

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

N E W D E L H I

O.A. No. 136/89
T.A. No.

199

DATE OF DECISION December 13, 1990

BABU SINGH

Petitioner

MR. B.S. MAINEE

Advocate for the Petitioner(s)

Versus
UNION OF INDIA & OTHERS

Respondent

MR. A.K. BHUROOYA

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. KAUSHAL KUMAR VICE CHAIRMAN

The Hon'ble Mr. T.S. OBEROI JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*

Done, 13.12.90
(T.S. OBEROI)
JUDL. MEMBER

Done, 13.12.90
(KAUSHAL. KUMAR)
VICE CHAIRMAN

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH
NEW DELHI

Date of order: December 13, 1990

O.A. 136 of 1989

Babu Singh

Applicant

Mr. B.S. Mainee

Counsel for the applicant.

VERSUS

Union of India & others

Respondents.

Mr. A.K. Behra

Counsel for the respondents.

CORAM:

THE HON'BLE MR. KAUSHAL KUMAR

VICE CHAIRMAN

THE HON'BLE MR. T.S. OBEROI

JUDICIAL MEMBER

KAUSHAL KUMAR, V.C.

In this Application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who was working as Store Superintendent, Central Ordnance Depot, Agra, has challenged his removal from service vide order dated 30.8.86 passed by the Disciplinary Authority (filed as Annexure-A.1 to the Application) and the order dated 7.8.87 by which his appeal was rejected by the Appellate Authority (Annexure-A.2 to the Application). The main ground of challenge is that the copy of the Enquiry Report was not furnished to the applicant before the Disciplinary Authority passed the impugned order of removal from service. The Application is resisted by the respondents on the ground that the action taken was in accordance with the rules and law on the subject.

2. The articles of charge framed against the applicant read as follows:-

"ARTICLE OF CHARGE - I"

Gross Misconduct

That the said Shri Babu Singh while functioning as Stores

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Supdt Incharge Shed No.21, NH No.318, 319 and 362 of Group I, COD Agra during February 84, committed an act of criminal conspiracy in respect of theft of Govt Stores in COD Agra on 09 Feb 84.

ARTICLE OF CHARGE-II

Gross Misconduct

That the said Shri Babu Singh while functioning as Stores Supdt Incharge Shed No.21, NH No.318, 319 and 362 of Group I, COD Agra during Feb 84, committed an act of criminal breach of trust in respect of Govt property entrusted to him in his capacity of stores Supdt Incharge on 09 Feb 84.

ARTICLE OF CHARGE-III

Gross Misconduct

That the said Shri Babu Singh while functioning as Stores Supdt Incharge Shed No.21, NH No.318, 319 and 362 of Group I of COD Agra during Feb 84, committed an act of theft on 09 Feb 84."

3. The findings of the Enquiry Officer as indicated at the end of the Inquiry Report read as follows:-

"FINDINGS OF THE INQUIRY

ASSESSMENT OF CHARGE-I : GROSS (MIS-CONDUCT)

Stores Superintendent Shri Babu Singh is found guilty of this charge on all respect.

ASSESSMENT OF CHARGE-II : GROSS (MIS-CONDUCT)

Stores Superintendent Shri Babu Singh is also found guilty of article of Charge II also on all account as per the evidence on record.

ASSESSMENT OF CHARGE-III : GROSS (MIS-CONDUCT)-ACT OF THEFT

Stores Superintendent Shri Babu Singh is again found guilty of this charge as per evidence recorded and in view of the assessment of the various witnesses' evidence."

4. The learned counsel for the applicant Shri Mainee contended inter alia that this was a case of no evidence and the conclusions reached by the Enquiry Officer were not warranted by the evidence on record.

5. It is not necessary to go into the various contentions raised by the learned counsel for the applicant as the matter can be disposed of on the legal ground of the Inquiry Report having not been furnished to the delinquent official before the penalty was imposed on him by the Disciplinary Authority. In this connection, reliance has been placed on the recent decision of the Hon'ble Supreme Court

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in Union of India & others Vs. Mohd. Ramzan Khan decided on 20.9.90 and reported in Judgments Today (JT 1990(4) SC 456).

The Hon'ble Supreme Court observed as follows:-

"15. Deletion of the second opportunity from the scheme of Art.311(2) of the Constitution has nothing to do with providing of a copy of the report to the delinquent in the matter of making his representation. Even though the second stage of the inquiry in Art.311(2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the Inquiry Officer holding that the charges or some of the charges are established and holding the delinquent guilty of such charges. For doing away with the effect of the enquiry report or to meet the recommendations of the Inquiry Officer in the matter of imposition of punishment, furnishing a copy of the report becomes necessary and to have the proceeding completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. While by law application of natural justice could be totally ruled out or truncated, nothing has been done here which could be taken as keeping natural justice out of the proceedings and the series of pronouncements of this Court making rules of natural justice applicable to such an inquiry are not affected by the 42nd amendment. We, therefore, come to the conclusion that supply of a copy of the inquiry report along with recommendations, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof. The Forty-Second Amendment has not brought about any change in this position."

"17. There have been several decisions in different High Courts which, following the Forty-Second Amendment, have taken the view that it is no longer necessary to furnish a copy of the inquiry report to delinquent officers. Even on some occasions this Court has taken that view. Since we have reached a different conclusion the judgments in the different High Courts taking the contrary view must be taken to be no longer laying down good law. We have not been shown any decision of a coordinate or a larger Bench of this Court taking this view. Therefore, the conclusion to the contrary reached by any two-Judge Bench in this Court will also no longer be taken to be laying down good law, but this shall have prospective application and no punishment imposed shall be open to challenge on this ground."

"18. We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter."

A. Bhargav

6. The learned counsel Shri Behra, appearing for the respondents contended that the decision of the Supreme Court in the case referred to above was to have prospective effect only. He laid emphasis on the

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last sentence in para 17 of the judgment cited above. We are afraid that this interpretation is not warranted from the context in which the observation in the last sentence of para 17 has been made by their Lordships. What the Hon'ble Supreme Court stated in para 17 is that whereas different High Courts might have taken a contrary view or a conclusion to the contrary might have been reached by a two-Judge Bench of the Supreme Court, the same would no longer be taken to be laying down good law but this shall have prospective application and no punishment imposed shall be open to challenge on this ground. The words 'on this ground' refer to the fact of the contrary decision taken by various High Courts or a two-Judge Bench of the Supreme Court being not good law. Notwithstanding this position the punishment imposed would not be open to challenge. This is the only harmonious and logical interpretation of the words 'prospective application' in the context in which they have been used and this position is made amply clear by the observations made in para 18 of the judgment which lay the law on the subject.

7. In the result, the Application succeeds and we hereby quash the order of removal passed by the Disciplinary Authority as also the subsequent order of the Appellate Authority rejecting the appeal. However, we make it clear that this will not preclude the Disciplinary Authority from revising the proceeding and continuing with it in accordance with law from the stage of supply of the Inquiry Report. There shall be no order as to costs.

T.S.Oberoi
(T.S.Oberoi)
Jud1.Member

K. Kumar
(Kaushal Kumar)
Vice Chairman

13.12.90