement from Railway service'.
Ref:-This office SF.5 of even no.dt.30.3.89 & your defence dt. 6.4.89.

You are required to acknowledge receipt of this Notice on the form subjoined

पत्र नाम..... C K Makwana

पद..... ADM-RJT

हस्ताक्षर.....

Encl: Findings in 1 page

(क) फाँक
(ख) आपकी सेवा के दिनों के लिए आपका निलंबन।
(ग) आपकी सेवा के दिनों के लिए आपका निलंबन।
(घ) आपकी सेवा के दिनों के लिए आपका निलंबन।
(ङ) आपकी सेवा के दिनों के लिए आपका निलंबन।

Settlement of your dues will be made at.....
DRM office R.T.

तब तक (अज्ञात और शरीर) नियम, 1968 के नियम 18 के अंतर्गत दे लिये जाने की प्रतीति (अ. म. प्र.)

(c) Under Rule 18 of the Railway Servants (Discipline and Appeal) Rules, 1968, an appeal against these orders lies to.....

(i) शरीर दे लिये जाने की प्रतीति दे लिये जाने की प्रतीति (अ. म. प्र.)
(ii) शरीर दे लिये जाने की प्रतीति दे लिये जाने की प्रतीति (अ. म. प्र.)

The appeal contains no disrespectful or improper language.

C/- Supdt.-MD
Supdt.-PB
Supdt.-Settle.

-P70

27

Speaking orders:

I have gone through the enquiry proceedings and I find that all reasonable facilities were given to the accused to defence his case. Even though he has admitted the charges levelled against him vide his reply dt. 6.4.53, he was nominated to give him further chances. Even during the course of enquiry he has admitted the charges levelled against him and he has given a lame excuse that due to bad health he could not do the office work as required. He has further stated that after receipt of SF 5, he has improved in his working. This statement cannot be accepted as even to day number of stock sheets pending pertaining to Engr department are 6. I find that his work is far from satisfactory and office work is likely to suffer badly if he continues to work. I have, therefore, come to the conclusion that his services are not required and he should be compulsorily retired with immediate effect.

True Copy

Advocate
(
W.K. am

overlook

Amrta A/9

FINDINGS

Shri R.T.Mochi, CC(Stores) was served with standard form No.5 vide memorandum No.E/308/ED/89/XR/3 dated 30.3.1989 for gross negligence in his working which resulted into heavy accumulation of outstanding stock sheets as under.

Due to his gross negligence, the no. of outstanding stock sheets pertaining to Engg. branch increased upto 9 nos. at the end of Nov.1988. He could hardly clear 1 stock sheet and these figures remained as 8 nos as on 31.1.89.

Stock sheet No.PWI/PTN/Stores/1-17/86-87 dt. 27.2.87 of PWI PTN was received in Divisional Office on 29.6.87. Initial remarks were given on 1.7.87. Subsequently he failed to obtain remarks for the queries raised by SAO(WS) SBI. He did not issue regular reminders to CCO nor did he put up the case to SDEN(II) occasionally for his orders with the result that this stock sheet is still remaining outstanding on 20.3.89.

Stock sheet No.IOW/RJT/WC/Stores/1-3/86-87 of 24.5.86 with remarks was received in this office on 11.6.1986 for which initial remarks were sent on 16.6.86. Subsequently he failed to get the remarks for the queries raised by SAO(WS)SBI. He failed to issue regular reminders and also failed in putting up the case to SDEN(I) occasionally with the result this stock is still not finalised and is pending as on 20.3.89.

Stock sheet No.CIOW/RJT/Stores/1-69/87-88 of 20.8.87 with remarks from CIOW-RJT was received in this office on 22.10.87 which was sent to SAO(WS) SPI on 10.12.87. He failed to obtain remarks to queries raised by SAO by issuing regular reminders. He also did not point out regularly to SDEN(I) that remarks are not forthcoming from the subordinates and other offices. This stock is still pending on 20.3.89.

Shri Raman T.Mochi has showed gross negligence in his working. This has resulted into arrears of outstanding stock sheets pertaining to Engg.Branch. Out of total 8 nos pending stock sheets of more than 1 year, 7 nos pertain to Engineering branch for which Shri Raman T Mochi is responsible.

CONCLUSION

In answer to question No.1, during the enquiry conducted on 30.6.1989, Shri R.T.Mochi has accepted the charges and stated that due to his maintaining indifferent health He could not keep up the work but after receiving the Standard Form No.5 he has improved his method of working. He also accepted the charges vide his representation dt. 5.4.89 in reply to Standard Form No.5 issued vide No.E/308/ED/89/XR/3 dated 31.3.89.

Since he has accepted the charges and looking to the documents and on verification it is concluded that he is held responsible for gross negligence in his working which resulted into heavy accumulation of outstanding stock sheets.

(M.F.Baig)
EO & DCOS-Rajkot.

True Copy

Advocate

Ames A/10

(29)

(10)

पश्चिम रेलवे
Western railway

मण्डल कार्यालय, राजकोट ।
Divisional office
Rajkot
dt/- 7-9-89.

सं. No. ED/R/89

आ प न
Memorandum.

Sub:- Compulsory retirement from Railway service- Shri
R T Mochi, CC, Stores Br. Divl office RJT.
Ref:- NIP No.E.308/ED/89/XR/3 dt. 10.8.89 issued by ADRM RJT.

Shri Ramanlal T. Mochi, Chief Clerk scale Rs. 1600-2660(RP) in
Stores Branch, stands compulsory retired under DAR with
effect from 6.9.89 the date from which he has acknowledged
the aforesaid NIP.

Necessary action for payment of settlement dues may be
taken by the concerned section.

Copy to- प्रतिलिपि: सर्व संबंधित को ।

DAO RJT: SUPDT-Stores; Supdt-Settlement; for IRM(E) RJT.
S-DAR; CWLI RJT. PI-Settlement; कृते मंडल (स्था) राजकोट
Branch Secretary, JCC Society, Rajkot; Supdt-EPB;
Promotion/increment/leave/pass/settlement clerks; DCOS RJT;
ED839/Works/CC.

विषय:- रेलवे नौकरी से अनिवार्य रूप से सेवानिवृत्ति - श्री आर टी मोची. मुलिक
मंडल शाखा. मंडल कार्यालय . राजकोट ।

संदर्भ:- अमरेन्द्र राजकोट द्वारा जारी दि. 01-08-89 का एनआरपी सं. 0 ई. 308/ईडी/89
एनआर/3

श्री रामलाल टी. मोची. मुख्य लिपिक. वेतनमान रु. 1600-2660(सर्वे), मंडल शाखा राजकोट
अनुशासनिक अपील नियमों के अंतर्गत दि. 06-9-89 से जिस तारीख को उन्होंने उपर्युक्त
एनआरपी की पावती दी है. उसी तारीख से अनिवार्य रूप से सेवानिवृत्त है ।

असकाया निपटान की अदायगी संबंधित संबंधी आवश्यक कार्रवाई संबंधित अनुभागों द्वारा
की जाए ।

By RAD

Shri Ramanlal T Mochi
JCC Society No 111
Jammagar Road Rajkot

True Copy
DBMsem
Advocate

Ames A/V

30

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39

From

R.T. Mochi,
Ex. Chief Clerk of DRM RJT's Office,
Slum Quarter No. 111,
Jamnagar Road,
RAJKOT

Dt. OCTOBER 07, 1989

To

Chief Personnel Officer,
Western Railway,
Churchgate,
BOMBAY - 400 020

Through: DRM RAJKOT

Respected Sir,

Sub: APPEAL against punishment of compulsory
retirement from service awarded by ADRM RJT

Ref: ADRM RJT's No.E.308/ED/89/XR/3 dt.10.8.'89

Sir, I have been awarded a penalty of compulsory retirement from railway service, vide the NIP under reference, and I approach your kindness with folded hands against the above punishment with a sanguine hope that I would get justice from your hands.

I was served with SF-5 dated 30.3.1989. The charges framed against me were mainly that I had delayed clearance of Stock Sheets dated 27.2.1987, 24.5.1986, and 20.8.1987. I have replied to this charge sheet vide my application dated 30.3.1989. In this I had mentioned that this situation has arisen due to the following reasons:

- 1) My bad health from 1985
- ii) Non receipt of response from the office of the subordinates despite my repeated telephonic requests.

From the above your good-self will kindly see that though I am responsible for handling the subject to the satisfaction of the Administration, I am not solely responsible for the delay caused. Partly it was ~~my~~ because of the in-action from the subordinate offices concerned, and partly because of my indifferent health.

At the time of DAR enquiry also, though I admitted my fault I had mentioned that it was due to my indifferent health I could not cope up with the work. This is only an unqualified admission and the EO should have verified from records about the reasons advanced by the undersigned for the poor state of affairs. Unfortunately this has not happened. To this extent the EO has erred in carrying out the duties cast on him as EO. However, the ~~XXXXXX~~ EO in his findings clearly indicated that "Shri Mochi has accepted the charges and stated that due to his maintaining indifferent health he could not cop up the work". Despite this mention the EO has also taken my admission as an un-qualified one.

It is also submitted that the Disciplinary Authority, i.e. the ADRM RJT also has not given any consideration about the defence given by me in reply to the charge sheet or the reasons of my indifferent health. Had this been given naturally one authority would not have imposed a harsh punishment like the compulsory retirement when I have got only a few years to go for retirement on superannuation.

Respectfully Obedient2.

For your kind consideration, I may submit that due to the fact I was bed ridden from the year 1987, I was constrained to remain under sick list during the following periods.

- 1) From 30.12.1987 to 07.3.1988 - 2 months and 09 days
- 2) From 29. 8.1988 to 11.10.88 - 1 month and 14 days

The above periods of absence have been computed. On other occasions in short spells I was constrained to be away from the work since I was bed ridden, the details of which I do not have with me.

Even when I attended the office, I was only out of bed and was not keeping good health, when one can put his head and heart for delivering goods in the manner one should do. /in

Even on date, I have a very frail structure and I may weigh hardly 40-45 Kg. at the age of 55 years. But for the social and domestic obligations even ~~that~~ I would have treated this compulsory retirement as a blessing in disguise ~~substantial~~ would not have appealed. But now it is not the situation. Hence I ~~request~~ request you to kindly give a considerate thought to the above mentioned facts and kindly set aside the punishment of "COMPULSORY RETIREMENT" awarded to me.

Thanking you,

Yours faithfully,

R. T. Mochi
(R. T. MOCHI)

True Copy

O. B. Moem

Advocate

Re: Mochi Copy

बीमा नहीं NOT INSURED
 लगाये गये डाक टिकटों का मूल्य रु
 Amount of Stamps affixed Rs 6 P 10
 एक रजिस्ट्री प्राप्त किया जारी मोहर
 Received by Register Date Stamp
 पानेवाले का नाम (Wm) P. R. M. A. C.
 Addressed to Hathi Company
 पानेवाले अधिकारी के हस्ताक्षर
 Signature of Receiving Officer

क्रमांक No 0855



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51-1

बीमा नहीं NOT INSURED
 लगाये गये डाक टिकटों का मूल्य रु
 Amount of Stamps affixed Rs 6 P 10
 एक रजिस्ट्री प्राप्त किया जारी मोहर
 Received by Register Date Stamp
 पानेवाले का नाम W. R.
 Addressed to Church Gate
 पानेवाले अधिकारी के हस्ताक्षर
 Signature of Receiving Officer

क्रमांक No 0816

True copy
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ક્ર. નં.
આર.પી. ૫૪
R.P. 54

ભારતીય ડાક-તાર વિભાગ
ભારતીય ટપાલ અને તાર વિભાગ
INDIAN POSTS AND TELEGRAPHS DEPT.

તારીખ-મોહર
તારીખ-સિક્કો



SENDER'S ADDRESS ઓડિશા રજીસ્ટર્ડ ઓફિસ
સેન્ડરના પત્ર

R. T. Mochi - chief clerk
Slum Quarter No 111
JAMNAGAR-ROAD, RAJKOT

DATE STAMP

રાજકોટ
૩૬૦૦
RAJKOT

પિન/પીઝ/PIN

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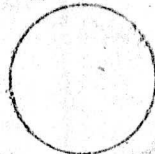
संख्या ११४६
आर.पी. ५४

भारतीय डाक विभाग
भारतीय डाक विभाग
भारतीय डाक विभाग

INDIAN POSTS AND TELEGRAPHS DEPT.

SENDER'S ADDRESS
भारतीय डाक विभाग
भारतीय डाक विभाग

संख्या ११४६
आर.पी. ५४



DATE STAMP

R. T. Mochi - Chief Clerk
Slum Counter No 111

AMNAGAR-ROAD, RAJKOT

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RAJKOT

पिन/पोस्ट/पिन

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No. E/308/ED/89/AR/3

Sri R T Mochi,
CO Slum Quarters,
No. 111
Jamnagar Road,
RAJKOT.

Divisional Office,
Rajkot.Dt.// -1-80.

You are hereby directed to see CPO for personal
hearing on 18.1.1990 without fail.

Please note and ack.

[Signature]
For DRM(E) RJT.

C/- S/ED for information and necessary
action please.

C/- CPO CCG in ref to A/No. E/DAR/308/14/11 of 9.1.90 for
information and necessary action.

True Copy

[Signature]

Advocate

Annex A/13

33

us

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

~~Case No.~~

198

T.A. No. 1293 OF 1986

(R.C.S.No. 558 OF 1984)

DATE OF DECISION 20.5.1988

SHRI T.A. PAWADAI

Petitioner

MR. B.B. GOGIA

Advocate for the Petitioner(s)

Versus

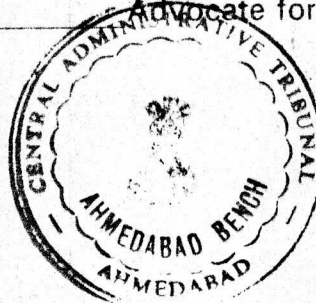
THE UNION OF INDIA & ORS.

Respondent_s

MR. B.R. KYADA

Advocate for the Respondent(s)

CORAM :



The Hon'ble Mr. P.H. TRIVEDI, VICE CHAIRMAN.

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

Shri T.A. Pawadai,
Adult, Occu: Service,
C/o. Shri A. Sethu,
Railway Quarter No.82/B2,
Kothi Compound,
Rajkot - 360 001.

..... Petitioner.

(Advocate : Mr. B.B. Gogia)

Versus.

The Union of India,
Owing & Representing
Western Railway, through:
General Manager,
Western Railway,
Churchgate, Bombay.

..... Respondents.

(Advocate : Mr.E.R. Kyada)

J U D G M E N T

T.A.No. 1293 OF 1986

(R.C.S.No. 558/1984)

Date : 20.5.1988

Per: Hon'ble Mr. F.M. Joshi, Judicial Member.

The petitioner Shri T.A.Pawadai, was a Permanent Way Inspector, scale Rs. 425-700(R), in Survey and Construction Department in Grade III. While he was acting in that capacity on Viramgam-Okha-Porbandar Conversion Project, at Rajkot, a charge sheet dated 29.11.1980 was served on him containing three articles of charges alleging misconduct which reads as under:-

- (A) Non-identical thumb impressions affixed by different persons against one name either in description or payment column in M.C.F. Sheet or in Register of Specimen thumb impressions obtained at the time of appointment. In view of Physical evidence of non-identity existing in M.C.F. Sheet which clearly shows that the payment has not been made to the original incumbent i.e. whose T.I. was obtained at the time of appointment in the 1st day attendance in M.C.F. Sheet.
- (B) Identical thumb impressions affixed by one and the same persons against different names either on the 1st day of attendance in description column of M.C.P. Sheet or



at the time of payment in M.C.P. Sheet. About 12 batches are involved in which one and the same employee has affixed his thumb impressions against different names involving 12, 6, 3, 66, 3, 32, 3, 32, 3, 2, 2, 3, 2, 4 persons

- (C) That names of casual labour who has been paid through M.C.P. Sheet of PWI(C) RJT are not traceable in the register of specimen thumb impressions. In terms of joint accounts and Establishment circular No.E/1049 dated 20.11.57 the specimen T.Is of Casual labours are required to be recorded in the register of specimen thumb impressions at the time of 1st appointment/recruitment. The employment of casual labours without obtaining thumb impressions despite repeated instructions is not free from doubt and indicate malafide intention.

2. In response to the standard form of charge sheet under memorandum No. RJT/E/308/1/1 dated 20.9.80 under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968, the petitioner submitted his defence, inter-alia denying the charges. The Inquiry Officer held the petitioner guilty of the charges levelled against him. The disciplinary authority viz; Executive Engineer(C) Rajkot agreed with the report of the inquiry officer and came to the following findings:

REG : Serious irregularities of Finger Prints-
195 Wrong payments in MCP sheets of PWI(C) RJT.

The findings and reasoning for the findings submitted by the EO&AEN(C) II. RJT have been gone into EO has mentioned that Shri T.A. Pawadai, PWI(C) RJT is partially responsible for Annexure 'E' i.e. the case of identical thumb impression affixed by one and the same person against different names in the MCP at the time of payment. He has further stated that the DPC, FPE etc. are also responsible, which tentamounts to mention that the PWI(C) RJT alongwith others is responsible jointly for making payment taking thumb impressions from one and the same person against different names. I therefore contend that Shri T.A. Pawadai, PWI(C) RJT is fully responsible alongwith others, at least for certain cases. e.g. Shri Pawadai had arranged payment taking thumb impression from Shri Sushi Chiranjilal against the following names appearing in page No.160 of C06 No.560 Dtd. 24/12/79.

- | | |
|----------------------------|-------------------------------|
| 1. Shri Raman Laxman | 4. Shri Veersingh Thara |
| 2. Shri Sukha Jaisingh | 5. Shri Murhuswamy |
| 3. Shri Jawansingh D Singh | 6. Shri Saboorsingh Parsingh. |

Shri T.A. Pawadai, PWI(C) RJT had identified and witnessed payments to one and the same person taking his thumb impression against different names in the same muster sheet in the above cases.



(47) (36)

This amply proves the allegations grouped under Group 'B' of the statement of imputation. This act on the part of Shri Pawadai is considered as a will full act of mal-practice in the payment to labour.

3. In view of the aforesaid findings the Executive Engineer by his office order No. RJT/E/308/1/1 dated 26.8.82 held the petitioner, responsible for the charges and awarded him a penalty of "reversion for a period of two years as Permanent Way Mistry with future effect". Being aggrieved by the order imposing penalty of reduction in rank, the petitioner preferred an appeal against the same to the Engineer-in-charge (C), Ahmedabad on 20.10.1982. However, when the said appeal was not decided even after a lapse of about 16 months, the petitioner was constrained to file a Regular Civil Suit No. 558/84 in the Court of Civil Judge (S.D.) Rajkot on 3.5.1984. He called in question the impugned order of penalty imposed upon him on the grounds that the enquiry held against him was neither fair nor just as the documents, material for the defence, even though demanded, were not supplied and the conclusions arrived by the disciplinary authority, were the result of non-application of mind and the enquiry was vitiated as he was not furnished with a copy of the report of the enquiry before passing the impugned order and even the punishment imposed upon him is disproportionate.

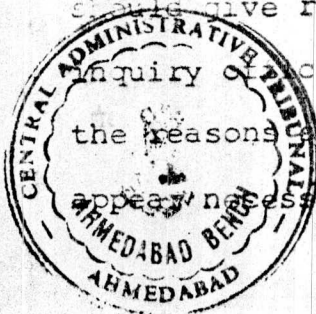
4. Mr. M.N. Udani appeared for the defendants-Railway Administration on 28.6.1984 and sought time to file written statement. Thereafter several opportunities were granted to the defendants to file the written statement, but the same was not filed till the matter was transferred to this Tribunal under section 29 of the Administrative Tribunals Act, 1985. Notices were issued to the parties. In response, whereof Mr. B.B.Gogia and Mr. B.R. Kyada appeared for the petitioner and the respondents respectively. The respondents were given more opportunities to file the reply but they have not preferred to file counter. The learned counsel for the parties waived oral arguments and they were allowed to file written submissions. Mr. B.B.Gogia, has filed his written submissions which has been taken on record.



.....5/-

5. Mr.B.B.Gogia, the learned counsel for the petitioner has raised three-fold contentions in his written submissions viz;
(i) non furnishing of the report of the inquiry officer vitiates the departmental proceedings (ii) the disciplinary authority had pre-judged with closed and pre-determined mind when it stated "since these cases are based on verification of Thumb impression of labourers, there is no doubt in the correctness of the case", in the statement of imputations issued by it.
(iii) the findings of the disciplinary authority are vague and not conclusive as he has not given adequate consideration to the complicated issues and evidence of as many as 10 witnesses of the inquiry.

6. Having regard to the materials brought on record, on careful consideration, we do not find merits in the last two contentions canvassed by Mr. Gogia. In all departmental proceedings, ordinarily, the disciplinary authority has to be convinced prima facie, that there is a case of enquiry to be held against the delinquent and in all cases where a major penalty is envisaged, it is indicated in charge sheet that the alleged misconduct involves lack of devotion to duty and conduct is unbecoming of a Government servant. In the use of such words or phrases in the charge sheet, it can not be said that the disciplinary authority is guilty of pre-judging the issue or for that matter, it can not be said that the authority had a pre-determined mind. It is now well settled that the enquiry report along with the evidence recorded constitute the material on which the Government has ultimately to act. It is conceivable that if the State Government does not accept the findings of the Inquiry Officer which may be in favour of the delinquent officer and propose to impose a penalty on the delinquent officer it should give reason why it disagrees with the conclusions of the Inquiry Officer. Even in such a case it is not necessary that the reasons should be detailed or elaborate. Thus it does not appear necessary that even an order of concurrence must be



supported by reasons in such cases, it is not necessary for the disciplinary authority to record its own findings (see Tarachand V/s. Delhi Municipality, 1977 Lab.I.C.(S.C.) 55).

In the present case the disciplinary authority, while passing the impugned order imposing penalty upon the petitioner, concurred with the findings and the reasoning assigned by the inquiry officer holding the petitioner guilty of the charges levelled against him. He has also in brief recorded his own reasons for his decision on the reverse side of the order dated 28.6.82.

6. The only crucial question for our consideration is whether the impugned order passed by the disciplinary authority is vitiated because the petitioner was not given a copy of the report of the inquiry officer and was not heard before arriving at the findings. Relying on the case of Nibaran Chandra Bose V/s. Union of India & Ors. (1988 Lab. I.C. 12 (C.A.T. Calcutta), it has been vehemently contended by Mr. Gogia that the imposition of penalty suffers from a serious infirmity as the petitioner has not been furnished with a copy of the enquiry report along with notice imposing penalty of reduction in rank as required under law.

7. In the instant case, the disciplinary authority on accepting the findings of the inquiry officer decided to impose a penalty of "reversion for a period of two years as Permanent Way Mistry with future effect". Admittedly, the disciplinary authority has not taken care to furnish a copy of the report of the Inquiry Officer to the petitioner-delinquent, either even prior to the passing of the impugned order or even thereafter.

In M.A. Khalsa V/s. Union of India & Ors. T.A.No.463/86 & O.A.No. 257/86, decided on 1.12.86 by this Bench, we found that when the petitioner delinquent had been informed of the charges



.....7/-

against him and given a reasonable opportunity of being heard and he has been supplied with a copy of the report of the inquiry officer and the disagreement note which enabled him to prefer an appeal to the appellate authority against the order of dismissal, it can not be said that the order of dismissal was vitiated in any manner. While reaching to this decision we had mainly relied on the proposition of law laid down by the Supreme Court in Secretary, Central Board of Excise & Customs and Ors. V/s. K.S. Mahalingam (A.T.R.1986 (2) S.C.4). The said case of Mahalingam, came up for consideration before the Bench of the Supreme Court consisting of M.P.Thakkar & N.D. Ojha JJ., while hearing the case of Union of India & Ors. V/s. E.Bashyan, decided on 11.3.1988 (JT 1988 (1) S.C.627).. his Lordship Mr. Justice Thakkar, speaking for the Bench observed as under :-

It is thus evident that the findings recorded by the Enquiry Officer become infused with life only when the Disciplinary Authority applies his mind to the material which inter alia consists of the report of the Enquiry Officer along with the evidence and the record etc. If therefore the basic material comprising of the report of the Enquiry Officer which has been taken into consideration by the Disciplinary Authority for holding that the delinquent is guilty as per the view expressed by his delegate, namely, Enquiry Officer, is not made available to the delinquent till the axe falls on him, can it be said that the principles of Natural Justice have been complied with? Can it be said that the delinquent had an opportunity to address the mind of the Disciplinary Authority who alone in reality found him guilty? Since it cannot be so asseverated it will be difficult to resist the conclusion that principles of natural justice have been violated and the delinquent has been denied reasonable opportunity.

8. While referring the case to a larger Bench of the Supreme Court, it was further observed that in Mahalingam case this question was not directly in issue and as neither been presented nor discussed in all its ramification and it is therefore futile on the part of the petitioners to contend that the point is covered and decided in their favour.

9. In this context we feel our duty to refer to the decision of the Full Bench of the Tribunal (C.A.T. New Bombay) in Prem Nath K Sharma V/s. Union of India, (1988 ATC 904) rendered

.....8/-



on 6.11.87. In the judgement of the Full Bench delivered by Mr. Justice K. Madhave Reddy, Chairman, having noted the changes made in Article 311 of the Constitution, after 42nd Amendment Act, 1976 and the Railway Servants (Discipline & Appeal) Rules, 1968, he has extensively discussed the case law on the issue. While quashing the order imposing the penalty of removal from service, it was held that the findings of the disciplinary authority are bad in law and is vitiated because the applicant was not given a copy of the report of the Inquiry Officer and was not heard before arriving at the findings. The dictum in the decision puts the point amply clear that "the limited departure made by the 42nd amendment Act, 1976, is that no second show-cause is necessary with respect to the penalty proposed to be imposed. But the obligation to afford a reasonable opportunity to defend himself and to observe the principles of natural justice by supplying all the materials sought to be put against the charged officer which includes the Inquiry Report is not in any way whittled down. The denial of a copy of the enquiry report and opportunity to make representation against it offends the principle of natural justice and violates the provisions of Article 311(2) itself". In all propriety, we respect the most considered view taken by the Full Bench in the said case. ✓

10. Bearing in mind, the position of law as discussed above ^{are} we clearly of the opinion that a duty was enjoined upon the disciplinary authority in the instant case that he should have furnished the petitioner-delinquent, a copy of the Inquiry Report and when that has not been done the requirement of the rule can not be said to have been fulfilled. We therefore hold that the imposition of penalty as had been done by the disciplinary authority can not be sustained and it is liable to be set aside.

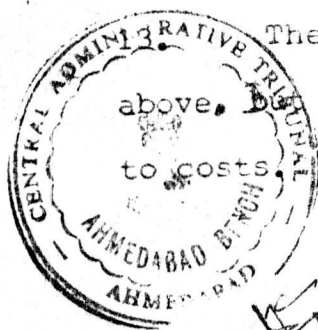
Before parting with, we make a note of the fact that in the meantime, the petitioner has retired from the service since May 1988. The petitioner, in his written submission has expressed his grievance that he had preferred an appeal before



the competent authority which has remained undecided for the last six years. In the suit filed by him he has prayed that the impugned order dated 26.8.82 be quashed and set aside and it should be declared that he continues to be in the service of the respondents railway administration as Permanent Way Inspector with all the benefits of his pay and salary etc.

12. The net result of the aforesaid discussion, is that the petitioner is entitled to claim the reliefs as prayed for. As a result, we allow the application and quash the impugned order dated 26.8.82 passed by the disciplinary authority against the petitioner. The petitioner should be treated to be reinstated in his former post from the date of his reversion and be paid all his arrears of difference in pay and allowances, admissible under the rule and the same should be worked out within three months from the date of this order. The respondents may however proceed against the applicant according to law if they so desire. However at the same time we clarify that this order of the Tribunal is not a direction to necessarily continue the disciplinary proceedings as it is entirely left to the discretion of the disciplinary authority.

The application is allowed to the extent indicated above. In the circumstances, we make no order as to costs.



TRUE COPY

Sd/-

(P.M. JOSHI)
JUDICIAL MEMBER

Sd/-

(P.H. TRIVEDI)
VICE CHAIRMAN

P. Mahajan
24/5/88
Section Officer
Central Administrative Tribunal,
Ahmedabad Bench.

True Copy

B. Misra
(Advocate)

RA St 500/90

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Reply filed

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD

RA/M.A/O.A./T.A./ 47 1980 in OA/279/90

Shri R. T. Mochi Applicant (s).

Mr. B. B. Gogia Adv. for the
Petitioner (s).

Honble Mr. P.H. Bared V.C.
Honble Mr. D.K. Agrawal Jm.

Versus

Union of India & or Respondent (s).

Mr. B. R. Kyada Adv. for the
Respondent (s).

SR. NO.	DATE.	ORDERS.
		Review (Copy served)
2314		<p>Reply filed by Mr. B. R. Kyada adv. for deppo.</p> <p>The order dt 25-1-91 may kindly be reversed... we may write to Honble Chairman for arranging to send Justice Shri D.K. Agrawal, Honble Member (J) of Allahabad Bench to sit at Ahmedabad Bench for hearing the Review Petition in accordance with para (ii) of the Confidential do letter no. 3 (G.P. 1189) dt 25-1-89 (flagged) from Honble Chairman please.</p> <p>for circulation 03/05/91 D.R. (S) <u>Agarwal</u> 03/5/91. Honble J.C. <u>Bared</u> 3/5/91</p> <p>→ Letter issued on 7/5/91. <u>Reply filed in RA</u></p>

(51)

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

AHMEDABAD

Submitted :

C.A.T./JUDICIAL SECTION.

Original Petition No.: _____ of _____.

^{Renew}
Miscellaneous Petition No.: 47 of 1990.

Shri R. T. Mochi Petitioner(s).

Versus.

Union of India & ors Respondent(s).

This application has been submitted to the Tribunal by
Shri B. B. Gogia

Under Section 19 of the Administrative Tribunal Act, 1985.

It has been scrutinised with reference to the points mentioned in the check list in the light of the provisions contained in the Administrative Tribunal Act, 1985 and Central Administrative Tribunals (Procedure) Rules, 1985.

The Applications has been found in order and may be given to concerned for fixation of date.

The application has not been found in order for the reasons indicated in the check list. The applicant may be advised to rectify the same within 14 days/draft letter is placed below for signature.

Asstt. :

S.O.(J) :

D.R. (J):

We may put-up for order.

23/11/90.

K B Sane
23/11/90

R/s
A

We may fix the order by circulation

Rm
23/1/91

AI matter had been reg'd/real

on 23/1/90

Att

MA
23/1/91

Se

to BSAW
24 Jan 91

Dpr

24
24/1/91

23/10/90

St. 500/90
22/11/90

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD

REVIEW PETITION NO: 47 /90

IN

ORIGINAL APPLICATION NO: 279 OF 1990

Shri R.T. Mochi,
Slum Quarter No.111,
Jamnagar Road,
RAJKOT

Versus

1) Union of India,
Owning & Representing
Western Railway
Through:
General Manager,
Western Railway,
Churchgate,
Bombay - 400 020

2) Divisional Railway Manager,
Western Railway,
Kothi Compound,
RAJKOT - 360 001

Amendment - Substituted
as per order
below
:: APPLICANT

MA 1st
557/91
PTA on 4/9/82
my m

:: KRR RESPONDENTS

APPLICATION FOR REVIEW OF JUDGEMENT/ORAL ORDER PASSED
ON 23RD OCTOBER 1990

The applicant begs to submit the Review Appli-
cation as under:

2) That this O.A.No.279/90 was filed by the
Applicant against Respondents against the Punishment
order passed in terms of NIP No.E.308/ED/89/XR/3 dt.
10.8.1989 issued by the ADRM, Western Railway Rajkot
imposing the punishment of compulsory retirement
upon the Applicant.

1. Smt. Prabhaben aged 48 years
occ: widow of late shri R.T. Mochi
Add 25 Mun. or Samner RD
Rikht
2. Mochi Vinod Kumar Kumbhal
aged 29 years occ: Advocate
Siddhpur.
3. Mochi H. Vinod Kumar Kumbhal,
aged 27 years occ: Labour
Rikht.
4. Mochi Rajendrakumar Kumbhal
aged 25 years occ: Service
Rikht.
5. Mochi Manoj Kumar Kumbhal
aged 20 years occ: Student
Rikht.

--- Applicant

3. The applicant submits that the appeal filed by the applicant against the above punishment before the Appellate authority is still pending before him and the same is not yet disposed of by any appellate order. Meanwhile on 23.10.1990 this honourable Tribunal has passed order not admitting the petition and directing the applicant to make a representation in the matter of quantum of punishment to the authority. The applicant begs to submit that he has raised various grounds in the petition including the grounds that he has not been ~~xxx~~ supplied with report of the Enquiry Officer before deciding the penalty and imposing the penalty upon the applicant. This ground is at page 10 of the petition. The said ground ~~xxxx~~ was raised at the time of hearing also but somehow it is missed from the consideration of this Hon'ble Tribunal. This is a legal ground and a law point and can be considered by the honourable Tribunal at any time. The applicant say that the oral order passed by the honourable Tribunal on 23.10.1990, a copy of which is annexed herewith as Annexure A/1 needs review by this honourable Tribunal on the ground that copy of Enquiry Officers' Report is not furnished to the applicant before the final order was passed, which is a sufficient ground for review under order XLVII of CPC

A/1

4) In the circumstances and in the interest of justice, the applicant prays that -

A) The oral order/judgement passed by this honourable Tribunal on 23.10.90 in O.A. No.279/90 may please be reviewed and the matter may please be further heard on the issue of non-supply of Enquiry Officer's Report and any other grounds as deemed fit by the honourable Tribunal at the time of hearing.

5. For this act of justice and kindness this applicant shall ever pray for.

Rajkot/Ahmedabad

Date: 22/11/90

R. T. Mochi
(APPLICANT)

VERIFICATION

I, R. T. Mochi, aged about 55 years compulsorily retired from Railways, resident of Rajkot do hereby verify that the contents of para 1 to 5 are true on legal advice and that I have not suppressed any material fact.

Rajkot/Ahmedabad

Date: 22/11/90

R. T. Mochi
(APPLICANT)

May 21
(ADVOCATE)

Filed by Mr... B. B. Garg ...
Learned Advocate for Petitioners
with second set & ... spaces
copies copy served/not served to
other side

By 22/11/90 for 10 B. Sane
Registrar C.A.T.(V)
A'bad Bench

12/3/90

A-1 4

CAT/J/13

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CENTRAL ADMINISTRATIVE TRIBUNAL

~~PRINCIPAL BENCH DELHI~~

AHMEDABAD BENCH, AHMEDABAD.

O.A No.
~~XXXXXX~~

279

1990

DATE OF DECISION 23.10.1990

Shri R.T. Mochi Petitioner

Mr. B.B. Gogia Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondent

Mr. B.R. Kyada Advocate for the Respondent(s)



Shri R.T. Mochi,
Slum Quarter No. 111,
Jamnagar Road,
Rajkot.
(Advocate-Mr. B.B. Gogia)

.. Applicant

Versus

1) Union of India,
Through,
General Manager, W.Rly.,
Churchgate, Bombay.

2) Divisional Railway Manager,
W. Rly., Kothj Compound,
Rajkot Division,
Rajkot - 360 001.
(Advocate-Mr. B.R. Kyada)

.. Respondents

COMMISSION : Hon'ble Mr. P.H. Trivedi .. Vice Chairman

Hon'ble Mr. D.K. Agrawal .. Judicial Member

O R D E R

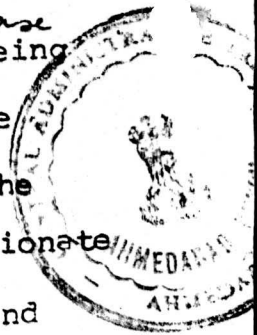
23.10.1990.

Per : Hon'ble Mr. P.H. Trivedi .. Vice Chairman

Heard Mr. B.B. Gogia, learned advocate for the petitioner. His case^M based upon the challenge to the order of punishment and the order of the appellate authority finding him guilty on the basis of his having admitted the charges on the ground that his reply to the memorandum of the charges while pleading ill-health and making some reference regarding his telephonically reminding the persons concerned, amounts to denial of the charges, and therefore^{here} the basis of the findings of his guilt having been established, and the punishment of compulsory retirement being awarded to him after a long period of service without any blemish in form of punishment or adverse remarks earlier awarded, is

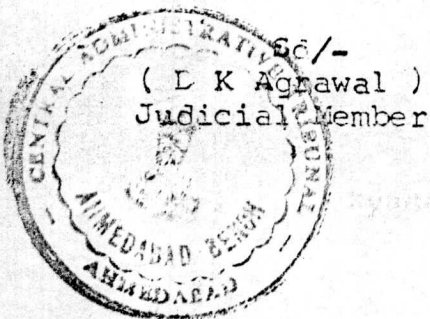
excessive and disproportionate punishment. Learned advocate for the petitioner was invited to take us through the charges and the replies given by the petitioner and subsequent appeal petition made by him, ^{in person,} and it is shown therein that he has in terms stated that he does not deny the charges and pleads ill-health and makes reference to his instructions not being carried out by other persons and ^{he} has telephonically reminding others, while the statement of charges clearly ask, why he did not issue reminders according to the rules as referred to therein. There is, therefore, no basis for his plea that the charges have been denied by him or not admitted by him and we cannot persuade ourselves that the disciplinary authority or the appellate authority ^{could} were not clearly able to conclude that the charges were admitted by him.

2. The other remaining question for challenging the impugned order is the quantum of punishment. ^{Whatever} views may be held regarding quantum of punishment ^{in this case} being excessive or disproportionate, it is now held by the Supreme Court that the Tribunal should not decide the quantum of punishment being excessive or disproportionate as this is a matter best left to the disciplinary and appellate authorities which are best able to appreciate the nature ^{and} quantum of punishment in proportion to the nature of guilt established after inquiry. ^{3.} Learned advocate for the petitioner states that the appeal has not been finally decided upon but the learned advocate for the respondents states that the appeal has been decided. Be that as it may, there is no bar ^{to} the petitioner



representing against the quantum of punishment either in the course of appeal if it is not decided upon or separately, and we are enjoined upon the respondent authorities to give due consideration to such representation and deal with the matter appropriately.

Subject to the above observation, we do not find any merit in the petition and dismiss the same.



Sd/-
(P H Trivedi)
Vice Chairman

IC B Sale
28/10/90
Section Officer

Central Administrative Tribunal,
Ahmedabad Bench.

TRUE COPY

*Mogera

Prepared by
Compared by

[Signature]
29/10/90

True copy
[Signature]
29/10/90

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD.

Review Application No. 47 of 1990.

IN

O.A. No. 279 of 1990

Shri R.T. Mochi,
Slum Qtrs. No.111,
Jamnagar Road,
RAJKOT.

..... Applicant.

Vrs.

Union of India & ors.

..... Respondents.

Reply by the Respondents.

1. At the outset the Respondents states and submits that the present review application of the Applicant is not maintainable or tenable under the provisions of the Central Administrative Tribunal Act. The original application was filed by the Applicant against the punishment order dt. 10-8-1989 passed by the Additional Divisional Railway Manager, Western Railway, Rajkot.

2. The Respondent states and submits that the averments made in para 3 are not correct and is denied hereby. When the matter came up for hearing and admission on 23-10-1990 the Hon'ble Tribunal directed to make representation to the authorities regarding the question of punishment. So far the pending of appeal as alleged by the Petitioner is concerned, the ground mentioned in that alleged pending appeal can only be considered. But so far as the other allegations and grounds regarding the supplying of the Report of Inquiry are concerned, it is altogether not related or relevant for the review application. At the time of admission the entire petition

any particular *in particular*
Dr. *2/4/41* **Dy. Registrar** *CAT*
 lect matter **A'bad Bench**

PNB

Dt: 1214197

13224301 2013191
onal Railway Manager.

I, S.C. Agrawal, age adult

Dt: 12/3/97

203181