IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 683/86 198
T.A. No.

DATE OF DECISION 29.5.1989

Hans Raj Choudhary Petitioner

Shri B.S. Mainee Advocate for the Petitioner(s)

Versus

Union of India Respondent

Shri O.N. Moolri Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman

The Hon'ble Mr. B.C. Mathur, Vice Chairman

1. Whether Reporters of local papers may be allowed to see the Judgement ? No
2. To be referred to the Reporter or not ? No
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether to be circulated to all the Benches? No

(B.C. Mathur)
Vice Chairman

(Amitav Banerji)
Chairman

(a)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 683/86 Dated of Decision: 29.5.1989

Hans Raj Choudhary .. Applicant

vs

Union of India .. Respondents

CORAM:

Hon'ble Mr. Justice Amitav Banerji, Chairman
Hon'ble Mr. B.C. Mathur, Vice Chairman

For the Applicant .. Shri B.S. Mainee, Advocate

For the Respondent .. Shri O.N. Moolri, Advocate

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

...

In this Original Application filed by Shri Hans Raj Choudhary (hereinafter referred to as the 'Applicant') has prayed for quashing the punishment order dated 6.12.83, directing the respondent railway to pay all his settlement dues without any recovery as ordered by the respondent railway and the amount recovered from the Applicant's salary and other amounts due to the Applicant, directing the railway to pay interest at the rate of 18 per cent per annum on the aforesaid amounts from the date of Applicant's retirement to the day of payment and to arrange for the commutation of pension as per rules and pay the same to the Applicant.

The Applicant was a Railway employee and he retired as Depott Stores Keeper under the Deputy Controller of Stores, Northern Railway, Alambagh, Lucknow. A charge sheet was

issued against the Applicant on 10.11.1977. The Applicant had replied to the charge sheet. No action was taken by the Disciplinary Authority thereafter and the Applicant was promoted from the post of Wardkeeper to Depott Store Keeper-III in 1979. Consequently, the Applicant was under the plea that he had been exonerated of the charges which were levelleved against him vide charge sheet dated 10.11.1977. However, on 18.12.1979, a notice was served on the Applicant which indicated that one Shri J. Mandan, Assistant Controller of Stores had been nominated as Enquiry Officer to hold the enquiry against the Applicant. He protested against the said order but the Enquiry Officer held the enquiry. The Applicant also raised the grounds that he had not been allowed to inspect the documents on which reliance had been placed by the railways; copies of the documents which were relevant to the subject matter and which had been asked for by the Applicant were not supplied to him; he was not allowed to cross examine the witnesses produced by the Disciplinary Authority; he was not allowed to produce defence witnesses and lastly, that the copies of the statement of witnesses were not given to him. The enquiry was held in 1980 but on 6.12.1983 i.e. nearly three months before the retirement of the Applicant, a punishment notice was served upon the Applicant (Annexure A-2) in which he was held guilty of "carelessness and negligence and

failure to advise the disposal of Fida Cells" and the penalty imposed was: "recovery from pay of whole of pecuniary loss amounting to Rs. 22,237.70 P caused to the Government by negligence or breach of order". It was further stipulated that the penalty would be recorded in the service register and recovered from the pay in monthly instalment of Rs. 500/- with effect from December, 1983 and the remaining amount from DCRG and other bills and leave encashment . Annexure A-2 indicated that under Rule 18 of the Railway Servants (Discipline and Appeal) Rules, 1968, an appeal against these orders may be filed through proper channel within 45 days from the date of the receipt of the order and the appeal does not contain improper or disrespectful language.

The Applicant's case is that he was not served with a copy of the findings of the Enquiry Officer along with the aforesaid order dated6.12.83. Consequently, he could not file an appeal. Secondly, the order (Annexure A-2) was not a speaking order at all and did not disclose that the officer imposing the penalty had applied his mind at all. Thirdly, that the officer had made an observation viz "I do not find your representation to be satisfactory, due to the following reasons: Shri H.R. Choudhary deserves no natural justice but adequate punishment. I agree with Enquiry Officer". The above order shows that the officer,

(12)

Shri S. Dharman, Deputy COS/AMV/LKO did not apply his mind at all. The representation referred to was one dated 14.9.1978 against the charge sheet and was filed before the equiry was commenced in 1980. The reason given for declaring the representation as not satisfactory was misconceived and shows lack of knowledge regarding rules of natural justice. It was argued that the officer did not follow the rules of natural justice and was biased against the Applicant. It was further argued that an employee may be adjudged guilty but only after an enquiry has been held in accordance with rules and after due observance of rules of natural justice. Articles 14 and 16 of the Constitution of India guarantee equal protection of law to all citizens and this could not be denied to the Applicant.

It was next argued that since a copy of the enquiry order did not accompany the order imposing penalty, the latter was void and unenforceable. In support of this contention, the learned counsel cited some case law. Learned counsel urged that since the order itself was bad in law, no recovery could be made from his salary and he was entitled to be reimbursed with all the amount which had been deducted from his salary and other retiral benefits alongwith interest at the rate of 18 per cent annum.

In their defence, the respondent took the plea that the Applicant had been rightly held to be guilty of carelessness and negligence and has been rightly penalised for recovery of a sum of Rs. 22,237.70 P to compensate the loss. The proceedings in the present case were all in accordance with law and the plea that the order (Annexure A-2) was bad in law was wholly wrong. It was also alleged that the entire file in the case had been misplaced and the ~~xxxxxx~~ Respondent had on several occasions asked the Applicant to supply copies of all the papers he had, so that the record may be reconstructed. but the Applicant had not supplied the same.

Learned counsel for the respondents argued that the charge against the Applicant was for a minor offence and it was not necessary to proceed in a regular enquiry and consequently, it was not necessary to supply a copy of the enquiry report, the order (Annex A-2) was sufficient to proceed against the Applicant. The Disciplinary Authority had fully considered the enquiry report submitted by the Enquiry Officer and decided to impose the minor penalty i.e. recovery of the cost of the railway material lost due to the negligence of the Applicant. The recovery of the amount was duly made and there was nothing erroneous in this.

He agreed that the order passed by the Disciplinary Authority where he had said that the Applicant "deserves no natural justice but adequate punishment" was unfortunate. He, however, prayed that he may be afforded an opportunity to find out what papers exist with the Department.

We do not think any useful purpose would be served by giving an opportunity to find out as to what papers exist with the Railways. There was ample time for the Railways to find out whether they had a copy of enquiry report. If it was there, they would have supplied to their counsel. Whenever in an Application a prayer is made for quashing or setting aside [redacted] an impugned order, it is imperative for the respondents to give the entire record pertaining to the case to their counsel and at least make it available to him on the date of the hearing of the matter. Otherwise, it will only delay and hold up the proceedings unnecessarily. After all, in a prayer for quashing of the record which comes within the perview of a writ of certiorari, the usual prayer is for producing the record and for quashing the same. However, in view of the categorical statement that the report of the Enquiry Officer was not available on the file and the correspondence existing on the file indicates that the said papers are not available with the Railways, no useful purpose will be served by adjourning the case for the same. Moreover,

that copy of the Enquiry report had to be supplied to the Applicant at the stage when the punishment was awarded.

We have heard the learned counsel for the parties and perused the material on the record. Certain facts are not in dispute. The Applicant was served with a charge sheet on 10.11.77. Thereafter, he had been promoted to a higher rank of Depott.Store Keeper. In 1979, a notice was served indicating that an Assistant Controller of Stores had been nominated as an Enquiry Officer. The enquiry proceedings took place in 1980. Witnesses were examined and the Applicant participated in the enquiry proceedings. The Enquiry Officer submitted a report but that report is not on the record of the OA. The Applicant did not file a copy of the enquiry report, as according to him, he did not get it. The respondents' case is that the file was lost and consequently they could not file it. It is also undisputed that along with the order imposing penalty (Annexure A-2) no copy of the enquiry report was furnished or served upon the Applicant. The Applicant had 45 days' time to file an appeal to the higher authority but without the copy of the Enquiry Officer's report, the appeal could not be filed.

In view of the above, it is clear that a regular enquiry proceedings had been gone through in the case

and the Enquiry Officer had given a report. We do not know what the report contained for Annexure A-2 which is an order of the Deputy Controller of Stores dated 6.12.83 does not disclose what the findings of the Enquiry Officer are. All that is said in regard to the enquiry in Annexure A-2 is "I agree with the Enquiry Officer". There is nothing further about the charge and the report of the Enquiry Officer holding that the charge was proved. There is nothing about the nature of the charge and the manner in which it was proved. Further, there is nothing in the order to indicate as to how the Enquiry Officer had arrived at the figure of Rs. 22,237.70 P, as the amount of loss caused to the Government. If there was a copy of the Enquiry Officer's report, this may have supplied some of the information but nevertheless it was the duty of the officer passing the punishment order (Annexure A-2) to indicate the elementary things.

The fact that the officer was not aware of the procedure is writ large in his order when he referred to the representation of the Applicant to be unsatisfactory. That representation was not a representation made after the Enquiry Officer's report. It was a representation made on 14.9.1978 i.e. even before the Enquiry Officer was appointed and the enquiry proceedings started. It was a representation against the charge sheet. While rejecting

the representation as not satisfactory, he gave a reason viz. "Shri H.R. Choudhary deserves no natural justice but adequate punishment". This shows absence of acquaintance with the enquiry proceedings. The term 'natural justice' has come to be recognised as rules of natural justice which any court, any quasi-jusicial authority is bound to observe while conducting a judicial or quasi-judicial proceeding. An authority imposing penalty is bound to give a speaking order. The order (Annexure A-2) is not a speaking order. It does not mention the material facts nor does it give reasons. It does not even show that he applied his mind to the report of the Enquiry Officer for he does not refer to any part of the report in his order.

In the case of Shri Premnath K. Sharma v. Union of India & others (1988(3) CAT 449) Division Bench headed by the then Chairman, Justice K. Madhava Reddy observed:

> "Any finding of the Disciplinary Authority on the basis of the Enquiry Officer's report which is not furnished to the charged officer would, therefore, be without affording a reasonable opportunity in this behalf to the charged officer. It would offend the principle of natural justice. It is a common knowledge that every often the Enquiry Officer's report largely influences the Disciplinary Authority. The Rules governing disciplinary proceedings also give great importance to this report and require the Disciplinary Authority to record reasons for disagreeing with the report. Hence, where the report is adverse to the charged officer, it becomes all the more necessary

to furnish him a copy of the report and afford him an opportunity to make his representation against it before the Disciplinary Authority records its findings and impose the penalty. ..... The enquiry cannot be said to be concluded with the submission of the Enquiry Officer's report. The submission of the Enquiry report is only one stage of the enquiry and as that Report constitutes material upon which the Disciplinary Authority is required to act, that Report furnished behind the back of the applicant cannot be used by the Disciplinary Authority to hold the charged officer guilty of any charge. But the Rules require the Disciplinary Authority to consider the report and except for reasons to be recorded, to accept it. It therefore follows that furnishing a copy of the enquiry report to the charged officer is obligatory. If reasonable opportunity has to be afforded and the Disciplinary Authority himself before coming to a finding on the charges has to afford him reasonable opportunity to the charged officer, the opportunity given by Enquiry Officer to the applicant before making the report would not amount to affording a reasonable opportunity and would not satisfy the requirements of the principles of natural justice. It is the Disciplinary Authority that has to come to the conclusion on charges of misconduct and before doing so he must give an opportunity to the charged officer. Hearing by an authority which has merely to submit a report would not be effective substitute for hearing by the competent Disciplinary Authority."

In the case of Bachittar Singh v. State of Punjab (AIR 1963 SC 395) their lordships observed -

"Departmental proceedings taken against a government servant are not divisible in the sense in which the High Court understands them to be. There is just one continuous proceeding though there are two stages in it. The first is coming to a conclusion on the evidence as to whether the charges alleged against the government servant are established or not and the second is reached only if it is found that they are so established...."

The Applicant's case that he was not supplied with a copy of the Enquiry Officer's report at any time before or after the passing of the alleged order (Annexure A-2) is fully made out. According to him, three months before his retirement i.e. on 6.12.1983 he received a copy of Annexure A-2 which he calls as punishment notice. As a matter of fact that order was not passed in his presence.

Looked from another point of view, the Applicant had a statutory right of appeal under Rule 18 of the (Discipline and Appeal)Rules but he could not file it because he was not supplied with a copy of the Enquiry Officer's report. And since the Enquiry Officer's report was not supplied, it was not possible for him to attack any of the findings nor attack the specific point about the irregularity or illegality of the procedure followed. He made repeated requests for the supply of a copy of the report but the same was not supplied. On the contrary, the respondents charged him for not producing the copy of the enquiry report. This was rather curious. There is nothing on the record to show that the copy of the enquiry report was ever served or given to the Applicant. How could he be charged that he was keeping it back and not giving to the respondents. The primary duty of the respondents was to produce that paper. Their counsel candidly stated that the relevant file was misplaced

and not found. By not supplying a copy of the enquiry report, the respondents deprived the Applicant of a valuable right to appeal against the challenged order. It is well settled that when an adverse order is passed against the employee particularly when he is visited with penalty, he must be supplied with a relevant paper ie, copy of the enquiry report as well as the punishment order so that he may file an appeal. In case these are not supplied, the employee cannot file an appeal. Even till this day, the copy of the enquiry report has not been supplied. Consequently, it is not possible to hold that the punishment order by the Disciplinary Authority(Annex A-2) is a valid order on the basis of which recovery proceedings could be initiated.

We are supported in this view by an earlier decision of the Principal Bench of the Tribunal in Malkiat Singh v. Union of India and others (ATR 1986 CAT 289) where Rule 12 of (Discipline and Appeal Rules) was being considered. It was held that "Rule 12 of the Railway Servants (Discipline and Appeal)Rules requires that the orders made by the disciplinary authority shall be communicated to the Railway servant with a copy of the report of enquiry. Where, therefore a copy of the report of enquiry had not been given to the dilinquent, the orders of punishment cannot be said to have been duly communicated to him. He has thus been

deprived of the remedy available to him at the appellate forum under rule 24(2) of the said Rules. This salutary statutory right cannot be abridged or reduced to a mere sham as it would negate the principles of natural justice."

The Madras Bench of the Tribunal in the case of V. Shanmugam v. The Union of India & Ors (ATR 1986(2) CAT 226) was considering Rule 18(3) of the Railway Servants (Discipline and Appeal) Rules, 1968. The Division Bench held -

> "Fairness requires that the Disciplinary Authority, being a quasi-judicial authority, arrives at his own conclusion with respect to the charges against the delinquent after examining the report of the Inquiry Officer alongwith the attack, if any, against the same by the delinquent. As such, the delinquent employee has necessarily to be supplied with a copy of the inquiry report before the Disciplinary authority proposes the punishment."

In the above case before the Madras Bench of the Tribunal, the report of the Enquiry Officer was served on the Applicant on 10.12.1979 while the punishment was imposed on 12.11.79. On this ground alone, the order dated 12.11.79 imposing punishment was quashed.

In the present case, the Enquiry Officer's report was never served - not even till today - and yet the recovery proceedings have followed and more than Rs 22,2370.70 P has been recovered from the Applicant.

(22)

In another case of K. Gopal Rao v. Union of India & Ors (ATR 1988(1) CAT 308) the Ahmedabad Bench of the Tribunal held that where a copy of the enquiry report was not supplied to the railway servant it has the effect of seriously prejudicing him, the entire proceedings are vitiated In that case, the railway servant was dismissed from service. The Bench held that the said order is illegal and inoperative and the plaintiff-delinquent continues to be in the service of the respondent.

It is no doubt true that in a charge sheet which involves only minor penalty, there need not be a regular enquiry against the railway servant. It is mandatory in a case where major penalties are proposed. Nevertheless, if a regular enquiry has been held, it is absolutely essential that the copy of the enquiry report is supplied along with the punishment order so that he knows what has been held against him and further to enable him to file an appeal which is provided under the statute. Where he is not supplied with a copy of the enquiry report thus depriving him of the right of availing statutory remedy by way of an appeal, the order of punishment cannot be sustained and must be set aside.

Learned counsel for the railways at the very outset of his arguments stated that he was handicapped by the loss of the relevant record and was not able to produce the enquiry report.

In the result, we set aside the order of the Disciplinary Authority (Annexure A-2) dated 6.12.1983 and also direct the respondents to restore to the Applicant the entire amount of Rs. 22,237.70 P within a period of three months from the date of serving upon the respondents a copy of this order passed by us today. In case the amount is not restored or repaid to the Applicant within the aforesaid period, the respondents will also be saddled with payment of interest at the rate of 12 per cent per annum from the date of the filing of the OA i.e. 3.9.1986. The Application is accordingly allowed with costs.

(B.C. Mathur)
Vice Chairman
-5-1989

(Amitav Banerji)
Chairman
-5-1989

bds