(9)

CAT/7/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1868/89
T.A. No. 199

DATE OF DECISION 13.12.91

Zile Singh — Petitioner

R.N. Tanwar — Advocate for the Petitioner(s)

Versus

Lt. Governor, Delhi & Ors. — Respondent

Mrs. Avnish Ahlawat — Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J).

The Hon'ble Mr. I.P. Gupta, 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. Whether it needs to be circulated to other Benches of the Tribunal ?

(Judgment of the Bench delivered by Hon'ble Shri Justice Ram Pal Singh, Vice-Chairman (J).)

J U D G M E N T

The applicant, by this O.A., filed under Section 19 of the Adminsitrative Tribunals Act of 1985, has prayed for the relief of setting aside the major penalty imposed upon the applicant by reducing his pay by three stages for two years. He also prays for quashing the order of the disciplinary authority passed on 27.11.87 (Annex.VI) and the appellate order dated 20.6.89 (Annex. VIII).

2. The applicant is a Grade I officer of Delhi Administration Subordinate Service and holding a substantive post in Grade II/Service of the Delhi Administration Subordinate Service and working as Asstt. Employment Officer in Sub Regional Employment Exchange, Curzon Road, New Delhi, under the Directorate of Employment & Training. He was serving in the office of the Commissioner of Sales Tax, Delhi Administration, from 1.12.81 to 21.10.86 as an Asstt. Sales Tax Officer in Ward No. 10. During this period, a departmental

enquiry, under Rule 14 of the CCS (CCA) Rules of 1965 (hereinafter referred as 'Rules'), was started for his alleged misconduct. The disciplinary authority appointed an Enquiry Officer who conducted the enquiry against the applicant and submitted a report to the disciplinary authority. The Enquiry Officer in his report has exonerated the applicant from all the charges and submitted his report to the disciplinary authority without supplying a copy of the said enquiry report to the applicant. The disciplinary authority, without affording an opportunity of being heard, did not agree with the findings of the Enquiry Officer and instead imposed the penalty stated hereinabove. The applicant was aggrieved by this order of the disciplinary authority. Hence, he filed an appeal to the appellate authority who, by their cryptic order, dismissed the appeal. The applicant, thus, challenges the disciplinary proceedings and also the appellate order on the ground that:

(i) a copy of the enquiry report was not supplied to the applicant when the Enquiry Officer submitted his report to the disciplinary authority;

(ii) the disciplinary authority before imposing the said penalty upon the applicant did not give an opportunity to the applicant of being heard on the proposed penalty;

(iii) though all these points were raised in the memorandum of appeal, yet the appellate authority has passed a cryptic and telegraphic order bereft of any reasoning, dismissing the appeal.

3. The learned counsel for the respondents was sent for, but was not available in the court. Consequently, she was given time for filing her written arguments, if any, by 11.12.91, but no written arguments have been filed by the counsel for the respondents. Today, again, the counsel was sent for, but was not available in the building. As the matter is of 1989 and deserves adjudication before the end of the year, we have proceeded to decide it after going through the return and documents of the respondents.

4. In the return, the respondents have supported the findings of the disciplinary authority and have contended that the appellate authority has gone through the records and found no merit in the appeal. Hence, the appeal has been dismissed. The law, by now, has been settled by the Hon'ble Supreme Court in the case of Union of India & Ors. vs. Mohd. Ramzan Khan (JT 1990 (4) S.C. Their Lordships have laid down a law which is being reproduced for convenience:

> "(ii) 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, 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 proceeding and the series of pronouncements of this Court making rules of natural justice applicable to such an enquiry 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 any chante in this position. 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... We would clarify that this decision may not preclude the disciplinary authority from reviving the proceeding and continuing with it in accordance with law from the stage of supply of the inquiry report in cases where dismissal or removal was the punishment."

This Tribunal also in a Full Bench of this Tribunal at Ahmedabad on 11.7.91 examined Mohd. Ramzan Khan's case in detail and elaborated by a Full Bench judgment which is being reproduced for convenience:

> "We now come to the question which has been referred to this Full Bench. The question whether a piece of legislation is prospective in effect or retrospective in effect is well understood. The judgment of the Supreme Court is not a piece of legislation. The question whether it is a prospective

legislative or retrospective would depend on the language used in the judgment. But it is clear that a declaration of law is effective for all such cases which are still pending or are to be filed in future excluding those which have already been decided finally. This is precisely what their lordships indicated in paragraph 17 of the judgment in the case of Union of India & Ors. vs. Mohd. Ramzan Khan (supra) which is 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."

The last two sentences of the above paragraph have to be read together. The last sentence makes it clear that if there be the conclusion to the contrary reached by any two-Judge Bench of the Supreme Court, that would not be deemed laying down a good law. As a matter of fact, all judgments of two-Judge Benches of the Supreme Court contrary to the decision in the case of U.O.I. & Ors. vs. Mohd. Ramzan Khan (supra) would no longer be good law. But their Lordships took special care to spell out that this would not mean that their decision in Mohd Ramzn Khan's case would afford any opportunity to the afflicted parties or aggrieved parties to reopen what have become final. The use of the word "but this shall have prospective application and no punishment imposed shall be open to challenge on this ground" refers to cases which have been heard and decided by the Division Benches of the Supreme Court earlier. Those cases will not be reopened. This principle would also extend to all such cases which have been decided by a Court of Law or the Tribunal and which have become final, or appeal or SLP dismissed or where no appeal has been filed within the prescribed time limit, all these matters have become final and it is no longer open to be adjudicated upon. In other words, all those cases which are pending before any Court of law or Administra tive Tribunal in which punishment has been inflicted, a plea of not having been provided with a copy of inquiry report can be raised as infringing the rules of natural justice. We are, therefore, of the view that the decision of the Supreme Court in the case of UOI & Ors. vs. Mohd. Ramzan Khan (supra), finally settles the question referred to us. We are unable to accept the reasoning and the conclusion given by the Madras Bench in the case of S. Phillip V. Director General of Ordnance Factories & Anr. (supra) as the same is contrary to the dictum of U.O.I. & Ors. V. Mohd. Ramzan Khan. We, therefore, answer the question referred to us as follows:

> "The law laid down by th Supreme Court in the case of U.O.I. & Ors. V. Mohd. Ramzan Khan is applicable to all such cases where finality has not been reached and in cases where finality has been reached, the same cannot be reopened. The law laid down by

the Supreme Court in the above case is binding on all concerned."

5. It is a cardinal principle of natural justice that no adverse orders can be passed against a person without hearing and no evidence has been adduced by the respondents that the disciplinary authority had afforded any opportunity to the applicant before imposing the penalty upon him by differing with the findings of the Enquiry Officer. Failure on the part of the disciplinary authority to observe the rules as a principle of natural justice has resulted in injustice to the applicant and the order of the disciplinary authority, therefore, cannot be maintained.

6. There has thus not only been breach of principles of natural justice and Article 311, but also of the Rules. On this subject, light has been thrown by a judgment of the apex court in the case of Narain Mishra vs. State of Orissa (SLR 1969 SC 657) wherein it has been held that if the punishing authority differs from the findings of the Enquiry Officer and holds the official guilty of charges of which he is acquitted by the Enquiry Officer, but gives no notice or opportunity to the delinquent about the attitude of the punishing authority, then any penalty imposed is violative of principles of natural justice and fair play.

7. When the appeal was filed by the applicant before the appellate authority and these points were raised in the memorandum of appeal, it was the bounden duty of the appellate authority to have considered and evaluated it and then after application of his mind passed a reasoned order. On perusal of the appellate authority's order dismissing the appeal, it does not appear that the appellate authority has applied its mind to any of the facts and circumstances of the case and a cryptic and telegraphic order has been passed by the appellate authority. In such a situation, the appellate order cannot be maintained. On this subject, the apex court in the case of Mahavir Prasad and Santosh Kumar (AIR 1970 S.C. 1302) has thrown sufficient light.

8. We, therefore, allow this O.A. and set aside the orders of punishment imposed by the disciplinary authority upon the applicant vide Annexure VI. We also quash the appellate order passed by the appellate authority in Annexure VIII. In the light of our findings, given hereinabove, we make it clear that this decision shall not preclude the disciplinary authority from reviving the departmental proceedings and continuing with it in accordance with law from the stage of supply of the Enquiry Report to the delinquent.

9. The parties shall bear their own costs.

(I.P. GUPTA) 13/12/91
MEMBER (A)

(RAM PAL SINGH) 13.12.91
VICE-CHAIRMAN (J)