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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

O.A. 2309/89

Date of decision: 15.5.92

Sh. Sher Singh

.. Applicant.

Versus

Commissioner of  
Police

.. Respondents.

Sh. B. S. Charya

.. Counsel for the applicant.

Ms. Avnish Ahlawat

.. Counsel for the respondents.

CORAM:

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

The Hon'ble Sh. I. P. Gupta, Member (A).

JUDGEMENT (ORAL)

(Delivered by Hon'ble Sh. Justice Ram Pal Singh, V.C. (J)).

The applicant was appointed as a Constable on 7.8.68 and was then promoted as Head Constable on 21.5.80. He was confirmed as Head Constable w.e.f. 20.11.84 in Delhi Police.

2. A departmental enquiry was directed to be held against the applicant. The disciplinary authority appointed different enquiry officers but at last Sh. Kujur, Inspector of the D.E. Cell concluded the departmental enquiry and submitted his report to the disciplinary authority. The disciplinary authority, vide annexure E-1, imposed a penalty upon the applicant of removal from service. The applicant, aggrieved by this order of the disciplinary authority challenged it before the appellate authority. The appellate authority also dismissed the appeal. By this O.A., filed under Section 19 of the Administrative Tribunals Act of 1985 the applicant challenges both these orders and prays that both the orders are contrary to law and should be quashed.

2. The respondents, on notice, appeared and opposed the prayer contained in the O.A.

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3. The learned counsel for the applicant, Sh.B.S.Charya has taken only one point at the bar that the applicant was not supplied with a copy of the enquiry report by the enquiry officer before he submitted his report to the disciplinary authority. This ground, he has taken in the O.A. But it has been denied by the respondents in an evasive manner. However, from the perusal of annexure A-1, the order passed by disciplinary authority, it is mentioned that the copy of the order of the disciplinary authority and the findings be given to the applicant for filing an appeal. This also indicates that the enquiry officer had not supplied the copies of the enquiry report to the applicant. Supply of a copy of the enquiry report is based upon the sound principles of natural justice. If the delinquent is supplied with an advance copy of the enquiry report then he can make effective representation before the disciplinary authority and the disciplinary authority may afford an opportunity to the delinquent of being heard and may pass the order. The learned counsel for the respondents, Mrs.Avnish Ahlawat, contended that the question of supply of a copy of the enquiry report to the delinquent ~~dates~~ gets back~~s~~ to year 1986 and hence, as the principles laid down in Mohammed Ramzan Khan's case are prospective, the defect of non-supply of a copy of the enquiry report does not go to the root of the matter. In **Mohammed Ramzan Khan (A.I.R. 1991 S.C. p.471)** the Apex Court while considering the scope of the principles of natural justice on the face of <sup>Forty</sup> the <sup>A</sup> second amendment to the Constitution has observed in para 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

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for any particular punishment or not, the delinquent is entitled to a copy of such report and is also 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 thereof"

While dealing with the matter in para 17 their Lordships have also observed:

"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"

4. In a subsequent judgement in the case of S.P.Vishwanathan (I) <sup>by</sup> another Bench of the Supreme Court (1991 Suppl. 2, S.C.C. 269) their lordships observed that the principles laid down in Mohammed Ramzan Khan (Supra) are prospective and hence, the judgement shall be effective from November 29, 1990.

5. In the case of **State of Maharashtra Versus Bhaishankar Avalram Joshi and another (A.I.R.1969 S.C. 1302)**, a Bench comprising of three Judges have held

"The failure on the part of the competent authority to provide the plaintiff with a copy of the report of the Enquiry Officer amounts to denial of reasonable opportunity contemplated by Article 311(2) of the Constitution".

They further proceed

"It is true that the question whether reasonable opportunity has or has not been afforded to the Government servant, must depend on the facts of each case, but it would be in very rare cases in which it could be said that the Government

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is not prejudiced by the non-supply of the report of the Enquiry Officer".

6. The ratio of this case is crystal clear and it directs the prospective operation of the supply of the Enquiry Report from the date of the judgement delivered by the Apex Court, as back as 1969. This judgement does not stand affected either by Mohammed Ramzan Khan (supra) or by S.P.Vishwanathan (I).

7. In the conspectus of the above discussion, we are of the view that non-supply of the enquiry report to the applicant has resulted in contravention of the principles of natural justice and also prejudiced ~~to~~ the applicant. We, therefore, quash the order passed by the disciplinary authority (Annexure P-1) and also order passed by the appellate authority. However, we make it clear that the respondents shall not be precluded from taking up the enquiry from the stage of the supply of the enquiry report to the applicant. The applicant thereafter can make the representation to the disciplinary authority. Before the enquiry officer proceeds, the applicant shall be placed to the position at which he was before the disciplinary authority passed the impugned orders.

8. The O.A. is accordingly disposed of with no order as to costs.

*I.P.Gupta*  
(I.P.GUPTA)  
MEMBER(A)

*Ram Pal Singh*  
(RAM PAL SINGH)  
VICE CHAIRMAN(J)