

**CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH**

**OA/449/92 and OA/450/92**

**Date of Decision : 18.04.2000**

**Shri Shankerbhai Patni and**

**Shri Natwarlal J.Thakkar**

**: 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)**

**CORAM**

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

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

OA/449/92

Shri Shankerbhai Patni,  
Rani Krupa Nagar,  
Mohan Nagar I, Bapunagar,  
Ahmedabad-24.

OA/450/92

Shri Natwarlal J.Thakkar,  
20, Asmitha Society,  
Maninagar( East),  
Ahmedabad-380 008.

Advocate: Mr.K.K.Shah

*Versus*

1. Union of India,  
Notice to be served through:  
General Manager,  
Western Railway,  
Churchgate, Bombay.
2. Divisional Commercial Supdt.,  
Divisional Office, Western Railway,  
Pratapnagar, Baroda.
3. Senior Divisional Commercial  
Supderintendent,  
Divisional Office,  
Western Railway,  
Pratapnagar, Baroda.

Advocate: Mr.N.S.Shevde

: 3:

**JUDGMENT**

**OA/449/92 & OA/450/92**

**Date: 18.4.2000.**

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

As both the OAs raised identical issues, it is proposed to dispose of both the O.As with a common order.

2. In both the O.As the applicants have challenged the order of the disciplinary authority mainly on the ground that the disciplinary authority has disagreed with the findings of the Inquiry Officer, without giving a show-cause notice to the applicant and has straightway proceeded to impose the penalty of removal. This order is contrary to law and in violation of principles of natural justice. The facts of both cases are as follows:-

**OA/449 of 1992**

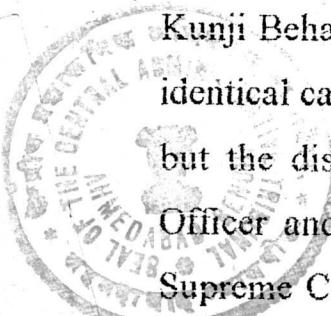
3. The case of the applicant is that he worked as Assistant Commercial Clerk. He was issued a charge-sheet in August, 1988 (Annexure-A) for imposing major penalties. After the due inquiry, the Inquiry Officer found the applicant not guilty of the charges. However, the disciplinary authority disagreed with the charges and without issuing show-cause notice to the applicant imposed the penalty of removal from Railway service vide order dated 31.7.1991 (Annexure A-1). The applicant then preferred an appeal against the penalty order of removal. The appellate authority vide order dated 5.2.1992 found that the punishment of removal from service was harsh and therefore, reduced the penalty to that of reversion of the applicant to the lower grade to Pointsman and fixed his pay after granting him five increments in the lower scale with cumulative effect.

OA/450 of 1992 :

4. The case of the applicant is that he worked as Assistant Commercial Clerk under the respondents. He was issued a charge-sheet dated 14.10.1988 (Annexure A) for imposing major penalties. After the due inquiry the Inquiry Officer vide order dated 6.3.90 (Annexure A-5) held that the charges against the applicant was not proved. The disciplinary authority however, disagreed with the findings of the Inquiry Officer and imposed the punishment order of removal dated 31.7.1991 (Annexure A-I). On filing appeal to the appellate authority, the appellate authority held that punishment of removal was hard and therefore reduced the punishment to that of reduction to the minimum pay scale for a period of five years with cumulative effect.

5. In both the O.As., the applicant raised many contentions. The first contention of both the applicants was that the disciplinary authority has disagreed with the findings of the inquiry officer and without giving them show-cause notice, straight-way imposed the punishment order of removal from service and this action is contrary to law and in violation of principles of natural justice.

6. The learned counsel for the applicant referred to the judgment of the Hon'ble Supreme Court in the case of Punjab National Bank and Others vs. Kunji Behari Misra reported in 1998 SCC (L & S) 1783. That case was an identical case where the inquiry officer had exonerated the delinquent officer but the disciplinary authority disagreed with the findings of the Inquiry Officer and imposed punishment without giving show- cause notice. The Supreme Court held that in such a situation, the charged officer must have been given an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed.



7. The observations of the Supreme Court in paragraphs 19 & 20 are as follows:-

"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 charges 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 has 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 Kisan's case (supra), we are of the opinion that the contrary view expressed in S.S.Koshai and M.C.Saxena's case (supra) do not lay down the correct law."

8. In view of the <sup>judgement of</sup> Apex Court in the above case, we are constrained to hold that the action taken by the disciplinary authority in imposing the punishment order without issuing the show-cause notice to the applicants in the above OAs is bad in law and not sustainable. Though these matters pertain to the incidents that had taken place in 1988, keeping in view of the fact that the applicants were charged for serious misconduct and both are even now serving under the respondents, we remand both cases to the disciplinary authority for further examination and passing of orders in accordance with the rules. If he forms an opinion to accept the findings of the Inquiry Officer, he can close the case and nothing more is required to be done. If, however, the disciplinary authority forms a tentative opinion that the reasoning given by the inquiry officer is not correct, and there is

sufficient evidence to prove the charges, he can record his tentative opinion and accordingly issue & show-cause notices to the applicants .Then, after receiving the reply from the applicants to the show-cause notices, the disciplinary authority may look into the facts and circumstances of the case including the representation of the applicant and then pass a speaking order in accordance with the rules.

9. As both the cases are remanded back to the disciplinary authority, we are not expressing any opinion on the rival contentions taken in the pleadings and at the time of argument. The applicants are given liberty to take up whatever grounds open to them with the disciplinary authority. Since the matters are old, we direct the disciplinary authority to dispose of the matter expeditiously preferably within six months from the date of receipt of a copy of this order.

10. Both the O.As are accordingly allowed and impugned orders of the appellate authority and the order of the disciplinary authority in both O.As are quashed and set aside and the matter is remanded back to the disciplinary authority to pass fresh order in accordance with the observations made in this OA. No costs.

sd/-

(P.C.Kannan)

Member(J)

sd/-

(V.Ramakrishnan)

Vice Chairman

Prepared by

Section Officer (U)

Central Admin

Abdul

Ahmed

19-6-2000

मनुभास अधिकारी (पा.)

Section Officer (U),

केन्द्रीय अधिकारी अधिकारी

Central Admin

Abdul

Ahmed

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