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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 657 1987
T.A. No.

DATE OF DECISION 14--9--1990

Dev Raj Chugh, S/o Sh. Mohan Lal, Petitioner
A.C. Fitter under S.F.O. (Power Car),
Railway Station, New Delhi.

Sri G.D. Bhandari Advocate for the Petitioner(s)

Versus

Union of India & others. Respondent_s


Sri O.N. Moolri Advocate for the Respondent(s)

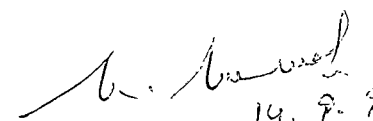
CORAM :

The Hon'ble Mr. Kaushal Kumar, Vice-Chairman.

The Hon'ble Mr. J. Narasimhamurthy, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes.
2. To be referred to the Reporter or not ? Yes.
3. Whether their Lordships wish to see the fair copy of the Judgement ? NO


(J.N.M.)
M (J)


(Kaushal Kumar)
Vice-Chairman.

14. 9. 90

(9)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
AT NEW DELHI.

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O.A.No.657 of 1987.

Date of Decision: September 14, 1990.

Between:

Dev Raj Chugh, S/o Sh. Mohan Lal,
A.C.Fitter under S.F.O. (Power Car),
Railway Station, New Delhi. .. Applicant.

Vs.

1. Union of India through the General Manager,
Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern
Railway.
3. The Divil. Electrical Engineer-I. .. Respondents.

Sri G.D.Bhandari, Counsel for the Applicant.

Sri O.N.Moolri, Counsel for the Respondents.

CORAM:

Hon'ble Shri Kaushal Kumar, Vice-Chairman.

Hon'ble Shri J.Narasimhamurty, Member(Judicial)

Judgment of the Bench delivered by
Hon'ble Shri J. Narasimhamurty, Member(J)

-:-

This Application is filed under Section 19 of the
Administrative Tribunals Act, 1985 seeking directions
to the Respondents to set aside and quash the Reversion
Order dated 24--6--1986 and also the follow up orders
issued on 25--7--1986 and 3--9--1986 and to reinstate him
on the post of A.C.C.I., Grade Rs.330--560 from the date
of removal from service viz., 10--3--1985 with all
consequential benefits.

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2. The averments in the application briefly stated are as follows:

The applicant was appointed as A.C.Khalasi in Northern Railway in 1959 and was promoted in the year, 1976 to the post of Air Conditioned Coach Incharge (hereinafter referred to as ACCI) in the Grade of Rs.330--480 and was posted at the Headquarters i.e., New Delhi.

3. The duties of A.C.C.I., are -- maintenance of A.C.C. Units of Air-conditioned Coaches on Rajdhani Express, Gomti Express and similar other Air-Conditioned Mail/Express Trains. Throughout his service, the applicant states that his Confidential Reports are good and his service record is clean and there is no stigma.

4. That on 17--7--1981 the applicant was deputed to accompany Gomti Express from New Delhi to Lucknow in A.C.C. Coach No.1283 and the applicant took over charge of the Units, Equipment, Tool Kit etc., and got absorbed in the working and checking of the Electrical equipment for the purpose of proper provision of coding temperature etc. The Coach attendant was guiding the entraining passengers. After the train left New Delhi, the T.T.Es., started checking the tickets of the passengers with the Reservation Chart and made entries in the relevant papers as per usual practice.

5. The applicant states that when the train was approaching Aligarh, one passenger, viz., Deepak Sawhney while searching for the Conductor entered the coach wherein the applicant was on duty as ACCI

and had a talk with him for the allotment of a Berth and the applicant directed him to the Conductor. At that particular time, he states, that he was very busy with the Air-conditioning equipment. After becoming free, the applicant found the said passenger sitting on the Attendant berth and ^{he} enquired of him about his sitting there and at that time the checking squad came to the scene and booked a case against the passenger for ticketless travelling with the applicant's connivance as the applicant was conversing with the passenger. The said passenger was made to pay the fare and fine. Shri Rajwat, Chief Ticket Inspector made a report against the applicant to Higher Railway Authorities that he was carrying a ticketless passenger in the coach.

6. That on the report, the applicant was served with a charge-sheet alleging that he was carrying a passenger without ticket in the linen room in a planned way with a view to defraud the Railways. The applicant requested for supply of the relevant documents but he was denied. Thereafter an enquiry was conducted after observing all formalities. After 3 years of the alleged incidence, the respondents again appointed another Enquiry Officer. The respondents appointed two Enquiry Officers; while the former conducted some proceedings and the latter was appointed without cancelling the appointment of the former.

7. The Enquiry Officer submitted his report to the Disciplinary Authority holding the applicant guilty of the alleged imputations. On the Report of the Enquiry Officer, the Disciplinary Authority issued Order of removal of the applicant from service vide Vlg/273-81/Elec/CHG dated 16--3--1985.

The applicant preferred an appeal to the Appellate Authority and the Appellate Authority set aside the removal from service orders and passed the impugned orders imposing the following punishments:

1. Reverted from the Post of A.C.C.I. Grade Rs. 330-560(RS) to A.C.Fitter Grade Rs.260-400(RS) for 5 years.
2. To start with the minimum grade in the scale of Rs.260-400(RS)
3. Period from the date of removal from service i.e., 18--3--1985 to the date of his reinstatement should be treated as suspension period.
4. The intervening period will not be treated as qualifying period for pensionary benefits.
5. He should not be booked to escort any A.C. Coach during the period of his reversion.

The applicant states that the impugned orders are void abinitio, arbitrary, discriminatory, bad in law and are liable to be set aside. Hence the Application.

8. The respondents have filed their counter contending as follows:

They denied the averments in the application and contended that each one working on the train had been allotted duties as per the prescribed roster. The said duty list is self-explanatory. That the duties of the ACCI and other commercial staff are not involved in this case and are not at all relevant for the purpose of this application.

9. The applicant was carrying one passenger by name Shri Deepak Sawhney without a ticket with him travelling with the petitioner sitting in the

Linen room of the Air-conditioned Coach No.1283. On questioning by the Checking staff, the applicant tried to avoid the checking of the passenger travelling with him on one or the other pretext. The said Linen room was in the custody of the ACCI., the applicant herein.

The applicant was made known correctly about the position of the case and the documents were supplied as demanded by him under the rules and he was advised to inspect the file with the Enquiry Officer.

10. The enquiry was delayed due to dilatory tactics of the applicant who did not produce his defence helper in time and took time for it repeatedly and raised one or the other objections. The Enquiry Officer appointed initially could not take over the Enquiry and therefore another Enquiry Officer was appointed. There was no malafide or intentional delay in completing the enquiry. The enquiry was completed within a minimum possible time. The earlier Enquiry Officer fell sick and later he was transferred to the Head Quarters' Office and therefore another Enquiry Officer was appointed.

11. The representation and appeal were considered by the Competent Authority. The allegations made in the application are totally false. The applicant was given opportunity to defend his case. The applicant was charge-sheeted for the acts of mis-conduct, and the charges are proved. There are no merits for allowing the application. The application is liable to be dismissed.

12. We have heard Sri G.D.Bhandari, learned counsel for the applicant and Sri O.N.Moolri, learned counsel for the respondents.

13. Sri Bhandari learned counsel for the applicant urges that the Competent Authority has not passed the Order of removal of the applicant from service, that list of witnesses was not given to the applicant along with the charge-sheet, that the list of witnesses was served on him subsequently, that the Enquiry Officer examined some other witnesses instead of listed witnesses, that the punishments imposed are multiple punishments. The learned counsel also contended that the applicant was not supplied with the Enquiry Report before imposing penalty against him, that itself is sufficient to throw out the case.

14. For the proposition that reasonable opportunity was not given to the applicant by non-supply of the Enquiry report, he relied upon the decision in Shri Premnath K. Sharma V. Union of India & others (T.A.No. 2 of 1986 dated 6-11-1987 of New Bombay Bench of the Central Administrative Tribunal reported in FULL BENCH JUDGMENTS(CAT) 245) wherein it was held as under:

"While we agree that the Disciplinary Authority need not furnish the reasons or grounds on which he proposes to disagree with the Enquiry Officer, we are clearly of the view that it would not merely be a violation of principles of natural justice but also denial of reasonable opportunity to the charged officer envisaged by Article 311(2) itself if the report itself is not supplied to him and he is not given an opportunity to make a representation against the report for the Disciplinary Authority is required to take that report into consideration in coming to the

conclusion on the charges. The distinction between giving a show cause notice in regard to the proposed punishment and giving a reasonable opportunity to the charged officer in the enquiry, by furnishing the report cannot be lost sight of. We are, therefore, unable to agree with the said view. The enquiry does not terminate until all the material is placed before the Disciplinary Authority after the charged officer is given an opportunity to challenge that material (which includes the enquiry report) and the Disciplinary Authority reserves the matter for recording his findings on the charges and imposing the penalty he chooses.

The denial of a copy of the enquiry report and an opportunity to make representation against it offends the principles of natural justice and violates the provisions of Article 311(2) itself."

15. Sri O.N.Moolri, learned counsel for the Respondents contended that Sri PREMNATH K.SHARMA V. UNION OF INDIA (cited supra) was stayed by the Supreme Court and it is not in force. The learned counsel for the applicant contended that a particular case was stayed but not the principle laid down in Premnath K.Sharma's case ~~was not stayed~~ and the matter was referred to a larger Bench for a decision. In support of his contention he relied upon a decision of the Supreme Court in UNION OF INDIA v. BASHYAN (A.T.R.1989(1)S.C.50) wherein the Supreme Court held as under:

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In the event of the failure to furnish the report of the Enquiry Officer, the delinquent is deprived of crucial and critical material which is taken into account by the real authority who holds him guilty namely, the Disciplinary Authority. He is the real authority because the Enquiry Officer does not more than act as a delegate and furnishes the relevant material including his own assessment regarding the guilt to assist the Disciplinary Authority was alone records the effective finding in the sense that the findings recorded by the Enquiry Officer standing by themselves are lacking in force and effectiveness. Non-supply of the report would therefore constitute violation of principles of Natural Justice and accordingly will be tantamount to denial of reasonable opportunity within the meaning of Article 311(2) of the Constitution. The question arising in this matter is not with regard to the giving of notice limited to the question of what penalty should be imposed. The question is whether it is the right of the delinquent to persuade the authority which makes up its mind as regards the guilt of the delinquent that such a finding is not warranted in the light of the report of the Enquiry Officer. The decision of this point will affect millions of employees in service today as also those who may enter government service hereafter for times to come. The matter thus needs careful consideration in depth, and if necessary at length. As this Bench is comprised of two Judges, we do not consider it proper on our part to pass any order in regard to the present petition though prima facie we are inclined to grant leave in view of the two recent decisions cited before us. In any view of the matter we do not think it proper on our part to pass any order notwithstanding the fact that it appears to us that this question was not directly in issue

and has neither been presented nor discussed in all its ramifications in the aforesaid two matters. The point therefore, deserves to be settled at this stage by a larger Bench".

16. In Dr. Ashok Kumar V. Union of India (1990(2)C.A.T.593) Principal Bench of the Central Administrative Tribunal held as follows:

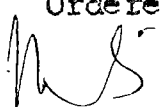
"The necessity for furnishing a copy of the report of the Enquiry Officer to the Government servant before the disciplinary authority passes an order imposing upon him one of the three penalties contemplated in clause (2) of Article 311 of the Constitution of India, as forming part of the reasonable opportunity of defence prescribed under the aforesaid clause was highlighted in the decision of a Bench of this Tribunal of which one of us was a Member (Sh.G.Sreedharan Nair) in the decision of the Madras Bench of this Tribunal D.S.Sekharan Kutty's case. It was held therein that the failure to do so will vitiate the proceeding as being violative of the principle of natural justice. Though a reconsideration of the said view was sought for before the Madras Bench in V.C.RAVINDRAN'S CASE in view of the Constitution (Forty Second Amendment) Act, it was held that the said Act does not in any way affect the position, and the view was reiterated. The aforesaid view has gained recognition in the decision of the Full Bench of this Tribunal in PREMNATH K.SHARMA'S CASE."


17. The principle that "denial of a copy of the Enquiry Report and an opportunity to make representation against it offends the principles of natural justice and violates the provisions of Article 311(2) & itself" laid down in PREMNATH K.SHARMA V. UNION OF INDIA :

is not stayed by the Supreme Court. The said principle was questioned in SLP (Civil) No. 2725 before the Supreme Court and the matter was referred by a Bench of the Supreme Court to a larger Bench. So long as there is no decision contrary to the principle laid down in *PREMNATH K. SHARMA V. UNION OF INDIA* (cited supra), the decision in *PREMNATH K. SHARMA* case is binding on us.

17. For the aforesaid reasons, we hold the enquiry is vitiated and the order imposing the penalty of reversion ordered on 24--6--1986 and the follow up orders issued on 25--7--1986 and 3--9--1986 must be quashed. This, however, will not preclude the respondents from supplying a copy of the enquiry report to the applicant and giving him an opportunity to make his representation and proceeding to complete the disciplinary proceedings from that stage. The application is allowed to the extent indicated above but in the circumstances we make no order as to costs. Nothing said herein would affect the decision of the Disciplinary Authority. At the same time, we hasten to add, that this order of the Tribunal is not a direction to necessarily continue the disciplinary proceedings. That is entirely left to the discretion of the Disciplinary Authority.

Ordered accordingly.


(J. NARASIMHAMURTHY)
Member (Judicial)
14--9--1990.


(KAUSHAL KUMAR)
Vice-Chairman.
14--9--1990.