

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5112 OF 2022

1. The Union of India,
Through Its Secretary,
Ministry of Railways,
Rail Bhawan, New Delhi 110 001
2. The General Manager,
Central Railway, Headquarters Office,
Personnel Branch, CST, Mumbai 001 ... Petitioners

Versus

S.C. Jain,
Age: 53 years,
Presently Working as Dy. COM
(Survey) HQ,
Central Railway, Mumbai CSMT.
(Then Working as AOM/ DRM/ PA/ ... Respondent
C. Rly. , Pune Division, Pune)

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Mr. Rui Rodrigues with Mr.P.J.Khosla for the Petitioners.
Mr. Rahul Walia with Ms.Asmita Pendharkar for the Respondent.

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**CORAM : NITIN JAMDAR &
MANJUSHA DESHPANDE, JJ.**

DATE : 9 OCTOBER 2023

JUDGMENT : (Per Nitin Jamdar, J.)

Rule. Rule made returnable forthwith. The Respondent
waives service. Taken up for disposal.

2. By this Petition, the Ministry of Railways challenges the order dated 28 February 2020 passed by the Central Administrative Tribunal (the Tribunal), Mumbai in Original Application No. 100 of 2014. By the impugned order, the Tribunal allowed Original Application No. 100 of 2014 filed by the Respondent and set aside the orders passed by the Disciplinary Authority and the Appellate Authority dated 29 June 2012 and 18 September 2013 respectively. The Respondent was appointed as Assistant Station Master.

3. Petitioner No.1 is the Secretary of Ministry of Railways and Petitioner No.2 is the General Manager of Central Railway, Mumbai. The Respondent was working with the Central Railway.

4. The Respondent was initially appointed in the year 1992 as Assistant Station Master at Solapur Division, Central Railway. Later, the Respondent was promoted in the year 2000 as Section Controller at Solapur Division. The Respondent joined as Chief Vigilance Inspector on deputation in the year 2004. Thereafter, the Respondent was promoted as Group 'B' Officer through limited departmental competitive examination held in April 2006. Thereafter, the Respondent was repatriated to his original cadre from Vigilance Department and was posted as Assistant Operating Manager (General) at Chhatrapati Shivaji Terminus (CST), Mumbai on 4 April 2006.

5. Petitioner No.2 issued a Memorandum on 9 January 2008 proposing an enquiry against the Respondent under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 (the Rules of 1968). The substance of imputations were set out in the Articles of Charge, which were annexed to the Memorandum. The Charge was that the Respondent while working as Assistant Operating Manager from April 2006 to October 2006 abused his official position demanding and accepting illegal money from one A.K.Singh, the then Booking Clerk to render undue help to him for settling his vigilance case. Accordingly, it was put to the Respondent that he had failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway Servant and contravened the provisions of Rule 3(1)(i),(ii)&(iii) of Railway Services (Conduct) Rules, 1966 (the Rules of 1966).

6. In the statement of imputation it was stated that A.K.Singh, the decoy, carried Rs. 30,000/- in denomination of notes of 500 and approached the residence of the Respondent and upon signal Vigilance Team entered the room where the Respondent and A.K. Singh, the decoy, were sitting. The Vigilance Team found that the Respondent had hidden currency notes in the cushion seat of his sofa and recovered all 60 notes of Rs. 500/- which tallied with the test check memo and that there were the same notes which were given to A.K. Singh. Certain audio recording was also recovered.

7. The Respondent filed an Original Application No. 561 of 2007 challenging the decoy memo and the chargesheet in the Tribunal. The Tribunal declined to interfere and left it to the Respondent to raise all such contentions that are available before the enquiry officer.

8. Thereafter, enquiry officer was appointed. Witnesses were examined. The enquiry officer, after considering the evidence and the documents on record, recorded a finding that the charges against the Respondent were not proved.

9. Rule 10 of the Rules of 1968 provides for action to be taken on enquiry report and before narrating further as to what transpired in this case after the enquiry report. As per Rule 10, the enquiry report was placed before the Disciplinary Authority-the General Manager. The Disciplinary Authority issued a Disagreement Memorandum stating that he does not agree with the findings of the enquiry officer in respect of the Articles of charge and then gave brief reasons for disagreement with the findings of the enquiry officer. After giving reasons, the Disciplinary Authority stated in the Memorandum that the Respondent was given an opportunity to make a representation/ submission, if any, against disagreement with the findings of the enquiry officer within 15 days. Thereupon, the Respondent tendered representation/ submission and thereafter, by order dated 29 June 2012, the Disciplinary Authority held that the Respondent

was in guilty of the charges and penalty of reduction by three stages in the same time scale of pay for a period of five years and on expiry it will have the effect of postponing the future increments of his pay was imposed.

10. The Respondent thereafter filed an Appeal under Rules 18 and 19 of the 1968 of the Rules of 1968 to the Railway Board. In the Appeal, the Respondent *inter alia* contended that the Respondent was fully exonerated by the enquiry officer vide his enquiry report, and the charges were not proved during the course of the enquiry against the Respondent. It was submitted that the Disciplinary Authority issued a Disagreement Memorandum dated 30 April 2012 wherein before giving an opportunity to the Respondent, the Disciplinary Authority finally decided to disagree with the findings of the enquiry officer and also finally held that the charges levelled in the Article of Charge stood proved and substantiated. It was submitted that this action of the Disciplinary Authority caused serious prejudice and harm to the Respondent as he was only given a post-decisional hearing as the Disciplinary Authority had already closed its mind with regard to his guilt and also that the enquiry report was not agreeable. It was submitted that the said Disagreement Memorandum thus was not tentative and was final. The learned Counsel for the Respondent relied upon the Railway Board order No. 2004/V-1/DAR/1/4/ dated 13 September 2004 and also on the decision of the Hon'ble Supreme Court in the

case of *Yoginath D. Bagde Versus State of Maharashtra and Another*¹ and the decision of the Division Bench of this Court (Nagpur Bench) in the case of *Ramdas Shankarrao Digraaskar vs. Union of India and others*².

11. The Appellate Authority by order dated 18 September 2013 dismissed the Appeal. The Appellate Authority held that since opportunity was given to the Respondent to put forth his say to findings of the Disciplinary Authority, will have to be considered as tentative. The Appellate Authority granted hearing to the Respondent and found that there was no error in the action taken by the Disciplinary Authority and penalty was rightly imposed, and accordingly dismissed the Appeal.

12. Thereafter, the Respondent filed an Original Application No. 100 of 2014 in the Tribunal. Reply was filed by the Petitioners and the Respondent filed a rejoinder. The Tribunal observed that the orders passed by the Disciplinary Authority and the Appellate Authority were not in accordance with Rule 10 of the Rules of 1968 and also do not conform the principles and law laid down by the Hon'ble Supreme Court and the High Court. Accordingly, the Tribunal set aside the orders of the Disciplinary Authority dated 29 June 2012 and the Appellate Authority dated 18 June 2013 and directed the Petitioners to recommence the proceedings from the

1 (1999) 7 SCC 739

2 Writ Petition No. 742 of 2003 dated 5 December 2006

same point at which the error took place. Following such notice and personal hearing, the appropriate Disciplinary Authority was to conclude the disciplinary proceedings within four months of receipt of a certified copy of this order.

13. Being aggrieved, the Petitioners are before us.

14. We have heard Mr. Rui Rodrigues, learned Counsel for the Petitioners, and Mr. Rahul Walia, the learned Counsel for the Respondent.

15. The genesis of the dispute before us is the Disagreement Memorandum of the Disciplinary Authority. Primary contention of the Respondent, which is accepted by the Tribunal, is that in the Disagreement Memorandum, the Disciplinary Authority cannot finally conclude regarding guilt of the delinquent in respect of whom enquiry report states that the charges are not proved. The Tribunal has held that if such final finding is recorded, then further opportunity would be rendered farce and would be clearly in the breach of the principles of natural justice as well as contrary to the Rules.

16. First, reference will have to be made to the language used in the Disagreement Memorandum dated 30 April 2012. In the second paragraph itself the Disciplinary Authority writes thus :

“I have carefully gone through the Inquiry Report. I do not agree with the findings of the inquiry officer

in respect of Articles of Charge. Brief reasons for disagreement with the findings of the inquiry officer are as under:”

(emphasis supplied)

Then Disciplinary Authority narrates the facts and gives brief reasons and conclusion for disagreement and ends the disagreement memorandum observing thus :

“In view of the above, charges levelled in Article of Charge stand proved and substantiated”.

(emphasis supplied)

Thereafter, the Disciplinary Authority states that the Respondent has an opportunity to make a representation/ submission to the Appellate Authority. Plain reading of the Disagreement Memorandum clearly shows that the Disciplinary Authority had concluded regarding guilt of the Respondent that the enquiry officer's report stating that the charges are not proved is not correct. This course of action has been assailed by the Respondent on two counts. Firstly, on the ground of general principles of natural justice and secondly, on the ground of violation of statutory Rules and the orders.

17. First, we will refer the judicial pronouncements covering the subject matter. Later, we will refer to the specific statutory provisions.

18. In the case of *Yoginath D. Bagde*, the appellant before the Hon'ble Supreme Court was a judicial officer, was dismissed from

service of the charges indulged in corrupt practice. A complaint was made against the appellant by a person who was an accused in a sessions and Anti Corruption Bureau had laid a trap against the appellant, but the trap was unsuccessful. The Enquiry Authority held that the charges not proved against the appellant. The Disciplinary Committee of the High Court disagreed and held that the charges levelled against the judicial officer were proved. Thereafter, it was tentatively decided to impose penalty of dismissal upon the Appellant and a show cause notice as to why penalty of dismissal from service as prescribed in Rule 5(1)(ix) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 should not be imposed upon him. Thereupon, the appeal came to be dismissed. The order of dismissal was challenged by way of a writ petition, which was dismissed and thereupon the matter reached the Hon'ble Supreme Court. One of the contentions raised by the appellant was that without affording any opportunity contrary to the principles of natural justice, the appellant who has been held not guilty by the Enquiry Officer while already been held guilty. It was argued that the Disciplinary Committee before proceeding to finally disagree with the findings of the enquiry officer has to give tentative reasons for disagreement and thereafter has to proceed. The Hon'ble Supreme Court accepting the submission observed thus:

“29. We have already extracted Rule 9(2) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 which enables the disciplinary authority to disagree with the findings of the enquiring authority on any article of charge. The only

requirement is that it shall record its reasoning for such disagreement. The rule does not specifically provide that before recording its own findings, the disciplinary authority will give an opportunity of hearing to a delinquent officer. But the requirement of "hearing" in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before disciplinary authority finally disagrees with the findings of the enquiring authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the enquiring authority do not suffer from any error and that there was no occasion to take a different view. The disciplinary authority, at the same time, has to communicate to the delinquent officer the "TENTATIVE" reasons for disagreeing with the findings of the enquiring authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the enquiring authority are not germane and the finding of "not guilty" already recorded by the enquiring authority was not liable to be interfered with".

Therefore, even though the concerned Rule 9(2) did not use the word "tentative", the Hon'ble Supreme Court held that the tentative reason for disagreement has to be first communicated to the delinquent officer. It was held that since the Disciplinary Committee did not give any opportunity to the Appellant before taking a final decision in the matter relating to finding on the two charges, the principles of natural justice were violated and accordingly, the action was held to be in violation of the principles of natural justice.

19. The decision in the case of *Yoginath D. Bagde* was followed by the Division Bench of this Court (Nagpur Bench) in the case of *Ramdas Shankarrao Digraskar*. The Division Bench considered the challenge to the order passed by the Central Administrative Tribunal dismissing the Original Application of the Petitioner, who had challenged this order of removal. Before the Division Bench it was argued that the Disciplinary Authority did not communicate the Petitioner tentative reasons for disagreeing with the findings of the enquiry officer. The Division Bench followed the decisions in the cases of *Yoginath D. Bagde* and *Punjab National Bank & Ors. vs. Kunj Behari Mishra*³. The Division Bench recorded that the advocate for the petitioner insisted to go through the evidence in the departmental enquiry to show that the action of the Disciplinary Authority on merits was also not correct. The Division Bench noted that normally in writ jurisdiction, this exercise would not be done, but found the case to be gross, and accordingly set aside the impugned order. These decisions are referred in the context of the principles of natural justice being read into the provisions and requirements of communicating tentative reasons for disagreement and giving opportunity being drawing final conclusion.

20. In the case at hand, the Petitioners' case stands on much higher footing. Rule 10 (2) (1) of the Rules of 1968 specifically incorporates the phrase "own tentative reasons for disagreement."

3 (1998) 7 SCC 84

Rule 10 which reads thus :

“10. Action on the Inquiry Report

(1) If the Disciplinary authority -

(a) after considering the inquiry report, is of the opinion that further examination of any of the witnesses is necessary in the interest of justice, it may recall the said witness and examine, cross-examine and re-examine the witness;

(b) is not itself the inquiring authority may for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold further inquiry according to the provisions of Rule 9, as far as may be.

(2) The Disciplinary authority-

(a) shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority, its findings on further examination of witnesses, if any, held under sub-rule(1)(a) together with its own tentative reasons for disagreement, if any, with finding of the inquiring authority on any article of charge to the Railway Servant, who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within 15 days, irrespective of whether the report is favourable to the Railway servant;

(b) shall consider the representation, if any, submitted by the Railway servant and record its findings before proceeding further in the matter as specified in sub-rules (3),(4)and(5).

(3) Where the disciplinary authority is of the opinion that the penalty warranted is such as is not within its competence, he shall forward the records of the inquiry to the appropriate disciplinary authority who shall act in the manner as provided in these rules.

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (i) to (iv) of Rule 6 should be imposed on the Railway servant, it shall, notwithstanding anything contained in Rule 11, make an order imposing such penalty:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Railway Servant.

(5) If the disciplinary authority, having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of the opinion that any of the penalties specified in clauses(v) to (ix) of Rule 6 should be imposed on the Railway servant, it shall make an order imposing such penalty and it shall not be necessary to give the Railway servant any opportunity of making representation on the penalty proposed to be imposed:

Provided that in every case where it is necessary to consult the Commission, the record of

the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Railway servant”.

(emphasis supplied)

21. Furthermore, the learned Counsel for the Respondent has placed before us the order issued by the Railway Board addressed to all General Managers on 13 September 2004. The subject of this order is a proper framing of memorandum of disagreement. The memorandum reads thus :

“Subject :-Proper framing of memorandum of disagreement.

In one of the case, the Hon’ble CAT has quashed the Presidential orders for cut in pension against one retired officer. In its judgment the Hon’ble CAT have brought out the facts that a perusal of the memorandum of disagreement communicated to the CO revealed that DA had taken a final decision and not a tentative conclusion before communication of the show cause notice to the CO. This had severely prejudiced the defence of the CO as the final decision to hold the charge as proved having already been taken by the DA.

In order to avoid such a situation in future it is very important to properly frame the memorandum of disagreement where it should be clearly indicated that DA has taken a tentative decision to disagree with the findings of the Inquiry Officer in respect of article of charge (s) not held proved/ partly allowed.

A sample of memorandum of disagreement is enclosed for guidance”.

(emphasis supplied)

22. There is, therefore, a specific order passed by the Railway Board taking note that not communicating the tentative conclusion has resulted in setting aside the order.

23. It was further noted that to avoid such a situation in future, it is important to properly frame Memorandum of Disagreement. The Railway Board order is widely circulated along with the communication.

24. The annexure to this Railway Board Order is a format of Memorandum of Disagreement. The format of Memorandum of Disagreement is enclosed at Annexure -1 which reads thus :

“Memorandum of Disagreement

Whereas, disciplinary proceedings were initiated against (name of CO) vide memorandum no_____ dated _____ for the charges as mentioned in the Annexure/s to the said charge memorandum.

And whereas, the Inquiry Officer namely (mention the name of the IO) in his inquiry report held the article of charge (s) as mentioned in the Annexure/s to the above said charged memorandum as not proved/ partly proved (as the case may be) against the (name of the CO).

After carefully considering the Inquiry Officer's report, it has been decided to disagree with the

findings of the IO in respect of the charge holding the charges as proved tentatively against the IO's findings that the said charges are not proved/ partly proved (as the case may be) against (name of the CO). Accordingly, a memorandum of disagreement (Annexure 1) containing brief reasons of tentative disagreement with the findings of the IO in respect of the said charges, along with a copy of IO's report is enclosed.

(name of CO) is required to submit his representation against the tentative disagreement with the IO's findings in respect of the article of charge (s) within a period of 15 days falling which the case will be processed further without affording any opportunity to (name of CO).

(Name of CO) is required to acknowledge receipt of the copy of IO's report and the memorandum of disagreement (Annexure).

(Signature of DA)

(Name and address of CO)"

(emphasis supplied)

25. Thus, the statutory Rules using the word 'tentative' are in force since 1968. The Railway Board Order is issued in the year 2004. We are not informed that the Rules and the order have been superseded and substituted.

26. In view of the specific Rules and the order, it was obligatory on the part of Disciplinary Authority to give tentative findings. There would be cases where the Memorandum of Disagreement does not specifically use the word tentative, but the tenor of the Memorandum would show that they are tentative and not final.

However, in the case at hand the Memorandum dated 30 April 2012 shows no doubt that the Memorandum of Disagreement was not tentative but final. In opening paragraph itself, the Disciplinary Authority states that having carefully gone through the enquiry report, the Authority does not agree with the findings of the enquiry officer. Having concluded thus, the reasons for disagreement were given. Not only this, the Memorandum ends with a conclusion that the charges levelled in Article of Charge were proved and substantiated.

27. After reaching this final conclusion that an opportunity sought to be given to file a statement and the order came to be passed and there is, therefore, no tentative findings were communicated to the Petitioner contrary to the Rules and Memorandum, and in breach of the principles of natural justice before proceeding against the Petitioner. After concluding that the Disciplinary Authority has differed from findings of the enquiry officer, the opportunity to make a representation became a formality which is in breach of the procedure laid down under the Rules of 1968.

28. The contention of the Petitioners is that hearing was given in the Appeal is of no substance as debate is not regarding hearing before the Appellate Authority. The Appellate Authority has observed the fact that representation from the Respondent was invited means the finding was provisional. This is entirely incorrect and presented in reverse. The findings were not tentative because

representation was received, but representation was sought for after rendering final conclusion. This in the case of the Petitioners as regards the aspect of disagreement and it was at the most can be considered a post-decisional hearing.

29. The Tribunal has rightly observed that the language used in the Disagreement Memorandum by its plain reading would show that the Disciplinary Authority had arrived at a positive and effective conclusion that the charges were proved. The Tribunal therefore rightly concluded that it was not a case of procedural violation, but of a substantive nature. Further, the Tribunal held that the orders were not in consonance with Rule 10 of the Rules of 1968.

30. Having considered the matter, we find no error with a view taken by the Tribunal. Accordingly, there is no case made out for interference in a writ jurisdiction.

31. The Writ Petition is accordingly dismissed. Rule is discharged. No order as to costs.

(MANJUSHA DESHPANDE, J.)

(NITIN JAMDAR, J.)