

## NOTES OF THE REGISTRY

## ORDERS OF THE TRIBUNAL

Or. No. 19.9.03

21.10.03

For Admission &  
final disposal with  
MA 970/02 and MA 1034/02  
for consideration

As a last chance, the matter is  
adjourning to 27.10.2003 for hearing  
peremptorily.

Vice-Chairman 21/10

Member G

Order dt. 27.10.03

Or. No. 21.10.03

For Admission /  
Final Disposal with  
MA 970/02 & MA 1034/02  
for consideration.

Another MA has  
also been given for  
app. orders. copy not  
served

The Applicant, a Railway Engine Driver  
was departmentally proceeded and major penalty  
charges were served on him on  
05.01.2001. The Enquiring Officer appointed in  
the matter, after completing the enquiry,  
submitted a report basing on which proceeding  
was dropped under Annexure-4 dt. 23.1.01. Later,  
the A.D.R.M. at Waltair (as Reviewing Authority)  
vide his notice under  
Annexure-5 dt. 28.6.02 called upon the  
Applicant to show cause as to why major penalty  
should not be imposed on him. The relevant  
portion of the said notice under Annexure-5  
dt. 28.6.02 issued by the Reviewing Authority  
reads as follows:-

"Sub:- Over shooting of signals by Tr.  
No.1019 Exp at BAM on 17.9.2001.  
Ref:- Charge sheet major (SF-5) brg.No.  
WM/D&A/CPR/420 dt. 23.1.02.

Please refer to the above notices, duly  
acknowledged by you on 6.10.01 and 25.1.02  
respectively.

In exercise of the powers conferred  
upon me as per the Rules 25(1) (b) of RS(D&A)  
Rules, 1968, I have called for the records  
pertaining to the DAR case against you. On  
going through the case thoroughly and  
obtaining the statements of the witnesses of  
the case duly inquiring them, I find that  
the decision of the Disciplinary Authority  
is not commensurate with the gravity of the  
offence committed by you.

I, therefore, propose to modify the  
the decision of the Disciplinary Authority  
and to impose a major penalty in terms of  
Railway Board parameters, since you have  
failed to control your train at BA M Da home  
signal, which was at danger and overshoot the  
signal, violating G & S.R. 3.78, 3.80 and 3.83  
You are hereby given an opportunity  
to make a representation if any, against the  
above proposed action, within 15 days from

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the date of receipt of this notice."

2. It is the case of the Applicant that his Disciplinary Authority having dropped the departmental proceeding in question (because the Enquiring Officer exonerated him (Applicant) from the charges levelled against him), the Show cause notice suggesting to impose major penalty is not sustainable, without supplying a copy of the enquiry report and *differing* opinion of the Reviewing Authority.

3. While issuing notices to the Respondents, the following interim orders were passed on 19.07.2002:-

"No final action should be taken on the show cause notice under Annexure-5 dt.28.6.02, without leave of this Tribunal and as a consequence, no coercive action should be taken against the applicant without taking leave of this Tribunal."

4. The Respondents have filed a counter contesting the stand of the Applicant and also filed M.A.No.970/02 seeking leave of this Tribunal to pass final orders on the show cause notice.

5. We have heard Mr.A .Kanungo, learned counsel appearing for the Applicant and Mr.D.N. Mishra, learned Standing Counsel appearing for the Railways and also perused the materials placed on record.

6. Without supplying a copy of the enquiry report drawn in the case, major penalty is certainly not available to be imposed on the Government servant protected under the Article 311 of the Consitution of India and, therefore, this O.A. is hereby disposed of as follows:

(i) The Respondents are hereby directed to supply a copy of the enquiry report to the Applicant at the earliest and while doing so, they should give full opportunity to the Applicant to have his say on the Enquiry Report by making an effective representation to the Reviewing Authority.

(ii) The Reviewing Authority should also supply to the Applicant (a) the reasons for which he has differed with the views of the enquiring officer/enquiry report and



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Mr. T. 27.4.03

Copies of order  
prepared for counsel  
for both sides.

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(b) that of the views of the Disciplinary Authority and give adequate opportunity to the Applicant to have his say on the matter by way of submitting the representation.

(iii) The Reviewing Authority should also grant personal hearing of the Applicant if he (the Applicant) opts for that.

(iv) If the Reviewing Authority has recorded statement(s) of any witnesses (or if he is intending to take statement(s) of any of the witnesses) then the Applicant should be allowed to cross examine to those witnesses and to rebut any of the evidence being taken into consideration by the Reviewing Authority.

We make it clear here that only after supplying the enquiry report and differing views of the Reviewing Authority etc. and after giving opportunity to the Applicant to have his say on the said reports/views and after giving personal hearing etc., to the Applicant, the Reviewing Authority should pass final orders on the notice given under Annexure-5 dt. 28.06.02.

7. With the aforesaid observations and directions, this Original Application is disposed-of. No costs.

*[Signature]*  
Vice Chairman 27/10

*[Signature]*  
Member (Judicial)