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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 86 OF 1990.

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DATE OF DECISION 7-7-1993.

Naranbhai Bhanabhai Makwana, **Petitioner**

Mr. M.M. Xavier, **Advocate for the Petitioner(s)**

Versus

The Union of India & Ors. **Respondent s**

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

CORAM :

The Hon'ble Mr. R.C.Bhatt, Judicial Member.

The Hon'ble Mr. M.R. Kolhatkar, Admin. Member.

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 ?

Naranbhai Bhanabhai Makwana,
Keyman Gang No. 47
Post Doliya Via, Dungar,
Amreli Dist.

.... Applicant.

(Advocate: Mr. M.M. Xavier)

Versus.

1. The Union of India
Owning & representing
Western Railway through its
General Manager,
Churchgate, Bombay.

2. The Divisional Railway Manager,
Western Railway,
Bhavnagar Division,
Notice to be served to the
Divisional Engineer,
Western Railway, Bhavnagar Para.

3. The Asstt. Engineer
Western Railway, Dholi Jn.

Respondents.

(Advocate: Mr. R.M. Vin)

JUDGMENT

O.A. No. 86 OF 1990

Date: 7-7-1993.

Per: Hon'ble Mr. R.C. Bhatt, Judicial Member.

Heard Mr. M.M. Xavier, learned advocate
for the applicant and Mr. R.M. Vin, learned advocate
for the respondents.

2. This application under section 19 of the
Administrative Tribunals Act, 1985, is filed by the
Keyman of Gang No. 47, serving in Bhavnagar Division
seeking the relief that the orders dated 26th December
1988 vide Annexure A-6 issued by the Assistant
Engineer, Dholi Junction i.e., respondent No. 3
imposing penalty of removal of the applicant from

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service and confirmed by the appellate authority by decision dated 15th September, 1989 vide Annexure A-9 **be declared** as illegal and void and that the said orders including the order of review application be quashed and set aside and the applicant be continued in service without any break with all consequential benefits etc.

3. It is the case of the applicant that he was suspended vide order No. E/229/DGJ dated 25th September 1988 vide Annexure A-1 which order was revoked on 17th October, 1988, that thereafter during that period on 7th October, 1988 a charge sheet was served on him vide Annexure A-2. The Article of Charge against the applicant was "Serious misconduct, misbehaviour and assaulting attitude with PWI Gr.III-RLA on 23rd September, 1988". The applicant then submitted representation dated 25th October, 1988 denying the charges levelled against him and requested to furnish the copies of the documents relied on by the respondents vide Annexure A-3 which was followed by further representation dated 28th November, 1988 vide Ann.A-4 in which the applicant requested the authorities not to proceed with the departmental proceedings as a criminal case was pending against him and had asked for the copies of documents relied upon by the respondents. The applicant then gave a notice dated 12th December, 1988 Annexure A-5 to the Inquiry Officer.

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Thereafter, the respondent No.3 issued the impugned order dated 26th December, 1988 vide Annexure A-6 imposing penalty of removal from service. It is the case of the applicant that the findings of the Inquiry Officer were not supplied to him and there was a violation of principles of natural justice. The applicant submitted an appeal dated 2nd January, 1989, vide Annexure A-7 to the appellate authority which was dismissed. Then according to the applicant, he made further appeal to the appellate authority vide Annexure A-8. Annexure A-9 is the impugned order of the appellate authority dated 25th August, 1989. The review application was thereafter submitted by the applicant vide Annexure A-10 on 2nd October, 1989 to the Divisional Railway Manager which was rejected on 22nd January, 1990. The main contention among others as found in the application is that the findings of the Inquiry Officer were never made available to the applicant and therefore, according to the applicant, there was a violation of principles of natural justice and all the orders should be held illegal.

4. The respondents have filed reply contending that the fact of suspension and its revocation as alleged by the applicant was true. The respondents have also not disputed the fact of Annexure A-3. The contention of the respondents in the reply is that

the findings of the Inquiry Officer were based on admission of the applicant and there was no question of violation of natural justice. The respondents have annexed the Enquiry Report at Annexure R-I.

5. The learned advocate for the applicant submitted that the respondents had never given the report of enquiry officer to the applicant but the respondents for the first time filed the enquiry report at Annexure R-I with the reply. The learned advocate for the respondents Mr. Vin submitted that the applicant had admitted the charge against him. The learned advocate for the applicant drew our attention to Annexure A-3 which is a copy of representation dated 25th October, 1988 in which the applicant has stated as under:

"I deny the charges listed under Annexure I with that of statement ~~of~~ imputation listed under annexure II".

and the respondents have in para-7(d) stated that the fact of Annexure A-3 not disputed.

Therefore, it can not be said that the applicant had admitted the same before the Inquiry officer.

More over, the respondents have not established that they had given or supplied the report of enquiry to the applicant ~~at~~ any stage. In our opinion, there was a clear violation of principles of natural justice in this case. The applicant had to face the case without report of enquiry. Neither the disciplinary authority at the time of giving findings, nor

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even thereafter the respondents supplied the report of enquiry to the applicant and therefore, all the orders suffer from this technical flaw namely non supply of the report of enquiry to the applicant. In this view of the matter, the order of the disciplinary authority, the order of the appellate authority and the order of reviewing authority are bad in law. However, this defect can be cured by the respondents by supply of the copy of the report of enquiry ~~if~~ till today not supplied ^{and} then resuming the proceedings from that stage. Hence we pass the following order:

O R D E R

The application is partly allowed. The orders passed by the disciplinary authority, respondent No.3 dated 26th December, 1988, Annexure A-6, the appellate order dated 25th August, 1989 vide Annexure A-9 and the order passed by the reviewing authority dated 22nd January, 1990 are quashed and set aside. The respondents are directed to reinstate the applicant in service. However, the respondents would be at liberty to proceed with the inquiry against the applicant if they so desire after furnishing the report of enquiry to the applicant, if not furnished till today and issuing the notice to him giving him an opportunity to make representation against the findings of the enquiry officer and then the disciplinary authority would be at liberty to dispose of the disciplinary proceedings

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according to law and rules applicable to the applicant. The manner in which the period spent by **is to be treated** the applicant, during this enquiry, will depend on the ultimate result of the proceedings as per the rules applicable to the applicant. This application is disposed of as above. No order as to costs.

M.R.Kolhatkar

(M.R.Kolhatkar)
Member (A)

R.C.Bhatt

(R.C.Bhatt)
Member (J)

vtc.