IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.1063/94.

Dated: 3.11.1999.

Mrs.J.S.Mualay ... Applicant.

Mr.U.Warunjikar ... Advocate Applicant.

Versus

Union of India & Anr. ... Respondent(s)

Mr.P.M.Pradhan ... Advocate for Respondent(s)

CORAM :

Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri B.N.Bahadur, Member (A).

(1) To be referred to the Reporter or not? Yes

(2) Whether it needs to be circulated to other Benches of the Tribunal? No

(3) Library? Yes

(R.G.VAIDYANATHA)
VICE-CHAIRMAN

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.1063/94.

Wednesday, this the 3rd day of November, 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri B.N.Bahadur, Member (A).

Mrs.J.S.Maulay,
Ashok Nagar,
P.O. Koregaon Factory,
Shrirampur, Tal. Shrirampur,
Dist Ahmednagar. ...Applicant.
(By Advocate Mr.U.Warunjikar)

Vs.

1. Union of India,
Through Telecom District Manager,
Opp. Kisan Kranti Building,
Market Yard, Station Road,
Ahmednagar.

2. Telecom District Manager,
Opp. Kisan Kranti Building,
Market Yard, Station Road,
Ahmednagar,
District Ahmednagar. ...Respondents.
(By Advocate Mr.P.M.Pradhan)

: O R D E R (ORAL) :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. The respondents have filed their reply. We have heard Mr.U.Warunjikar, the learned counsel for the applicant and Mr.P.M.Pradhan, the learned counsel for the respondents.

2. Few facts which are necessary for the disposal of this application are as follows.

The applicant was appointed as a Telephone Operator in the year 1987. In pursuance of some alleged mis-conduct a charge

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sheet was issued against the applicant dt. 20.4.1991. The applicant gave a reply denying the allegations. Then, a regular enquiry was held by an Enquiry Officer. The Enquiry Officer by his report held that the charges against the applicant are not proved as could be seen from the enquiry report which is at page 11 of the paper book. A copy of the enquiry report was furnished to the applicant. Then, the Disciplinary Authority passed the impugned order dt. 27.4.1993 holding that the charges are proved against the applicant by dis-agreeing with the conclusion of the Enquiry Officer and then imposed a penalty of reduction of pay to the minimum of the pay scale for a period of one year. Being aggrieved by that order, the applicant preferred an appeal to the Appellate Authority. Then, the Appellate Authority by the impugned appellate order dt. 9.12.1993 agreed with the Disciplinary Authority that the charges are proved and then found that it is a fit case for enhancing the penalty and accordingly passed the impugned order by enhancing the penalty to one of removal from service. Being aggrieved by the order of the Disciplinary Authority and the Appellate Authority, the applicant has approached this Tribunal by filing this application.

3. The applicant has taken number of grounds challenging the orders of the Disciplinary Authority and the Appellate Authority. The applicant's case is that the alleged mis-conduct had taken place prior to her joining service and therefore, it cannot be enquired into in the Disciplinary Enquiry. According to her, she is innocent and the charges are not proved as held by the Enquiry Officer. Though ~~the~~ some grounds ~~is~~ are taken in the application, now at

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the time of arguments, the learned counsel for the applicant has raised two additional legal grounds before us. Though the learned counsel for the respondents contended that these grounds cannot be taken since they are not pleaded, we find that the grounds are purely legal grounds and therefore, they can be raised at any time.

4. The two legal grounds which were pressed into service by the learned counsel for the applicant, apart from other grounds taken in the OA, are that the Disciplinary Authority while dis-agreeing with the enquiry report has not given a show cause notice to the applicant about his intended dis-agreement and thereby there is violation of principles of natural justice. The second legal ground pressed into service is that the Appellate Authority could not have raised the penalty from one of reduction of pay for one year to one of removal from service without hearing the applicant and without giving show cause notice about the proposed enhancement of the penalty. The learned counsel for the respondents, on the other hand, contended that there is no merit either on merits or in the two legal grounds which were pressed into service at this stage.

5. After hearing both the sides and perusing the materials on record, we find that the application should succeed only on the short ground viz. the first legal ground and therefore, it is not necessary to consider the second legal ground and the case of the applicant on merits.

6. As could be seen from the enquiry report which is at page 11 of the paper book, by a detailed order, the Enquiry Authority has held that the charges are not proved against the applicant. When such is the case, mere supplying of the enquiry report to

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the applicant will not be of any assistance to the applicant, since applicant can only send a reply to the enquiry report. In a matter like this, the Disciplinary Authority should have given an indication to the applicant that he intends to differ from the Enquiry Report by giving some tentative reasons so that it would have put the applicant on notice that there is a likelihood of adverse order against her and hence she could have been in a better position to give representation in support of the Enquiry Report and with a request to the Disciplinary Authority not to take any different view. But, that is not done in this case. At one time, there were conflicting decisions on this point. One view was that the Disciplinary Authority is not bound by the report of the Enquiry Officer and therefore he could pass any order as he deems fit and hence no show cause notice to the delinquent was necessary. The other view was that on the basis of principles of natural justice a show cause notice should be issued to the delinquent if the Disciplinary Authority intends to take a different view than the view taken by the Enquiry Officer.

7. Though there were conflicting opinions on this point, now the question is no longer res integra and is concluded by a decision of the Larger Bench of the Supreme Court consisting of three Judges in the case of Punjab National Bank and Ors. Vs. Kunj Behari Misra (1998 (2) SC SLJ 117). It was also an identical case, where the Enquiry Officer had exonerated the delinquent, but the Disciplinary Authority straightaway had disagreed with the view of the Enquiry Officer and held that the charges were proved and imposed a penalty. After surveying the

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case law on the point, the Supreme Court held in para 19 as follows :

> " The result of the aforesaid discussion would be that the principles of natural justice have to been 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, 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."

Therefore, the observations of the Supreme Court are that even though there is no such rule, such a rule of issuing show cause notice to the delinquent should be read into the rules by invoking the principles of natural justice. Therefore, the Disciplinary Authority in such a case has a duty to record his note of dis-agreement by giving tentative reasons and issue show cause notice to the delinquent and then on getting reply from the delinquent he can certainly pass any appropriate order as he deems fit. But, in that case, the Supreme Court did not remand the matter for further orders by the Competent Authority since both the delinquents had attained the age of superannuation in the meanwhile and it was a case in 1983 itself though the appeal was disposed of by the Supreme Court in 1995. Therefore, the Supreme Court felt that it was not a fit case for remanding the matter.

8. In the present case, there are serious allegations against the applicant. She has still not attained the age of superannuation and she is still young. Since, we are interfering

with the order of the Disciplinary Authority on technical ground, we are not inclined to close the matter at this stage since the law should take its own course when we are holding that the order of the Disciplinary Authority is not sustainable in law, particularly in view of the law laid down by the Apex Court in the recent Judgment we are remanding the matter to the Disciplinary Authority. Now, the Disciplinary Authority has to decide whether he wants to accept the enquiry report or not. If he decides to accept the enquiry report, he should close the matter, then nothing more will have to be done. In case, he finds that it is not a fit case for accepting the Enquiry Report, then he may record tentative reasons for disagreeing with the reasons given by the Enquiry Officer and serve a show cause notice to the applicant along with the note of dis-agreement calling upon her to show cause as to why he should not differ from the findings of the Enquiry Report and take a different view and then on getting reply from the delinquent within the time given by him, the Disciplinary Authority can pass appropriate orders according to law.

9. Some arguments are also addressed about the validity of the order of the Appellate Authority since he has straightaway enhanced the penalty without hearing the applicants. It is true that as per the ~~unamended~~ previous law there is no obligation on the part of the Appellate Authority to hear an appellant before enhancing the penalty, but after amendment of Rule 27 in 1996, now there is an obligation cast upon the Appellate Authority to hear the appellant in case he wants to enhance the penalty; whether there is such a rule or not, principles of natural justice demands that when a person is ~~given~~ comes up in appeal challenging particular penalty, if the appellate authority feels that the penalty is

less and he wants to take a different view and intends to give a different punishment, he should hear the applicant before enhancing the penalty even though the order may be valid as per the then law, still the principles of natural justice requires that in such a case the appellate authority should give an opportunity to the appellant of being heard in case he intends to enhance the penalty. Any how, we need not go into this question in detail, since we are remanding the matter directly to the Disciplinary Authority with the observations made above.

10. Now remains, the question about reinstatement. Normally, when an order of the Disciplinary Authority is set aside the official has to be reinstated with back wages etc. But, here is a case where we are interfering with the orders of Disciplinary Authority on a highly technical ground and that too on the basis of a recent judgment of the Apex Court which has come during the pendency of the application. Such a ground was not taken in the application, but now pressed into service at the time of the arguments in view of the recent judgment. There are serious allegations of mis-conduct against the applicant since she has already been supplied with the order of penalty with which we are now interfering on a technical ground and not on merits, Therefore, in the facts and circumstances of the case, though we are ordering reinstatement, we are not ordering any back wages at this stage. The applicant should be reinstated forthwith and she should be kept under deemed suspension since she was already under suspension when the impugned order of the Disciplinary Authority was passed. Whether in future the suspension should be revoked and she should be taken back on duty is a matter which is left to the discretion of the Disciplinary

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Authority. The applicant will be entitled to future subsistance allowance from to day and onwards. The applicant will not be entitled to any back wages from the date of removal and till to day. However, at the time of passing the final order , the Disciplinary Authority should take a conscious decision as to how this period should be treated for the purpose of duty, pay and allowances, leave, pension etc. We are leaving those question open.

11. In the result, the application is allowed by quashing the two impugned orders dt. 9.12.1993 and 27.4.1993. The matter is remanded to the Disciplinary Authority for appropriate action according to law as mentioned in para 9, 10 and 11 mentioned above. Since this is a charge sheet of 1991, we direct the Disciplinary Authority that he should issue a show cause notice as mentioned earlier and after receipt of reply from the applicant pass a fresh appropriate order according to law within *four months from the date of receipt of copy of this order.* Needless to say, that if the applicant is aggrieved by any further order that may be passed by the Disciplinary Authority she may challenge the same according to law. All contentions on merits are left open. No costs.

(B.N.BAHADUR)
MEMBER(A)

(R.G.VAIDYANATHA)
VICE-CHAIRMAN

B.