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IN THE CENTRL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. O.A. No. 2025/90

Date of decision 12-3-92.

S. Tejinder Singh

Applicant

Shri O.P. Gupta,

Counsel for the applicant

vs.

Union of India

Respondents

Shri P.S. Mahendru,

Counsel for the respondents

CORAM

The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman(J).

The Hon'ble Mr. I.P. Gupta, Member (A).

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
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) in the open court.)

J U D G M E N T

Both Shri O.P. Gupta, learned counsel for the applicant, and Shri P.S. Mahendru, learned counsel for the respondents, are finally heard.

2. The applicant was holding the post of Electric Khalasi and then he was promoted to the post of Tracer and was posted in the Drawing Office Electric Loco Shed, Ghaziabad. He was removed from service by order dated 7.1.88 (Annexure A-1). This order was passed by the disciplinary authority. This order in paragraph 1 contains that "a copy of the report is annexed to this order". Annexure A-1 is the final order of removal of the applicant from service. The enquiry proceeded ex-parte against the applicant, but the applicant was not supplied with a copy of the enquiry report before it was considered by the disciplinary authority. The applicant

Lambert

contends in the O.A. that he was busy in looking after his daughter who was seriously ill, suffering from kidney trouble. The enquiry was proceeded against the applicant for having remained absent from duty.

urged

3. The only point/ by the learned counsel for the applicant, Shri O.P. Gupta, is that a copy of the enquiry report was not supplied to the applicant before the disciplinary ^{authority} imposed the penalty upon him. Perusal of Annexure A-1 supports the contention of the applicant wherein it is mentioned that a copy of the enquiry report is being sent along with the order of punishment. Law by now is settled in the case of Union of India Vs. Mohd. Ramzan Khan (JT 1990 (4) S.C. 456) wherein their Lordships have observed:

"(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

Lawfully


was the punishment."

Needless to say that on the face of this settled position of law, this O.A. has to be allowed. We, therefore, allow this O.A. and set aside the order of removal from service. 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 applicant shall be reinstated in service before a copy of the enquiry report is supplied to the applicant.

4. As the costs of proceedings (Rs. 100 + Rs. 300 = Rs. 400/-) have not been paid by the respondents to the applicant till this day, the applicant shall get the costs (Rs. 400/-) from the respondents within a period of two months from the date of receipt of a copy of this order.


(I.P. GUPTA)

MEMBER (A)


(RAM PAL SINGH)

VICE-CHAIRMAN (J)