

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2501/1990 **199**
T.A. No. 275

DATE OF DECISION 23.1.1991

<u>Shri Manoj Chand</u>	<input checked="" type="checkbox"/> Petitioner Applicant
<u>Shri D.R. Gupta</u>	<input type="checkbox"/> Advocate for the Petitioner(s) Applicant
Versus	
<u>Union of India & Ors.</u>	Respondents
<u>Shri N.S. Mehta</u>	<input type="checkbox"/> Advocate for the Respondent(s)

CORAM

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

The Hon'ble Mr. D.K. Chakravorty, 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 ?

JUDGEMENT

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
 MR. JUSTICE RAM PAL SINGH, VICE CHAIRMAN)

Arguments heard. Judgement dictated in open
 Court.

2. The applicant, in this OA, filed under Section 19 of the Administrative Tribunals Act, 1985, challenges the penalty imposed against him of compulsory retirement by the disciplinary authority. The applicant preferred an appeal before the appellate authority and his appeal was dismissed. His revision petition was also rejected. Hence he has filed this OA praying therein for a direction to quash the order of his compulsory retirement dated 19.12.1986 (Annexure A-I).

Lambh

3. The first contention of Shri D.R.Gupta is that after the completion of the enquiry, a copy of the enquiry report was not supplied to him when the enquiry officer submitted his report and recommendations to the disciplinary authority. The second contention is that though he raised this ground in the memorandum of his appeal before the appellate authority, the appellate authority has not applied its mind to this contention.

4. Supply of a copy of the enquiry report is not an empty formality. The law has now been settled by the apex court in the case of **Union of India & Ors. Vs. Mohd.Ramzan Khan (JT 1990 (4) S.C 456).** Their Lordships have laid the law in the following words:-

"(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.

Locality

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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."

5. Thus the law requires that a copy of the enquiry report should be supplied to the applicant to enable him to make effective defence and representation to the disciplinary authority before a penalty is imposed upon him. The enquiry officer, by not supplying a copy of the enquiry report, has infringed the right of the applicant and on this sole ground the entire enquiry is vitiated. We, therefore, allow this OA and set aside the punishment of compulsory retirement and quash the order dated 19.12.86(Annexure A-1). We also quash the order dated 27.4.1987 passed by the appellate authority and the order dated 21.6.1989 passed by the President on his review petition. Though other grounds have also been urged but they are not dealt with as the applicant can re-agitate these in the proper forum. We, however, make it clear that the disciplinary authority, would not be precluded from reviewing the departmental proceedings, in accordance with law from the stage of the supply

Demolition

of a copy of the enquiry report. The applicant shall be reinstated in service by the respondents within a period of three months from the date of receipt of a copy of this judgement. In the facts and circumstances of the case, there shall be no order as to costs.

D.K.Chakravorty
(D.K.CHAKRAVORTY)

MEMBER(A)

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