

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 425 OF 1995.

Date of Decision : 17.06.1998.

Kailash Pandey, Petitioner.

Shri R. P. Saxena Advocate for the  
Petitioner.

VERSUS

Union Of India & Others Respondents.

Shri R. K. 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 ? ✓ <sup>yes</sup>

× (ii) Whether it needs to be circulated to other Benches of the Tribunal ? × <sup>no</sup>

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

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 425 OF 1995.

Dated this Wednesday, the 17th day of June, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,  
VICE-CHAIRMAN.  
HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

Kailash Pandey,  
NL 2/15, C-7, Sector-I,  
Nerul,  
New Bombay - 400706.

(By Advocate Shri R.P. Saxena)

... Applicant

VERSUS

1. Union Of India through  
The Chief Electrical &  
Mechanical Engineer,  
Headquarters Maharashtra  
& Gujarat Area,  
Colaba, Bombay-400 005.

2. The Commanding Officer,  
Station Workshop EME,  
Colaba,  
Bombay - 400 005.

3. Capt. S. P. Mahajan,  
Station Workshop E.M.E.  
Colaba, Bombay - 400 005.

(By Advocate Shri R. K. Shetty)

... Respondents.

: OPEN COURT ORDER :

| PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN |

This is an application challenging the order of removal from service. Respondents have filed reply. We have heard the Learned Counsels appearing on both sides.

2. The applicant was working as a labourer in the Station Workshop EME, Colaba, at the relevant

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time. In respect of an alleged incident said to have taken place on 06.08.1994, the respondents initiated disciplinary enquiry against the applicant. A charge-sheet was issued. The applicant gave his written statement. Then an enquiry was held. The Inquiry Officer held that the charge is proved. The Disciplinary Authority accepted the enquiry report and imposed a penalty of removal from service against the applicant. The applicant preferred an appeal before the Competent Authority. The appeal was not disposed of and hence the applicant has filed the present application challenging the order of punishment dated 24.10.1994.

3. The applicant has challenged the impugned order on many grounds. It is alleged that the charge-sheet is defective. Then it is alleged that no enquiry was held according to law. Then it is alleged that defence assistant has been nominated by the respondents on their own choice and not at the request of the applicant. Then it is also alleged that the enquiry report was not furnished to the applicant before the impugned order was passed by the Disciplinary Authority. Then there is also an allegation that ex-parte enquiry was held on 06.10.1994 without intimating the date to the applicant. Then there are some more allegations in respect of the enquiry in question.



4. The respondents have filed their reply justifying the action taken against the applicant. They have stated that the enquiry was held according to law and there are no defects in the departmental enquiry.

5. Though number of contentions were urged before us, the application has to succeed on three short grounds. Hence, it is not necessary to consider all the contentions that were urged on both sides.

6. It is seen that the charge-sheet is very vague. It does not contain the necessary details regarding the alleged incident. Even the column meant to show imputation of allegation, does not give a gist of the incident. Then what is more, the charge-sheet does not contain the names of witnesses, the list of documents on which the charges were going to be proved. Therefore, we have to hold that the charge is defective since it does not contain the details of the allegations, either in the articles of charge or in the imputations. The date of the incident, the place and the manner of incident are not mentioned in the charge-sheet and the charge-sheet is also defective for not mentioning the names of the witnesses and the list of documents. This defect goes to the root of the matter and on the short ground the charge-sheet and the <sup>subsequent</sup> ~~supplementary~~ enquiry are liable to be quashed.

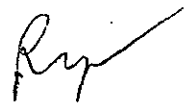
7. Then we also see that the administration itself has appointed the defence assistant to defend the case of the applicant. One Mr. B.V. Chaudhary was appointed as a defending officer as per letter dated 29.09.1994. Then on 03.10.1994 the administration itself changed the Defending Officer and appointed one Mr. K. Kasipandi as Defending Officer. Infact, the applicant gave a letter dated 06.10.1994 opposing the appointment of a Defence Assistant without his request and he was prepared to conduct his case himself. According to rules, the delinquent officer can engage any serving officer to defend himself in the enquiry. The Administration cannot itself or on its own appoint the Defence Assistant without the consent or request of the applicant. Therefore, the procedure adopted by the respondents in imposing the Defence <sup>assistant</sup> Office of their own choice on the applicant, is not warranted by law.

8. Then there is one more serious infirmity in the procedure adopted by the respondents. After the Inquiry Officer submits his report, the Disciplinary Authority has straight away passed the order of penalty without furnishing a copy of the Enquiry Report to the applicant and asking for his comments. It is well settled that this procedure adopted by the respondents is contrary to rules and also against the principles of natural justice. As pointed out by the Supreme Court in Union Of India V/s. Mohd. Ramzan Khan's case [AIR 1991 SC 471], which is a well known

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case, the administration is bound to supply the enquiry report if the Disciplinary Authority is not the Inquiry Authority before passing final orders in the disciplinary case. The only defence on this point is that, the rule came to be amended in 1995 and since the present enquiry was held in 1994, the respondents did not furnish a copy of the enquiry report to the applicant. This contention is also not correct because the respondents are bound by the law declared by the Supreme Court in Mohd. Ramzan Khan's case. Even otherwise, we see that Government circular dated 26.06.1989 clearly provides that the Disciplinary Authority, if he is not the Enquiry Authority, should furnish the enquiry report and the say of the delinquent should be called for before passing a final order in the disciplinary case. In this case, admittedly, the enquiry report was not furnished to the applicant before the final order was passed by the Disciplinary Authority. Even on this ground, the impugned order is not sustainable in law.


9. In view of the above three grounds pointed out by us, the departmental enquiry and the penalty order are liable to be quashed. As a consequence, the applicant will have to be reinstated with full back wages from the date of removal from service i.e. 24.10.1994 till the date of reinstatement. But since there are some serious allegations against the applicant about using abusive language and



unparliamentary words to the department officials, we give liberty to the respondents to hold a fresh enquiry according to law.

10. In the result, the O.A. is allowed. The impugned Charge-Sheet, consequent enquiry and penalty order dated 24.10.1994 are hereby quashed. The applicant shall be reinstated in service within one month from the date of receipt of this order and he shall be paid full back wages from 24.10.1994 till the date of reinstatement. The backwages shall be paid within one month after the reinstatement. We also give liberty to the respondents, if necessary, to issue a fresh charge-sheet and then hold a regular departmental enquiry as per rules. In the circumstances of the case there will be no order as to costs.

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

  
(R.G. VAIDYANATHA)  
VICE-CHAIRMAN.

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