

(1)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A. 2323/90

Date of decision 21.10.91

Sh.Bhani Sahai

.. Applicant.

Sh.V.P.Sharma

.. Counsel for the applicant.

Versus

Union of India & Others

.. Respondents.

Sh.N.S.Mehta

.. Sr. Standing counsel for the respondents.

CORAM:

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

The Hon'ble Sh.I.K.Rasgotra, Member (A).

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

( JUDGEMENT )

(Delivered by Hon'ble Justice Ram Pal Singh, Vice Chairman (J))

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985. The applicant is EDA-BOM, Dongre Ahir B.O. On 16.12.88 a chargesheet was given to him alongwith the statement of imputation, list of documents by which articles of charges were framed and list of witnesses by which the charges were to be sustained. An enquiry was to be conducted by an Enquiry Officer, who was appointed on 2.1.89. The Enquiry Officer submitted his report on 30.3.89.

2. The disciplinary authority passed an order dated 31.3.89 dismissing the applicant from service with immediate effect.

*Handwritten signature*

contd.2p...

A copy of the enquiry report was also given to the applicant along- with the order of dismissal. In the aforesaid order, the disciplinary authority had mentioned that he had gone through the enquiry report, depositions of P.W.s, concerned documents and also defence statements of the delinquent official and proof filed by him as also other documents under defence and he came to the conclusion that the verdict of the Enquiry Officer that all the three charges were proved, was correct and he agreed with it.

3. The applicant filed an appeal but in response thereof he was informed that the appeal submitted by him was time barred, hence, it was rejected.

4. The applicant has sought the relief that the order of penalty dated 31.3.89 by which the applicant was dismissed from service, the appellate order dated 4.9.90, the enquiry report dated 30.3.89 and the charge sheet dated 16.12.88 be declared null and void as they are illegal and against the principles of natural justice. The applicant has prayed for issue of direction to the respondents to reinstate the applicant in service from the date of dismissal and to pay the back wages.

5. The learned counsel for the applicant has argued that:-

- i) The applicant was not supplied with copies of document which were relied upon in framing the chargesheet in detail.
- ii) The enquiry report was not given to the applicant before passing of the impugned order of dismissal. The principle of natural justice was therefore, denied to him and he did not get a reasonable opportunity to represent on the enquiry report.

*21/6/91*

- iii) The order of dismissal is not a speaking order.
- iv) The appellate authority should supply the copy of the appellate order and it is not sufficient to say that the appeal of the applicant is time barred.
- v) 10 documents were listed with the impugned charge sheet whereas 16 documents were placed before the Enquiry officer.

6. The learned counsel for the respondents pointed out that:-

- i) All listed documents were examined by the applicant during the enquiry and even additional documents which were sought by the applicant, were examined by him and he was allowed to take extracts of relevant portions of the documents. In this connection the letter of the applicant dated 20.2.89 stating "I have inspected the following additional documents as demanded by me with the assistance of my defence counsel and I have also taken the extracts etc. from the additional documents wherever required by me" has been enclosed at annexure A.
- ii) The orders passed by the disciplinary authority are just and legal and the disciplinary authority after going through the enquiry report of the relevant documents agreed with the enquiry officer and passed the order of penalty.
- iii) The appeal of the applicant was rejected as it was time barred and Rule 11 of P & T E.D.A.'s Conduct and Service Rules, 1964 provides that no appeal shall be entertained unless it is submitted within a period of three months from the date on which the appellant receives the copy of the

Annex A(3)

Law 26

order appealed against. The applicant has not given any reason for condonation of delay in his appeal for consideration of the appellate authority.

- iv) The orders for supply of a copy of the enquiry report prior to passing of the final order of penalty was received by the disciplinary authority on 19.9.89 whereas the impugned order was passed on 31.3.89 itself.

7. Notwithstanding what has been stated above a major deficiency in the proceedings namely, non-supply of enquiry report to the applicant before passing the final orders of penalty remains. The law on the subject is well settled. In Union of India Vs. Mohammad Ramzan Khan JT 1990 (4) S.C. 456 their lordships held:-

"We make it clear that wherever there has been an Inquiry Officer and he has furnished a report of 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"

8. In a full Bench judgement given on 11.7.91 the Central Administrative Tribunal, Ahmedabad observed that the rule laid down by the Supreme Court is binding on all cases pending before the Court or to be filed in future. The following excerpts from the judgement are reproduced:-

"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 judgement of the Supreme Court is not a piece of legislation. The question whether it is a prospective legislation or retrospective would depend on the language used in the judgement. 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 judgement in the case of Union of India & Ors. Vs Mohd. Ramzan Khan (supra) which is in the following words:

contd.5p..

Ramzan Khan

"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 judgements 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 judgements of two-Judge Benches of the Supreme Court contrary to the decision in the case of U.O.I. & Ors. V. Mohd. Ramzan Khan (supra) would no longer be good law. But their Lordships 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 inquiry 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. v. 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 & Anrs. (supra) as the same is contrary to the dictum in 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 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".

9. In the conspectus of the above view of the matter, we direct that the order of penalty dated 31.3.89 and the appellate order dated 4.9.90 be quashed. The disciplinary authority have however, the liberty to proceed with the enquiry from the stage of furnishing a copy of the enquiry report alongwith other documents

*Lawyer*

5)

: 6 :

relied upon but not yet supplied to the applicant with an opportunity to him to represent including personal hearing and thereafter pass appropriate orders, according to law .

10. With the above directions and orders, the application is disposed of. There is no order as to costs.

*L. K. Rasgotra*  
(L.K. RASGOTRA)  
MEMBER (A)

*Ram Pal Singh*  
(RAM PAL SINGH)  
VICE-CHAIRMAN (J)