

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

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Regn. No. OA 201/92

Date of decision 18.5.1992

Kishan Bhardwaj

Applicant

Shri Sant Lal

Counsel for the applicant

vs.

Union of India & Ors.

Respondents

Shri M.L. VERMA

Counsel for the respondents

CORAM

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

The Hon'ble Mr. I.P. Gupta, Member (A).

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not? *Yes,*

3. Whether their Lordships wish to see the fair copy of the judgment?

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).)

*I.P. Gupta*  
(I.P. GUPTA)

MEMBER (A)

*Ram Pal Singh*  
(RAM PAL SINGH)

VICE-CHAIRMAN (J)

Fit for Reporting.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
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(7)

O.A.201/92

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Sh.Kishan Bhardwaj

.. Applicant.

Versus

Union of India & ors.

.. Respondents.

Sh.Sant Lal

.. Counsel for the applicant.

Sh.M.L.Verma

.. Counsel for the respondents.

CORAM:

The Hon'ble Sh.Justice Ram Pal Singh, Vice Chairman(J)  
The Hon'ble Sh.I.P.Gupta, Member(A).

(Delivered by Hon'ble <sup>J U D G E M E N T (oral)</sup> Sh.Justice Ram Pal Singh, V.C.(J) ).

The applicant was working as Postman in Miranpur Post Office when disciplinary proceedings were initiated against him on 4.4.88 with the allegations that he has violated Rule 424 of the P & T Mannual and Rule, 3(1) of the C.C.S.(Conduct) Rules, 1964. Sh.P.C.Gupta, Sub-Divisional Inspector (Postal), Muzaffer Nagar was appointed as enquiry officer who concluded the enquiry and submitted his report on 14.9.88 holding that the charges against the applicant were proved. He submitted this report to the disciplinary authority who agreed with the findings of the enquiry officer and proceeded to impose penalty upon the applicant vide Annexure A-1, dated 20.9.88. By this impugned order the applicant was dismissed from service. The disciplinary authority also directed in the Impugned order that a copy of the final order imposing penalty be forwarded to the delinquent. The applicant filed an appeal before the appellate authority. The appellate authority allowed the appeal partly and modified the impugned order to the extent that the applicant shall be removed from service. Against this order the applicant preferred revision petition to the revisional authority who rejected the revision petition. Thereupon aggrieved by annexure A-1, the revisional order, the applicant by this O.A.,

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challenged these orders and praying inter-alia for quashing them.

2. Sh.Sant Lal, learned counsel for the applicant has raised only one ground i.e. a copy of the enquiry report, Annexure 2, was not supplied to him when the enquiry officer submitted his report to the disciplinary authority. From this Sh.Sant Lal further contended that valuable constitutional right and principles of natural justice have been violated by the enquiry officer because in absence of the copy of the enquiry report the applicant could not put up his defence before the disciplinary authority. He has also raised several grounds in the O.A. but for the present he reserves his right to challenge them at a later stage. He has asserted this fact in para 5.2. The respondents in their counter have accepted this factual fact and contended in reply that according to rules it was not necessary for the enquiry officer to supply a copy of the enquiry report to the delinquent. Thus they accept the fact that the copy of the enquiry report was not supplied to the applicant before the disciplinary authority imposed penalty upon him. The law on this point has been settled by the apex court in the case of **Mohammed Ramzan Khan (A.I.R. 1991 S.C. 471)** in which the scope of principles of natural justice on the face of the 42nd amendment to the Constitution has been discussed. In para 18 their lordships accepted :-

"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 is also 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 thereof"

While dealing with the matter in para 17 their lordships have also observed:

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"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".

3. In a subsequent judgement in the case of S.P.Vishwanathan(I) by another Bench of the Supreme Court (1991 Suppl.2, S.C.C. 269) their lordships observed that the principles laid down in Mohammed Ramzan Khan (supra) are prospective and hence, the judgement shall be effective only from November 29, 1990. Unfortunately before that Bench the judgement of the Supreme Court was not brought to the notice of the Apex Court in the case of **State of Maharashtra Versus Bhaishankar Avalram Joshi and another (A.I.R. 1969 S.C. 1302)**, a Bench comprising of three Judges held:-

"The failure on the part of the competent authority to provide the plaintiff with a copy of the report of the Enquiry Officer amounts to denial of reasonable opportunity contemplated by Article 311(2) of the Constitution".

They further proceed:-


"It is true that the question whether reasonable opportunity has or has not been afforded to the Government servant, must depend on the facts of each case, but it would be in very rare cases in which it could be said that the Government is not prejudiced by the non-supply of the report of the Enquiry Officer".

4. The ratio of this case is crystal clear and we need not dilate upon it. Even if we take that Mohammed Ramzan Khan (supra) is effective prospectively then the previous judgement of State of Maharashtra Bhaishankar Avalram Joshi and another is also prospective, when the judgement was delivered in the year 1969. Thus the principles of natural justice have been operative since 1969 if not earlier. In the conspectus of the above discussion

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we are of the view that non supply of the enquiry report to the applicant by the enquiry officer has resulted in contravention of the principles of natural justice and has also resulted in prejudice to the applicant. Prejudice is the spider of mind, it is the womb of injustice. We, therefore, quash the order of disciplinary authority (Annexure A-1) and also the orders of the appellate authority (Annexure A-3) and also the revisional order (Annexure A-4). However, we make it clear that the respondents shall not be precluded from taking up the enquiry from the stage of the supply of the enquiry report to the applicant. The applicant thereafter can make representation or put up his defence to the disciplinary authority. Before the case proceeds the applicant shall be placed to the position at which he was before the disciplinary authority passed the impugned orders.

5. The O.A. is accordingly disposed of with no order as to costs.

  
(I.P.GUPTA)  
MEMBER(A)

  
(RAM PAL SINGH)  
VICE CHAIRMAN(J)