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Date of decision : March 26, 1990.

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Respondents.

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M/s. G. K. Mohanty,
M. N. Harshabardhan
B. Mohanty,
M. K. Badu, Advocates.

M/s. B. Pal,
O. N. Ghosh,
Advocates.

THE HON'BLE MR.B.R.PATEL, VICE-CHAIRMAN

THE HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

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1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? No.
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

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that the findings of the Enquiring Officer in a departmental proceeding ^{be declared} as illegal and for quashing the order of removal from service, copies of which are at Annexures-2 & 3 and other consequential reliefs.

2. It is unnecessary to state in detail all that has been

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averred in the original application, suffice it to say that against the applicant charges were framed and the memorandum of Charges was served on the applicant on 19.11.1987.

The Disciplinary authority proposed to cause an enquiry made, and after that on 18.6.1988 the Enquiring Officer submitted his report. The Senior Divisional Operating Superintendent, S.E. Railway, Khurda Road on 25.8.1988 passed the impugned order of removal. This order of removal is now being challenged principally on the ground that the enquiring officer's report is vitiated.

3. From the Counter filed by the Railway Administration it is seen that the applicant has not availed of the departmental remedy of preferring an appeal and it is contended by Mr. Pal, learned Senior Standing Counsel for the Railway Administration, that as the applicant has not exhausted all the remedies available to him under the departmental rules, he cannot be granted the reliefs that he has prayed for. We find considerable force in the argument of Mr. Pal, because under Rule 22 of the Railway Servants (Discipline & Appeal) Rules, 1968, an appeal would lie. From the averments in the application it would be found that there is no reference to any appeal having been preferred against the order of the disciplinary authority. In these circumstances, in our opinion, proper course would be to direct the applicant to file an appeal to the appropriate authority within a month hence whereafter the appellate authority would consider the appeal on the submissions made before him. Since the applicant approached

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this Tribunal against the order of the disciplinary authority before availing of the departmental forum of appeal, we would direct that if any appeal is preferred with - In the time stated above, no question of limitation would be ^{- raised while} ~~attached in~~ admitting the appeal by the appellate authority.

4. This application is accordingly disposed of leaving the parties to bear their own costs.


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Vice-Chairman


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Member (Judicial)

