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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.361/89

DATE OF DECISION 11.9.91

SHRI I.D.GUPTA

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM:

THE HON'BLE JUSTICE MR.RAM PAL SINGH, VICE-CHAIRMAN(J).

THE HON'BLE MR.R.VENKATESAN, MEMBER(A).

FOR THE APPLICANT

SH.B.S.MAINEE, COUNSEL.

FOR THE RESPONDENTS

SH.INDERJIT SHARMA, COUNSEL.

J U D G E M E N T

(Delivered by Justice Mr.Ram Pal Singh, Vice Chairman(J).

By this application filed U/s 19 of the Administrative Tribunals Act, the applicant prays for quashing the order of ~~dismissal from service~~ ^{reduction in his pay time scale} (Annexure A-1), passed by the respondents on 10.11.1987.

2. This order (Annexure A-1) has been passed by the disciplinary authority.

3. The applicant was appointed on 1.12.1948 as Apprentice Mechanic and was subsequently promoted in gazetted scale, Class II, as Assistant Works Manager in November 1984. On 13.11.1985 a memorandum of charge sheet of major penalty was issued to the applicant containing two articles of charges that the applicant in his official capacity approved inferior quality of sample of rexine as compared to the one received earlier. The second

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article of charge was that the applicant connived with the firm to defraud the Railway administration in supplying an inferior quality of material. The applicant denied the charges and on completion of the departmental enquiry, the enquiry officer submitted his report to the disciplinary authority for imposition of major penalty upon the applicant. According to the enquiry officer the findings in para 7 of the report is that article 1 of the charge is partly ~~proved~~ ^{proved} and article 2 of the charge is not ~~proved~~ ^{proved}. Thus the major penalty was imposed by the disciplinary authority. The main grievance of the applicant is that the enquiry was held under rule 9 of the Railway Servants Discipline and Appeal Rules, 1968 for the imposition of major penalty. But the enquiry officer did not supply the copy of the enquiry report to the applicant, hence, the applicant was unable to put up effective defence. The other grievance of the applicant is that this point was raised in his appeal before the appellate authority but the appellate authority without giving any finding on this count mechanically passed a telegraphic order containing no reason for dismissing the appeal.

4. The learned counsel for the applicant, Sh.B.S.Mainee and Sh.Inderjit Sharma, counsel for the respondents were heard finally. The sole contention raised by the applicant deserves consideration. According to the learned counsel for the respondents the appellate authority has only imposed a minor penalty upon the applicant and hence, the copy of the enquiry report, which is required to be supplied to the delinquent only for major penalty, need not be supplied when minor penalty is imposed.

5. The case of Sh.K.K.Sharma (1990) 13 A.T.C.

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939 was brought to our notice wherein a Bench of this Tribunal has held that the supply of enquiry report in a case other than one culminating in dismissal, removal or reduction in rank, is not necessary to be supplied to the applicant. We have no dispute with this proposition. In the instant case the copy of the enquiry report was required to be supplied because the enquiry was being held under rule 9 of the Railway Servants Discipline and Appeal Rules of 1968 (hereinafter called 'Rule') This rule deals with the procedure for the enquiry requiring imposition of major penalty. Disciplinary authority also imposed a major penalty upon the applicant. The Apex Court in the case of Union of India and Others Versus Mohammad Ramzan Khan (J.T.1990(4) Supreme Court 456) observed:

"(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 imposition of punishment, 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 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 delinquent would, therefore, be entitled to the supply of a copy thereof. The Forty-second Amendment has not brought any change 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

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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 revising 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".

6. Thus it is a salutary principle of natural justice and it is required to be complied with by the disciplinary authority, ~~which is~~ Contravention ^{shall} ~~to~~ make the entire disciplinary proceedings null and void. Articles ~~8 and~~ 311(2) of the Constitution of India deals with the cases where the inquiry culminates in dismissal, removal or reduction in rank. The inquiry was held for imposing the major penalty upon the applicant in accordance with the rules, 9 of the rules. Hence, the supply of the inquiry report to the applicant for making an effective appeal, representation or revision was necessary and it ~~is~~ ^{is} contravention ~~as it~~ resulted in prejudice to the applicant. The Division Bench of Guwahati High Court in the case of Piyar Mohammad Talukdar (1974 (1) volume 10, page 162) has held in para 8 that where the enquiry is held for major penalty but subsequently it results in imposition of the minor penalty, the statutory provision of supplying the copy of the enquiry report to the delinquent is not washed away. This Tribunal also in the case of Agam Prakash O.A. 2596/90 decided on 30.8.91 in which one of us was a member (Hon'ble Justice Ram Pal Singh) held the same view. In such a situation

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the O.A. has to be allowed. Consequently, we allow this O.A. and quash the order of ^{reduction of lower time scale} ~~dismissal~~ as well as the appellate order. The applicant who has by now retired from service, shall be entitled to his pensionary benefits accruing to him and seniority, ^{Promotion} etc., according to rules. _{R.P.}

7. The parties shall bear their own costs.

R. Venkatesan
11/9/91
(R. VENKATESAN)

MEMBER(A)

Ram Pal Singh 11.9.91
(RAM PAL SINGH)

VICE CHAIRMAN(J)