CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 315 of 2003

Thursday., this the 20th day of July, 2006

C O R A M :

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

R. Radhakrishna Raju,
S/o. A. Ramachandra Raju,
Station Master – II,
Southern Railway, Valliyur,
Residing at " R.S. Mansion",
Konkalam Road, Kunnapuzha,
Aramada Post, Trivandrum. ... Applicant.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India represented by
The General Manager, Southern Railway,
Park Town P.O., Chennai – 3

2. The Chief Operations Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 3

3. The Chief Passenger Transportation Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 3

4. The Divisional Railway Manager,
Southern Railway,
Trivandrum Division, Trivandrum – 14

5. The Additional Divisional Railway Manager,
Southern Railway,
Trivandrum Division, Trivandrum – 14

6. The Senior Divisional Operations Manager,
Southern Railway,
Trivandrum Division, Trivandrum – 14

7. The Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum Division, Trivandrum – 14 ... Respondents.

(By Advocate Mr. P. Haridas)

This application having been heard on 5.7.06, the Tribunal on 20.7.06 delivered the following :

ORDER
HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

In one of the latest decisions[1], the Apex Court has indicated the following as the scope and extent of judicial discipline to be observed during the course of departmental inquiry and the powers of the court to interfere with the proceedings:-

(a) The enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry[2].

(b) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice[3].

(c) Exercise of discretionary power involves two elements—(*i*) objective, and (*ii*) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element[4].

(d) It is not possible to lay down any rigid rules of the principles of natural justice which depend on the facts and circumstances of each case but the concept of fair play in action is the basis[5].

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1 Narinder Mohan Arya v. United India Insurance Co. Ltd.,(2006) 4 SCC 713

2*State of Assam* v. *Mahendra Kumar Das* (1970) 1 SCC 709

3*Khem Chand* v. *Union of India* 1958 SCR 1080 and *State of U.P.* v. *Om Prakash Gupta* .(1969) 3 SCC 775

4*K.L. Tripathi* v. *State Bank of India* (1984) 1 SCC 43

5*Sawai Singh* v. *State of Rajasthan* .(1986) 3 SCC 454 :

(e) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject-matter of the charges is wholly illegal[6].

(f) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances[7]. (See *Central Bank of India Ltd.* v. *Prakash Chand Jain*[8], *Kuldeep Singh* v. *Commr. of Police*[9].)

(g) In a departmental proceeding preponderance of probability would serve the purpose[8]

2. It is within the above parameters that this case, wherein the challenge is against the disciplinary proceedings and orders passed thereon, has to be analyzed.

3. A thumb nail sketch of the facts of the case, with terse sufficiency as contained in the Original Application is as under:-

(a) The applicant was on duty as Duty Station Master at Nagercoil Junction from 20.00 hours of 19.2.96 to 6.00 hours of 20.2.96. The entire Yard including the running lines were occupied by Goods and Passenger Vehicles, the applicant managed to run all the trains in time during his duty hours. He also instructed the Shunting Mater and Yard Staff to clear all the roads including

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6 *Director (Inspection & Quality Control) Export Inspection Council of India* v. *Kalyan Kumar Mitra*.(1987) 2 Cal LJ 344

7 *Central Bank of India Ltd.* v. *Prakash Chand Jain* (1969) 1 SCR 735 and *Kuldeep Singh* v. *Commr. of Police* .(1999) 2 SCC 10 :

8 *Commr. of Police v. Narender Singh,(2006) 4 SCC 265,*

Road No. 4 to deal with morning trains. In terms of the Station working rules, the Shunting Master and other shunting staff alone are responsible for clearance of roads. Despite repeated instructions from the applicant the Shunting Master and Shunting staff did not clear the running roads to facilitate smooth running of morning trains. This fact was recorded by the applicant in the 'special event register' for further action by the Station Manger and for information of the morning duty Station Master. The applicant also suggested his reliever-Station Master to ensure clearance of Road 4 before 6.45 hours to deal with Scheduled Passenger Trains. The Station Manager, Nagercoil, made a complaint against the applicant to the Senior Divisional Operations Manger as certain trains were delayed due to non-clearance of Road No.4. Major penalty charge memorandum dated 28.2.96 was issued to the applicant. The charge sheet contained the following allegations:

> ".....While working as SM/III/NCJ on 19/20.2.96 (Night duty) has shown serious dereliction to duty in that he failed to clear 373/397 rake occupied on Road 4 and caused detention to Passenger Trains 372 and 381 since there is no passage of TEs of these two trains. Due to late start of 372 Pass additional stoppage was given to 6525 Express, TVC-NCJ and 6525 Exp: lost its punctuality.
>
> Thus he has violated Rly. Service Conduct Rules 3.1 (ii) and (iii) of 1966".

(b) Three documents and equal number of witnesses were also listed to sustain charges. The applicant denied the charges in toto and requested for a personal hearing as provided under the rules. An enquiry was proposed to be held on 6.11.96. The enquiry officer agreed to produce the listed documents and the enquiry was adjourned. The enquiry continued on 20.11.96. Two out of three prosecution witnesses were examined. The

applicant made a request to arrange three Railway Employees namely, Shri C. Velappan, Station Manager, Nagercoil, Shri Jai Singh, Station Master II, Nagercoil and Shri Subbiah, Acting Train Clerk, Nagercoil as defense witnesses. On 1.6.97, the third prosecution witness was examined. With that the case of the prosecution was closed. Thereafter, two out of three defence witnesses were produced in the enquiry and they were examined. However, the request for summoning and examining the third defence witness namely, Shri Velappan, Station Manager, Nagercoil, was outrightly rejected by the Enquiry Officer. The reasons for rejection of summoning that witness as recorded by the Enquiry Officer are as follows:

> "Shri C. Velappan, SMR/NCJ will not be allowed as a defence witness because the statement given by him is used as a prosecution document, he will be helping the prosecution and not defending the charged employee, However, for the transparency the report of Sri Velappan is supplied to the charged employee. It can put forward the reasons against the report in the enquiry if he submitting himself for the enquiry or in his defence statement. Hence, the above request is regretted."

(c) After the examination of two defence witnesses and rejection of the third defence witness, the enquiry officer asked the applicant the following question:

"Now we have examined all the prosecution and defence witnesses. Are you subjecting yourself to an enquiry"?

To that question the applicant replied that Shri c. Velappan, who is considered as a material witness was not summoned and thereby he was disabled in defending his case. However, the applicant agreed to submit his defence statement for which the

enquiry officer gave him 10 days time. With that the enquiry ended abruptly.

(d) The applicant submitted his defence statement wherein he explained at length that there is no evidence on record of the enquiry to substantiate the charges. He also submitted that he was denied of a reasonable opportunity in defending his case. The applicant received the copy of the enquiry report dated 10.8.97 holding that the charges levelled against the applicant have been proved. The findings of the enquiry officer being totally perverse and arbitrary, the applicant by his representation dated 10.10.97 filed his objections to the 6th respondent. The applicant pointed out that serious illegalities have been committed in the matter of holding the enquiry and that at any case there are no evidences on record to arrive at a conclusion that the applicant is guilty of the charges. The 6th respondent issued Annexure A1 order imposing on the applicant a severe penalty of reversion from the grade of Rs. 5500-9000 to the grade of Rs. 4500-7000 and fixing the pay at the stage of Rs. 4500/- for a period of 5 years, 4 months and 20 days or till superannuation. The applicant submitted a detailed appeal dated 29.3.98. The same was considered by the 5th respondent who passed A/2 order holding "there is failure on the part of the employee in keeping Road 4 at NCJ clear for further train/engine movement." However, the 5th respondent was pleased to modify the penalty to that of reversion to the grade of Rs. 4500-7000 with pay fixed at Rs. 4500/- for a period of 2 years 6 months (non-recurring). The applicant submitted a revision petition dated 20.10.98 to the first respondent but there was no response for a long time. In the circumstances, the applicant was forced to approach this Tribunal in O.A. No. 710/2002. The

said O.A. was finally disposed of, by an order dated 3.1.2003 directing the third respondent, Chief Passenger Transportation Manager to consider the revision petition in accordance with law and to give a speaking order to the applicant within a period of two months. Shortly thereafter, the applicant received revisional order dated 2.1.2003 issued by the third respondent wherein it was held that the modified punishment of the appellate authority holds good. The following are the grounds:

(a) Serious illegalities have been committed in the matter of issuing charge memorandum, holding enquiry and passing orders at all levels.

(b) Out of three documents cited in charge memorandum, two have originated from Shri C. Velappan, Station Master, Nagercoil, who was not examined.

(c) The first two of the listed witnesses are persons who are sitting in the control room, Trivandrum who cannot have any primary knowledge about the issue.

(d) There has been several instances of denial of reasonable opportunity to the applicant.

(e) Yet another serious illegality in the enquiry is when the evidence on the side of the applicant was over the applicant was not questioned generally by the enquiry officer, against the evidence if any found against him, as is required under Rule 9 (21) of the Railway Servants (D&A) Rules, 1968.

(f) Penalty advice is merely based on the enquiry report. It does not take into consideration of the evidence adduced during the enquiry, the valid points highlighted by the applicant in his objections to to the enquiry report.

(g) Appellate order is also arbitrary, discriminatory, without application of mind and contrary to law, apart from being without jurisdiction.

(h) The revisional orders are also ex facie arbitrary,

discriminatory, without application of mind and hence violative of the constitutional guarantees enshrined under Articles 14 and 16.

(i) The revision order too is arbitrary, discriminatory and without application of mind. It does not take into consideration the several grounds raised by the applicant in the proper perspective and as such it is non-speaking and therefore, arbitrary and illegal apart from being without application of mind.

4. The respondents contested the OA and their version as contained in the Reply statement is as under:-

(a) Enquiry was conducted on the charges in accordance with the prescribed procedure duly giving full reasonable opportunity to defend the case of the applicant and the report thereon was submitted to the disciplinary authority who on consideration of the report and findings of the enquiry officer ordered imposition of penalty as per Annexure A1 penalty. The appellate authority on consideration of the appeal of the applicant against the penalty passed order duly reducing the penalty. The applicant was also heard in person before disposing of his appeal thereby giving a further opportunity for defending his case.

5. The applicant had filed the rejoinder and the respondents additional reply.

6. Arguments were heard. The learned counsel for the applicant has itemized the following grounds to assail the entire disciplinary proceedings:-

(a) At the level of Inquiry Authority:

(i) Rejection of the request of the Defence Assistant for summoning the third Defence Witness i.e. One Shri Velappan, Station Manager, Nagercoil on the ground that he cannot be summoned in the capacity of Defence Witness as his statement is used by the prosecution to prove its case, is illegal. For either the said individual should have been called as a prosecution witness in which event, he would have been cross examined by the applicant or else he should have been summoned as a defence witness. Non examination of the said witness is illegal on the ground that principles of natural justice are violated in not summoning him as a defence witness, is also illegal from a different legal point viz., the author of the document relied upon should be examined and in the absence of such examination, the document concerned cannot be relied upon. In the instant case, one of the documents being the statement of the said Velappan, non examination either as prosecution or defence witness vitiates the inquiry.

(ii) The mandatory question to be put forward to the charged officer in the event he was not prepared to enter in to the witness box has not been observed. This is a serious lapse as held by the Apex Court in the case of Ministry of Finance vs S.B. Ramesh[9]

(iii)There is no evidence on records of the enquires to substantiate the charges. The control chart which was heavily relied by the prosecution and which was the basis of the finding by the inquiry officer only showed the delay in the departure of the trains and they are not sufficient to prove the charges that the applicant had failed to clear Road No. 4.

9(1998) 3 SCC 227

(iv)The findings of the Inquiry Officer are thoroughly perverse.

(b) At the level of Disciplinary Authority: The Disciplinary Authority has been unmindful of the representations made against the inquiry report and without considering the same he had endorsed the findings of the inquiry authority.

(c) At the level of Appellate Authority: The appellate authority being respondent No. 4, the order was passed by respondent No. 5 and thus there has been usurpation of power. Apart from the same, the appellate authority has taken into account extraneous matters to uphold the order of penalty (of course with certain modification as to the quantum of penalty in terms of the duration) as for example, cancellation of one train has been taken as the entire base for the decision by the Appellate authority, whereas, that was not the charge at all. Hence, the order of the appellate authority is totally illegal.]

(d) At the level of Revisional Authority: The revisional authority has also erred as his order is arbitrary, illegal, inasmuch as, the same is non speaking and without considering the solid grounds raised in revision petition.

7. The learned counsel for the applicant relied upon the following judgments/orders:-

1. AIR 1969 SC 983 : Central Bank of India Ltd. vs. Prakash Chand Jain
2. AIR 1978 SC 1277: Nand Kishore Prasad vs. State of Bihar & Others
3. AIR 1984 SC 1805 : Rajinder Kumar Kindra vs. Delhi Administration
4. 1986 SCC (L&S) 383 : Ram Chander vs. Union of India & Ors.
5. AIR 1998 SC 853 : Ministry of Finance & Anr. vs. S.B. Ramesh
6. 1999 SCC (L&S) 429 : Kulpup Singh vs. Commissioner of Police & Ors.
7. 2000 (3) SLJ (CAT) 209 : K.G. Appan vs. Union of India & Others
8. 2005 (3) ATJ 359 (A.P. HC) : Union of India & Ors. vs. G. Krishna

8. On the other hand, the counsel for the respondents argued that non examination of the witness Shri Velappan is not fatal to the proceedings as the inquiry officer has not taken into account the statement of the said officer in his findings. As regards failure to put forth the mandatory question by the inquiry authority to the applicant, the counsel contended that the following words would amply prove that the applicant did not give any scope to the Inquiry Authority to ask any further question and the one already asked by the Authority would suffice:-

> "Now we have examined and the prosecution and defence witnesses. Are you subjecting yourself to an inquiry?"
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> To the above mandatory question, the reply of the applicant was:
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> "The defence witnesses requested for were not completely provided as Sri C. Velappan, SMR/NCJ who is considered as a prime defence witness was not provided thereby defence could not be fully met with. The detailed defence statement will be submitted within a short time".

9. As regards the contention of the applicant that this is a case of "no evidence" the learned counsel for the respondents argued that the very control chart, which is a vital document is a sufficient proof of charge. And, as to the contention about the illegality at the Disciplinary Authority's level, the counsel for the respondents contended that if the disciplinary authority chooses to endorse the findings of the Inquiry Authority, there is no need for a speaking order. The order clearly states that the representation of the applicant against the inquiry report had also been considered. Likewise, the other contentions of the

applicant's counsel against the order of the Appellate Authority and Revisonal Authority have also been repelled by the counsel for the respondents.

10. Rejection of the request of the applicant for summoning the Station Manager as defence witness has been stated to be on account of the fact that one of the documents relied upon by the prosecution was authored by the said Station Manager. In other words, when a document is relied upon by the prosecution, the author thereof cannot be brought in the scene as a defence witness. That would act as an antidote to the prosecution's reliance of the document. In that case the question arises whether the said Station Manager ought to have been produced as a prosecution witness. For, if a particular document has to be relied upon, in the event of the said document not specifically admitted by the other side, examination of the author as a witness or his affidavit would be necessary. In this regard reference can be made to the observations of the Apex Court in the case of ***Cholan Roadways Ltd. v. G. Thirugnanasambandam,***[10] wherein it has been held -

> *"If a letter or other document is produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. This is both in accord with principles of natural justice "*

11. So it would be prima facie seen that non examination of the writer of the document relied upon by the prosecution would be violation of principles of

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10(2005) 3 SCC 241

natural justice. But here what is to be examined is also as to whether that very document was taken into consideration by the inquiry authority to arrive its finding. In other words, whether the said document formed the basis for the findings by the Inquiry authority is to be seen. Perusal of the inquiry report, which no doubt initially refers to the report of the Station Manager has not been taken into account by the Inquiry Authority. As such, no prejudice is caused to the applicant. It has been held in the case of ***Syndicate Bank v. Venkatesh Gururao Kurati,***[11] as under:-

> *"It is well-settled law that the doctrine of principles of natural justice are not embodied rules. It cannot be put in a straitjacket formula. It depends upon the facts and circumstances of each case. To sustain the allegation of violation of principles of natural justice, one must establish that prejudice has been caused to him for non-observance of principles of natural justice."*

12. From this point of view, non examination of Mr. Velappan as a prosecution witness is not fatal to the inquiry. In so far as examination as defence witness and rejection by the Inquiry Authority to summon him on the ground as indicated above (i.e. He being the author of one of the relied upon documents in the charge sheet, he cannot be summoned by the Inquiry Authority), in fact, the applicant could have from his side projected the said witness in which event, the Inquiry Authority perhaps would not have been able to object the same. Such is not the case herein. Hence, the argument of the applicant's counsel that non examination of Shri Velappan vitiates the inquiry cannot be endorsed.

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11 (2006) 3 SCC 150

13. As regards non observation of the mandatory provisions under rule 9(21) of the D A Rules, reliance placed by the applicant's counsel on the decision of the Apex Court in the case of S.B. Ramesh (supra) does support his case. The judgment in the case of S.B. Ramesh (supra) dealt with the legal issue of Rule 9 (18) of the CCS (CC&A) Rules, 1966 which is in pari materia with the provisions of Rule 9(21) of the D.A. Rules of the Railways. In that case, the Apex Court has held as under:-

> *"The Tribunal, after extracting in full the evidence of SW 1, the only witness examined on the side of the prosecution, and after extracting also the proceedings of the Enquiry Officer dated 18-6-1991, observed as follows:*
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> > *"After these proceedings on 18-6-1991 the Enquiry Officer has only received the brief from the PO and then finalised the report. This shows that the Enquiry Officer has not attempted to question the applicant on the evidence appearing against him in the proceedings dated 18-6-1991. Under sub-rule (18) of Rule 14 of the CCS (CCA) Rules, it is incumbent on the Enquiry Authority to question the officer facing the charge, broadly on the evidence appearing against him in a case where the officer does not offer himself for examination as a witness. This mandatory provision of the CCS (CCA) Rules has been lost sight of by the Enquiry Authority. The learned counsel for the respondents argued that as the inquiry itself was held ex parte as the applicant did not appear in response to notice, it was not possible for the Enquiry Authority to question the applicant. This argument has no force because, on 18-6-1991 when the inquiry was held for recording the evidence in support of the charge, even if the Enquiry Officer has set the applicant ex parte and recorded the evidence, he should have adjourned the hearing to another date to enable the applicant to participate in the enquiry hereafter/or even if the Enquiry Authority did not choose to give the applicant an opportunity to cross-examine the witness examined in support of the charge, he should have given an opportunity to the applicant to appear and then proceeded*

to question him under sub-rule (18) of Rule 14 of the CCS (CCA) Rules. The omission to do this is a serious error committed by the Enquiry Authority.

15. On a careful perusal of the above findings of the Tribunal in the light of the materials placed before it, we do not think that there is any case for interference, particularly in the absence of full materials made available before us in spite of opportunity given to the appellants. On the facts of this case, we are of the view that the departmental enquiry conducted in this case is totally unsatisfactory and without observing the minimum required procedure for proving the charge. The Tribunal was, therefore, justified in rendering the findings as above and setting aside the order impugned before it.

16. *In the result, the appeal fails and is dismissed accordingly with no order as to costs."*

14. Here, as per the inquiry proceedings, the mandatory questions have not been asked. Just because the applicant has stated that he would file the defence brief, the same cannot mean that the Inquiry Authority could be absolved of his duty to pose the mandatory question. This certainly vitiates the inquiry.

15. As regards the contention that this is a case of no evidence, the submission of the applicant's counsel has some substance. For, the control chart does not reflect anything about the clearance of Road No. 4. All that it contains is the factum relating to the the situation as occurred between 6000 to 1200 hrs in respect of arrival/ departure of the trains on the morning of 20-02-1996 whereas the charge is that the delay in the departure of train is due to non clearance of Road No. 4 due to which the engines could not be turned around. For this purpose the report of the Station Manager would have been of some

value but neither the statement was taken into account while arriving at the findings nor was the Station Manager examined.

16. Perhaps, giving some weight to the inquiry report in this regard even if it is held that the fact that Road No. 4 was not cleared upto 6 a.m. on 20-03-1996 is 'not a disputed fact', what is the misconduct by the applicant in this regard? Is he the actual person to do physically the job of clearing Road No. 4? He is the duty station master and his job is to supervise and the duty of clearance of Road No. 4 admittedly was of the shunting staff and all that the applicant could do, in case the shunting staff did not perform their duties properly, was to report the fact to the higher authorities as per the procedure, if any, prescribed in this regard. As such, what is to be seen is whether the non clearance by the shunter (who was issued only with a minor penalty charge sheet) was duly reported by the applicant. The applicant has stated in para 4(b) of the OA averred that he did report the matter by recording in the Special Event Register. This fact has not been specifically denied rather impliedly admitted by the respondents who have stated, "*The applicant being the station master on duty should have been more alert in his duties rather than putting the blame to other staf-f on duty.*" Even before the Appellate Authority and the Revisional Authority the fact as to the recording of the non cooperation by the shunting staff in the Special Event Register had been mentioned but the same does not seem to have been considered by the appellate or Revisional Authority. As a station master on duty, the applicant had multifarious duties to perform and in the event of

disobedience of his instructions by the shunting staff all that he could do within his command was to record the event in the special Event Register. Once this has been done, the responsibility to some extent shifts upon the superiors to the applicant. The applicant's helplessness is quite understandable. For he cannot take any disciplinary action or issue any memo for the non cooperation of the shunting staff. An act of omission would become misconduct only when there was negligence or intentional omission and where an individual has acted to the best of his ability and powers but could not perform an act, the same may not be construed as a misconduct.

17. As regards the disciplinary authority's endorsing the views of the inquiry authority, the law is well settled. In the case of ***National Fertilizers Ltd. v. P.K. Khanna***[12], (the Apex Court observed as under:-

> *The various decisions referred to in the impugned judgment make it clear that the disciplinary authority is required to give reasons only when the disciplinary authority does not agree with finding of the enquiry officer. In this case the disciplinary authority had concurred with the findings of the enquiry officer wholly. In Ram Kumar v. State of Haryana[1] the disciplinary authority after quoting the content of the charge-sheet, the deposition of witnesses as recorded by the enquiry officer, the finding of the enquiry officer and the explanation submitted by the employee passed an order which, in all material respects, is similar to the order passed by the disciplinary authority in this case. Learned counsel appearing on behalf of the respondent sought to draw a distinction on the basis that the disciplinary authority had, in Ram Kumar case[1] itself quoted the details of the material. The mere quoting of what transpired would not amount to the giving of any reasons. The reasons were in the penultimate paragraph which we have said virtually used the same language as the impugned order in the present case. This Court dismissed the challenge to the order of punishment in the following words: (SCC p. 584, para 8)*
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> *"8. In view of the contents of the impugned order, it is difficult to say that the punishing authority had not applied his mind to the*

12 *(2005) 7 SCC 597*

> *case before terminating the services of the appellant. The punishing authority has placed reliance upon the report of the enquiry officer which means that he has not only agreed with the findings of the enquiry officer, but also has accepted the reasons given by him for the findings. In our opinion, when the punishing authority agrees with the findings of the enquiry officer and accepts the reasons given by him in support of such findings, it is not necessary for the punishing authority to again discuss evidence and come to the same findings as that of the enquiry officer and give the same reasons for the findings. We are unable to accept the contention made on behalf of the appellant that the impugned order of termination is vitiated as it is a non-speaking order and does not contain any reason. When by the impugned order the punishing authority has accepted the findings of the enquiry officer and the reasons given by him, the question of non-compliance with the principles of natural justice does not arise. It is also incorrect to say that the impugned order is not a speaking order."*
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> *(emphasis supplied)*

We respectfully adopt the view."

18. On the basis of the above decision, the argument of the applicant's counsel has to be rejected.

19. As regards the appellate authority's orders, the Apex Court in the case of ***Narinder Mohan Arya v. United India Insurance Co. Ltd.,***[13] held as under:-

> *33. An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regards the compliance with the requirements of law while exercising his jurisdiction under Rule 37 of the Rules.*

20. In the instant case though point by point the appellate authority has not dealt with the appeal, overall, it appears that the order was passed after

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13(2006) 4 SCC 713

application of mind. As such, keeping in view the above dictum of the Apex Court, the order of the appellate authority cannot be faulted with.

21. It may be that there is no fault in the endorsing the views of the disciplinary authority by the appellate authority and that of the Inquiry authority by the Disciplinary authority. But, if basically the Inquiry report has some legal infirmity, and if the Inquiry Report cannot stand legal scrutiny, as in this case because of the fact that the mandatory provisions have not been followed coupled with the fact that this is a case of no evidence, that order becomes illegal. If the Inquiry Report is stamped as illegal, as in this case, in view of the fact that the mandatory requirement of Rule 9(21) of the D.A. Rules has not been followed, that the Disciplinary authority has endorsed the Inquiry Report or the Appellate Authority has endorsed the decision of the Disciplinary authority etc., cannot make the initial illegality in the inquiry report. The Apex Court has held in the case of ***Union of India v. R. Reddappa,***[14] ***"An illegal order passed by the disciplinary authority does not assume the character of legality only because it has been affirmed in appeal or revision unless the higher authority is found to have applied its mind to the basic infirmities in the order."*** Hence it is to be seen whether the illegality by the inquiry authority had been considered consciously by the Disciplinary authority or the appellate authority. The applicant has in his representation against the inquiry report clearly spelt out, "*It is a violation in the Enquiry Proceedings that after the close*

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14 (1993) 4 SCC 269

of evidences, I was not examined generally as laid down in Rule 9(21)." This illegality goes to the root of the disciplinary proceedings, as held by the Apex Court in the case of S.B. Ramesh (*supra).* If despite such a specif ground taken in the representtion in attacking the inquiry report, the disciplinary authority failed to consider the same but has endorsed his concurrence upon the finding, the disciplinary authority's order cannot legally be sustained. As such, the same also becomes illegal and once the inquiry report and the disciplinary authority's orders become legally unsustainable, the orders of the higher authorities i.e the Appellate Authority and the Revisional Authority also crumble to the ground.

22. Thus, in view of the above discussion, the OA succeeds. The impugned orders i.e. the Order of the Disciplinary authority, that of Appellate authority and of the Revisional authority are all quashed and set aside. It is declared that the applicant is entitled to restoration of his pay in the scale of 5,500 – 9000/- in the stage he was at the time of passing of the order dated 21-01-1998. He is entitled to the normal annual increments in the said scale and consequently, is entitled to the arrears of pay and allowances arising out of such restoration of the pay scale and pay. The respondents shall calculate the arrears of pay and allowance due to the applicant and pay the same within a period of four months from the date of communication of this order.

23. Before parting with this case, it would be appropriate to cite the folowing observation of the Apex Court in the case of ***Lakshmi Ram Bhuyan v. Hari***

Prasad Bhuyan,[15] which applies to this case as well:

> *"3. An inadvertent error emanating from non-adherence to rules of procedure prolongs the life of litigation and gives rise to avoidable complexities. The present one is a typical example wherein a stitch in time would have saved nine."*

24. Costs easy.

(Dated, the 20th July, 2006)

K B S RAJAN
JUDICIAL MEMBER

SATHI NAIR
VICE CHAIRMAN

cvr.

15(2003) 1 SCC 197