IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

.....

O.A.No. 2100/89 DATE OF DECISION: 25.9.1991.

SHRI C.P. SINGH ..... APPLICANT

VERSUS

UNION OF INDIA & ORS. ..... RESPONDENTS

CORAM:-

THE HON'BLE MR. T.S. OBEROI, MEMBER(J)

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

COUNSEL FOR THE APPLICANT : SHRI B.S. MAINEE

COUNSEL FOR THE RESPONDENTS : SHRI O.N. MOOLRI

JUDGEMENT
(of the Bench delivered by Hon'ble Mr. T.S. Oberoi,Member(J)

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant who was working as P.W.I., Grade-III, at Gajraula, Northern Railway, has challenged his removal from service, vide order dt. 28.7.1989 passed by the Disciplinary Auhtority (filed as Annexure A-I to the application). Initially, the disciplinary proceedings were initiated by Shri K.L. Kapoor, the then Divl.Supdtg.Engineer, Moradabad, but later on detecting that he was not the competent authority to do so, the charge-sheet etc. were issued again by Shri R.R. Bhandari, A.D.R.M., Moradabad, as the Disciplinary Authority. Sh. Piyush Agarwal, Divisional Engineer-II, Moradabad, was appointed as the enquiry officer in the case, who, after the enquiry, held the charges levelled against the applicant

as proved and submitted his report (pages 63 to 66) to the Disciplinary Authority, who, vide impugned order Annexure A-I, imposed the penalty upon the applicant, as indicated above, and hence this application.

2. The applicant filed an appeal against the order of penalty, but as the appeal was not decided after about two months of his submissions, the applicant filed the present O.A., taking recourse to the Railway Board instructions, for expeding the decision on such appeals. After filing of the appeal, a M.P. (433/90) was moved on behalf of the respondents, challenging jurisdiction of this Tribunal to entertain the application mainly on the ground that the applicant did not wait for the requisite period of six months, before filing of the present application. Upon this, vide order dt. 21.2.90, passed by an another Bench of the Tribunal, one month's period was allowed to the respondents, to decide the said appeal, with the liberty to the applicant to move the Tribunal again, in case he remains aggrieved with the order of the Appellate Authority. We are, however, not aware if the said appeal has since been decided by the Appellate Authority, as neither the applicant nor the respondents have intimated about the same, in any manner.

3. Several grounds were taken up, while challenging the impugned order appendix-A, but it is not necessary to dwell upon all the points, as main emphasis was laid by the learned counsel for the applicant, on a

legal point that the enquiry report was not provided to the applican by the Disciplinary Authority, before imposition of the penalty. In this connection, para 4.24 of the OA, with the corresponding reply by the respondents refers, in which the respondents have themselves admitted that a copy of the enquiry report was sent alongwith the order of the Disciplinary Authority imposing the penalty.

4. With regard to the point mentioned in the preceding paragraph regarding not furnishing a copy of the enquiry report before imposition of the penalty, reliance was placed on a recent decision of the Hon'ble Supreme Court in U.O.I. & Ors. Vs. Mohd. Ramzan Khan decided on 20.11.90 and reported in Judgements Today (JT 1990(4) S.C.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 delinguent 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 delinguent 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 delinguent 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 punsihment, furnishing a copy of the report becomes necessary and to have the proceeding completed by using some material behind the back of the delinguent 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 alongwith recommendations, if any, in the matter of proposed punishment to be inflicted would be within the rules of

natural justice and the delinguent 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 delinguent officers. Even on some occasions this Court has taken that view. Since we have reached a different conclusion the judgements 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 delinguent guilty of all or any of the charges with proposal for any particular punishment or not, the delinguent 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."

5. As regards the "Prospective Application", referred to in the concluding lines of para-17 above, in a recent Full Bench decision dt. 11.7.91, reported in Administrative Tribunal Judgements, 1991(2) P.278, it was held that the law laid down as above, by the Hon'ble Supreme Court will be applicable to all cases where finalty has not been reached. The relevant part may be reproduced, for benefit, as under:-

"The use of the word "but this shall have prospective application and no punsihment 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 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.

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> In other words, all those cases which are pending before any Court of law or Administrative Tribunal in which punsihment has been inflicted, a plea of not having been provided with a copy of the 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 U.O.I. & Ors. Vs. Mhd.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 A. Philip Vs. Director General of Ordnance Factories & Anrs. (supra) as the same is contrary to the dictum in U.O.I. & Ors. Vs. Mohd. Ramzan Khan."

6. As a result of the foregoing, the impugned order dt. 28.7.89, is not sustainable, being not in accordance with the provisions of law, and is, therefore, quashed. The respondents shall, however, be not precluded from re-initiating the enquiry proceedings from the stage of supply of a copy of the enquiry report, and proceeding further, in accordance with the provisions of law. There shall be no order as to costs.

(I.K. RASGOTRA)
MEMBER(A)

25.9.91
(T.S. OBEROI)
MEMBER(J)