

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

N E W D E L H I

O.A. No. 453
T.A. No.

1987

DATE OF DECISION 1-10-91

Shri M.K. Saha Petitioner
Shri M.N. Krishnamani etc. Advocate for the Petitioner(s)
Versus
Union of India & Another Respondent
Shri P.H. Ramchandani Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman

The Hon'ble Mr. I.K. Rasgotra, 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 ?


Chairman

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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.**

O.A. No.453/1987.

Date of decision: 1-10-1991

Shri M.K. Saha

...

Applicant.

Vs.

Union of India & Another

...

Respondents.

CORAM

HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.

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

For the applicant

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Shri M.N.Krishnamani,
Shri R.K.gingh and
Shri K.S.Mahadevan,
Counsel.

For the respondents

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Shri P.H.Ramchandani,
Sr. Counsel.

(Judgment of the Bench delivered by Hon'ble
Mr. Justice Amitav Banerji, Chairman).

This Application under section 19 of the Administrative Tribunals Act, 1985 has been filed by the applicant Shri M.K.Saha. He is aggrieved by an order dated 1.4.1986 dismissing the applicant from service on the ground of remaining absent from duty without authorised leave.

The applicant was employee in the rank of Scientist/Engineer SF, Department of Space (DOS). In August 1981, the DOS deputed the applicant on foreign service abroad as an Indian representative at International Maritime Satellite Organisation (INMARSAT), London, initially for a period of two years. But there was a clause for extension of the applicant's deputation in case the INMARSAT required his services beyond two years. He made

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an application to the DOS for an extension as his services were required by INMARSAT for some more time. The matter was taken up by the Director General of INMARSAT with the DOS and requested the latter to grant extension. The D.O.S. refused extension to the applicant's deputation. In April, 1984, the DOS levelled a charge against him for unauthorised absence from duty. The applicant's case is that he requested the DOS to withdraw the charge so that he may return to India and resume duty. No response was received from the D.O.S. The applicant then tendered his resignation on 20.10.1984. Instead of dropping the charge or accepting the resignation of the applicant, the DOS proceeded with an enquiry and the applicant attended the same. The D.O.S. finally passed dismissal order against the applicant dated 1.4.1986. The applicant is aggrieved that there was nothing serious nor he was involved in any moral turpitude to terminate his services. The applicant expected that the respondents would accept his resignation instead of terminating his services. The applicant's case is that the act of the respondents is arbitrary, irrational and unreasonable and, therefore, violative of Articles 14 and 16 of the Constitution. The applicant is also aggrieved that the stigma of dismissal was attached to him by the above act of the respondents. further, the extreme penalty of dismissal from service for a minor lapse was wholly unjustified and disproportionate. The applicant has, therefore, prayed for setting aside

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the order of dismissal against the applicant vide order dated 1.4.1986 and pass such other order as may be deemed just and proper.

The respondents have taken up the stand that the Application is totally misconceived and not maintainable. Secondly, the Principal Bench has no jurisdiction to deal with this case as D.O.S. is located at Bangalore. Thirdly, the applicant had not exhausted his statutory remedies and, therefore, the O.A. is not maintainable. Lastly, the Application is barred by limitation - the O.A. has been filed after the expiry of one year from the date of the impugned order.

On the merits, it was stated that there was no arbitrariness in chargesheeting the applicant. In January, 1983 the applicant requested for extension of his deputation on foreign service but the same was not acceded to by the Department. He was informed well in advance and directed to report for duty vide letters dated 6.6.1983 and 5.10.1983. He did not rejoin duty. Disciplinary action was initiated in February, 1984 after giving enough opportunity to the applicant to rejoin duty as he was unauthorisedly absent. Charge sheet was issued vide orders dated 16.6.1984, the applicant indulged in unwarranted correspondence repeatedly requesting for extension, but the same was not accepted by the Department. Thereupon, the applicant tendered his resignation which was not accepted as disciplinary action was already in progress against him. The dismissal order dated 1.4.1986 was thus, issued after following

the procedure prescribed under the Department of Space Employees' (Classification, Control & Appeal) Rules, 1976 by the competent authority on the advice of the UPSC.

It was further stated that the applicant was permitted to proceed on deputation on foreign service with INMARSAT, UK for a period of two years commencing from August 17, 1981, which expired on 16.8.1983. The applicant requested the Department in January, 1983 for extension of his deputation with INMARSAT organisation by three years. This request was not agreed to by the D.O.S. in the exigencies of service as major ISRO Projects were in progress. The allegation that the respondents' action was arbitrary, irrational and unreasonable and violative of Articles 14 and 16 of the Constitution was denied. The request of the applicant for extension was refused due to exigencies of service and in public interest in the light of organisational needs of DOS/ISRO. It was also stated that the policy of the Government that in case of Government servants on foreign service, if the lending department was not willing to extend the period of foreign service, neither the foreign employer can allow the Government servant on foreign service to continue nor the employee himself can remain/ beyond the period of sanctioned tenure. The respondents had no other alternative but to proceed with the departmental action against the applicant. The respondents had after following due procedure taken a conscious decision with the approval of the competent authority to dismiss the applicant from service.

The dismissal order had been issued in the name of the President of India. Where disciplinary authority is the President, the CCA Rules provide for review which had not been resorted to by the applicant in this case.

We have heard learned counsel for the parties.

The preliminary objection taken by the respondents may be dealt first that the O.A. could not be filed before the Principal Bench and had to be filed before the Bangalore Bench of the tribunal as the O.O.S. had its secretariat and Headquarters at Bangalore, the impugned order of dismissal was also issued from Bangalore and hence the O.A. had to be filed there.

Learned counsel for the applicant urged that Rule 6 of the Central Administrative Tribunal (Procedure) Rules, 1987 (hereinafter referred to as 'the Rules') was on the relevant day when the O.A. had been filed by the applicant, viz.

1.4.1987. Rule 6 of the Rules reads as follows:

"6. Place of filing applications.— The application shall ordinarily be filed by the applicant with the Registrar of the Bench within whose jurisdiction:

- (i) the applicant is posted for the time being, or
- (ii) the cause of action has arisen, or
- (iii) the respondent or any of the respondents against whom relief is sought, ordinarily resides:

Provided that the application may be filed with the Registrar of the Principal Bench and, subject to Section 25 of the Act, such application may be transmitted to be heard and disposed of by the Bench which has jurisdiction over the matter."

It was urged that the above Rule was amended partially with effect from 24.10.1988 and a change has been introduced

by deleting the clause (iii) and also adding the words "wholly or in part" in clause (ii). In the proviso the following words have been added in the very first line:

"with the leave of the Chairman"

It is evident from the above that the applicant could have filed the O.A. before the Principal bench because he has arrayed Respondent No.1 whose address was given at Delhi. The relief was sought against respondent No.1 and, therefore, the O.A. could be filed before the Registrar of the Principal bench also. The amendment in Rule 6 of the Rules has been brought about in 1988 would not be effective in the present case as the same was filed before the amendment came into force.

The plea that the O.A. was filed one year from the date of the impugned order is not quite correct. The impugned order is of dated 1.4.1986 and the date of the filing of the O.A. is 1.4.1987. At the most, it could be said that there was a delay of one day as the one year ended on 31.3.1987. We are of the view that there is no delay in filing of the O.A. which has been filed on 1.4.1987. The Tribunal cannot take a pedantic view of the matter.

Another preliminary objection was taken that the applicant had not exhausted his statutory remedy of review. Since the order was in the name of the President, only a review lay. The applicant's reply is that review is never an alternative remedy. Since the impugned order was passed by the President of India and there being no higher authority above the President, there was no question

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of alternative remedy by way of filing a review/revision.

We do not find any good reason to decide this case on the preliminary objections raised by the respondents. We will now take up the question of merits.

The learned counsel for the applicant filed a written argument and there he had taken the stand that although Art.311 (2) was amended to delete the 2nd opportunity on aspect, still under the principles of Natural Justice enquiry report and UPSC report being 'materials' used by the Disciplinary Authority were not disclosed to the applicant before the punishment was imposed. Consequently, the impugned order dated 1.4.1986 is void ab initio and has to be set aside. In support of his contention, he relied on two decisions:

1. PREMNATH K.SHARMA Vs. U.O.I. & ORS (AISLJ 1988 (3) CAT 449) decided by a Full Bench of the Tribunal.
2. U.O.I. & ORS Vs. MOHD. RAMZAN KHAN (JT 1990(4) SC 456)

In the case of P.K. SHARMA (supra), a Full Bench of the Tribunal held that when a disciplinary authority uses the report of the inquiry officer, it has to provide copy of the same to the delinquent officer so that he may make representation before the punishment is awarded.

This view has been upheld by the Supreme Court in Mohd.

Ramzan Khan's case (supra). where their Lordships have held:

"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 of punishment, furnishing a copy of the report becomes necessary and to have the proceedings 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 proceedings 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 about any change in this position."

In view of the above declaration of law by the Supreme Court, non-supply of a copy of the inquiry officer's report has the effect of making the dismissal order non est. There is no dispute about the fact that a copy of the Inquiry Officer's report was never supplied to the applicant before the punishment order was issued.

Learned counsel for the respondents sought to point out that the above order in the case of MOHD. RAMZAN KHAN (supra) will not be applicable because the order is not

retrospective. It being prospective, it would not have any application whatsoever to a case where the punishment had been passed on a date earlier than the judgment of the Supreme Court. In support of this contention, he cited a decision of the Division Bench of the Tribunal at Madras in the case of A.PHILIP Vs. DIRECTOR GENERAL OF ORDNANCE FACTORIES & ANRs. (AISLJ 1990(2) CAT 631) where it has been held that the judgment rendered in the case of PREMNATH K.SHARMA (supra) will have the force of law from the date the judgment was rendered. The Division Bench observed:

"When a decision or ruling of a court is in the nature of interpretation of any provision of the Constitution, Act, or Rule, that ruling will necessarily have effect from the date of the legal provision interpreted. But, when a judicial pronouncement is in the nature of a fresh rule elaborated by a Court in the interest of justice, it can have effect only from the date of the judicial pronouncement."

Learned counsel for the respondents, therefore, urged that according to the decision of the Tribunal, the effect of the decision will be only prospective and not retrospective.

It may be mentioned here that the decision in the case of A.PHILIP (supra) was given before the decision of the Supreme Court in the case of MOHD. RAMZAN KHAN (supra). The law laid down by the Supreme Court would prevail and not by the Division Bench of the Tribunal.

Further, a Full Bench of the Tribunal sitting at Ahmedabad in the case of SHRI BALWANTSINGH KUMARSINGH GOHIL vs. U.O.I. & ANR. (OA No.209/1987) dated 11.7.1991 has taken the view that:

"The law laid down by the supreme Court in the case of U.O.I. & ORS. Vs. 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 concerned."

It has also been held in the above case of BALWANTSINGH KUMARSINGH GOHIL (supra):

"We are unable to accept the reasoning and the conclusion given by the Madras Bench in the case of A.PHILIP Vs. DIRECTOR GENERAL OF ORDNANCE FACTORIES & ANRs (supra) as the same is contrary to the dictum in U.O.I. & ORS. Vs. MOHD. RAMZAN KHAN".

We are, therefore, of the view that this O.A. can be disposed of on this short ground and it is not necessary to go into other questions raised in the O.A. We are, therefore, of the view that the order dated 1.4.1986 has to be set aside on the ground that before imposing the penalty of dismissal, the applicant was not given a copy of the inquiry report. This has vitiated that decision. It is liable to be quashed.

We, therefore, allow the O.A. to the extent that the order of dismissal dated 1.4.1986 is set aside. But we hold that it will be open to the respondents to continue the disciplinary proceedings after the applicant is given a reasonable period of time to file a representation before the Disciplinary Authority in respect of the Inquiry Officer's report. If this is done, the proceedings may continue in accordance with law. It will be open to the

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respondents whether to continue the proceedings or not.

If the respondents propose to continue disciplinary proceedings, they must indicate so within two months from the date of service of a copy of this order.

As far as payment of salary etc. for the period after 1.4.1986 is concerned, it will depend on the outcome of the disciplinary proceedings and on the applicant's satisfying the respondents that he was not gainfully employed during this period. There will be no order as to costs.

De Lough
(I.K.RASGOTRA) 1/10/91
MEMBER (A)

AB
1.10.91
(AMITAV BANERJI)
CHAIRMAN

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