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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 241/87

17.08.1992

SHRI SURENDER KUMAR GUPTA

PETITIONER

VS.

UNION OF INDIA & ANR.

RESPONDENTS

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HON'BLE SHRI I.K. RASGOTRA, MEMBER (A)

HON'BLE SHRI J.P. SHARMA, MEMBER (J)

FOR THE PETITIONER

SHRI UMESH MISHRA

FOR THE RESPONDENTS

SHRI P.S. HAHENDRU

1. Whether Reporters of local papers may be allowed to see the Judgement?

2. To be referred to the Reporter or not?

JUDGEMENT (ORAL)

(DELIVERED BY HON'BLE SHRI I.K. RASGOTRA, MEMBER (A))

The petitioner, Shri Surender Kumar Gupta while working as Safaiwala, Carriage and Wagon, Railway Station, Delhi during 1983 was served with a chargesheet in SF 5 in June, 1986. The article of charge framed against the petitioner was that he failed to maintain absolute integrity and committed misconduct in as much as he demanded and accepted Rs 200/- as illegal gratification on 30.12.1982 at the house of Shri Ashok Kumar Sharma at Sahibabad from Shri Madan Singh Sharma for the interview call letter issued from the office of T.O.H. Hazrat Nizamuddin Railway Station. He thereby contravened Rule 3(1)(ii) of the Railway Services Conduct Rules. An enquiry was held against him and the charge was held to be proved by the Enquiry Officer. The

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Disciplinary Authority after considering the record of the enquiry passed an order dt.31.3.1986 removing the petitioner from service. The petitioner filed an appeal which was disposed of by the Appellate Authority vide order dt.3.7.1986 by a short and cryptic order by saying, "The appeal of Shri Surender Kumar Gupta has been considered and rejected as no new thing has been brought out of the employee in his appeal." The learned counsel for the petitioner urged that the case falls within the ambit of the decision of the Hon'ble Supreme Court in Union of India Vs. Mohammed Ramzan Khan, Judgement Today 1990(4) SC 456. It was pointed out to him that the application of the judgement in Mohammed Ramzan Khan (supra) has been circumscribed by a later decision of the Hon'ble Supreme Court in S.P. Vishwanathan(1) Vs. Union of India and Others, 1991 Supplementary 2 SCC 269 where their Lordships in the Hon'ble Supreme Court have held that the law laid down in Mohammed Ramzan Khan (supra) would not be effective in cases where orders have been passed prior to the date of rendering the judgement viz. November 29, 1990. The learned counsel referred to a recent decision of one of the Benches at the Principal Bench in Kishan Bhardwaj Vs. Union of India decided on 10.5.1992. He also referred to the judgement of the Allahabad Bench in Kuber Nath Vs. Regional Postal Services and Anr., ATR 1990 (?) CAT p-9. In both these judgements, it has been held that to meet the requirements of the principles of natural justice it is necessary to supply a copy of the enquiry report to the petitioner before an order

is passed to enable him to make a representation to the Disciplinary Authority. Since this has not been done, the order of removal from service and the Appellate Order confirming the said order be struck down as violative of principles of natural justice. The applicability of Mohammed Ramzan Khan's judgement and the recent judgements as brought out above of the Allahabad Bench and the Principal Bench of the Tribunal were resisted by the learned counsel for the respondents.

We have considered the matter carefully and we are of the view that it is not necessary for us to go into the polemics of the applicability of Mohammed Ramzan Khan's case (*supra*). In *Ram Chander Vs. Union of India & Ors.*, 1986 (2) SLJ 249, the Hon'ble Supreme Court observed as follows :-

"(1) In terms of Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, the Railway Board have carefully considered your appeal against the orders of the General Manager, Northern Railway, New Delhi imposing on you the penalty of removal from service and have observed as under :

- (a) By the evidence on record, the findings of the Disciplinary Authority are warranted; and
- (b) The penalty of removal from service imposed on you is merited.

(2) The Railway Board have, therefore, rejected the appeal preferred by you.

To say the least, this is just a mechanical reproduction of the phrasology in R.22(2) of the Railway Servants Rules without any attempt on the part of the Railway Board either to martial the evidence on record with a view to decide whether the findings arrived at by the Disciplinary Authority could be sustained or not. There is also no indication that the Railway Board applied its mind as to whether the

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act of misconduct with which the appellant was charged together with the attendant circumstances and the past record of the appellant were such that he should have been visited with the extreme penalty of removal from service for a single lapse in a span of 21 year of service. Dismissal or removal from service is a matter of grave concern to a civil servant who after such a long period of service, may not deserve such a harsh punishment. There being non compliance with the requirements R.22(2) of the Railway Servants Rules, the impugned order passed by the Railway Board is liable to be set aside."

As pointed out above, the order of the Appellate Authority dt.3.7.1986 indicates non application of mind as no point raised by the petitioner in appeal has been dealt with or referred to by the Appellate Authority. Appellate Authority has not even indicated if it agreed with the reasoning given by the Disciplinary Authority in its order on the basis of the record of the enquiry report and the finding of the Enquiry Officer.

In the circumstances, we are of the view that the case should be remanded to the respondents with the direction that the Appellate Authority shall reconsider the appeal of the petitioner and apply its mind and thereafter pass a reasoned order. This shall be done with utmost expedition, but preferably within a period of twelve weeks from the date of communication of this order. In case, the appeal of the petitioner is accepted and the punishment imposed on him is compounded/reduced, the Appellate Authority shall also pass orders with regard to the treatment of the period for the purpose of payment of pay and allowances from the date he was removed from service till the date the final order is passed by the authority. Ordered accordingly. No costs.

J.P. Sharma
(J.P. SHARMA)
MEMBER(J)

J.K. Rasgotra
(J.K. RASGOTRA)
MEMBER(A)