CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 1383 of 1994.

Dated this MONDAY the 7th day of February, 2000.

Shri G. B. Merchant, _____ Applicant.

Shri B. Ranganathan, _____ Advocate for the applicant.

VERSUS

Union of India & Others, _____ Respondents.

Shri P. M. Pradhan, _____ 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 ? } NO

(ii) Whether it needs to be circulated to other Benches of the Tribunal ? }

(iii) Library.

(R.G. VAIDYANATHA)
VICE-CHAIRMAN.

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ORIGINAL APPLICATION NO.: 1383/94.

Dated this Monday, the 7th day of February, 2000.

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

Hon'ble Shri D. S. Baweja, Member (A).

G.B. Merchant
Residing at- B/35,
E.T. Western Railway Bunglow,
Jogeshwari (Easti),
Bombay - 400 060. ... Applicant.

(By Advocate Shri B. Ranganathan)

VERSUS

1. Union of India through
The Secretary,
Ministry of Communications,
Telecom Board,
Door Sanchar Bhawan,
New Delhi.

2. The Chairman,
Telecom Board,
Door Sanchar Bhavan,
New Delhi.

3. Chief General Manager,
Telecom Circle,
Gujarat, Ahmedabad.

4. Telecom District Engineer,
Bhuj Kutch, Gujarat.

5. Divisional Engineer Telegraphs,
Acceptance Testing (SW),
Bandra, Telephone Exchange
Building, Bandra,
Bombay - 400 050.

6. Assistant Engineer Telecom,
PRX Gandhidham - 370 201. ... Respondents.

(By Advocate Shri P.M. Pradhan).

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O R D E R

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

This is an application challenging the disciplinary action taken by the respondents against the applicant. Respondents have filed reply. We have heard Mr. B. Ranganathan, the Learned Counsel for the applicant and Shri P.M. Pradhan, the Learned Counsel for the respondents.

2. Few facts that are necessary for the disposal of the application are as follows :

The applicant is an employee of Telecom Department. He was transferred from Bombay to Bhuj, Kutch in Gujarat State. It appears, the applicant has remained absent for five years from 19.04.1979. That means, instead of complying with the order of transfer, according to the respondents, the applicant has remained absent unauthorisedly for about five years from 19.04.1979. Therefore, the department issued a charge-sheet dated 28.09.1987 alleging that the applicant has remained absent unauthorisedly.

The applicant's version is, that since he was suffering from mental disorder he had sent number of applications with medical certificates but no leave was granted.

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After the receipt of charge-sheet, the applicant made a voluminous correspondence with the department for supply of documents, etc. and then filed his written statement to the charge-sheet after two years. Then an Inquiry Officer and a Presenting Officer was appointed. Then when the enquiry proceedings started, the applicant started again correspondence seeking some additional documents. He also challenged the appointment of Inquiry Officer and the Presenting Officer. He also issued a legal notice to the department. Though he attended the enquiry for certain periods, he did not attend the enquiry during August, September and December, 1992. He also made number of applications for TA/DA and since the amount was not paid, he refused to attend the enquiry. Then the Inquiry Officer proceeded ex-parte and recorded his findings and submitted a report to the Disciplinary Authority holding that the charge is proved. At that stage, the applicant approached this Tribunal by filing O.A. No. 1336/92. That O.A. was disposed of by this Tribunal by order dated 20.08.1993 stating that this is not a fit case for interferring at this stage and applicant should give his reply to the Inquiry Report and Disciplinary Authority should pass a final order. Then the applicant sent detailed representations against the first Inquiry Report dated 20.02.1993. After seeing the representation of the applicant and since the enquiry had proceeded ex-parte, the Disciplinary

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Authority found that the matter should be re-heard and accordingly remanded the matter to the Inquiry Officer for a de-novo enquiry and appointed a fresh Inquiry Officer. At this stage, the applicant has filed the present O.A. challenging the action of the Disciplinary Authority in remanding the matter for de novo enquiry with a fresh Inquiry Officer. His contention is, that there is no such provision for de novo enquiry and the Disciplinary Authority should have passed final order on the basis of the Inquiry Report. This Tribunal granted interim order of stay about this de novo enquiry. Subsequently, the interim order is modified by order dated 03.04.1996 directing that the enquiry may be completed and applicant should participate in the enquiry, but no final orders to be passed without seeking permission of the Tribunal. We are now told that applicant participated in the enquiry and the enquiry has been completed and the inquiry report has been submitted holding that the charge is proved and, further, the applicant has sent his representation against the Inquiry Report and now it is at the stage of final order to be passed by the Disciplinary Authority. The applicant is now challenging the action of the Disciplinary Authority in ordering de novo enquiry.

3. At the time of arguments, the Learned Counsel for the applicant pressed two points. The first submission is that there

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is no power for the Disciplinary Authority for remanding the case for a de novo enquiry and appointing a fresh Inquiry Officer and, therefore, the order is liable to be quashed. The second submission is, that in view of the delay of nearly 12 years from the date of issuance of charge-sheet from 1987 till today, the enquiry proceedings should be quashed on the ground of delay. The Learned Counsel for the respondents submitted that it is not strictly ~~because~~ a case of de novo enquiry but it is a case of further enquiry after giving opportunity to the applicant to participate in the enquiry and, therefore, the order is perfectly valid. As far as delay is concerned, it was stated that applicant himself is responsible for the delay in the completion of the enquiry.

4. As far as the first point is concerned, we are not impressed by the argument of the Learned Counsel for the applicant that this is a case of de novo enquiry and it is not sutainable in law. It is true that the Disciplinary Authority has used the word 'de novo'. Merely because a wrong word is used by the Disciplinary Authority, it does not make the enquiry a de novo. In this case, no witnesses were examined in the first enquiry. Just on the basis of the record, the Inquiry Officer submitted a report. The applicant sent a representation challenging the ex-parte enquiry report and wanted it to be quashed and fresh enquiry to be held after appointing a fresh Inquiry Officer.

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The Disciplinary Authority has conceded the demand of the applicant and ordered further enquiry after giving opportunity to him to participate in the enquiry. Even after the fresh enquiry, no oral evidence is adduced ~~to the inquiry report~~. Just on the basis of the record, fresh enquiry report is submitted. Whether we call it as de novo enquiry or further enquiry or fresh enquiry, it makes no difference in the facts and circumstances of this case. In this case, no oral evidence is recorded either in the first enquiry or in the second enquiry. Both, the first and the second enquiry proceeded on the admitted and undisputed materials, namely - the admitted absence of the applicant and some leave applications submitted by the applicant and on that basis the enquiry report is submitted. Therefore, no fresh enquiry is held in this case and no fresh evidence is taken to fill up any lacuna or fill up any gap. Just on the basis of available evidence on record, both the reports are submitted. Therefore, mere use of the word 'de novo enquiry' makes no difference in the peculiar facts and circumstances of this case.

Then, what is more, the applicant himself has demanded and invited fresh enquiry. Against the first enquiry report, the applicant has sent two representations to the Disciplinary Authority. Both the representations are at pages 102 and 106 of the Paper Book.

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In the representation at page 102 dated 29.08.1993, the applicant has taken the stand that the ex-parte enquiry report is illegal. That the Inquiry Officer could not have proceeded ex-parte at all. In page 104 he has alleged that injustice is caused to him by holding ex-parte enquiry and it is against fundamental rights guaranteed in the Constitution. In the prayer he has requested the Disciplinary Authority not to accept the ex-parte enquiry report.

Then we come to applicant's second representation dated 27.09.1993 which is at page 106 of the Paper Book. In para 3 he says that closing the enquiry proceedings without giving any opportunity to the applicant to produce his defence is like hanging an employee unheard, which is contrary to the principles of natural justice. Again in para 4 he says that he did not have reasonable opportunity of defending himself and, therefore, the enquiry is bad. Then we come to para 4, which is very important and relevant for our present purpose and it reads as follows :

> "It is therefore requested that the enquiry report dated 20.02.1993 may kindly be quashed and a fresh enquiry may be commenced by appointing any other suitable Inquiry Officer. Please note that no one can be hanged or punished unheard."
> (Underlining is ours)

Therefore, we find that applicant is repeatedly asserting that it is an ex-parte enquiry report and it is bad in law and

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contrary to principles of natural justice. What is more, he prayed the Disciplinary Authority to order a fresh enquiry. Now when the Disciplinary Authority has ordered fresh enquiry by using the word 'de novo enquiry', how can the applicant take objections to the same, since his very request has been conceded and granted by the Disciplinary Authority. A person cannot be allowed to approbate and reprobate. One cannot blow hot and cold at the same time. He has asked for fresh enquiry and when fresh enquiry is granted, he is now saying that the Disciplinary Authority has no right to order fresh enquiry. Such a type of conduct on the part of a government official cannot be encouraged and such a practice should be deprecated. As already stated, this is not a case of de novo or fresh enquiry but a direction to redo the enquiry in the ~~absence~~ presence of the applicant and by giving him an opportunity. As already stated, both, in the first and second enquiry, no oral evidence is recorded either on behalf of administration or on behalf of the applicant and both the reports ~~have~~ are proceeded on the basis of admitted and available documentary evidence.

5. Another grievance made by the Learned Counsel for the applicant is, that even if the Disciplinary Authority has powers to remand the matter for fresh enquiry or further enquiry or de-novo enquiry, he cannot appoint a fresh Inquiry Officer but

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should have remitted the matter to the same old Inquiry Officer. On behalf of the respondents, the Learned Counsel made a submission that the previous Inquiry Officer has already been transferred on promotion and he could not be entrusted with the fresh enquiry and that is how a fresh Inquiry Officer has been appointed.

6.. We have already pointed out para 4 of applicant's representation dated 27.09.1993 which is extracted above and the underlined portion clearly shows that applicant's prayer was to appoint a fresh Inquiry Officer. Therefore, when the applicant himself wanted some new Inquiry Officer and not the old Inquiry Officer and when that has been considered by the Disciplinary Authority, it is now too late in the day for the applicant to canvass that the matter should have been remitted to the old Inquiry Officer. As already stated, the applicant cannot be permitted to blow hot and cold at the same time. Further, we notice that the applicant himself had expressed his views against the previous Inquiry Officer as biased and prejudiced. For instance, at page 114 of the Paper Book the applicant has sent a representation dated 07.04.1994 where at para 4 he has made an allegation that the previous Inquiry Officer has shown undue interest in completing the enquiry ex-parte against his request. In view of this, he was forced to approach the Tribunal challenging the ex-parte enquiry. He further alleges that the

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ex-parte enquiry proceedings will clearly reveal the biased mind of the then Inquiry Officer. Then in the same para he has further stated that a new Inquiry Officer must be appointed from some other department. Therefore, the applicant himself has made allegations against the previous Inquiry Officer and called him a biased officer, then how can he now contend that the Disciplinary Authority should have remitted the matter to the old Inquiry Officer and not to the fresh Inquiry Officer. Both, in the representation dated 27.09.1993 (page 106) and representation dated 07.04.1994 (page 114) the applicant himself has made allegations against the previous Inquiry Officer and wanted a fresh Inquiry Officer or a new Inquiry Officer to be appointed. When that has been accepted by the Disciplinary Authority and a fresh Inquiry Officer is appointed, now the applicant cannot turn round and contend that the old Inquiry Officer should have been appointed. Therefore, we feel that even this contention of the applicant's counsel must fail having regard to the peculiar facts and circumstances of the case.

The Learned Counsel for the applicant has referred to some three four authorities to contend that the Disciplinary Authority has no powers to order de novo enquiry and referring the matter to a different Inquiry Officer. In our view, there is no necessity to refer to those decisions, since in this case the

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applicant has himself requested the Disciplinary Authority to order fresh enquiry and to appoint a fresh Inquiry Officer and that has been accepted by the Disciplinary Authority. Therefore, the applicant is estopped from questioning the action of the Disciplinary Authority and as already stated, he cannot be allowed to blow hot and cold at the same time. Hence, it is not necessary to refer to those decisions in view of the stand taken by the applicant in both the representations asking for a fresh enquiry and making allegation against the previous Inquiry Officer and then asking for appointment of a fresh Inquiry Officer. Therefore, we are satisfied that in the facts and circumstances of the case, the Disciplinary Authority was justified in not accepting the ex-parte enquiry report and remitting the matter to a fresh Inquiry Officer though he has wrongly used the word 'de novo enquiry'. Even otherwise, using such a wrong word makes no difference, since no oral evidence has been adduced at all, either in the first enquiry or in the second enquiry, except preparing a report on the basis of admitted and available documentary evidence.

For the above reasons we hold that the first contention has no merit.

7. Coming to the second contention that the enquiry proceedings should be quashed on the ground of delay, we find

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that this contention has no merit, since the applicant himself is responsible for this undue delay for completing the enquiry.

8. The charge-sheet was issued in September 1987. The applicant took two years time to file his reply in 1989. We have perused the two files submitted by the Learned Counsel for the respondents which shows number of letters written by the applicant to the Inquiry Officer and the Disciplinary Authority about his claim regarding documents, regarding TA/DA, challenging the appointment of Inquiry Officer, then issuing legal notice, etc. and then ultimately the enquiry commenced in 1992. Then he did not participate in the enquiry during August, September and December, 1992 and then an ex-parte inquiry report was prepared. Then right from 1992 to 1999, for the last seven years till today, there is litigation pending in this Tribunal. The applicant filed the first O.A. No. 1336/92 challenging the ex-parte inquiry report. That was disposed of in August, 1993. Then he filed a M.P. for review of the earlier order. That was rejected. Then in 1994 he has filed the present O.A. and it is pending till today. Therefore, the matter is under litigation and a stay order has been passed by the Tribunal from 1992 till today, namely - February, 2000. Therefore, for the last 8 years the applicant has put obstacles in the completion of the enquiry by filing these two cases before this Tribunal and number of M.Ps.

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in the old case and the present case obstructing the course of enquiry. Therefore, it does not lie in the mouth of the applicant to say that the enquiry should be quashed on the ground of delay when he himself is responsible for 8 years delay from 1992 to February, 2000 by filing these two O.As. before this Tribunal. Therefore, we are not inclined to quash the charge-sheet or enquiry on the ground of delay.

9. We have already seen that the second enquiry was conducted, in which the applicant fully participated. He has already submitted his representation against the second Inquiry Report. Now the Disciplinary Authority has to pass final order on the enquiry report. Since this is an old matter, we expect the Disciplinary Authority to pass a final order in the disciplinary case within a period of three months from the date of receipt of a copy of this order. Needless to say that if any adverse order is passed, the applicant can challenge the same before the Appellate Authority and then before this Tribunal according to law. Advisedly we have not referred to some arguments about merits of the case, since any opinion expressed by us will prejudice the final order to be passed by the Disciplinary Authority. Hence, all contentions on merits are left open.

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10. In the result, the application fails and is hereby dismissed, subject however to observations made in para no. 9 above. The stay against the enquiry granted in this case by order dated 30.12.1994 and modified by order dated 03.04.1996 are hereby vacated. It is now open to the Disciplinary Authority to pass final order in the disciplinary case within three months from the date of receipt of a copy of this order. No order as to costs.

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

(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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Order/Judgement despatched
to Applicant/Respondent (s)
on 4/12/2000