

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1615/88.
T.A. No.

199

DATE OF DECISION 31.12.1990.

Shri V.M.Gupta

Petitioner

Shri G.D.Gupta

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri P.H.Ramchandani,

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. I.K.Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? —
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? — Yes
4. Whether it needs to be circulated to other Benches of the Tribunal? — Yes

(AMITAV BANERJI)
CHAIRMAN
31.12.1990.

Central Administrative Tribunal
Principal Bench
New Delhi.

Regn. No. 1615/88

Date of decision: December 31, 1990.

Shri V.M. Gupta ... Applicant

Vs.

Union of India. ... Respondent.

CORAM:

Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. I.K. Rasgotra, Member (A).

For the applicant ... Shri G.D. Gupta, Counsel.

For the respondent ... Shri P.H. Ramchandani, Sr. Counsellor

(Judgement of the Bench delivered by
Hon'ble Mr. Justice Amitav Banerji, Chairman).

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Although the applicant has filed the OA against an order imposing on ^{him} ~~the~~ penalty of compulsory retirement from service as a result of departmental enquiry held against him on certain allegations of misconduct yet the matter can be disposed of on a short point. The point is whether the non-furnishing of a copy of the Enquiry Officer's report to the applicant before awarding punishment was against the rules of natural justice and has vitiated the proceedings.

Learned counsel for the applicant, Shri G.D. Gupta relied on the decision of the Full Bench of the Tribunal in the case of PREM NATH K. SHARMA Vs. U.O.I. (1986) 6 ATC 904), Supreme Court's decision in the case of U.O.I. V. E. BASHYAN (1988 (7) ATC 285) and the decision of the Division Bench of the Tribunal in OA 1791/89 (Kulbhushan Vs. U.O.I.) dated 20.9.1989. In the case of Prem Nath K. Sharma (supra), a copy of the Enquiry Officer's report was not given to the employee.

The respondent pleaded that giving a copy of the Enquiry Officer's report before imposing penalty was not necessary after the Forty-Second Amendment to the Constitution of India. The Full Bench of the Tribunal held that the Forty-Second amendment to the Constitution had only removed show cause notice but not reasonable opportunity. The Full Bench explained the meaning of the word 'hearing' and held that a copy of the Enquiry Officer's report must be given before imposing a penalty so that he may represent against it. It need not be confined only to oral hearing. A S.L.P. was filed against the above decision and it was numbered 2725/88. This matter along with several other matters came up before a Bench of the Supreme Court presided over by the Chief Justice of India in the case of UNION OF INDIA & ORS. V. MOHD. RAMZAN KHAN (JT 1990(4) SC 456). The Supreme Court after considering the matter observed as follows:

"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."

In effect, the decision of the Full Bench of the Tribunal in the case of PREM NATH K. SHARMA (supra) was upheld.

Shri P.H. Ramchandani, learned counsel/ for the

respondents stated that the above principle of law laid down by their Lordships has no application in the case of compulsory retirement from service. He referred to the last sentence in paragraph 19 of the judgment of the Supreme Court in the case of UNION OF INDIA & ORS. (supra) to urge that it would be applicable only in cases where dismissal or removal was the punishment. In other words, his contention was that an order of compulsory retirement from service is neither dismissal nor removal from service and as such the above principle laid down by their Lordships is not applicable to a case of the present type.

We have heard learned counsel for the parties. We do not think it necessary to refer to the pleadings of the parties but it will only be necessary to state that the applicant was employed as a Senior Medical Officer in the Central Government Health Scheme, New Delhi and was posted in G.G.H.S. Dispensary, President's Estate, New Delhi. The President had passed an order on 31.5.1988 whereby the penalty of compulsory retirement from service was imposed upon the applicant as a result of departmental enquiry held against him on certain allegations of misconduct. The applicant pleaded that he had not been given a reasonable opportunity of being heard vis-a-vis the report of the Enquiry Officer. He was entitled to a copy of the Enquiry Officer's report to make representation thereon before the order of compulsory retirement from service could be passed. It is not necessary to refer to other facts or dates in this case for this O.A. is being disposed of on a pure question of law as indicated below.

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The law laid down by the Full Bench in the case of PREM NATH K. SHARMA (supra) has been confirmed by the Supreme Court and if we may say so with great respect, the law has been made very clear by their Lordships of the Supreme Court. The principle of law enunciated by their Lordships in the case of MOHD. RAMZAN KHAN (SUPRA) is binding on the Tribunal under Art. 141 of the Constitution of India. There can be no dispute to the above position.

The only contention which is live now is whether this decision would affect the case where an order is passed which is not termed as an order of 'dismissal or removal' from service after a disciplinary proceeding. In our opinion, this partakes the character of a punishment. In other words, this is punitive action. The punitive action which results in termination of the service of an employee has to be on the same footing as in the case of a dismissal or removal from service. It is not a compulsory retirement from service under F.R. 56(j). The punishment of removal from service in the present case came following a disciplinary proceeding. We are, therefore, of the view that ^{that it} the contention ~~would be~~ applicable only in the case of 'dismissal or removal' is not correct. We would refer to the last paragraph of the judgment of the Supreme Court in the case of MOHD. RAMZAN KHAN (supra) which reads as under:

"On the basis of this conclusion, the appeals are allowed and the disciplinary

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action in every case is set aside. There shall be no order for costs. 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."


Their Lordships had ultimately come to the conclusion that the appeals had to be allowed and the disciplinary action in every case was to be set aside. However, their Lordships made it clear that this decision would not preclude the disciplinary authority from revising the proceedings and continuing with it in accordance with law particularly in those cases where a dismissal or removal was the punishment proposed. We would like to observe the principle that has been laid down by their Lordships in the earlier paragraph "non-furnishing of the report would amount to violation of the rules of natural justice and make the final order liable to challenge hereafter."

A compulsory removal from service after disciplinary proceeding stands on the same footings as removal or dismissal from service and it would be imperative for the disciplinary authority to supply a copy of the Enquiry Officer's report to the applicant and give him an opportunity of filing a representation before an order adverse to the applicant is passed by the disciplinary authority.

We are, therefore, of the view that the entire proceedings after the submission of the Enquiry Officer's report to the Disciplinary Authority including the disciplinary action in the case of the applicant have to be set aside. However, it will be open to the respondents to commence the proceedings after supplying a copy of the Enquiry Officer's report to the applicant and giving ^{him} an opportunity to make a representation thereon to the Disciplinary Authority, in accordance with law.

In the result, therefore, the Application is partly allowed. The disciplinary action against the applicant i.e. compulsory retirement from service is set aside and he is reinstated in service. However, we make it clear that this decision shall not preclude the Disciplinary Authority from revising the proceedings and continuing with it in accordance with law from the stage of supply of the copy of the Enquiry report to the applicant and giving ^{ing} him an opportunity of making a representation to the Disciplinary Authority. There will be no order as to cost.


(I.K. Rasgotra)
Member (A)
31.12.1990


(Amitav Banerji)
Chairman
31.12.1990