

(12)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.668/89

Date of decision: 6.6.89

Lakhu Oraon

.. Applicant.

Versus

Union of India & ors.

.. Respondents.

Sh.B.S.Mainee

.. Counsel for the applicant.

Sh.Inderjit Sharma

..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).

J U D G E M E N T (Oral)

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

The applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act of 1985 challenging therein the order passed by the Senior Divisional Commercial Superintendent, Northern Railway, Allahabad dated 1.2.88 (annexure A-1). The applicant was chargesheeted for having committed misduct and hence, an Enquiry Officer was appointed by the disciplinary authority to enquire into the charges. Two charges were levelled against the applicant. After the enquiry was concluded the disciplinary authority imposed major penalty, which is being challenged in this O.A. Sh.B.S.Mainee, counsel for the applicant has challenged the impugned order on following grounds:-

- 1) A copy of the enquiry report was not supplied to him before the disciplinary authority imposed major penalty against him, thus he was prevented from putting up his defence before the disciplinary authority.
- 2) A copy of the preliminary enquiry and the statement of the witnesses were not supplied to the applicant during the course of the enquiry, hence, the applicant was deprived of his valuable

Lakhu Oraon

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right of confronting those witnesses during the departmental enquiry, more so when the preliminary enquiry was used and relied upon during the course of the enquiry, by the Enquiry Officer and by the disciplinary authority.

2. Sh. Inderjit Sharma, counsel for the respondents raised a preliminary objection that the applicant has not availed the departmental remedy as contained in Section 20 of the Act, by not availing an appeal before the appellate authority, challenging the imposition of the penalty. Hence, this O.A. should be dismissed on this very preliminary ground. On perusal of the O.A. it was found that this fact has been stated by the applicant in para 4.14 that he had filed an appeal on 8.3.88 before the Additional Divisional Railway Manager Allahabad. He has also filed a copy of the memorandum of appeal, which is annexure A-3. In counter the respondents have not specifically denied this fact but denied evasively. At the time of the argument Sh. B. S. Mainee placed the copy of the receipt, issued by the Station Superintendent, Northern Railway, Hathras Junction dated 8.3.88 in which it is acknowledged that an appeal in original was received for being sent to the appellate authority. The preliminary objection of the learned counsel for the respondents, is therefore, has no force and it is rejected.

3. On perusal of the O.A. it is found that the copy of the enquiry report was supplied to the applicant by the disciplinary authority alongwith the impugned order. This further strengthens the stand of the applicant that the applicant was not supplied with the copy of the enquiry report by the Enquiry Officer before he

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submitted his report to the disciplinary authority. In the case of Union of India Versus Mohd. Ramzan Khan (JT 1990(4) S.C. 456) their lordships have clearly enumerated the law on this point as below:

"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 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 reply or to meet the recommendations of the Inquiry Officer in the matter of 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 with 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 delinquent 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 delinquent 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 opened 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 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."

Thereafter a full Bench judgement of this Tribunal at ~~Ahmedabad~~ ~~Hyderabad~~ have further elaborated the case of Mohd. Ramzan Khan in great detail and there remains no doubt that this defect during the departmental enquiry goes to the root of the matter depriving thereby the valuable right of the applicant of putting of his defence before a major penalty is imposed. On this point alone this O.A. deserves to be allowed.


4. Cardinal principle of natural justice ^{is} / that when a preliminary enquiry is held and that preliminary enquiry is used by a disciplinary authority then it is the valuable right of the applicant to be supplied with the copy of the report of preliminary enquiry along-with the statements of prosecution witnesses which are to be examined during the course of the departmental enquiry. It is further observed that the applicant during the enquiry prayed for the copies of the report of the preliminary enquiry as well as the copy of the statement of the prosecution witnesses but the said request was turned down. According to the principles of natural justice if a previous statement of prosecution witnesses is recorded before the enquiry then the delinquent gets a valuable opportunity of contradicting that witnesses over this previous statement. These golden principles of natural justice are enshrined in Section 145 of the Indian Evidence Act and Section 161 of the Criminal ^{Procedure} Code

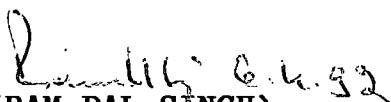
Thus the non-supply of the copy of the preliminary enquiry report and non-supply of the previous statement of the prosecution witnesses has resulted in great prejudice to the applicant during the departmental enquiry. We have to keep in mind the observations of the Supreme Court of U.S.A. in which justice Lord Marshall observed

"Prejudice is the spider of ^{considered} ~~line~~, it is the womb of injustice"

5. Thus the entire enquiry stands vitiated. We, therefore, quash the impugned order alongwith the entire enquiry, but before parting we observe that it will not preclude the respondents from proceedings with the departmental enquiry afresh from the stage of issue of chargesheet, if they are so advised.

6. With regard to the receipt produced by the learned counsel for the applicant, the learned counsel for the respondents contends that this receipt is being shown to him for the first time during the arguments, and hence, it should not be considered. We have not relied upon this document for the purpose of our judgement which has been dictated hereinabove. We direct the respondents to reinstate the applicant in service and the position prior to the commencement of the enquiry should be restored. The parties shall bear their own costs.


(I.P. GUPTA)
MEMBER(A) 6/4/92


(RAM PAL SINGH)
VICE CHAIRMAN(J) 6.4.92