

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1554 of 1988
T.A. No.

199

DATE OF DECISION 14.1.1992 / 15.1.92

Gopi Chand	Petitioner
Shri K.L. Bhatia,	Advocate for the Petitioner(s)
Versus	
Union of India & Ors.	Respondent
Shri P.P. Khurana	Advocate for the Respondent(s)

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

The Hon'ble Mr. P.S. Habeeb Mohd., 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 who was working as Mate in Delhi Milk Scheme under the Ministry of Agriculture (Department of Agriculture & Co-operation), New Delhi, while distributing milk to the consumers in a van was intercepted by a departmental party who checked and found that the applicant supplied unauthorisedly milk to the outsiders, pilfered 16-1/2 milk filled bottles, tampered seals of the bottles and cans, adulterated DMS milk and sold the milk to unauthorised persons and taking van to places not on the route against illegal consideration. These were the grounds against him in a departmental enquiry. On conclusion of the departmental enquiry, the report was submitted to the disciplinary authority who passed orders on 24.11.87 imposing the penalty of compulsory retirement from service upon the applicant. He, therefore, prays for setting aside this order

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as illegal and unconstitutional and also prays for consequential benefits of pay and allowances and also for the period of suspension.

2. The respondents on notice appeared and controverted the contents of the O.A. The main contention of Shri K.L. Bhatia, counsel for the applicant, is that a copy of the enquiry report was not supplied to the applicant before the disciplinary authority imposed the punishment upon him. Thus, he was not afforded a valuable right of being heard before the imposition of the penalty. Shri Bhatia has raised other grounds also, but we would not take them up as we intend to quash the order of punishment on the only ground of non-supply of the enquiry report to the applicant before the disciplinary authority imposed the penalty upon the applicant.

3. 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 seires 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 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 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

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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."

Thus, we are of the view that the penalty imposed upon the applicant must be set aside and we direct that the penalty imposed upon the applicant by the disciplinary authority in their order dated 14.11.87 be set aside. The applicant also filed an appeal before the appellate authority, but no copy has been filed by the respondents with regard to the orders passed by the appellate authority. Any order of the appellate authority, if any in existence, is also quashed. However, we make it clear that the respondents shall not be precluded from proceeding with the enquiry from the stage of the supply of the enquiry report to the applicant. The applicant shall be reinstated in service and shall be given consequential benefits, if any, after the conclusion of the enquiry. The parties are directed to bear their own costs.


(P.S. HABEEB MOHD.)

MEMBER (A)


(RAM PAL SINGH)

VICE-CHAIRMAN (J)

The judgment was ready and was to be pronounced today i.e. 14.1.92. When the judgment was to be pronounced, Shri K.L. Bhatia appeared and contended that he is filing the written arguments for giving findings on other points raised in the O.A. As we have allowed this O.A. on the sole point of the principles laid down in the judgment of the apex court in the case of U.O.I. Vs. Mohd. Ramzan Khan (supra), we did not consider it proper to give our findings on other grounds raised in the O.A. because if the disciplinary authority proceeds with the enquiry from the stage of the supply of the enquiry report to the applicant, the applicant will be heard

by the disciplinary authority and in that case he can raise all these grounds mention^{ed} in the O.A. as well as in the written arguments. Furthermore, if the verdict of the disciplinary authority goes against him, then he gets a right of appeal and he can raise all those grounds with regard to the enquiry and the memorandum of appeal and the appellate authority shall get the chance of applying its mind and see the legality or otherwise of the enquiry. If we express our views at this stage, the disciplinary authority and the appellate authority are likely to be affected by our findings. That is why, we refrain from making any observations with regard to the grounds raised in the O.A. and the written arguments. If the applicant gets a fresh cause of action, he can raise these grounds again before the Tribunal. With these observations, the contention of Shri K.L. Bhatia is disposed of.


(P.S. HABEEB MOHD.)

MEMBER (A)


(RAM PAL SINGH)

VICE-CHAIRMAN (J)

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