IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 382 of 1987
T.A. No. 199

DATE OF DECISION 9.1.92

S.K. Sharma — Petitioner

E.X. Joseph — 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. P.S. Habeeb Mohd., 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 has filed this application under Section 19 of the Administrative Tribunals Act of 1985 praying for reliefs:

(i) to quash the major penalty of reduction in rank imposed upon the applicant, imposed by the disciplinary authority;

(ii) to quash and set aside the order passed by the appellate authority on 21.10.86;

(iii) to restore to the applicant the position of Junior Accountant from the date of imposition of the penalty of reduction in rank and consequential benefits.

2. The applicant was working as Junior Accountant in the office of the Pay & Accounts Officer, Department of Mines, New Delhi, in the year 1981. A chargesheet was filed against the appli-

cant containing the allegation that he had preferred false medical bills suported by fraudulent cash memos for reimbursement of medical expenses. He has thus defrauded the Government of the money resulting in loss of public funds. An Enquiry Officer was appointed by the disciplinary authority to conduct a departmental enquiry against the applicant for the alleged misconduct. Shri H.L. Attri, Under Secretary, Department of Mines, was appointed as the Enquiry Officer. After the departmental enquiry was concluded, the Enquiry Officer in his lengthy report discussed the evidence and exonerated the applicant from all the charges. The Enquiry Officer sent his report to the disciplinary authority. The disciplinary authority did not agree with the report of the Enquiry Officer and came to the conclusion that the charges levelled against the applicant stood proved. Consequently, he imposed on the applicant the penalty of reduction to the lower post of Lower Division Clerk in the time scale of pay of Rs. 260-6-290-EB-6-326-8-366-EB-8-390-10-400 until he is found fit after a period of 4 years and 8 months from the date of that order. The applicant filed an appeal before the appellate authority which also rejected the appeal. Consequently, the applicant filed this O.A. on 6.2.87.

3. The return in this case was filed by the Deputy Controller of Accounts of the respondents in which the respondents have controverted the contents of the O.A. and maintain that after the orders passed by the appellate authority the applicant has not availed of the remedy of revision which was available to him. They have also denied the facts and supported the orders passed by the disciplinary authority and the appellate authority.

4. Neither the departmental representative nor any counsel for the respondents was available when the case was called today, though the case is being continuously listed from 2.1.92. On perusal of the order sheet, it also appears that the departmental representative used to appear for the respondents in all earlier dates. On 29.8.91, the departmental representative, A.K. Tripathy, contended before the Bench that Shri P.H. Ramchandani is their counsel, but

when today (8.1.92) Shri Ramachandani or his juniors were sent for, none was present to argue on behalf of the respondents. However, we have gone through the entire record minutely and examined the documents.

4. The learned counsel for the applicant, Shri E.X. Joseph, raised only two grounds before us:

(i) copy of the Enquiry Report was not supplied to the applicant when the Enquiry Officer submitted his report to the disciplinary authority;

(ii) the disciplinary authority when decided not to agree with the findings of the Enquiry Officer, the applicant was not afforded an opportunity of being heard nor any notice was given to him that the disciplinary authority intends to disagree with the Enquiry Report and proposes to impose punishment upon him.

On these contentions, we examined the record and found to our dismay that the salient principles of natural justice were not observed either by the Enquiry Officer or by the disciplinary authority. We also found that the appellate authority too ignored these points of law completely. The law, by now, is well settled by the apex court in the case of **Union of India & Ors. Vs. Mohd. Ramzan Khan (JT 1990 (4) S.C. 456).** For convenience the observations of their Lordships is being reproduced:

> "(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."

The case of Mohd. Ramzan Khan (supra) was also examined by a Full Bench of this Tribunal at Ahmedabad Bench on 11.7.91 where the Full Bench observed:

"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:

"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."

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), 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."

4. Thus, the law, by now, stands crystalised on the subject and we do not need to dwell upon other cases cited by the learned counsel for the applicant. 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 copy of the report to the applicant.

5. It is a cardinal principle of natural justice that no adverse orders can be passed by the disciplinary authority against a person without hearing him. When the disciplinary authority decided to disagree with the findings of the Enquiry Officer, then the disciplinary authority should have given a notice to the applicant and should have heard him. Without affording an opportunity of being heard, major penalty was imposed upon the applicant violating the principles of natural justice. Our view stands supported by the judgment of the apex court in the case of Narain Mishra vs. State of Orissa

(SLR 1969 SC 657) in which it was held that if the punishing authority differs from the findings of the Enquiry Officer and holds the delinquent guilty of charges of which he is acquitted by the Enquiry Officer, but gives no notice or opportunity to the delinquent about the intended punishment, then any penalty imposed is violative of principles of natural justice and fair play.

6. We, therefore, allow this O.A. and quash the punishment imposed upon the applicant by the disciplinary authority. We also quash the order of the appellate authority. However, we make it clear and further clarify that this decision shall not preclude the disciplinary authority from reviving the proceeding and continuing with it in accordance with law, indicated hereinabove, from the stage of the supply of the enquiry report to the applicant. The parties shall bear their own costs.

9/1/1992

(P.S. HABEEB MOHD.)
MEMBER (A)

9.1.92

(RAM PAL SINGH)
VICE-CHAIRMAN (J)