

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 692/2000

Date of Decision: 19<sup>th</sup> December 2000

R. Yadav Applicant.

Shri S.P. Saxena Advocate for the Applicant.

VERSUS

Union of India & Ors. Respondents.

Shri S.C. Dhawan Advocate for the Respondents.

CORAM :

The Hon'ble Shri S.L. Jain, Member (J)

The Hon'ble Smt. Shanta Shastry, Member (A)

- (i) To be referred to the Reporter or not ? *yes*
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? *No*
- (iii) Library *yes*

*S.L. Jain*  
(S.L. JAIN)  
MEMBER (J)

mrj\*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.692/2000

Dated this the 19<sup>th</sup> day of December 2000.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Smt.Shanta Shastry, Member (A)

Ramanand Yadav,  
(Sal.No.90670),  
Office Superintendent -II,  
C.W.M. Office - 140 T (Crane),  
Parel, Bombay.

... Applicant

By Advocate Shri S.P.Saxena

V/S.

1. Union of India  
through the Secretary,  
Ministry of Railways,  
New Delhi.
2. The Chief Workshop Manager,  
Central Railway, Loco Workshop,  
Parel, Bombay.
3. The Deputy C.M.E.(D),  
Central Railway,  
Parel, Bombay.
4. The Enquiry Officer,  
(Shri K.R.Gaikwad),  
C.O.S.,(DAR), C.W.Ms Office,  
Parel, Bombay.

... Respondents

By Advocate Shri S.C.Dhawan

..2/-

*S.C. Dhawan*

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 seeking the relief to quash and set aside the impugned order dated 21.7.2000 (Annexure-'A1') and 14.9.2000 (Annexure-'A-2').

2. The applicant who is working as Office Superintendent with Respondent No. 2 at Parel was served with a chargesheet dated 3.4.1999 (Ex.A-5), after submission of the reply by the applicant, enquiry officer was appointed, enquiry proceedings were held and the enquiry officer submitted his report (Annexure-'A-7'). The disciplinary authority forwarded a copy of the above said report of enquiry officer to the applicant vide letter dated 1.2.2000 without indicating any disagreement with the findings of the enquiry officer asking him to submit his representation/submission on the findings within 15 days. Thereafter, when no representation was submitted by the applicant, as the enquiry officer had exonerated him from the charge levelled against him, the enquiry officer issued a letter which was received by the applicant on 21.7.2000 (Annexure-'A-1') calling upon the applicant to attend the enquiry on 11.8.2000 along with his defence assistant. Hence, this OA. for the above said relief.

*S.L.Jain* -

..3/-

3. The grievance of the applicant is that when the disciplinary authority forwarded the report of the enquiry officer along with letter dated 1.2.2000 (Annexure-A-8) without a disagreement note, it amounts to acceptance of the enquiry officer's report, hence, later on to direct the enquiry officer to hold further enquiry is against the procedure prescribed under Railway Servants (Discipline & Appeal) Rules, 1968.

4. So far the disciplinary authority has not arrived to a finding whether the applicant is guilty of the charge levelled against him or not.

5. In JT 1994 (1) SC 658 Union of India vs. Upendra Singh, it has been held that the Tribunal ought not to interfere at an interlocutory stage which amounts to stepping in the shoes of the disciplinary authority or the enquiry officer appointed by him. It further laid down as under :-

"It may be recalled that the jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution. Therefore, the principles, norms and the constraints which apply to the said jurisdiction apply equally to the Tribunal. If the original application of the respondent were to be filed in the High Court it would have been termed, properly speaking, as a writ of prohibition. A writ of prohibition is issued only when patent lack of jurisdiction is made out. It is true that a High Court action under Article 226 is not bound by the technical rules applying to the issuance of prerogative writs like certiorari, prohibition and mandamus in United Kingdom, yet the basic principles and norms applying to the said writs must be kept in view....If we do not keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law, the exercise of jurisdiction becomes rudderless and unguided; it tends to become arbitrary and capricious."

D.C. Singh - ..4/-

6. The function of Tribunal is one of judicial review, the parameters of which are as stated above.

7. It is true that the disciplinary authority before issuance of the letter dated 1.2.2000 (Annexure-'A-8') must have applied it's mind whether to accept the report of the enquiry officer or not. In doing so, the disciplinary authority was competent to proceed under Rule 10 (2) of the Railway Servants (Discipline & Appeal) Rules, 1968. Having not done so and probably when there was no representation from the side of the applicant, at the time of consideration for penalty, this mistake might have <sup>been</sup> noticed and to cure the said mistake, the matter was again sent back to the enquiry officer which in compliance of the same issued letter dated 21.7.2000 (Annexure-'A-1').

8. Without expressing any opinion on the merits of the case, it is suffice to say that the right of the applicant to agitate the question of prejudice which is a relevant matter in view of State Bank of Patiala vs. S.K.Sharma, (1996 (1) SCC (L&S)717) before the disciplinary authority and other competent authorities or before the Tribunal, if an occasion arises therefor, exists.

9. Merely, <sup>✓</sup> ~~for~~ issuance of the letter at Annexure-'A-8' and then to change the mind subsequently to hold further enquiry, we are not inclined to interfere in the disciplinary proceedings at this stage.

S.C. Sharma

10. The learned counsel for the respondents also brought to our notice the OA.NO.468/2000 decided on 8.12.2000 by this Bench which lays down the proposition that if once the disciplinary authority has furnished the copy of the enquiry officer's report, it does not amount to acceptance of the findings of the enquiry officer.

11. In the aforesaid circumstances, we dispose of the OA. with the direction that in case the applicant is in any way prejudiced by the procedure adopted by the disciplinary authority in issuing Annexure-'A-8' dated 1.2.2000, he shall be at liberty to agitate the same before the disciplinary authority, other competent Authorities and the Tribunal, if an occasion arises therefor. No order as to costs.

*Shanta Shastri*

(SMT. SHANTA SHASTRY)

MEMBER (A)

*S.L. Jain*

(S.L. JAIN)

MEMBER (J)

mrj.