

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
N E W D E L H I

O.A. No. 2596 of
 T.A. No.

199 0

DATE OF DECISION 30.8.91

Agam Prakash	Petitioner
Shri P.K. Kamal	Advocate for the Petitioner(s)
Versus	
Union of India & Ors.	Respondent
Shri Romesh Gautam	Advocate for the Respondent(s)

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

The Hon'ble Mr. P.C. Jain, 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 ?

(Judgment of the Bench delivered by Hon'ble Shri Justice
 Ram Pal Singh, Vice-Chairman (J).)

J U D G M E N T

By this O.A., filed under Section 19 of the Administrative Tribunals Act, 1985 (hereinafter referred as 'Act'), the applicant prays for reliefs:

- (i) The inquiry report be quashed and set aside.
- (ii) The punishment order passed by the disciplinary authority, the appellate order and the revision order be quashed and set aside.

2. The applicant was working as D.P.I., Moradabad Division, when he was suspended for contemplated disciplinary proceedings. On 15.4.88, he was served with a memorandum of chargesheet which contained the following charges:

- (i) The applicant had signed and issued a letter dated 1.8.84

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to a Railway advocate seeking his legal opinion with a view to cause undue benefit to a litigant employee on transfer.

(ii) The said letter was issued without the approval of the competent authority.

(iii) The applicant deliberately destroyed the original transfer order of the litigant employee.

(iv) The applicant failed to take remedial action on the complaints of the Railway advocate.

(v) The applicant deliberately did not keep the letter dated 1.8.84 on the file.

(vi) The applicant did not pursue the follow-up action on the letter dated 1.8.84 and claimed T.A. for several days without performing duties.

The chargesheet is at Annexure A-5.

3. The applicant submitted his defence in which he denied the alleged charges. The report (Annexure A-10) was submitted to the disciplinary authority with the recommendation for the imposition of major penalty upon the applicant. The disciplinary authority imposed a major penalty of reduction to the lower grade with immediate cumulative effect for three years at the stage of pay of Rs. 1700.00 p.m. in the grade of Rs. 1400-2300 vide Annexure A-3 dated 17.11.88. Thereupon, the applicant submitted an appeal to the appellate authority on 4.1.89 (Annexure A-12). On 16.5.89 (Annexure A-2), the said appeal was rejected by the appellate authority. On receipt of the appellate order, the applicant submitted a revision petition on 28.6.89 (Annexure A-14). The revision petition was rejected by the Chief Personnel Officer, Northern Railways, New Delhi, which was conveyed to the applicant on 1.11.90 (Annex. A-1).

4. The applicant in his O.A. contended that he was prejudiced by the inquiring authority; the memorandum of charges are illegal because of being vague; the inquiry report is illegal and void and in gross violation of the principles of natural justice and the procedural rules; the punishment imposed is void because a copy of the inquiry report was not supplied to him before the imposition of

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the major penalty; the appellate and revision orders are also void and illegal. The applicant, inter alia, has also given a ground in his O.A. that the Inquiry Officer was associated with the preliminary inquiry and the applicant raised objections on 8.9.88 that the Inquiry Officer was biased and that if the inquiry is conducted by him, it shall not be impartial. According to the applicant, this petition was rejected on the ground that merely the appearance of an individual in a particular case does not lead to his getting biased about the individual. Another grouse raised by the applicant in the O.A. is that after the inquiry was concluded, the applicant was cross-examined and the Inquiry Officer examined another witness Shri R.K. Tewari on 21.9.88, thus violating the principles of natural justice when Shri R.K. Tewari was neither a listed witness nor was he examined during the inquiry.

5. The respondents on notice appeared and filed their return. According to the respondents, the O.A. is devoid of any merit and that the inquiry was conducted in accordance with the provisions contained in the Railway Servants (Discipline & Appeal) Rules, 1968. They, inter alia, also contended that the applicant did not object to the appointment of the Inquiry Officer but raised objection as late as 8.9.88 but remained participating with the inquiry, thus waving away the objection. It is admitted by them that the Inquiry Officer had appeared in this particular case at the preliminary stage, but on this ground it was not considered necessary to change the Inquiry Officer after the objection was raised by the applicant. In their return, the respondents further supported the action of the Inquiry Officer in summoning Shri R.K. Tewari, Ex. L.A., for the purpose of clarifying the position. They further maintain that the applicant was given a copy of the inquiry report with N.I.P. and he had recorded on the office copy of the NIP while receiving the copy of the inquiry report that it was not legible and a typed copy may be supplied to him. They further contend that it was supplied to him on 28.12.88 under the clear acknowledgement of the applicant as is evidenced from Annexure R-3.

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6. On perusal of Annexure R-3, it appears that this letter was issued from the office of the D.R.M., Northern Railways, on 28.12.88. This letter was in respect to the applications of the applicant dated 5.12.88 and 12.12.88 and was addressed to the applicant himself. Annexure R-3 contains the receipt of this letter which was sent to him along with a complete and neat copy of the inquiry report. On 28.12.88, the applicant under his own signatures noted "Prapt Kiya". This receipt negates the contention of the applicant that he was not supplied with a copy of the inquiry report. Furthermore, perusal of the copy of the letter sent by the applicant to the Senior Divisional Personnel Officer, Northern Railway, Mora-dabad, on 12.12.88 indicates that he had asked for a copy of the inquiry report for filing the appeal within the period of limitation and in response to this letter of the applicant dated 12.12.88, a copy of the inquiry report was supplied to him on 28.12.88 which was duly received by him under his own hand on the same date. Thus, it cannot be said that the applicant was not served with a copy of the inquiry report. Rule 12 of the Railway Servants (Discipline & Appeal) Rules, 1968 provide for the supply of the inquiry report to the delinquent and this provision is mandatory because of the use of the word "shall". Furthermore, in the case of **Union of India & Ors. vs. Mohd. Ramzan Khan (JT 1990 (4) S.C. 456)**, the apex court has considered all the aspects of law, including the effect of the 42nd amendment of Article 311 (2) of the Constitution of India. The apex court 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 of punishment, furnishing a copy of the report becomes necessary and to have the proceeding completed by using some material behind the back of the delinquent

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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 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 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 revising 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."

7. As this is a salutary principle of natural justice, it is required to be complied with by the disciplinary authority. Its contravention will make the entire disciplinary proceeding null and void.

8. The respondents in their return have admitted that after the conclusion of the inquiry, the Inquiry Officer not only cross-examined the delinquent railway servant, but also examined the statement of one Shri R.K. Tewari, Ex. L.A. There was no prohibition for the Inquiry Officer in examining a witness in the interest of justice, but if he chose to do so, he should have after examining Shri R.K. Tewari, given an opportunity to the delinquent to cross-examine Shri R.K. Tewari with regard to the facts stated by him.

From the perusal of the material on record it is not evident whether an opportunity was afforded to the applicant or not. However, even

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after the examination of Shri R.K. Tewari, the Inquiry Officer should have given an opportunity to the delinquent to produce his defence and also to submit his defence to the statement of the said witness. As it is admitted by the respondents in their return, we would conclude that the Inquiry Officer has flagrantly violated the principle of natural justice.

9. The last, but not the least, from the return filed by the respondents and also the averments of the applicant in the O.A., it becomes clear that the Inquiry officer was associated with the preliminary inquiry of this case. In such a situation, the disciplinary authority should have appointed someone as the Inquiry Officer who was independent and not biased. It is natural for the applicant to adduce that the Inquiry Officer is biased against him as he participated in the preliminary inquiry of the case. The Inquiry Officer, in a departmental inquiry, must not have any personal interest in the case and he must be impartial and have an open mind. The Inquiry Officer must be a person who is impartial, independent and with no personal interest so that prejudice may not be caused to the delinquent. An American Jurist has observed: "Prejudice is the spider of man; it is the womb of injustice." The Inquiry Officer is required to act with the detachment of a Judge since he is professing to exercise that dignified position.

10. We need not, on the face of the above findings, any more dwell upon the other contentions of the applicant. We, therefore, allow this O.A. to the extent:

The O.A. is allowed and the punishment imposed, the appellate order and the revision orders are quashed.

However, we make it clear that this will not preclude the disciplinary authority from reviving the proceeding of the departmental inquiry

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by appointing a new Inquiry Officer who shall conduct a de-novo inquiry in accordance with the provisions of law. There shall be no order as to costs.

(P.C. JAIN) 30/8/91

MEMBER (A)

(RAM PAL SINGH) 30.8.91

VICE-CHAIRMAN (J)