

CENTRAL ADMINISTRATIVE TRIBUNALMUMBAI BENCHORIGINAL APPLICATION NO.: 631 OF 1991.Date of Decision : 09.02.1999.V. P. Hatekar, Petitioner.Shri V. G. Pashte, Advocate for the Petitioner.

VERSUS

Union Of India & Others Respondents.Shri R. R. Shetty, Advocate for the Respondents.CORAM :Hon'ble Shri Justice R. G. Vaidyanatha,
Vice-Chairman.

Hon'ble Shri D. S. Baweja, 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

R. G. Vaidyanatha
 (R. G. VAIDYANATHA)
 VICE-CHAIRMAN.

14

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 631 OF 1991.

Dated this Tuesday, the 9th day of February, 1999.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

V. P. Hatekar,
Esm Grade-I,
Central Railway,
Lasalgaon.

Residing at -

Block No. 10, M.I.G.-II,
Hudco, Manmad,
Manmad (At & Post),
Dist. Nasik

... Applicant

(By Advocate Shri V. G. Pashte)

VERSUS

1. Union Of India through
The General Manager,
Central Railway,
Bombay.

... Respondents.

2. The Divisional Rly. Manager,
Central Railway,
Bhusaval.

(By Advocate Shri R. R. Shetty).

: OPEN COURT ORDER :

[PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN]

This is an application filed by the applicant challenging the disciplinary action taken against him by the administration and the penalty imposed on him. The respondents have filed reply opposing the application. We have heard the Learned Counsels appearing on both sides.

Pr
...2

2. The applicant, at the relevant time was working as Electrical Signal Maintainer Grade-I in the scale of Rs. 1320-2040. Due to an alleged misconduct, a charge-sheet was issued against the applicant dated 22.11.1989. Some witnesses were examined during the enquiry. After completing the enquiry, the Inquiry Officer submitted a report to the Disciplinary Authority by holding that the charges are not proved. Then the Disciplinary Authority forwarded a copy of the report to the applicant asking for his comment. Then after receiving the reply of the applicant and on going through the record, the Disciplinary Authority held that the charges are proved against the applicant and held him guilty and imposed a penalty of reduction to the lower grade in the pay scale of Rs. 1200-1800 and he shall continue in that grade until he is found fit by the competent authority for promotion to the next grade. Being aggrieved by that order, the applicant preferred an appeal before the Appellate Authority. The Appellate Authority by order dated 25.03.1991 agreed with the Disciplinary Authority on the question that the charges are proved but however, took a lenient view regarding penalty and reduced the period of reversion only for a period of three years with a direction that after the expiry of three years the applicant should be restored to the original post and grade. Being aggrieved by the orders of the Disciplinary Authority and the Appellate Authority, the applicant has approached this Tribunal challenging those orders.

The applicant has taken some grounds challenging the orders of the Disciplinary Authority and the Appellate Authority.

3. The respondents in their reply have taken a stand that the applicant has been properly punished and no case is made out for interfering with the orders of the Disciplinary Authority or the Appellate Authority.

4. It is not necessary to consider the detailed allegations in the pleadings and the documents produced, since at the time of arguments, the Learned Counsel for the applicant challenged the orders of the Disciplinary Authority on the ground that he has disagreed with the findings of the Inquiry Officer without issuing a show cause notice to the applicant and without giving an opportunity to the applicant about the intention to take a different view than the view of the Inquiry Authority. The Learned Counsel for the respondents supported the action taken by the Disciplinary Authority and the Appellate Authority.

5. In this case, it is a common ground that the Inquiry Officer, after discussing the evidence, has come to the conclusion that the charges are not proved against the applicant. Therefore, the applicant has been exonerated by the Inquiry Officer. When the report went to the Disciplinary Authority, no doubt he forwarded a copy of the Enquiry Report to the applicant and sought for his comment and then, after getting the reply of the applicant, straight-away proceeded to pass the impugned order dated 17.01.1991 holding that the charges are duly proved against the applicant and he disagreed with the findings of the Inquiry Officer.

: 4 :

The question is as to what procedure the Disciplinary Authority should follow in case he disagrees with the findings of the Inquiring Authority. Though there was some conflicting view on this point, we have now the latest judgement of the Supreme Court in the case of Punjab National Bank & Others V/s. Kunj Behari Misra reported in 1998(2)SC SLJ 117. The Supreme Court noticed the earlier decisions where some conflicting views had been taken. After analysing the previous decisions, the Supreme Court has now laid down that whenever the Disciplinary Authority intends to disagree with the findings of the Inquiring Authority, he must disclose his tentative opinion in the form of a show cause notice to the delinquent official and should ask his comments so that the delinquent official can give a reply to the show cause notice and persuade the Disciplinary Authority not to disagree with the findings of the Inquiring Authority. The Supreme Court points out that if such a show cause notice is not issued after giving tentative opinion of the disciplinary authority about his intention to disagree with the findings of the Inquiry Officer, then there is violation of principles of natural justice. In para 19 of the reported judgement, this is what the Supreme Court has observed :

"The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge, then before it records its own findings on such charge,

Pr ...5

: 5 :

it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

6. In view of the law declared by the highest Court of the land and being the latest judgement, we find that the action taken by the Disciplinary Authority in the present case, disagreeing with the report of the Inquiry Officer and straight-away passing the order of punishment without issuing a proper show cause notice and without giving any indication to the applicant about his tentative opinion and about his intention to disagree with the findings of the Inquiry Officer, is not sustainable in law and, therefore, liable to be quashed.

7. Now remains the question as to what should follow. Since the order of penalty is set aside on a technical ground and not on merit, we feel that the case should be remanded to the Disciplinary Authority to follow the law. Since the applicant has already suffered the punishment, there is no question of immediate ^{restitution} reinstatement but, however, if after further proceedings the Disciplinary Authority exonerates the applicant, then ofcourse, the applicant will be entitled to whatever



: 6 :

monetary loss he has suffered as a result of the impugned punishment. But however, if the disciplinary authority imposes any fresh penalty or confirms the old penalty, then it is open to the applicant to challenge the same before the Appellate Authority and again before this Tribunal according to law.

8. In the result, the application is allowed. The orders of the Appellate Authority dated 25.03.1991 and the orders of the Disciplinary Authority dated 17.01.1991 are hereby quashed. The matter is remanded to the disciplinary authority. The disciplinary authority shall go through the enquiry report and then take a decision, whether to accept it or to disagree with the same. If the Disciplinary Authority prefers to accept the report, then the matter ends and the proceedings comes to an end. However, if the disciplinary authority ~~turning a~~ ^{turning a} ~~confirms~~ the tentative opinion to disagree with the findings of the Inquiring Authority, then the disciplinary authority shall indicate his tentative opinion with reasons and intimate the same to the applicant in the form of a show cause notice, as mentioned by the Supreme Court in the decision mentioned above, and ask the applicant to show cause as to why the disciplinary authority should not disagree from the findings of the Inquiry Officer for the reasons mentioned in the show cause notice. Then it is open to the applicant to give an appropriate reply to the show cause notice. Then the Disciplinary Authority can pass final orders after taking into consideration the entire record.

By ...7

including the representation of the applicant and pass appropriate orders according to law. Needless to say, if any adverse order is passed, the applicant can challenge the same according to law. No order as to costs.

D. S. Baweja
(D. S. BAWEJA)
MEMBER (A).

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

os*