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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No 658 of 1986

Date of decision 21.7.1992

Madan Lal

Applicant

Shri O.P. Gupta

Counsel for the applicant

vs.

General Manager, Northern Railway

Respondents

Shri O.N. Moolri

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 initially appointed as Class IV employee in the year 1960, but rose to the position of a fitter and acquired a lien on the post and then became a permanent employee of the Northern Railways. He was served with a memorandum of charges on 29.11.84 for his unauthorised absence from duty from 29.8.84 to 24.1.85. The applicant filed his reply that his wife was seriously ill and that none else except him was present. Hence, he was looking after the treatment and attending upon his wife. He also contended that he was not wilfully absent from duty. After the completion of the inquiry, the Inquiry Officer submitted his report of findings on 20.3.85 which was accepted by the disciplinary authority. The disciplinary authority by Annex 'A' dated 20.5.85 passed the final

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orders imposing upon the applicant the penalty of removal from service. Aggrieved by this, the applicant filed an appeal before the appellate authority who on 8.7.85 (Annex. 'C') dismissed his appeal. The applicant filed a revision which still remains undecided. Hence, he filed this O.A. under Section 19 of the Administrative Tribunals Act of 1985, challenging his order of removal and also rejection of his appeal. He prayed for the relief of quashing Annex. 'A' and Annex. 'C'. The applicant contended that the inquiry was not in accordance with law, that he was not permitted to engage a helper, that he was not supplied with a copy of the statements of witnesses nor any opportunity to cross-examine them was afforded and that he was not supplied with a copy of the inquiry report before the Inquiry Office submitted his report to the disciplinary authority. He also contended that the disciplinary authority did not afford an opportunity to him against the proposed penalty.

2. The respondents on notice appeared and opposed the contents of the O.A. and, inter alia, maintained that the inquiry was held in accordance with law and rules.

3. The applicant, during the pendency of the O.A. expired on 11.12.87. His widow, Saroj, sons - Jagdish Chander, Rajinder Kumar and Sanjay Kumar - were brought on the record as legal representatives. The legal representatives were brought on record on 18.4.88. The legal representatives should have been brought on record within a period of 90 days. Hence, the counsel for the legal representatives filed an application that they are illiterate, hence a little delay has occurred and the same be condoned. On perusal of the record, we are satisfied that the delay in filing the application for bringing the legal representatives on record in place of the deceased applicant should be condoned in the interest of justice.

4. We had ordered the counsel for the respondents, Shri O.N. Moolri, to produce the entire record of the disciplinary proceedings. The same has been produced for our inspection. We have gone through the entire record. It is apparent that a copy of the inquiry report was not supplied to the applicant before the Inquiry Officer submitted his recommendations to the disciplinary authority. This

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fact also stands corroborated by the fact that the disciplinary authority when passed the order imposing the penalty upon the applicant, then and only then, he directed a copy of the report to be supplied to the applicant. Hence, it can safely be concluded that no copy of the inquiry report was supplied to the deceased applicant for putting up an effective defence before the disciplinary authority. The deceased applicant also filed an appeal. He had mentioned several grounds in his memorandum of appeal, but perusal of Annexure 'C' indicates that the appeal was rejected in a mechanical manner, without meeting the grounds raised by him with regard to the inquiry. The appellate authority has also passed a cryptic and telegraphic order without assigning any reason for dismissing the appeal.

5. Shri O.P. Gupta placed reliance upon the **Union of India vs. Mohammed Ramzan Khan (A.I.R. 1991 S.C. 471)** according to which non-supply of a copy of the inquiry report to the delinquent amounts to denial of natural justice. Their Lordships observed:

"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 a copy of the report to the applicant is based upon the principles of natural justice. It enables the delinquent to make an effective representation and defence to the disciplinary authority before a penalty is imposed upon him. Non-furnishing of the report would, therefore, amount to violation of the rules of natural justice.

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6. The learned counsel for the respondents, Shri O.N. Moolri, contended that according to the judgment of the Supreme Court in **S.P. Vishwanathan (I) (1991 Suppl. 2 S.C.C. 269)**, the scope of Mohammed Ramzan Khan (supra) cannot be stretched to the time when this inquiry was held. Thus, according to him, the law laid down in Mohammed Ramzan Khan is prospective and not retrospective. Shri O.P. Gupta, learned counsel for the applicant, placed reliance upon the **State of Maharashtra vs. Bhaishankar Avalram Joshi and another (A.I.R. 1969 S.C. 1302)**. The three-Judge Bench observed as follows:

"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."

According to Shri Gupta, Bhaishankar Avalram Joshi (supra) was delivered in 1969 and hence the principles of natural justice as enunciated in Mohammed Ramzan Khan have been consistently in vogue after the judgment of Bhaishankar Avalram Joshi (supra).

7. Looking at the facts and circumstances of the case, we are satisfied that a copy of the inquiry report was not supplied to the deceased applicant, that the appellate authority has not exercised its powers correctly. We, therefore, quash Annex. 'A', the order passed by the disciplinary authority imposing the penalty of removal from service upon the deceased applicant. We also quash Annex. 'C', the order passed by the appellate authority, but as laid down in Mohammed Ramzan Khan (supra), we cannot direct now the respondents to begin the inquiry from the stage of the supply of the inquiry report because the applicant is now dead and further inquiry cannot be held in accordance with law.

8. As we have quashed Annex. 'A' and Annex. 'C', the applicant shall be deemed to be in service till the date of his death i.e. 11.12.87 and he is entitled to receive till that date all the emolu-

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based on that date
 ments and the pensionary benefits like pension, death-cum-retirement
 gratuity, leave encashment, etc. according to rules, but as he is
 dead, his legal representatives - widow, Saroj, sons - Jagdish Chander,
 Rajinder Kumar and Sanjay Kumar - are entitled to receive all the
 dues of the deceased employee. We, therefore, direct the respondents
 as would accrue as if he had continued in service
 to pay all the dues of the deceased applicant till his death i.e.
 11.12.87 to the legal representatives named hereinabove as early
 as possible, preferably within a period of four months.

9. A Bench of this Tribunal on 29.8.86 had directed the respondents not to evict the deceased applicant and his family from quarter No. 49-A/7, Chhoti More, Sarai, Delhi, until this application is decided. Thus, the legal representatives of the deceased applicant are in occupation of this residential quarter. The respondents shall be entitled to deduct the normal licence fee from the amount of the dues they are required to pay to the legal representatives of the deceased employee. In view of this judgment, the interim order passed on 29.8.86 automatically stands vacated.

The application with the above directions is disposed of with no order as to costs.

I.P. Gupta
 (I.P. GUPTA) 21/7/92

MEMBER (A)

RAM PAL SINGH
 (RAM PAL SINGH) 21.7.92

VICE-CHAIRMAN (J)