IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

Date of decision: 14/11/91

1. O.A. No. 919 of 1986

Harit Singh — Applicant

Shri Anis Suhrawardy — Cousel for the applicant

vs.

Union of India & Ors — Respondents

Shri R.L Dhawan, — Counsel for the respondents

2. O.A. No. 923/86

Harit Singh — Applicant

vs.

Union of India & Ors — Respondents

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

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

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

JUDGMENT

This judgment shall also govern the disposal of O.A. No. 923/86.

2. The applicant was working as Assistant Engineer in the Nortern Railways and was posted in the Tracks Supply Depot, Ghaziabad, when as a result of the departmental inquiry, he was awarded the penalty of reduction in rank from Class II service to Class III service. The applicant was served with a chargesheet on 24.5.84 (Annxures A-1 and A-2). He was charged on four counts and was found guilty on all the four counts by the inquiry officer. The inquiry report dated 26.11.84 was sent to the disciplinary authority i.e., the General Manager, who imposed the penalty on 5.3.85. In the impugned order, it was mentioned by the disciplinary authority that a copy of the inquiry report be given to the delinquent who may prefer his appeal against the imposition of the penalty. The applicant aggrieved by this order of the disciplinary authority filed an appeal on 25.8.85 before the appellate authority and since then the appellate authority has not cared to pass any orders on this appeal in spite of several reminders from

the applicant. Hence, he filed this O.A. under Section 19 of the Administrative Tribunals Act of 1985 praying therein for quashing the order of the disicplinary authority dated 5.3.85 by which he was directed to be reduced in rank.

3. The respondents, on notice, controverted the contents of the O.A. and submitted that it was not necessary for the appellate authority to pass any order on appeal because in another departmental inquiry, the applicant was punished with order of removal from service. They also maitnain that the inquiry proceedings do not suffer from any infirmity.

4. In O.A. 923/86, the applicant challenges the punishment imposed by the disciplinary authority upon him, passed by the disciplinary authority on 11.6.85, by which the applicant was directed to be removed from service by way of punishment. The applicant filed an appeal before the appellate authority, aggrieved by the said penalty, on 16.7.85. The said appeal was rejected on 13.6.86 (R-2). Annexure A-1 is the order passed by the disciplinary authority i.e., General Manager, in which it is written that a copy of the report of the inquiry officer be given to the applicant.

5. The respondents, on notice, controverted the facts contained in the O.A. and inter alia maintained that the entire inquiry proceedings were in accordance with rules and the applicant does not suffer from any prejudice. They also contended that the disciplinary authority has thoroughly dealt with the evidence and the material on record before they passed the punishment of removal from service.

6. It is significant to note that the disciplinary authority in both the cases has mentioned that a copy of the inquiry report be given to the applicant when he imposed the penalty. It thus appears that a copy of the inquiry report was not supplied to the applicant by the inquiry officer when he submitted his inquiry report to the disciplinary authority for imposing the punishment. Thus, the applicant has been deprived of a valuable right of making representation and showing cause to the disciplinary authority challenging thereby the recommendations of the inquiry report.

Shri R.L Dhawan, learned counsel for the respondents, contended

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that it was not necessary for the inquiry officer to supply a copy of his report to the applicant before he submitted it to the disciplinary authority and he cited plethora of case laws which need not be mentioned here because the law stands well settled by now by the apex court and also by a Full Bench judgment of this Tribunal. In the case of Union fo India & Ors. vs. Mohd. Ramzan Khan (JT 1990 (4) S.C. 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 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 inquiry 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 revising the proceeeding 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."

The case of Mohd. Ramzan Khan was considered by a Full Bench of this Tribunal of the Ahmedabad Bench on 11.7.91 in which all the aspects of the Mohd. Ramzan Khan case were discussed and elaborated. The same is being reproduced for convenience:

"We now come to the question which has been referred to this Full Bench. The question whether a piece of legislation is prospective in effect or retrospective in effect is well understood. The judgment of the Supreme Court is not a piece of legislation. The question whether it is a prospective legislation or retrospective would depend on the language used in the judgment. But it is clear that a declaration of law is effective for all such cases which are still pending or are to be filed in future excluding those which have already been decided finally. This is precisely what their lordships indicated in paragraph 17 of the judgment in the case of Union of India & Ors. vs. Mohd. Ramzan khan (supra) which is in the following words:

> "There have been several decisions in different High Courts which, following the Forty-second Amendment, have taken the view that it is no longer necessary to furnish a copy of the inquiry report to delinquent officers. Even on some occasions this Court has taken that view. Since we have reached a different conclusion, the judgments in the different High Courts taking the contrary view must be taken to be no longer laying down good law. 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 grounds."

The last two sentences of the above paragraph have to be read together. The last sentence makes it clear that if there be the conclusion to the contrary reached by any two-judge Bench of the Supreme Court, that would not be deemed laying down a good law. As a matter of fact, all judgments of two-Judge Benches of the Supreme Court contrary to the decision in the case of U.O.I. & Ors. V. Mohd. Ramzan Khan (supra) would no longer be good law. But their Lordships took special care to spell out that this would not mean that their decision in Mohd. Ramzan Khan's case would afford any opportunity to the afflicted parties or aggrieved parties to reopen what have become final. The use of the word "but this shall have prospective application and no punishment imposed shall be open to challenge on this ground" refers to cases which have been heard and decided by the Division Benches of the Supreme Court earlier. Those cases will not be reopened. This principle would also extend to all such cases which have been decided by a Court of Law or the Tribunal and which have become final, or appeal or SLP dismissed or where no appeal has been filed within the prescribed time limit, all these matters have become final and it is no longer open to be adjudicated upon. In other words, all those cases which are pending before any Court of law or Administrative Tribunal in which punishment has been inflicted, a plea of not having been provided with a copy of inquiry report can be raised as infringing the rules of natural justice. We are, therefore, of the view that te decision of the Supreme Court in the case of UOI & Ors. vs. Mohd. Ramzan Khan (supra), finally settles the question referred to us. We are unable to accept the reasoning and the conclusion given by the

Madras Bench in the case of S. Phillip V. Director General of Ordnance Factories & Anr. (supra) as the same is contrary to the dictum of U.O.I. & Ors V. Mohd. Ramzan Khan. We, therefore, answer the question referred to us as follows:

> "The law laid down by the Supreme Court in the case of U.O.I. & Ors V. Mohd. Ramzan Khan is applicable to all cases where finality has not been reached and in cases where finality has been reached, the same cannot be reopened. The law laid down by the Supreme Court in the above case is binding on all concered."

7. The law, by now, stands crystalised on the subject and we need not dwell upon the case laws cited by the learned counsel for the respondents. On this point alone, both the O.As deserve to be allowed.

8. In O.A. No. 919/86, the appeal filed by the applicant still remains undecided and it was not correct on the part of the appellate authority to have sat over the appeal filed by the applicant on 25.8.85. As we are inclined to quash both the punishments in both the inquiry proceedings, we need not pass any orders with regard to the pendency of this appeal. Consequently, both the OAs are allowed and the orders of punishment imposed are quashed. However, we would clarify that this decision may not preclude the disciplinary authority from reviving the proceedings and continuing with the same in accordace with law from the stage of supply of the inquiry report. In the facts and circumstances of the case, there will be no orders as to costs.

(I.P. Gupta) 14/11/91
Member (A)

(Ram Pal Singh)
Vice-Chairman (J)

Central Administrative Tribunal
Principal Bench, New Delhi

प्रमाणित सत्यप्रतिलिपि
दिनांक.....
CERTIFIED TRUE COPY
Dated.....
अनभाग अधिकारी (न्या०-I)
Section Officer (J-I)
केन्द्रीय प्रशासनिक न्यायालय
Central Administrative Tribunal
प्रधान न्यायपीठ, नई दिल्ली
Principal Bench, New Delhi