

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

OA/375/92

Date of Decision : 18.04.2000

Shri Augustin Peter Mecwan : Petitioner (s)

Mr. K.K. Shah : Advocate for the petitioner(s)

Versus

Union of India & Ors : Respondent(s)

Mr. N.S. Shevde : Advocate for the Respondent(s)

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The Hon'ble Mr. V. Ramakrishnan : Vice Chairman

The Hon'ble Mr. P.C. Kannan : Member(J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the judgment? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgment? *no*
4. Whether it needs to be circulated to other Benches of the Tribunal? *no*

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Shri Augustin Peter Meehan,
Carriage Fitter Grade II,
Bajwa, Baroda Division,

Address for service for notice:

C/o. Secretary,
Western Railway Employees Union,
Down Lane Railway Colony,
Memdavad-387 130.

: Applicant

Advocate: Mr.K.K.Shah

Versus

1. Union of India,
Notice to be served through:
The General Manager,
Western Railway,
Head quarter Office,
Churchgate,
Bombay.
2. Senior Divisional Mechanical Engineer,
Western Railway,
Baroda.
3. Additional Divisional Railway Manager II,
Divisional Office, Pratapnagar,
Western Railway,
Baroda.

JUDGMENT

OA/375/92

Date: 18-4-2000

Per: Hon'ble Mr. P.C.Kannan: Judicial Member

The applicant in this OA has challenged the penalty order dated 1.10.1991 imposed on him by Senior DME (Annexure A-1) and the Appellate Order dated 23.12.1991 (Annexure A-2) withholding of increment for three years with future effect.

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2. The case of the applicant is that he was working as Fitter Grade III under the respondents and he was charge-sheeted on major penalty as per order dated 29/5/1989 (Annexure A) . The applicant was also kept under suspension from 24.12.1988 (Annexure A-3). The charge against the applicant was that he disobeyed the instructions of the superior and assaulted the superior causing him physical injury. The Inquiry Officer after due inquiry, found that the applicant was not guilty of the charges. The disciplinary authority, without issue of any show-cause notice to the applicant, disagreed with the findings of the inquiry officer and held charges as proved and accordingly imposed the punishment order of withholding of increments for three years with future effect. The appellate authority considered the appeal against the punishment order and rejected the same vide order dated 23.12.91. The applicant in this OA has challenged the disciplinary proceedings on various grounds including that the action of the disciplinary is illegal because the inquiry officer after examining the witnesses held that the applicant is not guilty of charges and the disciplinary authority cannot pass punishment order straight-way without issuing show-cause notice; that the charge-sheet was incomplete defective; the inquiry officer did not examine the defence witnesses ; the inquiry officer did not furnish documents along with the charge sheet, etc.

3. The respondents in their reply justified the action taken against the applicant and also contended that the disciplinary authority is not required to give any opportunity to the applicant before recording reasons for disagreement with the findings of the inquiry officer. They submitted that there is no violation of any rules and the action of the disciplinary is in accordance with the law.

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4. Mr.K.K.Shah counsel for the applicant at the time of hearing, pressed many contentions. The main contention of the applicant was that the disciplinary authority disagreed with the findings of the inquiry officer and awarded punishment to the applicant without giving show- cause notice to him and the punishment order is therefore, contrary to law and in violation principles of natural justice. In this connection, he relied upon the judgment of the Hon'ble Supreme Court in the case of Punjab National Bank and Others vs. Kunji Behari Misra 1998 SCC (L & S) 1783 and also the judgment of the Mumbai Bench of this Tribunal in B.Ram vs. Collector of Customs and Anr. 2000 (1) SLJ 308. Mr.Shah further submitted that during the pendency of OA ,the applicant retired from service. He submitted that in the light of the judgment of the Supreme Court in the case of R.Parangusam vs. Chief Electrical Inspector and another 1996 SCC (L & S) 1326, there is no case for conducting a fresh inquiry at this stage and therefore submitted that the impugned orders be quashed and the applicant given all consequential benefits.

5. As we find that the first ground mentioned by the learned counsel for the applicant goes to the root of the matter and if that ground is accepted, it is not necessary to examine the other grounds as the matter will have to be remanded to the disciplinary authority for fresh consideration.

6. The first ground is whether the disciplinary authority before disagreeing with the findings of the inquiry officer should give a show-cause notice to the applicant. The Hon'ble Supreme Court in the case of Punjab National Bank and others vs. Kunji Behari Misra (referred to supra) observed that in such cases, the charged officer must be given an opportunity to represent before the disciplinary authority before final findings on the charges recorded and punishment imposed. The Apex Court in paras-19 and 20 observed as follows:-

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" 19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the Disciplinary Authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which as to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

20. The aforesaid conclusion, which we have arrived at, is also in consonance with the underlying principle enunciated by this Court in the case of Institute of Chartered Accountants (supra). While agreeing with the decision in Ram Khan's case (supra), we are of the opinion that the contrary view expressed in S.S. Koshal and M.C. Saxena's case (supra) do not lay down the correct law"

7. In the light of the above observations of the apex Court, we are constrained to hold that the action taken by the disciplinary authority in imposing the penalty of withholding of increments for three years with future effect without issuing show- cause notice to the applicant is bad in law and not sustainable.

8. The learned counsel Mr. Shah also referred to the case of R. Parangusam vs. Chief Electrical Inspector and Another (referred to supra) and submitted that there is no case for remand in this case. In that case Hon'ble Supreme

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Court found that the appellant had retired from service and there was no dispute that the advances drawn was for construction of the house and the allotment of the house in the name of his wife by the Housing Board had already been redone and there was no detriment caused to the State. In that particular facts and circumstances, the Hon'ble Supreme Court had directed that no fresh inquiry should be conducted by the respondents. In the present case, the facts are different. The applicant has been charged for assaulting his superior and caused physical injury in the year 1989. Having regard to the gravity of the charge, we are not inclined to give any direction to the Respondent for dropping of the charges.

9. In the facts and circumstances, we quash the impugned orders of the appellate authority dated 23.12.91 and the order of the disciplinary authority dated 1.10.1991 and remand the matter to the disciplinary authority. He may examine the materials on record and ~~form~~^{form} a tentative opinion whether the charges against the applicant are proved or not. If he propose to accept the findings of the inquiry officer he can close the case and issue consequential order with regard to the fixation of pay, etc. of the applicant. If he, however, disagree with the findings of the Inquiry Officer, he can proceed with the inquiry and record his tentative opinion and issue a show-cause notice to the applicant as to why he should not disagree with the findings of the inquiry officer and also give his tentative reasons as observed by the Hon'ble Supreme Court in the Punjab National Bank case and after receiving the reply from the applicant pass a speaking order.

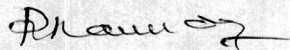
10. As the applicant has since retired from service, the disciplinary authority may not be able to impose ^{penalty on} any of the charges mentioned in the DAR rules except withholding of pension wholly or partly in terms of the

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Pension Rules and the President only can impose any such penalty.

11. In the light of the above, the O. A. is allowed and the impugned orders of the Appellate Authority dated 23.12.91 (Annexure A-2) and the disciplinary authority dated 1.10.91 (Annexure A-1) are quashed and the matter is remanded to the Disciplinary authority to pass a fresh order in the light of our observations in this order. We further direct that the entire exercise should be done expeditiously preferably within 6 months from the date of receipt of a copy of this order. All other contentions on merit raised by the applicant in the O.A are left open. There will be no order as to costs.



(P.C.Kannan)
Member(J)



(V.Ramakrishnan)
Vice Chairman

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