

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 899 of 1986
T.A. No. 199

DATE OF DECISION 22.1.92

Paras Ram	Petitioner
None	Advocate for the Petitioner(s)
Versus	
Union of India	Respondent
None	Advocate for the Respondent(s)

CORAM

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

The Hon'ble Mr. D.K. Chakravorty, 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 ?

(Judgment of the Bench delivered by Hon'ble Shri
Justice Ram Pal Singh, Vice-Chairman (J).)

J U D G M E N T

The applicant, by this application under Section 19 of the Administrative Tribunals Act of 1985, prays for quashing the dismissal order passed against him as illegal and unconstitutional. He also prays for quashing of the appellate order which cannot be sustained on merits.

2. The respondents, on notice, controverted the contents of the O.A. and contended that the applicant was a Chowkidar appointed on regular basis on 17.7.70 and he was asked to submit the proof of his date of birth alongwith the relevant records. They admit that disciplinary proceedings were started against the applicant and a charge-sheet was issued with appointment of an Enquiry Officer. They further admit that the applicant was dismissed by the Deputy Director of Education who was the disciplinary authority.

Lambh

: 2 :

3. Neither the counsel for the applicant nor the counsel for the respondents were available when this old case of 1986 was taken up. Both the counsel were sent for, but were not available in the building. We, therefore, without unnecessarily adjourning it took it upon ourselves to go through the record and deliver the judgment.

4. The Enquiry Officer, after making the enquiry, submitted his report to the disciplinary authority in which he held that the applicant is exonerated from all the charges. The disciplinary authority did not agree with the findings of the Enquiry Officer, but passed the orders of dismissal against the applicant on 26.3.85. Aggrieved by this order of the disciplinary authority, the applicant filed an appeal before the Director of Education, Respondent No. 2, contending therein that the disciplinary authority was lower in rank than his appointing authority, hence his dismissal was against the provisions of Article 311 of the Constitution. The appellate authority also dismissed the appeal of the applicant and hence this OA was filed.

5. Two points in favour of the applicant are made out:

- (i) a copy of the enquiry report was not given to the applicant when the Enquiry Officer submitted his report to the disciplinary authority; and
- (ii) the disciplinary authority, before awarding the punishment of dismissal upon the applicant, did not issue a notice to the applicant to show cause against the proposed punishment.

6. Law, by now, has been settled by the Hon'ble Supreme Court in the case of Union of India & Ors. vs. Mohd. Ramzan Khan (JT 1990 (4) SC 456). Their Lordships have laid down a law which is being reproduced for convenience:

"(ii) Deletion of the second opportunity from the scheme of Art. 311(2) of the Constitution has nothing to do with providing of a copy of the report to the delinquent in the matter of making his representation. Even though the second stage of the inquiry in Art. 311 (2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the Inquiry Officer

Lambert

holding that the charges or some of the charges are established and holding the delinquent guilty of such charges. For doing away with the effect of the enquiry report or to meet the recommendations of the Inquiry Officer in the matter of imposition, furnishing a copy of the report becomes necessary and to have the proceeding completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. While by law application of natural justice could be totally ruled out or truncated, nothing has been done here which could be taken as keeping natural justice out of the proceeding and the series of pronouncements of this Court making rules of natural justice applicable to such an enquiry are not affected by the 42nd amendment. We, therefore, come to the conclusion that supply of a copy of the inquiry report along with recommendations, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof. The Forty-Second Amendment has not brought any change in this position. 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 will also be 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 hereafter...We would clarify that this decision may not preclude the disciplinary authority from reviving the proceeding and continuing with it in accordance with law from the stage of supply of the inquiry report in cases where dismissal or removal was the punishment."

Thus, in view of the settled position of law we hold that the departmental enquiry and the punishment imposed upon the applicant are vitiated because the applicant was not supplied with a copy of the enquiry report.

7. It is a principle of natural justice that if the disciplinary authority does not agree with the findings of the Enquiry Officer then he is required to give a notice to the delinquent and give him an opportunity of being heard before the punishment is imposed upon him. The law has been settled by the apex court in the case of *Narain Mishra vs. State of Orissa* (SLR 1969 SC 657) wherein it has been held that if the punishing authority differs from the findings of the Enquiry Officer and holds the official guilty of charges of which he is acquitted by the Enquiry Officer, but gives no notice or opportunity to the delinquent about the attitude of the punishing authority, then any penalty imposed is violative of principles of natural justice and fair play.

Lambert

7. Thus, we are of the view that the entire enquiry is vitiated. We, therefore, allow this O.A. and quash the order of dismissal passed against the applicant. We also quash the order passed by the appellate authority. We may make it clear that this judgment shall not prevent the disciplinary authority from taking up the enquiry from the stage of the supply of the enquiry report to the applicant. The disciplinary authority, before imposing any penalty upon the applicant, is under law bound to issue a notice to the applicant. In the facts and circumstances of the case, the parties shall bear their won costs.

-22/1/1992
(D.K. CHAKRAVORTY)

MEMBER (A)

-22.1.92
(RAM PAL SINGH)

VICE-CHAIRMAN (J)