

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.711/90

Date of decision: 20.4.92

Palla Singh

.. Applicant.

Versus

Union of India & ors. .. Respondents.

Sh.B.S.Mainee .. Counsel for the applicant.

Sh.O.P.Kshatriya .. Counsel for the respondents.

CORAM:

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

J U D G E M E N T(oral)

(Delivered by Hon'ble Sh.Justice Ram Pal Singh, V.C.(J)).

The applicant was working as Khallasi in the Delhi Division of Northern Railway. While working so the applicant was served with a chargesheet on 27.1.88 for major penalty. The misconduct alleged was careless working and not ensuring the freshly unloaded articles with adequate safety measures. The enquiry was concluded and the enquiry officer forwarded the enquiry report to the disciplinary authority. The disciplinary authority imposed the penalty of removal from service and conveyed the order alongwith the copy of the enquiry report.

2. Sh.B.S.Mainee, learned counsel for the applicant has raised only one point at the bar, that the applicant was not supplied with a copy of the enquiry report and thus he was deprived of his right of putting up ~~of~~ defence before the disciplinary authority before the disciplinary authority imposed punishment upon him, thus the principles of natural justice were violated. Sh.O.P.Kshatriya, learned counsel for the respondents has seriously contested the contentions of Sh.B.S.Mainee and maintained that the requirement of natural justice stands complied with when a copy

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of the enquiry report has been supplied to the applicant by the disciplinary authority alongwith punishment orders. Law on this point has been finally settled by the apex court in the case of Union of India Versus Mohammad Ramzan Khan (JT 1990(4) S.C. 456) where it has been 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 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 alongwith 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

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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".

3. Sh.O.P.Kshatriya, counsel for the respondents contended that another judgement of the Apex Court delivered in S.P.Vishwanathan's case (1991 Supl.(2) S.C.C.269) holds the contrary view. The view is not contrary. This Tribunal in S.P.Vishwanathan's case (supra) ~~that this court~~ has held that if enquiry report is not supplied to the delinquent employee before passing the order of punishment, the order would be rendered illegal, but the decision of this court is given a prospective effect it will not effect the orders passed prior to the date of rendering of the judgement. This view does not appear to be contrary to Mohammed Ramzan Khan (supra). In the Full Bench of our Tribunal in the case of Balwant Singh (1991(2) A.T.J. 278) has taken the same view as in Mohammed Ramzan Khan's case. Without ~~relying~~ ^{dwelling} upon much on the subject, we are of the view that the principles of natural justice have ~~not~~ been violated by the respondents. Consequently, we set aside the impugned order of punishment. But we make it clear that this shall not preclude the disciplinary authority from proceeding the enquiry further from the stage of supply of enquiry report and conclude the enquiry according to law and rules. The respondents shall reinstate the applicant and proceed with the enquiry. There is no order as to costs.


(A.B.GORTHI)

MEMBER(A)


(RAM PAL SINGH)

VICE CHAIRMAN(J)