

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1676 of 1987

T.A. No.

199

DATE OF DECISION 31.9.92

Jai Nath

Petitioner

Shri K.L. Bhatia

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri P.P. Khurana

Advocate for the Respondent(s)

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

J U D G M E N T

The applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act of 1985 who was aggrieved by the penalty imposed upon him by the disciplinary authority and has prayed for the relief of quashing the impugned order dated 17.10.87 by which the disciplinary authority has imposed the penalty of reduction to such stages as to make him to start at the minimum of Rs. 1150/- in the pay scale for a period of five years with the stipulation that he will not earn any increment of pay during the period of reduction and that on the expiry of this period, the reduction will not have effect of postponing his future increments of pay.

2. The applicant was served with two charges and an Inquiry Officer was appointed. The inquiry was conducted by the Inquiry Officer who exonerated the applicant from both the charges and submitted his report to the disciplinary authority. The disciplinary

authority by its order dated 17.10.87 (Annex. A-1) disagreed with the findings of the Inquiry Officer and, after giving reasons, imposed the said penalty upon the applicant. It is this impugned order (Annex. A-1) which is under challenge.

3. The learned counsel for the applicant has raised two grounds:

- (i) a copy of the Inquiry Report was not supplied to the applicant before the Inquiry Officer submitted his report to the disciplinary authority;
- (ii) the disciplinary authority, before passing the impugned order dated 17.10.87 (Annex. A-1) without affording an opportunity to the applicant, has imposed the penalty.

The learned counsel for the applicant also contended that the entire disciplinary proceedings were against the principles of natural justice.

4. Shti P.P. Khurana, learned counsel for the respondents, contended that the disciplinary authority has given reasons of his disagreement in the impugned order as required by the ^{Rules} disciplinary authority in the case of disagreement from the report of the Inquiring Officer ^{as} provided in the CCS (CCA) Rules of 1965.

5. We have examined carefully the records and also considered the relevant contentions. The 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) S.C.). 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

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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 the 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."

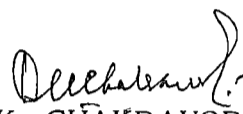
Thus, the non-supply of the inquiry report to the applicant has resulted in prejudice and injustice to the applicant because he was prevented from making any representation before the disciplinary authority when the disciplinary authority chose to disagree with the findings of the Inquiry Officer. It is a cardinal principle of natural justice that no adverse orders can be passed against a person without hearing and no evidence has been adduced by the respondents that the disciplinary authority had afforded any opportunity to the applicant before imposing the penalty upon him by differing with the findings of the Enquiry Officer. Failure on the part of the disciplinary authority to observe ^{and} the rules/ as a principle_s of natural justice, has resulted in injustice to the applicant, the order of the disciplinary authority, therefore, cannot be maintained.

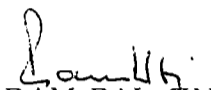
6. There has thus not only been breach of principles of natural justice and Article 311, but also of the Rules. On this subject, light has been thrown by a judgment of the apex court in the case of Narain Mishra vs. State of Orissa (SLR 1969 SC 657) wherein it has been held that if the punishing authority differs from the findings of the Inquiry 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

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justice and fair play.

7. We, therefore, allow this O.A. and quash the impuged order at Annex. A-1. In the lght of our findings, given hereinabove, we make it clear that this decision shall not preclude the disciplinary authority from reviving the departmental proceedings and continuing with it in accordance with law from the stage of supply of the Enquiry Report to the delinquent. In the facts and cricumstances of the case, the parties shall bear their own costs.

 3/1/1992
(D.K. CHAKRAVORTY)
MEMBER (A)

 3.1.92
(RAM PAL SINGH)
VICE-CHAIRMAN (J)