IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1133 of 1986
T.A. No. 199

DATE OF DECISION 19.2.92

H.S. Arora — Petitioner

Shri G.D. Gupta — Advocate for the Petitioner(s)

Versus

Union of India — Respondent

Mrs. Raj Kumari Chopra — 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-Chairmn (J).)

JUDGMENT

The applicant by this O.A. filed under Section 19 of the Administrative Tribunals Act of 1985 has prayed for quashing the impugned order dated 31st October, 1985 by which the penalty of dismissal from service has been imposed upon him.

2. The applicant was appointed as a Stenographer Grade 'C' in the office of the Chief Administrative Officer, Ministry of Defence, Government of India, New Delhi. He was sent on deputation to the High Commission of India, London, in November 1978 for a period of three years. On completion of the period of deputation, he was relieved of his duties in the High Commission on 3.12.1981. He prayed and was granted ex-India leave upto 31.7.82 on compassionate grounds, i.e., on the ground of the education of his children. While the leave was granted, it was made clear to the applicant that he should report back to India after the expiry of the leave. He did not return back to India, instead applied for extension of

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leave which was not granted. He wes repeatedly warned that his returning back to Infdia immediately was essential and his failure to report for duty in India would be viewed seriously, but the applicant did not comply with this order. Consequently, the respondents issued a charge-sheet against the applicant for his unauthorised absence on 4.7.83. Shri John Peter, CSO, and Shri A.M. Srivastava, C.S.O., were appointed Inquiry Officers, but as they could not coninue, Shri Anant Ram, CSO, was appointed as the Inquiring Authority on 21.1.1985. After this, the applicant filed an application dated 9.9.83 in which he prayed for his voluntary retirement in terms of Rule 48A of the CCS (Pension) Rules, 1972. The competent authority of respondents did not accept the request of the applicant for voluntary retirement on the ground that a disciplinary action was pending against him. This decision was conveyed to the applicant on 17.11.83. The applicant remained absent from the enquiry in spite of repeated notices by the Enquiry Officer. Hence, an ex-parte enquiry, according to Rule 14 of the CCS (CCA) Rules proceeded against the applicant. Copies of the daily order sheets were sent to the applicant at his London address. The applicant does not deny that he did receive copies of the daily order sheets in his application as well as at the Bar. On conclusion of the disciplinary proceedings, the Enquiry Officer submitted his report to the disciplinary authority who in turn imposed the penalty of dismissal from service against the applicant for his unauthorised absence from office and this order of the disicplinary authority is under challenge in this O.A.

3. The respondents on notice appeard and opposed the prayer contained in the O.A. They, inter alia, maintain that the decision with regard to the non-sanctioning of the leave beyond 31.7.82 was communicated in November 82 to the applicant at his address. In February, 1983, again, an opportunity was given to the applicant to report back by 28.2.83. As the applicant did not comply with these directions and remained wilfully absent from the office, the enquiry proceeded against him. They contended that the Enquiry Officer sent repeated notices to the applicant, but as he remained absent, the enquiry proceeded ex-parte according to sub-rule

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(20) of Rule 14 of the CCS (CCA) Rules. They further maintain that enquiry was concluded in accordance with the provisions of law. The respondents also raised the preliminary objection that the applicant has not filed any appeal, review or petition against the orders of the disciplinary authority. Hence, he did not avail the departmental remedy as provided under Section 20 of the Act.

4. The applicant filed M.P. No. 759/91 on 8.3.91 wherein he prayed for permission to raise additional grounds in the O.A. The notice of this M.P. was given to the respondents and they filed a counter reply to it. In this M.P., the applicant raised the additional point that a copy of the enquiry report was not sent to the applicant. The respondents in their reply have stated that it was not incumbent upon the Enquiry Officer or the disciplinary authority to supply a copy of the enquiry report before passisng of the final orders on the report of the Enquiry Officer. Several extraneous matters have also been raised in this reply.

5. We have perused the entire record and are satisfied that the departmental enquiry was conducted in accordance with the rules and there was no fault on the part of the Enquiry Oficer. Copies of the daily order sheets were despatched continuously by the Enquiry Officer to the applicant at his London address. Hence, the other grounds urged at the Bar do not deserve any serious thought. The only point made out by the applicant is that the non-supply of a copy of the enquiry report has resulted in prejudice to the aplicant and that the Enquiry Officer as well as the disciplinary authority have also acted against the principles of natural justice.

6. On perusal of the record it becomes apparent that copies of virtully all the documents during the course of the enquiry or the disciplinary proceedings were invariably sent to the applicant at his London address except the copy of the enquiry report. On perusal of the order passed by the disciplinary authority, it further becomes clear that copy of the enquiry report was not sent to the applicant when the Enquiry Officer submitted his recommendation and report to the disciplinary authority. R-4 dated 31.10.85 is that

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document. In the bottom of that document it is written that a copy of the order imposing the penalty be sent to the applicant at his London address along with a copy of the Enquiry Report. It thus becomes clear that when the penalty was imposed , before that the Enquiry Officer had not sent a copy of the enquiry report to the applicant. The law in this regard has been finally settled by the apex court of this country in the case of Union of India & Ors. vs. Mohd. Ramzan Khan (J.T. 1990 (4) S.C. 456):

> "(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 seires 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."

Again, a Full Bench of this Tribunal at Ahmedabad on 11.7.91 examined the case of Mohd. Ramzan Khan (supra) and observed and

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explained further in the following words:

> "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 legislative 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:
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> > "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 ground."
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> 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. vs. Mohd. Ramzan Khan (supra) would no longer be good law. But their Lorships 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 inquriy report can be raised as infringing the rules of natural justice. We are, therefore, of the view that the decision of the Supreme Court in the case of UOI & Ors. vs. Mohd. Ramzan Khan (supra),

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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 such cases where finality has not been reached and in all 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 concerned."

7. Thus, the law, by now, stands crystalised on the subject and we do not need to dwell upon the several cases cited at the Bar by the learned counsel for the applicant, Shri G.D. Gupta. We therefore, hold that non-supply of the copy of the enquiry report to the applicant has resulted in prejudice to the applicant and the entire enquiry stands vitiated from the stage it was necessary to supply a copy of the report to the applicant. It is the cardinal principle of natrual jsutice that no adverse orders can be passed by the disciplinary authority against a person without hearing him. When the disciplinary authority received the report of the Enquiry Officer, then it should have applied its mind as to whether a copy of this report has been sent to the applicant or not. It should have futher tried to verify whether the applicant intends to be heard before the penalty was imposed upon the applicant. We, therefore, allow this O.A. and quash the impugned order of punishment dated 30.10.1985. However, we make it clear and further clarify that this decision shall not preclude the disciplinary authority from reviving the proceedings and continuing with it in accordance with law indicated hereinabove from the stage of the supply of the enquiry report to the applicant. The applicnt shall be reinstated before the enquiry proceeds further.

8. Parties shall bear their own costs.

19/2/1992
(D.K. CHAKRAVORTY)
MEMBER (A)

19.2.92
(RAM PAL SINGH)
VICE-CHAIRMAN (J)