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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 462 of 1986
~~T.A. No.~~ and C.C.P. 17 of 1986.

DATE OF DECISION 11-3-1987.

Prem Baboo Petitioner

Shri R.L.Sethi Advocate for the Petitioner(s)

Versus

The Union of India and others Respondent_s

Mrs. Raj Kumari Chopra Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Kaushal Kumar, Member (A)

The Hon'ble Mr. G.Sreedharan Nair, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
- ✓ 2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No.*

[Signature]
(G.Sreedharan Nair)
Member (J)
11-3-1987

[Signature]
(Kaushal Kumar)
Member (A)
11-3-1987.

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CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

D.A.No.462 of 1986 and
C.C.P.17 of 1986.

Date: 11-3-1987.

Prem Baboo

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Applicant.

vs.

The Union of India and others

...

Respondents.

For applicant:

Shri R.L.Sethi, counsel.

For respondents:

Shrimati Raj Kumari Chopra, counsel.

Coram:

The Hon'ble Mr.Kaushal Kumar, Member (A)
The Hon'ble Mr.G.Sreedharan Nair, Member (J)

(The Judgment of the Tribunal delivered by
The Hon'ble Mr. G.Sreedharan Nair, Member (J))

The applicant who was working as sorter, RMS in the P & T Delhi Circle was proceeded against under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, for short 'the Rules', by a memorandum of charges dated 25-5-1984. It was alleged that he committed misconduct by furnishing fake marks sheet of his High School Examination while applying for the post of Clerk/Sorter and continued to suppress the factual information about actual marks obtained by him in the said examination, failed to produce his original High School Certificate and mark sheets and has submitted attested copies, attested under forged signature. An enquiry was conducted following which, the 3rd respondent, the disciplinary authority accepting the report of the Inquiring Officer and holding that the charges against the applicant stand proved fully beyond any doubt, dismissed the applicant from service with immediate effect. An appeal was filed by the applicant before the Additional

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Post Master General (the second respondent) on 18-6-1985.

The applicant has approached this Tribunal for quashing the order of the 3rd respondent dated 20-5-1985 alleging that though a period of more than one year has lapsed since the appeal was filed, no decision had been communicated to him.

2. The main ground urged in the application is that the enquiry has not been conducted in accordance with the provisions of Rule 14 of the Rules and that there has been clear disregard and violation of Sub-rules (15) and (18) of ~~xxx~~ Rule 14 of the Rules.

3. A reply has been filed on behalf of the respondents denying the averments in the application and contending that the enquiry has been conducted in all fairness and in accordance with the Rules.

4. At the time of hearing, counsel of the applicant pressed before us two points. Firstly, it was submitted that there is a clear violation of Sub-rule (15) of Rule 14 of the Rules in so far as the Inquiring Officer summoned witnesses on his own and examined them after the close of the case. On a perusal of the copy of the report of the enquiry (Annexure 14) we find that the submission is correct. The report shows that the case was treated as closed on 23-1-1985 and was adjourned to 28-1-1985. However, considering it necessary that one

Shri Pathak of Aligarh R.M.S. is to be examined in the case for confirmation of some vital points, and pointing out that it is also necessary that the evidence of the immediate supervisory officials of the delinquent and the charge report attested at the time of appointment of the delinquent should be brought on the enquiry record "to reach some definite conclusions in the case", the case was reopened, and Shri Pathak and one Shri H.K.Sapru were examined on 13-2-1985. Even thereafter, one Shri Gurbej Chand was examined on 20-3-1985.

5. It is clear from Sub-rule (15) of Rule 14 of the Rules that the discretion that has been conferred on the Inquiring Authority to call for new evidence is only before the close of the case on behalf of the disciplinary authority. It is not permissible to let in any new evidence or to summon any fresh witness to fill up the gap in the evidence that is on record when the case is closed on behalf of the disciplinary authority. Since there is clear violation of the said provision, as fresh evidence has been let in at the instance of the Inquiring Authority after the close of the case on behalf of the disciplinary authority and such evidence has been relied upon for the findings in the report, the report of the Inquiring Authority and the findings arrived at therein and accepted by the disciplinary authority, cannot be sustained.

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6. It was argued by counsel of respondents that considering the gravity of the charges laid against the applicant, if the Inquiring Authority felt that for a proper conclusion to be arrived at, such evidence was required, that Authority cannot be faulted for having let in such evidence. It was also pointed out that there has not been a denial of opportunity to the applicant to cross-examine such witnesses. We are afraid that the submission cannot be accepted. The jurisdiction of the Inquiring Authority to conduct the enquiry is only in accordance with the Rules, and it behoves the Inquiring Authority to conduct the enquiry strictly in consonance with the Rules and not to detract from the same.

7. The second point that was urged by the counsel of the applicant was that as the Inquiring Authority himself has cross-examined the delinquent, there is violation of the principles of natural justice. He invited our attention to Sub-rule (18) of Rule 14 of the Rules, wherein the Inquiring Authority is enabled only to generally question the delinquent on the circumstances appearing against him in the evidence, in a case where the delinquent has not examined himself. (This is a case where the delinquent did not choose to examine himself). It is clear from the Sub-rule that the purpose is to enable the delinquent to explain any circumstances appearing in the evidence

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against him. It is settled that if in the guise of exercise of power under Sub-rule (18), the Inquiring Authority proceeds to make a cross-examination of the delinquent, there is clear violation not only of Sub-rule (18) but of the principles of natural justice, for, the Inquiring Authority cannot assume the role of the prosecutor. A Bench of this Tribunal has held in Balu Singh v. Union of India and others (A.T.R.1986 C.A.T. 195) that where the Enquiry Officer had subjected the delinquent employee to cross-examination and had thus assumed the role of a judge as well as the prosecutor, then the factum of the Enquiry Officer assuming the role of the prosecutor vitiates the entire proceedings.

8. On going through the recorded statement of the examination of the delinquent by the Inquiring Authority (Annexure 13), it cannot at all be said that it was with a view to generally question him on the circumstances appearing against him in the evidence on record; instead a searching cross-examination has been made. This again is another serious infirmity which vitiates the proceedings.

9. In view of the above, the order of the disciplinary authority dated 20-5-1985 imposing the punishment of dismissal from service on the applicant, on the strength of his finding agreeing with that of the Inquiring Authority cannot be

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sustained. It is hereby quashed. The intervening period from the date of dismissal to the date on which the applicant is to be reinstated in service as a result of this order, shall be treated as duty for all purposes, except regarding the payment of salary and allowances. We make it clear that this order shall not be a bar in proceeding against the applicant denovo in accordance with law in case the respondents are so advised.

10. C.C.P.17 of 1986 has been filed by the applicant for taking appropriate action against the second respondent for committing contempt of this Tribunal. It is alleged that after the filing of this application, the second respondent has disposed of the appeal that was filed by the applicant against the order of the disciplinary authority which amounts to violation of Sub-section (4) of Section 19 of the Administrative Tribunals Act. Though a reply to the application has been filed by the respondents, there is nothing therein to indicate that while the appeal was considered and disposed of, the second respondent was not aware of this Original Application before this Tribunal filed by the applicant for quashing the order of the disciplinary authority. Sub-section (4) of Section 19 of the Act is as follows:-

"Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of

grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules."

It is seen from the records that the Original Application was filed by the applicant before this Tribunal on 24-6-1986 and was admitted on 1-7-1986. Notice was ordered on the application and it was served on the second respondent on 9-7-1986. It is not disputed that the appeal was considered and disposed of only thereafter. It was submitted that the order of dismissal of the appeal was on 12-8-1986.

11. In view of Sub-section (4) of Section 19 of the Act extracted above, when once the Original Application has been admitted by this Tribunal, the appeal that was pending before the appellate authority abates, ^{in the eye of law,} so that there was no appeal as such for consideration and disposal on 12-8-1986. The result is that the order dated 12-8-1986 by which the appeal is stated to have been dismissed is nonest. To be ~~more~~ clear, we hereby declare it to be so.

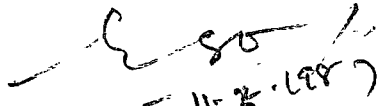
12. In view of this declaration, in all fairness, the counsel of the applicant submitted that it is not necessary to pursue the matter further and enter a finding whether actually there is any contempt as such.. Hence we are not going into that question.

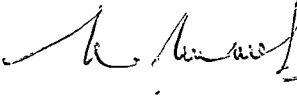
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12. The Original Application and the C.C.P. are
disposed of as above.


- 11-3-1987 -
(G. Sreedharan)
Member (J)
11-3-1987


(Kaushal Kumar)
Member (A)
11-3-1987.