(13)

IN THE CENTRL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI.

Regn. No. O.A. 436 of 1986 Date of decision 2.7.92.

Shiv Nandan Applicant

Shri G.D. Gupta Counsel for the applicant

vs.

Union of India& Ors. Respondents

None Counsel for the respondents

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

The Hon'ble Mr. I.P. Gupta, Member (A).

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the fair copy of the judgment?

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).)

JUDGMENT

The applicant was employed as L.D.C. in the Defence Science Lboratory, Ministry of Defence, Research and Development Organisation, South Block, New Delhi. He was served with a chargesheet for having committed misconduct under Sections 3-1(i) and 3-1(ii) of the C.C.S. (Conduct) Rules. He was alleged to have committed the misconduct with regard to 70 bundles of paper in collusion with one Shri Jai Narain. The stock of the bundles of papers was received from the Controller of Stationery, Calcutta. These bundles were 130 in number. The applicant is alleged to have, in collusion with Jai Narain, stolen 70 bundles of these papers and sold the sameto M/s. Amba Trading Company. A report was lodged and the departmental enquiry was ordered by the disciplinary

authority. By its order dated 21.3.84 (Annexure 'A'), the disciplinary authority passed the impugned order imposing the penalty of removing the applicant from service. The applicant then preferred an appeal against this order but the same was dismissed by the appellate authority on 24.4.85. By this lengthy and cumbersome O.A., filed under Section 19 of the Administrative Tribunals Act, the applicant prays for quashing both these orders.

2. The respondents on notice appeared and in their return have supported the order of dismissal. Subsequently, the applicant filed a Miscellaneous Petition No. 2192/90 on 10.9.90 and prayed for raising additional grounds in the O.A.by filing the amended application. The respondents have filed their reply to it. The additional grounds raised are that the Inquiry Officer has not supplied a copy of the inquiry report to the applicant before submitting his report to the disciplinary authority and hence he could not make an effective representation or defence before the disciplinary authority. Hence, by this M.P., the applicant raised these additional grounds for consideration at the time of the final arguments.

3. The learned counsel for the respondents, Shri K.C. Mittal, was sent for, but he was not available in the premises. This is case of 1986 and the case cannot be adjourned for accommodting a counsel. We have, therefore, heard the arguments of Shri G.D. Gupta, learned counsel for the applicant, and have perused the return to the O.A., reply to the amendment application and all the documents filed by the respondents. The learned counsel for the applicant also urged that the applicant was not permitted to engage a law-knowing person as his Defence Assistant who was well versed in law while the Presenting Officer of the Central Bureau of Investigation was a law-knowing person. Thus, the applicant was prejudced in his defence in this unequal combat. The applicant also contended that the mere perusal of the impugned order shows that the disciplinary authority has only read the inquiry report submitted by the Inquiry Officer while he is required to make up his mind not only by merely reading the inquiry report but also going through the written statement of defence, oral and documentary evidence, written

(15)

briefs and other orders, on the strength of sub-rule (23) of Rule 14 of the C.C.S. (C.C.A.) Rules of 1965 (hereinafter referred as 'Rules'). The learned counsel for the applicant also contended that the appellate order also is not only cryptic but the reasons have also not been given for dismissing the appeal. He also mentioned that the provisions contained in Rule 15 of the Rules have not been complied with by the disciplinary authority etc. etc.

4. The reply to the additional grounds filed by the respondents contains a statement that it was not necessary for the Inquiry Officer to supply a copy of the report of the inquiry to the delinquent before he submitted his report to the disciplinary authority, but the law in this regard as laid down by the apex court is very clear. Their Lordships in the case of Union of India vsMohammed Ramzan Khan (A.I.R. 1991 S.C. 471) observed in para18:-

> "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 is also 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 thereof."

They further observed in para 17:

> "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 open to challenge on this ground."

Thus, furnishing of the copy of the report to the applicant is based upon the principles of natural jusice. It enables the delinquent to make an effective representation and defence to the disciplinary authority before the disciplinary authority imposes a penalty upon the delinquent. Non-furnishing of the report would amount, therefore, to violation of the rules of natural justice and make the final order of the disciplinary authority liable to challenge. Even before Mohd. Ramzan Khan (supra), consistently the apex court has been holding that supply of a copy of the inquiry report to the delinquent is the call of the principles of natural justice. In Mohd.

(16)

Ramzan Khan (supra) their Lordships also observed that even after the 42nd amendment to the Constitution, the principles of natural justice cannot be ignored and hence if a copy of the inquiry report has not been supplied to the delinquent, it will be an injustice and prejudice to him. At this stage, we anticipate the argument of the respondents that they would have placed reliance upon the case of S.P. Vishwanathan (I) (1991 Suppl. 2. S.C.C. 269) where their Lordships had observed that the principles laid down in Mohd. Ramzan Khan (supra) shall have prospective effect and shall be effective only from November 1990 while the impugned order was passed before this date. Hence, the principles of Mohd. Ramzan Khan shall not be applicable in this case. The apex court in the case of State of Maharashtra vs. Bhaishankar Avalram Joshi and another (A.I.R. 1969 S.C. 1302), a Bench consisting of three Judges held:

> "The failure on the part of the competent authority to provide the plaintiff with a copy of the report of the Enquiry Officer amounts to denial of reasonable opportunity contemplated by Article 311(2) of the Constitution."

They further proceed

> "It is true that the question whether reasonable opportunity has or has not been afforded to the Government servant, must depend on the facts of each case, but it would be in very rare cases in which it could be said that the Government servant is not prejudiced by the non-supply of the report of the Enquiry Officer."

Thus, according to Bhaishankar Avalram Joshi (supra), the observance of the principles of natural justice shall be prospective from the year 1969 and Mohd. Ramzan Khan (supra) does not overrule the principles laid down in Bhaishankar Avalram Joshi (supra). We, therefore, conclude that the ratio in this case is crystal clear and it directs the prospective operation of the supply of the inquiry report from the date of the judgment delivered by the apex court as back as 1969. This judgment does not stand in any way affected by either Mohd. Ramzan Khan (supra) or by S.P. Vishwanathan (I) (supra). Non-supply of the inquiry report has, therefore, resulted in prejudice to the applicant and is also in contravention of the principles of natural justice. We, therefore, are of the view that the impugned order should be quashed.

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5. We now take up the arguments of the learned counsel for the applicant with regard to the permission for engaging a Defence Assistant if the Presenting Office is well acquainted with the rules and procedure of law. In the case of Board of Trustees of the Port of Bombay vs. Dilip Kumar (1983 (1) S.C.R. 828), the apex court observed:

> "In our view, we have reached a stage in our onward march to fairplay in action that wherein an enquiry before a domestic Tribunal the delinquent officer pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner, the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated" (emphasis supplied).

It would be relevant to quote Decision No. 21 under Rule 14 of the Rules:

> "Assistance of legal practitioner to be decided on merits of each case - The assistance of a legal practitioner should not be refused to the officer concerned if the Presenting Officer is a legal practitioner. The rule, however, vests discretion in the Disciplinary Authority to permit assistance of a legal practitioner having regard to the circumstances, that such assistance is justified. No orders exist laying down guidelines to the Disciplinary Authority as to in what circumstances such jurisdiction may be said to exist. The matter has been carefully considered and after taking into account the judgment delivered by some High Courts on this point it has been decided that the Disicplinary Authority should bear in each case, such circumstances in mind as the status of the Presenting Officer, his experience in this type of job and the volume and nature of documentary evidence produced in the case before taking a decision to whether or not the services of a legal practitioner should be made available to the officer concerned. It is reiterated that the discretion of the Disciplinary Authority is vast and it should exercise such discretion in the most impartial manner on the merits of each case and be guided solely by the criterion whether the denial of assistance of a legal practitioner is likely to be construed as denial of reasonable opportunity to the officer concerned to defend himself."

As in this case the Presenting Officer was from the Central Bureau of Investigation, well acquainted in the matters of prosecution, the delinquent also should have been represented by an Assistant who was well-versed in law and the disciplinary authority should not have permitted this unequal combat in the disciplinary proceedings between the Presenting Officer and the poorly assisted delinquent. The disciplinary authority should have also followed the principles laid down in the recent judgment of the apex court in the case of J.K. Agrawal (1991 (2) A.T.J.502) in which their Lordships observed:-

"On the consideration of the matter, we are persuaded to the view that the refusal to sanction the service of a lawyer in the enquiry was not a proper exercise of the discretion under the rule, resulting in a failure of natural justice, particularly in view of the fact that the Presenting Officer was a person with legal attainments and experience... in defending himself, one may tend to become 'nervous' or 'tongue-tied' ... The refusal of the service of a lawyer in the facts of a case results in the denial of natural justice."

6. We need not quote more decisions of the apex court for the lack of space, but relying upon the judgment of this Bench passed in O.A. No. 215/92 dated 16.4.92 (Dr. Raghunathaman Opeh) directly conclude that justice should not only be done but should seem to have been done and the applicant should have been permitted to engage a Defence Assistant who was equal in qualification and knowledge of law euqal to that of the Presenting Officer. We have perused the grounds of appeal raised by the applicant when he filed them before the appellate authority. The appellate authority while dismissing the appeal has not met those grounds in its order. The grounds raised in the Memorandum of Appel should have been dealt with by the appellate authority in a proper manner and should have passed a speaking order meeting all the grounds raised therein. In view of this, the impugned appellate order can also not be maintained.

7. We, therefore, allow this O.A. and

(i) quash the impugned order of imposing punishment upon the applicant dated 21.3.84 by which the applicant was directed to the removed from service. We also quash the appellate order dated 24.4.85.

(ii) We further direct that the disciplinary authority may consider afresh the request of the applicant for providing him with the Defence Assistance as observed earlier in this judgement and on the basis of principles laid down therein.

(iii) The disciplinary authority shall have complete freedom in initiating the inquiry against the applicant from the stage of either by giving permission for engaging a Defence Assistant or from the stage of the supply of the inquiry

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(19)

report to the applicant.

(iv) We make it very clear that the grounds raised before us by the applicant may again be raised before the disciplinary authority or the appellate authority as the case may be and they shall give a proper finding upon the grounds raised.

(v) The disciplinary authority shall have freedom to initiate the inquiry again from the stage indicated herein-above within a period of four months from the date of receipt of a copy of this judgment.

(vi) The applicant shall be placed at the position where he was at the time of imposition of the penalty of removal from service by the disciplinary authority.

The parties shall bear their own costs.

(I.P. GUPTA) 2/7/92
MEMBER (A)

(RAM PAL SINGH) 2.7.92
VICE-CHAIRMAN (J)