

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A.No.712 of 1990.

Date of decision: 31<sup>st</sup> JAN. 92

Shri S.C.Verma

...Applicant

v/s

Union of India & Others

...Respondents

CORAM:

THE HON'BLE MR. T.S.OBEROI, MEMBER (J)  
THE HON'BLE MR. P.C.JAIN, MEMBER (A).

Shri B.S.Mainee

...Counsel for the applicant

Shri O.N.Moolri

...Counsel for the respondents

JUDGEMENT

(Delivered by Hon'ble Mr. T.S.  
Oberoi, Member(J) )

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In this application, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant who was working as a Head Clerk in the office of Area Manager, Northern Railway, Kanpur, has challenged his dismissal from service vide Order dated 13-4-89 (annexure A-I) to the O.A., and also the order passed by the appellate authority, whereby the punishment of dismissal was reduced to that of compulsory retirement. The main charge against the applicant was that on 28.2.88, while working as Head Clerk in the office of the Area Manager, Northern Railway, Kanpur, he allegedly demanded and accepted Rs.200/- from one Shri Satish Chander, a Booking Clerk, for allegedly showing some favour to him. Though the applicant was proceeded in the disciplinary proceedings, for four charges, all the charges revolved round the said main charge. The Inquiry Officer held that charges no.1,3 and 4 were proved against the applicant, while no.2 was not proved. The disciplinary authority accepted the report of

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the Inquiry Officer and imposed a penalty of dismissal from service, with immediate effect. However, on appeal, this was reduced to that of compulsory retirement.

2. In the counter filed on behalf of the respondents, the applicant's case was opposed.

3. The rejoinder was also filed on behalf of the applicant, in which the contentions put forth in the OA, were reiterated.

4. We heard learned counsel for both the parties.

5. Though several grounds had been taken up in the OA, challenging the impugned orders, during arguments, the main ground urged was that a copy of the inquiry report was not furnished to the applicant, before the impugned order, imposing the punishment of dismissal from service, was passed in the case, thereby denying to him the principles of natural justice. This is also evident from perusal of the impugned order (annexure A-I), passed by the disciplinary authority, as, it also shows that a copy of the report of the Inquiry Officer with his findings etc. was sent to the applicant, along with the same.

This has also been admitted by the respondents, in their counter, relevant para 4.17, wherein they have stated that a copy of the report of the Inquiry Officer, with his findings etc., was supplied to the applicant along with the order of punishment, in accordance with the procedure and law. But, in <sup>1/a</sup> recent judgement passed by the Hon'ble Supreme Court in UNION OF INDIA & OTHERS v. MOHD. RAMZAN KHAN, decided on 20-09-1990, and reported in JUDGEMENTS TODAY 1990(4) SC p.456, the Hon'ble Supreme Court observed as follows :

"15. Deletion of the second opportunity from the

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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 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 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 proceedings 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 about any change in this position."

"17. 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 judgments 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 to be laying down good law, but this shall have prospective application and no punishment imposed shall be open to challenge on this ground."

"18. 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."

6. Further in a Full Bench judgement dated 11-7-90 of this Tribunal, BA-LWANTSINGH KUMARSINGH GOHIL V. U.O.I.,

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reported in ATJ 1991(2) p.278, it has been held that above findings shall be applicable in all cases where finality has not been reached.

7. In view of the above position, we do not think it necessary to dwell upon the other points urged in the Q.A., and quash the order of disciplinary authority as well as that of the appellate authority, referred to above. However, we make it clear that this will not preclude the disciplinary authority from proceeding from the stage of supplying a copy of the report of the Inquiry Officer, onwards, in accordance with the provisions of law. The result of the disciplinary proceedings, if held, shall govern the period in between the date the applicant was sent on compulsory retirement and the date of his being taken back in service, in accordance with the provisions contained in FR 54. In the circumstances, we make no order as costs.

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(C.L.)  
(P.C. JAIN)  
MEMBER (A)

(T.S. OBEROI)  
MEMBER (J)

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