

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1695/89
TAX NO.

198

DATE OF DECISION 3.5.1991

Shri H.S. Yadav

Applicant (s)

Shri B.S. Mainee

Advocate for the Applicant (s)

Union of India & Ors.

Respondent (s)

Shri B.K. Agarwal

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. I.K. Rasgotra, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *✓*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

AB
3/5/91
(AMITAV BANERJI)
CHAIRMAN
3.5.1991

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

O.A. No. 1695/1989.

Date of decision: 3.5.1991.

Shri H.S. Yadav

...

Applicant.

Vs.

Union of India:

Through the General Manager,
Northern Railways, Baroda House,
New Delhi.

The Senior Stores Officer (E),
Northern Railways, Baroda House, ... Respondents.
New Delhi.

CORAM:

HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.

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

For the applicant ...

Shri B.S. Mainee,
counsel.

For the respondents ...

Shri B.K. Agarwal,
counsel.

(Judgment of the Bench delivered by Hon'ble
Mr. Justice Amitav Banerji, Chairman).

The short question in this Original Application (O.A.) is that the applicant was not given a copy of the inquiry report before imposing penalty by the disciplinary authority and as such, the applicant has been deprived of an opportunity to make his submission to the disciplinary authority. Shri B.S. Mainee, learned counsel for the applicant relied on the Full Bench decision of the Tribunal in the case of PREMNATH K. SHARMA V. U.O.I. & ORS (1988 (6) ATC 904) and the later Supreme Court decision in the case of UNION OF INDIA & ORS. V. MOHD. RAMZAN KHAN (J.T 1990 (4) SC 456).

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Shri B.S. Mainee, learned counsel for the applicant has prayed for quashing of the penalty imposed on the applicant by the disciplinary authority and has also prayed for consequential reliefs to the applicant.

A few relevant facts in this case are as follow:

The applicant was appointed as Lower Division Clerk (LDC) on 7.7.1959. He was promoted as Upper Division Clerk (UDC) in 1980. He was looking forward to his next promotion as Head Clerk in April, 1986 but instead a junior to him was promoted w.e.f. 1.4.1986. On 21.8.1986 the applicant was placed under suspension and a memorandum chargesheet for major penalty was issued on 24.6.1987. There were allegations of serious misconduct viz. the applicant fraudulently removed from purchase order file, 4 FDRs for the total amount of Rs.1395/- and unauthorisedly returned the same to the firm under a forged letter. The applicant submitted a written statement of defence against the said chargesheet on 26.9.1987. One Shri D.R. Manchanda was appointed as an Inquiry Officer to hold the disciplinary inquiry. The applicant had asked for supply/inspection of relevant documents for his defence. The applicant's grievance was that the documents demanded by him were not given to him and the inquiry was finalised. The inquiry proceedings

were completed by the Inquiry Officer and the applicant submitted written brief of defence on 12.1.1989. The Inquiry Officer completed the inquiry proceedings thereafter.

The respondent No.2, disciplinary authority passed a non-speaking order on 19.4.1989 imposing a penalty of reduction to the lower stage in the time scale of pay for a period of 2 years and his pay was reduced from the stage of Rs.1500/- to the stage of Rs.1440/- in the scale of Rs.1200-2040. Suspension of the applicant was revoked w.e.f. 20.4.1989 and the above penalty of reduction in pay was imposed. A copy of the inquiry report was also not given to the applicant before imposing the penalty. He made a representation to the respondent No.2 on 31.5.1989 to supply a copy of inquiry report so that he could file an effective appeal. That was supplied to the applicant on 20.6.1989. It was stated that an appeal was filed but was not decided upto the date of filing of this O.A., viz. 25.8.1989.

The stand taken by the respondents was that the applicant could not be promoted as he was under suspension w.e.f. 21.8.1986. All the documents which were asked for by the applicant had been supplied and were acknowledged by him on 15.7.1987. Documents subsequently demanded by the applicant after the enquiry proceedings started were not supplied to him. In respect of supplying the copy of the inquiry report, the stand taken was that "as per

latest DAR Rules, the delinquent official is not required to be issued a show cause notice after completion of the enquiry alongwith which copy of the report was to be supplied. The Disciplinary Authority can go ahead with finalisation of DAR case on receipt of the enquiry report ." It was also stated that it was not mandatory to furnish a copy of the Inquiry report. It was further stated that the inquiry report was supplied to the applicant on 20.6.1989. The applicant sent the appeal to the competent authority on 27.6.1989 which was also disposed of by the said authority and the applicant received the rejection letter dated 10.8.1989 (Annexure R-2). On this basis it was stated that neither the penalty has been imposed illegally, arbitrarily nor against the rules. The penalty has been imposed in accordance with the procedures laid down under D & A Rules, and the applicant is not entitled to any relief.

The principal question in this case is: whether the applicant was entitled to the supply of a copy of the inquiry report when the inquiry was conducted by an officer other than the disciplinary authority? The law on the subject is clear now in three Members Full Bench of the Tribunal in the case of PREMNATH K.SHARMA (supra). It was held that it was necessary for the authority concerned to supply a copy of the inquiry report to enable the delinquent official to file a proper representation before the disciplinary authority.

Subsequently, the Supreme Court in the case of UNION OF INDIA & ORS. V. MOHD. RAMZAN KHAN (supra) was of the same view which is expressed in the following words:

"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.

...

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."

The above is the law declared by the Hon'ble Supreme Court of India. It will be applicable to all pending cases.

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In our opinion, the non-supply of the Inquiry Officer's report vitiated the proceedings before the disciplinary authority and the appellate authority. The law require that a copy of the Inquiry Officer's report was to be given to the delinquent officer so that he may make a proper representation before the disciplinary authority. He would be aware of the facts and circumstances which weighed against him and would be able to make a proper representation against the same. The non-supply thereof amounts to violation of the rules of natural justice to make the order liable to be challenged. Consequently, we are satisfied that in the present case the orders passed by the disciplinary authority and the appellate authority must be struck down as they are bad in law. We order accordingly.

Learned counsel for the applicant prayed that the applicant be restored to his position on the date of suspension and be given promotion as was granted to his junior and paid accordingly and, in any event, difference between the amount due to him and which was paid to him as subsistence allowance. We are of the view that quashing of the orders of the disciplinary authority and the appellate authority leaves the report of the Inquiry Officer in tact and it would be open to the respondents to recommence the proceedings from that stage. It will be open to the applicant to file a representation with the

disciplinary authority against the report of the Inquiry Officer. The disciplinary authority will proceed thereafter in accordance with law. The applicant admits that he has received a copy of the inquiry report. Consequently, no fresh copy of the inquiry report be served on him.

In case, the respondents decide not to proceed further against the applicant, then he would be restored to the position as it was before imposition of the penalty and pay him his pay and allowances as due and in accordance with the rules. He will also be considered for promotion and be paid the sums due to him. However, in case the respondents decide to proceed with the disciplinary proceedings, they will call upon the applicant to file his representation against the Inquiry Officer's report to the disciplinary authority. The applicant shall be given a reasonable period of time to do so. In that event, the payment of salary and allowances for the period from the date of suspension to a date when he was reduced to lower stage of pay scale will be subject to the final outcome of the disciplinary proceedings. We order accordingly. The O.A. is accordingly allowed but there will be no order as to costs.

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

AMITAV BANERJI
(AMITAV BANERJI)
CHAIRMAN