CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 187 of 2000.

Dated this Friday, the 7th day of July, 2000.

CORAM : Hon'ble Shri Justice R.G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri G. S. Tampi, Member (A).

Ashok Nagpure,
Junior Engineer (C&W),
Grade-I, Mazgaon,
Central Railway,
Mumbai. ... *Applicant*

(By Advocate Shri G.S. Walia)

VERSUS

1. *Union of India through*
The General Manager,
Central Railway,
Headquarters Office,
Mumbai C.S.T.,
Mumbai - 400 001.

2. *Divisional Railway Manager,*
Mumbai Division,
Central Railway,
DRM's Office, Mumbai C.S.T.,
Mumbai - 400 001.

3. *Senior Divisional Mechanical*
Engineer (Coaching),
Mumbai Division,
Central Railway,
Mumbai C.S.T.,
Mumbai - 400 001. ... *Respondents.*

(By Advocate Shri V. D. Vadhavkar)

OPEN COURT ORDER

PER : Shri R. G. Vaidyanatha, Vice-Chairman.

This is an application in which the applicant is challenging the disciplinary action taken against him. Respondents have filed reply. Since the point involved is a short point, after hearing both sides, we are disposing of this O.A. finally at the admission stage itself.

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The applicant is a Junior Engineer in the Central Railway. Due to certain alleged misconduct, a major penalty charge-sheet was issued against the applicant. The applicant denied the allegation. Then a regular enquiry was held. The Inquiry Officer submitted a report to the effect that the charges are not proved. That the Disciplinary Authority forwarded a copy of the Enquiry Report to the applicant for his comments. According to the administration, the applicant's reply was not received in time. The Disciplinary Authority passed the impugned order dated 17.07.1998 holding that the charges are proved against the applicant and imposed the penalty of with-holding two increments for a period of two years without cumulative effect. Being aggrieved by this order, the applicant preferred an appeal. The appellate authority dismissed the appeal by order dated 03.11.1998. Being aggrieved by this order, the applicant has approached this Tribunal by taking number of grounds. The applicant has filed M.P. No. 219/2000 for condonation of delay. In our view, sufficient grounds are made out and delay should be condoned.

3. The respondents in their reply have justified the action taken against the applicant. After mentioning the facts of the case, they have stated that regular enquiry has been held and the orders passed by the respective authorities are fully justified and do not call for interference. It is also stated that the Appellate Authority had given personal hearing to the applicant before disposing of the appeal.

4. Though number of grounds are taken in the application on merits and on legal points, we find that the application has to succeed on two short grounds.

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The first ground is that the impugned order dated 17.07.1998 does not give any reason except filling up blanks in a printed proforma order. A copy of the order which is at page 16 of the Paper Book does not contain any factual points or findings of the Disciplinary Authority except filling up the blanks in the printed proforma. In our view, this order at exhibit A-1, page 16 of the Paper Book, does not conform to the requirements of the law.

The respondents' counsel at this stage submits that the Disciplinary Authority has recorded his reasons in the office file. Even if that is so, it may not be sufficient unless the reasons are communicated to the applicant, since he has a right of statutory appeal against that order to the Appellate Authority. Unless he knows the grounds for decision, he will be handicapped in submitting an appeal. The respondents' counsel submits that this copy of the order, which is in the file, has been communicated to the applicant, which is now disputed by the applicant's counsel. Anyhow, we need not detain ourselves much on this point, since there is another legal ground on which the impugned order has to be quashed.

We have already seen that the Inquiry Officer has exonerated the applicant. The Disciplinary Authority simply forwarded a copy of the enquiry report to the applicant calling for his reply and he will take a decision. For such a letter, the only reply that can be sent by the applicant is to thank the administration for exonerating him. Though there were divergent views at one point of time, as to whether the Disciplinary

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Authority should inform the delinquent official about his intention to take a different view, but now the matter is settled by a decision of the larger Bench of three Judges of the Supreme Court in the case of Punjab National Bank & Others V/s. Kunj Behari Mishra reported in A.I.R. 1998 SC 2713 The Supreme Court has now authoritatively held that in a case where the Inquiry Officer has exonerated an official and the Disciplinary Authority intends to take a different view or disagree with the view of the Inquiry Officer, then he must record tentative reasons as to why he intends to take a different view and call upon the delinquent official to show cause as to why he should not disagree from the view taken by the Inquiry Officer. Then after considering the representation of the delinquent official, he can pass whatever order he deems fit. The Supreme Court has made it clear that unless this stage is followed, the whole proceedings are vitiated due to non-observance of principles of natural justice. Therefore, in view of the authoritative law, we are constrained to hold that in the present case the Disciplinary Authority gave no indication to the delinquent official that he intends to disagree with the view taken by the enquiry officer.

5. The Learned Counsel for the respondents invited our attention to another judgement of two Judges of the Supreme Court in Yoginath D. Bagde V/s. State of Maharashtra & Another reported in 1999 (2) SC SLJ 325 where also the same view is taken by the Supreme Court. But the Learned Counsel invited our attention to para 31 of the reported judgement where there is reference to the protection given to a Government official under Article 311 (2) of the Constitution of India. Since in that case the Supreme Court was concerned with the penalty of dismissal from service,

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the Supreme Court was referring to the protection given under Article 311 (2). The Supreme Court has no where stated that in case of ~~major~~ minor penalty one can differ from the enquiry report and pass a punishment order straight-away without informing the applicant. No such distinction is made by the Supreme Court in Kunj Behari Mishra's case. The legal point made out is that the Disciplinary Authority, before taking a different view, should inform the delinquent official about his intention to take a different view by giving tentative conclusion and then on getting reply of the delinquent official, he can pass a final order. There is no distinction between a minor penalty and major penalty to follow this principle, which is based on the principles of natural justice. Hence, we hold that the present order of the Disciplinary Authority dated 17.07.1998 straight away passing the order of punishment without indicating to the applicant that he is going to take a different view and the order of the Appellate Authority dated 03.11.1998 confirming the same, is liable to be quashed.

6. Now the next question for consideration is as to what direction we should give in the matter. Normally when we hold that the order suffers from a legal infirmity, the matter has to be remanded to the competent authority to follow the rules properly and to pass whatever order he deems fit according to law. It may be in extreme cases where there is a lapse of long time or some other circumstances the Court may close the matter without giving liberty to the concerned authority from proceeding the matter. But in this case, this is not an old matter but the incident is of 1997 and the order of the Disciplinary Authority is of 1998 and, therefore, this is not a case where we can close the proceedings.

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7. In the result, the application is allowed. The impugned order of the Disciplinary Authority dated 17.07.1998 and the order of the Appellate Authority dated 03.11.1998 are hereby quashed. It is now open to the Disciplinary Authority to apply his mind to the enquiry report and then form an opinion whether to close the proceedings or he wants to take a different view. In case he decides to close the proceedings, nothing more to be done. In case he decides that the enquiry report should not be accepted, then he has to record tentative reasons as to why he is inclined to take a different view. Then those tentative reasons alongwith a show cause notice be sent to the applicant calling upon him to show cause as to why he should not disagree with the report of the Inquiry Officer. Then after getting reply from the applicant, the Disciplinary Authority may apply his mind to the entire case and pass whatever order he deems fit according to law. Needless to say that if any adverse order is passed, the applicant may challenge the same before the appellate authority according to law. Advisedly, we have not expressed any opinion on the merits of the case. All contentions on merits, including the applicant's prayer for promotion, are left open. The impugned orders dated 17.07.1998 and 03.11.1998 are set aside and as a consequence, the applicant must be restored whatever financial loss he has suffered as a result of the impugned orders within a period of two months from the date of receipt of a copy of this order. In the circumstances of the case, the Disciplinary Authority should apply his mind and take one view or the other about proceeding further with the matter within a period of three months from the date of receipt of a copy of this order. No order as to costs.

(G. SHANTAPPI)
MEMBER (A).

(R.G. VAIDYANATHA)
VICE-CHAIRMAN.

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