

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. NO. 211/91

~~T.A. NO.~~DATE OF DECISION 5th May 1997Jitendra U. Acharya

Petitioner

Mr. D.P. Padhya

Advocate for the Petitioner (s)

Versus

Union of India

Respondent

Mr. N.S. Shevde

Advocate for the Respondent (s)

Mr. A.S. Kothari**CORAM**

The Hon'ble Mr.

V. Ramakrishnan,

Vice Chairman

The Hon'ble Mr.

T.N. Bhat,

Member (Judicial)

JUDGMENT

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

Jitendra U. Acharya
Fitter in the Loco shed of
the Western Railway at Mehsana.
House No. 38
Ambika Society, Visnagar Road,
Mehsana Pin- 334 001.

Applicant

Advocate: Mr. D.P. Padhya

Versus

The Union of India
Through
Divisional Rail Manager
Western Railway
Kothi Compound
Rajkot- Pin 360 001.

Respondent

Advocate: Mr. N.S. Shevde
Mr. A.S. Kothari

ORAL ORDER

IN

OA/211/91

Dated 5.5.1997

Per Hon'ble Mr. V. Ramakrishnan, Vice Chairman:

We have heard Mr. Padhya and Mr. Shevde,
Advocates.

2. The applicant who was proceeded against departmentally ~~enquiry~~ and on whom the Disciplinary Authority had inflicted the penalty of withholding of increment for two years has challenged the order of the Appellate Authority dated 3.11.88 as at Annexure A-1. As per this order the appellate authority had reduced the penalty imposed by the Disciplinary Authority but did not fully exonerate the applicant.

3. This is the second round of litigation. The applicant who is a Fitter Grade II in the Railway Administration was proceeded against departmentally and charged with responsibility for a defect which had developed in an engine which was attended to by him. The Disciplinary Authority after an enquiry

inflicted the penalty of stoppage of increments as per orders dt.18.6.'85. for two years without cumulative effect/ He challenged this order before the Tribunal in O.A. 351/1986. The O.A. was disposed of on 24.6.1988 (Annexure A-6). While dealing with this O.A. the Tribunal had observed that even though the applicant had asked for a copy of the C.M.T. report, the same apparently was not given to him and the Tribunal finally noted that an appeal was pending before the appellate authority and directed the appellate authority to dispose the same. It may be worthwhile to reproduce para 5 of the Tribunal's orders which reads as follows:-

"5. In the circumstances of this case, therefore, the following directions will meet the ends of justice. The appellate authority i.e. D.R.M. Rajkot is directed to dispose of the appeal after giving an opportunity to the petitioner to be heard within a period of three months of the date of this order and in doing so he should ascertain whether C.M.T. report and other documents had been furnished to the petitioner in the course of the departmental enquiry and whether he was given adequate opportunity to present his case. The appellate authority should also duly consider whether in the circumstances of the case, the disciplinary authority has erred in fixing the whole or disproportionate share of the responsibility for the defect in the engine on the petitioner. The order disposing of the appeal should be a speaking order covering inter alia the above points and in the light of its conclusions pass such orders as are appropriate regarding redressal of the grievances of the petitioner made in this petition. The petitioner

is at liberty to pursue his cause if any survives in the forum of the Tribunal thereafter".

4. In pursuance of this order, it is seen that the appeal was considered by Divisional Railway Manager, Rajkot and a copy of the appellate order dated 3.11.88 signed for the D.R.M. (E) Rajkot is at Annexure A-1. This order, is quite perfunctory. It refers to some circular under which negligence in chalk testing (which was the charge against the applicant) rests only with the Chargeman as per the relevant instructions. However, the appellate authority had held that the applicant who is a Fitter Grade II cannot disown responsibility. No attempt has been made to reconcile this finding with the instructions referred to by the appellate authority himself under which only the chargeman should be held responsible. The appellate authority also does not deal with the question regarding the omission to supply the C.M.T. Report and other documents and whether this has in any way prejudiced the case of the applicant. It admits the fact that the C.M.T. report was not made available to the applicant, and refers to some portion from the C.M.T.'s report. No attempt has been made to analyse the same and to ~~give to and find~~ ^{come to a finding} whether non-supply thereof had caused any prejudice. This is clearly contrary to the directions of the Tribunal where the appellate authority was told to ascertain whether the C.M.T. report and other documents had been forwarded to the petitioner and whether he was given adequate opportunity to present his case.

5. It is clear from the foregoing that the appellate authority has not applied his mind to the issue and has not taken into account the directions of the Tribunal

and its order as at Annexure A-1 cannot be sustained. We accordingly quash the appellate authority's order dated 3.11.88 as at Annexure A-1 and direct the appellate authority to dispose of the appeal by means of a comprehensive and speaking order, in particular taking into account the observations of the Tribunal in its order dated 24.6.88 referred to earlier. The same should be done within two months from the date of receipt of a copy of this order.

6. With the above directions the O.A. is finally disposed of. No costs.





(T.N. Ehat)
Member (J)



(V. Ramakrishnan)
Vice Chairman

pmr

Date	Office Report	ORDER
2.9.97		<p data-bbox="636 304 1495 607">Heard Mr.Kothari on M.A.630/97 and a copy of which is said to have been served on Mr.Padhya, For the reasons brought out in the M.A., time is ex extended upto 31.10.1997. M.A. stands disposed of accordingly.</p> <div data-bbox="597 607 1470 808"><div> (T.N.Bhat) Member (J)</div><div> (V.Ramakrishnan) Vice Chairman</div></div> <p data-bbox="581 897 655 929">ssh*</p>

Date

Office Report

ORDER

Date

2.9.97

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(T.N.Bhat)
Member (J)

(V.Ramakrishnan)
Vice Chairman

ssh*