BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Transferred Application No.350/86.

Mr.S.N. Dhamadhere,
No.9 Elphinstone Road,
Mahaji Baug, Bhoite Chawl,
Pune - 411 003. ... Applicant

V/s.

1.The Union of India through
the Secretary, Ministry of Defence,
New Delhi.

2.The General Manager,
High Explosives Factory,
Kirkee, Pune - 411 003. ... Respondents.

Coram: Hon'ble Vice-Chairman, B.C.Gadgil,
Hon'ble Member(A), J.G.Rajadhyaksha.

Appearances:

1.Mr.Y.G.Waknis, Advocate
for the applicant.

2.Mr.S.R.Atre, Advocate
for the Respondents.

ORAL JUDGMENT

(Per Vice-Chairman, B.C.Gadgil) Dated: 13-4-1987.

Regular Civil Suit No.696/1984 of the file of Civil Judge, Senior Division, Pune, is transferred to this Tribunal for disposal.

2. The applicant joined the service as Switch Board Attendant in High Explosives Factory at Kirkee on 20-9-78. In 1982, two departmental enquiries were held against him on the basis of two charge sheets ~~are~~ one dated 3-5-82 and the other dated 3-7-82. In these proceedings we are not concerned with the earlier enquiry (based on the charge sheet dated 3-5-82) as it is common ground that the said enquiry has been dropped on 22-8-1983.

...2/-

3. With respect to the second enquiry, an enquiry officer was appointed. He held an enquiry and submitted his report to the disciplinary authority. The disciplinary authority thereafter passed the order dated 22nd August,1983 (Annexure A-1) removing the applicant from service. It is this order that is challenged before us.

4. Though a number of contentions have been raised in the plaint, we do not intend to consider all of them as the matter can be decided on a small point. For appreciating this point it will be necessary to reproduce the impugned order. It reads as follows :

> "The undersigned,enclosed herewith a copy of the Inquiry Report submitted by the Officer appointed to inquire into the charges against Shri S.N. Dhamdhere, Switch Board Attendant, T.No.U 65, under Memorandum No.4099/151/Vig/G/HEF, dated 3-7-82.
>
> On a careful consideration of the Inquiry Report aforesaid, the undersigned agrees with the findings of the Inquiry Officer and holds that the article of charge i proved. The undersigned, has therefore, provisionally come to the conclusion that
>
> Shri S.N. Dhamdhere, Tkt No.U-165 is not a fit person to be retained in service and so the undersigned hereby imposes on him the penalty of "REMOVAL FROM SERVICE" with effect from 22-8-1983(AN).
>
> The receipt of this order should be acknowledged."

5. The applicant has contended in paragraph 3 of the plaint that as the disciplinary authority has come to a provisional conclusion that the charge has been established it could not have been possible for the disciplinary authority to inflict any final penalty of removal from service. The respondents have filed a written statement. Surprisingly that written statement does not reply this contention of the applicant. It was contended by Mr.Waknis that the

...3/-

impunged order would be bad on the face of it. According to him for inflicting a penalty, the disciplinary authority has to come to a definite conclusion about the proof of the misconduct and that it is only thereafter that the said authority can impose any penalty. Mr.Waknis argued that after having come to a provisional conclusion that the applicant was not fit to be retained in service it was not permissible for the disciplinary authority to impose any penalty. Mr.Atre for the Respondents tried to support the impugned order by contending that before the 42nd Constitutional Amendment, it was necessary to give a second notice by the disciplinary authority to the delinquent and that such a notice is required to be given after coming to a provisional conclusion about the guilt. It is true that this procedure was required to be followed,but then if it was to be followed there could not have been straight away an order for removal from service. The delinquent was never given an opportunity to make a representation. Of course, after the 42nd Constitutional Amendment such second notice is not necessary. We are not much impressed by the submission of Mr.Atre that the word 'provisionally' has been introduced by the disciplinary authority on the basis of the specimen form of a notice printed on page 242 of Chaudri's compilation of the Civil Service Regulations.

6. One cannot however forget that the said form was of a second notice (which was required to be given before 42nd Amendment). If the disciplinary authority used that form it was necessary for him to use it in its entirety by giving the delinquent an opportunity.

...4/-

of making representation against proposed penalty. Instead of doing so the disciplinary authority has ~~straight way~~ straightway passed the impugned order.

7. The net result is that the disciplinary authority has passed the impugned order without finally coming to a conclusion about the proof of the misconduct and the nature of the penalty. In this background, it would be very difficult for the Respondents to urge that the order should be confirmed. The said order has to be set aside. Of course, the disciplinary authority will be at liberty to apply its mind afresh to the inquiry proceedings and to come to a conclusion as to whether or not the misconduct has been proved. In addition it has also to come to the conclusion about the quantum of penalty. Hence we pass the following orders :

O R D E R

1. The impugned order dated 22nd August, 1983 removing the applicant from service with effect from 22-8-1983 is set aside and the respondents are directed to forth-with reinstate the applicant in service with all backwages. This order however will not come in the way of the disciplinary authority to apply its mind to the enquiry proceedings and the enquiry report afresh, and then to pass appropriate orders as it may deem fit.

2. No order as to costs.

(B.C.GADGIL)
VICE-CHAIRMAN.

(J.G.RAJADHYAKSHA)
MEMBER(A).