

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO. : 1044 of 1995.

Dated this Wednesday, the 8th day of March, 2000.

Shri N. P. Mahajan, Applicant.

Shri B. Dattamoorthy alongwith Advocate for the
Shri S. P. Inamdar, applicant.

VERSUS

Union of India & Another, Respondents.

Shri S. S. Karkera for Advocate for the
Shri P. M. Pradhan, Respondents.

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

Hon'ble Shri B. N. Bahadur, Member (A).

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other Benches
of the Tribunal ?
- (iii) Library.

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

os*

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO. : 1044 of 1995

Dated this Wednesday, the 8th day of March, 2000.

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

Hon'ble Shri B. N. Bahadur, Member (A).

N. P. Mahajan,
P.W.I. Grade-I,
Central Railway,
Bhusawal (Control) Office.
Resident of
Bhusawal, Jalgaon District,
Maharashtra.

... Applicant.

(By Advocate Shri P.G. Zare).

VERSUS

1. Union Of India through
The General Manager,
Central Railway,
Bombay V.T.,
Bombay - 400 001.
2. The Additional Divisional
Railway Manager (ADRM),
Central Railway,
Bhusawal.

... Respondents.

(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. We have heard Shri P. G. Zare, the Learned Counsel for the applicant and Shri R. R. Shetty, the Learned Counsel for the respondents.

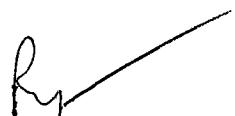
... 2

RR

2. At the relevant time, the applicant was working as a Permanent Way Inspector, Grade-I in Central Railway. His duty is to maintain the railway track properly. A charge-sheet dated 05.01.1994 was issued to the applicant alleging misconduct on his part, since there was derailment of two wagons on 09.09.1993 due to fault in the track. The applicant submitted a reply denying the allegations. Then an Inquiry Officer was appointed. After holding the enquiry, the Inquiry Officer submitted a report stating that the charges are not proved. Then the papers were submitted to the Disciplinary Authority, who in turn sent a copy of the enquiry report to the applicant for his comments. The applicant sent a reply thanking for the enquiry report exonerating him. Then subsequently, the Disciplinary Authority passed the impugned order dated 22.12.1994 holding that the charges are proved against the applicant and imposed the penalty of reduction in applicant's pay from Rs. 2,150/- to the stage of Rs. 2,050/- for a period of one year from the date of the order. Being aggrieved by that order, the applicant preferred an appeal but the appeal came to be dismissed. Being aggrieved by these orders, the applicant has approached this Tribunal by taking number of grounds challenging the impugned order.

3. The respondents has justified the impugned orders by mentioning the facts in detail.

...3



4. Though the applicant has taken number of grounds in challenging the impugned orders, we need not consider them, since one of the legal points pressed by the Learned Counsel for the applicant is sufficient for the disposal of this application. One of the contentions which is urged before us is, that when there is a report of exoneration by the Inquiry Officer, the Disciplinary Authority could not have taken a different view without informing the applicant about his intention to take a different view by giving notice of disagreement. Strong reliance was placed on the recent judgement of the Apex Court in the case of Punjab National Bank V/s. Kunj Behari Misra reported in 1998 (2) SC SLJ 117. The Apex Court has held that if the Disciplinary Authority intends to take a different view than the Inquiry Officer when he has exonerated the delinquent official, then the Disciplinary Authority has to give a show cause notice to the official about his intention to disagree from the report of the Inquiry Officer by giving tentative reasons. Then the delinquent official can send his representation to meet those grounds. Then it is for the Disciplinary Authority to pass a final order according to law.

But in the present case, the Disciplinary Authority has no doubt forwarded the copy of the Inquiry Report to the applicant but giving no indication about his intention to take a different view and also without giving his tentative decision about the note of disagreement. Mere sending a copy of the

...4



enquiry report will not suffice. This is further clear from the fact that applicant sent a reply to the letter of the Disciplinary Authority dated 25.10.1994 thanking for the enquiry report which is exonerating him. Applicant had no notice that the Disciplinary Authority might take a different view. If he had such a notice, then probably he would have sent a detailed representation persuading the Disciplinary Authority to accept the enquiry report and to show his innocence and that he has not committed any misconduct. Hence, serious prejudice is caused to the applicant. In view of the law declared by the Apex Court, we are constrained to hold that the order of the Disciplinary Authority cannot be sustained. Similarly, when the order of the Disciplinary Authority is not sustainable on the legal ground, the subsequent order of the appellate authority dated 18.04.1995/12.05.1995 cannot also be sustained. In the circumstances of the case, we have to remit the matter back to the Disciplinary Authority to follow the observations of the Supreme Court in the above case. That means, the Disciplinary Authority has to form a tentative opinion about note of disagreement from the findings of the Inquiry Report by mentioning the grounds of disagreement. Then in the form of a show cause notice, the Disciplinary Authority may send a note of disagreement and ask him to show cause why the enquiry report should not be rejected and why he should not take a different view. After the reply of the applicant, the Disciplinary Authority may pass appropriate order according to law. If

ultimately any adverse order is passed, the applicant can challenge the same before the Appellate Authority according to rules.

5. In the result, the application is allowed. The impugned orders of the Disciplinary Authority dated 22.12.1994 and the order of the Appellate Authority dated 18.04.1995/12.05.1995 are hereby quashed. The matter is remanded to the Disciplinary Authority. The Disciplinary Authority shall issue a show cause notice to the applicant and pass appropriate orders according to law in the light of the observations made in this order. All contentions on merits are left open. Since this is a matter of 1993, we direct the Disciplinary Authority to comply with this order within a period of three months from the date of receipt of a copy of this order. No order as to costs.

B.N. BAHADUR
(B.N. BAHADUR) ..
MEMBER (A).

Re�andent
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

os