

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

* * * * *

O.A. No. 1630/89

DATE OF DECISION 18/2/1991

Shri Mukhtyar Singh

.....Applicant

Vs.

Union of India

.....Respondents

CORAM

SHRI I.K. RASGOTRA, HON'BLE MEMBER (A)

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

For the Applicant

.....Shri B.S. Mainee

For the Respondents

.....Shri S.N. Sikka

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant who was Deputy Chief Electrical Engineer, South Eastern Railway has filed this application under Section 19 of the Administrative Tribunals Act, 1985, challenging the impugned orders of the respondents dated 20.1.1988 (Annexure A-1) and dated 1.7.1988 (Annexure A-2) reducing his pay by three stages from the stage of Rs.4,575 to Rs.4200 in time scale (3700-5000) for a period of 2 years.

2. The applicant has sought relief in the application as under:-

- (a) that this Hon'ble Tribunal may be pleased to quash the impugned orders.
- (b) that this Hon'ble Tribunal may be further pleased to direct the respondents to restore the pay of the applicant as if no orders reducing the salary of the applicant were passed with all consequential benefits of promotions, which were withheld on account of aforesaid punishment.

3. The applicant who was appointed as an Electrical Engineer in November, 1966, was ultimately promoted to the Junior Administrative Grade with effect from January, 1980 and was posted as Deputy Chief Electrical Engineer (Planning) in the Head Quarter Office. He was subsequently transferred in Northern Railway and joined as Senior Divisional Electrical Engineer (in short S.D.E.E.) at Moradabad. The applicant worked at Moradabad from March, 1981 to January, 1985. After this, applicant was transferred from one place to another e.g. Jodhpur, Ferozepur, then again to Lucknow, from there to Kanpur and again to Lucknow where he worked till January, 1987. The applicant while working as Sr.D.E.E., Moradabad during the period 1981 to 85 was charge-sheeted

on the following charges:-

(1) that the applicant ordered different electrical subordinates incharge to engage following persons as casual labourers despite knowing that they had not worked prior to 1-8-1978:-

(1) Shri Santosh Masih; (2) Shri Brahmpal Singh;
(3) Shri Shri Babal Singh; (4) Shri Vijay Kumar Gupta; (5) Shri Kamal Behari Sexena & (6) Shri Satish Kumar.

(2) that the following appointments were made in violation of the instructions as they were not actually in possession of new casual service card:-

S/Shri Japal Singh & Vishal Mani.

(3) that the applicant also issued orders to electrical subordinates incharge to give appointment to the following persons without verifying genuiness of the casual labour service cards:-

1. Shri Dinesh Chander
2. Shri Jaipal Singh
3. Shri Davinder Singh
4. Shri Shailender Singh
5. Shri Ashok Kumar Gupta

6. Shri Krishan Kumar

7. Shri Latafat Hussain

They were found to be in possession of bogus
cards.

4. Shri S.Lahiri was appointed as Inquiry Officer by the order of Railway Board, New Delhi dated 10th April, 1987. The Inquiry Officer submitted his report dated 27-5-1987 to the disciplinary authority and gave the findings that the ingredients of charge No.1 are proved. The ingredients of charge No.2&3 were proved subject to observations in para 5.5 and 6.5 respectively of the enquiry report. The disciplinary authority by the memorandum of disagreement discussed the article of charges. There was no disagreement on article one of the charge. With regard to the charges vide article two and three there was disagreement with the Inquiry Officer. With regard to charge No.3, concerning the applicant, the Railway Board held that the article of charge stands proved. As a consequence the punishment order (Annexure A-1) dated 2-1-1988 as referred to above has been passed by the Disciplinary Authority. This order appears to have been superseded by another order dated 1-7-1988 of the Railway Board though the punishment imposed almost remained the same. The applicant preferred an appeal against the punishment order (Annexure A-7) dated

5-4-1988 and also sent an appeal to the Chairman, U.P.S.C. (Annexure A-8) dated 7th April, 1989. At the time when this application was filed in the Tribunal in August, 1989 the appeal had not been disposed of. However the respondents during the course of the argument have filed an order dated 21/2/3-90 rejecting the appeal passed in the name of the President and communicated to the applicant.

5. The grievance of the applicant is that there was absolutely no evidence on record to prove the charges levelled against him. Further he has been deprived of the right to make his submissions to the disciplinary authority as a copy of the enquiry report was not supplied to him before orders for imposing the penalty were passed. Lastly it has also been urged that the impugned orders passed by the Railway Board are non speaking orders and that the Board did not apply its mind to the facts of the case before passing the impugned order mechanically. The subsequent order dated 1-7-1988 (Annexure A-2) is also a non speaking order.

6. The respondent contested the application and stated in the reply that the application is barred under Sec.20 of the Central Administrative Tribunals

Act, 1985. The order dated 20.1.1988 (Annexure A-1) was superseded by the order dated 1.7.1988 (Annexure A-2) because the applicant's pay had, in the meanwhile, been raised by adding thereto the increment due to him in February, 1988. Regarding the appeal against the punishment order dated 20.1.1988, the respondents stated that the same has been under consideration by the President in consultation with the U.P.S.C. It has been further stated that the question of adequacy or reliability of the evidence cannot be canvassed before this Tribunal. The respondents have in para 5.4 stated that the inquiry report was supplied to the applicant alongwith the final order imposing the penalty on him. The punishment order by the Board is speaking order giving the reasons for imposing the penalty. Regarding the non-disposal of the appeal at that relevant time, it is contended that for the disposal of the appeal, it is obligatory to obtain the opinion of the U.P.S.C. before the President passed the order imposing the penalty. It is, therefore, prayed that the application be dismissed.

7. We have heard the learned counsel for the applicant at length. Regarding the first contention of the learned counsel for the applicant that the report of the Inquiry

Officer has not been given, there is no dispute, but principle laid down by the Hon'ble Supreme Court in the case of Union of India & Ors. Vs. Momd. Ramjan Khan reported in Judgement Today 1990(4)SC.P-456 decided on 20.9.1990, it has been held that the failure to deliver the report to the Inquiry Officer before passing the order of punishment prejudices the charged official as he could not make proper submissions, if he so likes to the disciplinary authority regarding the report. The Hon'ble Supreme Court in para 15 observed as follows : -

"Deletion of the second opportunity from the scheme of Article 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 Article 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 quality 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

Le

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 should, therefore, be entitled to the supply of a copy thereof. The Forty-Second Amendment has not brought about any change in this position."

8. On this point alone, therefore, the impugned orders dated January, 1988 and July, 1988 (Annexure A-1 and A-2) cannot stand. The learned counsel for the respondent further argued that the applicant has not taken any such ground of non supply of Inquiry Officer's report in the memo of appeal (Annexure A-7). To our mind it is not necessary because if an omission has taken place, then

the aggrieved person can take advantage of the same in the court of law, irrespective of the fact that the omission was not pointed out earlier before the competent authority. The learned counsel for the respondent also referred to the fact that the applicant was given due opportunity and he has submitted an exhaustive appeal and so non supply of the report of the Inquiry Officer has in no way prejudiced his case.

In the present case, however, the matter is different. On the report of the Inquiry Officer dated May, 1987, there exists the memo of disagreement by the disciplinary authority and subsequently the impugned orders of January and July, 1988 were passed by the Railway Board. Had the applicant been supplied the report of the Inquiry Officer and allowed the opportunity to make a representation defending/explaining his conduct, the final outcome may have been different or remained unchanged. While we do not wish to conjecture in this regard, the fact remains that non supply of the report of the enquiry resulted in denial of the opportunity to explain his conduct to Disciplinary Authority in contravention of the principles of natural justice.

9. The learned counsel for the applicant has also placed reliance on an unreported judgement of O.A. 136/1989 decided by the Principal Bench on 13.12.1990 concerning similar matter of non supply of the report of the Inquiry Officer before the penalty was imposed on him by the disciplinary authority. In that case, the Tribunal held that it was mandatory on the part of the respondent to furnish the copy of the Inquiry Officer's report and failure in doing so has rendered the order of punishment illegal.

10. We do not consider it necessary to go deep into the various contentions of both the counsels as the matter is being disposed of on the legal ground of non-supply of a copy of the Inquiry Officer's report to the charged official before the penalty was imposed on him by the disciplinary authority. In the result, the application succeeds.

11. We hereby quash the impugned punishment orders dated 20.1.1988 and 1.7.1988 (Annexure A-1 & A-2) passed by the disciplinary authority as also the subsequent order of the appellate authority rejecting the appeal. We, however, make it clear that this will not preclude the

disciplinary authority from continuing the proceedings in accordance with law from the stage of supply of Inquiry report. There will be no order as to the cost.

J. P. Sharma
(J.P. SHARMA) 5/2
MEMBER (J)

I. K. Rasgotra
(I.K. RASGOTRA)
MEMBER (A)

Pronounced by me on 18/2/91
in open Court

I. K. Rasgotra
18/2/91