

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

N E W D E L H I

O.A. No. 1890/88.
T.A. No.

199

DATE OF DECISION 29.11.1990.Shri Balwan Singh

Petitioner

Shri Sant Lal

Advocate for the Petitioner(s)

Versus
Union of India & Ors.

Respondent

Shri P.P. Khurana

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 ?
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 ?

AMITAV BANERJI
(AMITAV BANERJI)
CHAIRMAN
29.11.90.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A. No. 1890/1988. Date of decision: November 29, 1990.

Shri Balwan Singh ... Applicant.

Vs.

Union of India & Ors. ... Respondents.

CORAM :

HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.

HON'BLE MR. I.K. RASGOTRA, MEMBER (A).

For the applicant ... Shri Sant Lal, counse

For the respondents ... Shri P.P. Khurana,
Counsel.

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

A short question arises for determination in this case. The applicant has complained that he was not given a copy of the Inquiry Officer's report before the disciplinary authority awarded punishment to the applicant. It was urged that it is imperative for the Inquiry Officer to give a copy of his report before the punishment is imposed on the delinquent government servant. In support of this contention, reference has been made to the Full Bench decision of the Tribunal in the case of PREMNATH K. SHARMA V. UNION OF INDIA & ORS. (1988(3) SLJ 449) decided on 6.11.1987.

The facts of the present case lie in the narrow compass and may be briefly stated as under.

The applicant was appointed as Postman in March, 1980 in New Delhi West Postal Division. He was placed under suspension by the Sub Postmaster Tilak Nagar Post Office, New Delhi by Memo No. B2/Balwan Singh P. Man/84 dated 12.5.1984 on account of contemplated disciplinary proceedings against the applicant. The suspension order was, however, revoked on 19.7.1984. Thereafter the respondent No.4 initiated disciplinary proceedings under Rule 14 of the CCS(CCA) Rules, 1965 against the applicant on the ground of allegation of creation of indiscipline and obstruction of Govt. work in Tilak Nagar Post Office on 16.6.1984 by slapping Shri S.C. Asthana, Sub Postmaster, Tilak Nagar, New Delhi-110018. The disciplinary authority appointed Shri S.P.Tiwari, Asstt. Superintendent RMS Delhi Air Sorting, New Delhi as the Inquiry Officer. The latter submitted his report on 31.1.1986. He gave a finding that the charge of slapping Shri S.C.Asthana, Sub Postmaster, Tilak Nagar Post Office was 'not proved'. However, the Inquiry Officer bifurcated the Article of Charge into two parts:

- (1) Coming to Post Office while under suspension and refusing to take delivery of Registered letter addressed to him and creating indiscipline and obstruction to Govt. work.
- (2) Slapping the Postmaster.

The Inquiry Officer held that the first part of the above charge was proved absolutely and completely but as far as the second part of the charge, i.e., slapping

the Sub Postmaster, he held that it was not proved.

When the matter went before the disciplinary authority, he disagreed with the findings of the Inquiry Officer, treated the charge as proved and awarded the penalty of reduction of pay of the applicant in the existing scale of pay by two stages from Rs.885/- to Rs.855/- for one year with future effect vide Memo dated 24.2.1987 (Annexure A-2). The applicant filed an appeal on 14.4.1987 to the Director Postal Services, Delhi Circle, New Delhi against the punishment order issued by the disciplinary authority (Annexure A-5).

The Appellate Authority was of the view that "assault on supervisory official should invite the extreme penalty." He, therefore, enhanced the punishment already imposed by the disciplinary authority to the dismissal of the applicant with immediate effect, by Memo dated 26.11.1987 (Annexure A-3).

The applicant thereafter preferred an appeal under Rule 23 to the Postmaster General, Delhi Circle, New Delhi on 17.12.1987. The appeal was kept pending for more than six months. Ultimately, the matter was put up before the Member (Personnel), Postal Services Board (Respondent No.2) on 5.7.1988 for consideration of appeal as a revision petition under Rule 29 of the CCS(CCA) Rules, 1965. One of the points taken by the applicant in the appeal/revision was that enhanced penalty of dismissal from service was imposed without providing him an opportunity to show cause or explanation.

The point was overruled on the ground that Rule 27(2) of the CCS(CCA) Rules does not provide for issuing show cause notice (presumably because he was given full opportunity to defend himself during the course of inquiry under Rule 14). The appeal/revision under Rule 29 of the CCS(CCA) Rules, 1965 was rejected by an order dated 26.7.1988 (Annexure A-4). Thereafter the applicant has filed the present O.A.

In one of the grounds taken in the O.A., it is mentioned that the Disciplinary authority did not give a copy of the inquiry report to the applicant and thereby denied an opportunity of hearing him or to make a representation before it considered the report of the Inquiry Officer and awarded the penalty and cited the cases of PREMNATH K. SHARMA (supra) and V. SHANMUGAM V. U.O.I. (ATR 1986 (2) CAT 226).

In the reply filed on behalf of the respondents in paragraph D it is clearly indicated that:

"The applicant was given full opportunity to defend his case during the course of enquiry and a copy of the enquiry report and dissent note was supplied to him with the punishment order."

The supplying of the Inquiry Officer's report along with the punishment order does not satisfy the requirement of law. The Rule of Natural Justice requires that any person facing disciplinary inquiry should be given a copy of the Inquiry Officer's report so that he can make a representation against the same before a punishment is awarded to him. This has not been done in the present case.

In our opinion, the Full Bench decision in the case of PREMNATH K.SHARMA (supra), makes the position abundantly clear and it is obvious that the imposition of penalty on the applicant without serving a copy of the Inquiry Officer's report was bad in law and must be set aside. The result is that the orders of the appellate authority or the revisional authority would also fall since the disciplinary authority's order is bad in law. We may also state here that when the appellate authority or the revisional authority proposes to enhance the punishment, it must record that punishment recorded is inadequate and then give a further opportunity to the applicant before the enhanced penalty is awarded. This would be valid on the same principle as imposing a punishment on a delinquent Government servant as laid down in the case of PREMNATH K.SHARMA (supra).

We are, therefore, of the view that the orders of the disciplinary authority dated 24.2.1987 (Annexure A-2), appellate authority dated 26.11.1987 (Annexure A-3) and the revisional authority dated 26.7.1988 (Annexure A-4) are all to be set aside as being bad in law. The position would revert to the stage where the Inquiry Officer had submitted his report to the disciplinary authority. The disciplinary authority if he so chooses, may proceed with the case from that stage after complying with the requirement of law and keep in view the observations made in this judgment.

As a consequence of the setting aside of the

orders passed by the disciplinary authority, appellate authority and revisional authority, the applicant will be deemed to be in service and as such, would be entitled to consequential monetary benefits for the period from the passing of the disciplinary/appellate authorities' orders subject to condition that the applicant was not gainfully employed during the said period elsewhere and he will have to file a certificate to that effect with the respondents within a month from the date of the order. We order accordingly. The respondents are also directed to compute the amount that is to be paid to the applicant for the above period from the date of dismissal till reinstatement subject to the condition mentioned above within a period of three months on receipt of a copy of this order. The O.A. is accordingly allowed. There will be no order as to costs.

Silghat
(I.K.RASGOTRA)
MEMBER (A)

29.11.1990.

AB
(AMITAV BANERJI)
CHAIRMAN
29.11.1990.

SKS