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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Original Application No. 762 of 1987

Bhagwati Prasad Tripathi

Applicant.

versus

Union of India & others

Respondents.

Hon. Mr. D.K. Agrawal, JUDL. MEMBER.

Hon. Mr. K. Obayya, ADM. MEMBER.

(Hon. Mr. D.K. Agrawal, J.M.)

Aggrieved by punishment order dated 11.3.85 passed by disciplinary authority removing him from service the applicant Shri B.P. Tripathi posted as Extra Departmental Branch Post Master at Randauli, District Basti, has filed this application under section 19 of the Administrative Tribunals Act, 1985 for setting aside the removal order confirmed in appeal on 28.2.1987.

2. The charge against the applicant was to the effect that while disbursing money to Hanuman Prasad and Sher Bahadur received through post office Randauli, the recipients were not paid the full amount of the money order; that the applicant paid Rs 990/- to Hanuman Prasad instead of Rs 1000/- and Rs 95/- to Sher Bahadur instead of Rs 100/-.

3. We have heard the learned counsel for the parties and perused the record. We do not consider it necessary to go into the merits of the case because we notice that one of the grounds raised by the learned counsel for the applicant is that before the disciplinary authority passed the punishment order, the applicant

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had not been furnished with the report of enquiry officer on the basis of which the disciplinary authority proceeded to pass the impugned order. It has also been brought to our notice that the Enquiry Officer exonerated the applicant while the disciplinary authority had not agreed with the findings of the Enquiry Officer without affording an opportunity of hearing or representation to the delinquent employee, the disciplinary authority inflicted the punishment of removal from service. Even in the earlier decisions it was held that as and when the disciplinary authority does not agree with the findings of the Enquiry Officer, it becomes necessary for the disciplinary authority before recording findings to the disadvantage of the delinquent government servant that an opportunity should be given to him. The point stands settled by the latest decision of Hon'ble Supreme Court in the case of Union of India vs. Mohd. Ramzan Khan and others reported in Judgment Today 1990(4) Supreme Court 456. The Supreme Court, after consideration of earlier decisions held that the obligation to furnish a copy of the Enquiry Report in disciplinary proceedings before the order is passed by the disciplinary authority is an obligation arising out of principles of natural justice and remains unaffected by 42nd Amendment of the Constitution of India.

4. The learned counsel for the respondents urged that the said judgment is not applicable because the Extra Departmental Branch Post Master staff Rules are self contained. We are constrained to observe that the

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decision of Supreme Court based on the principles of natural justice is applicable whether or not the rules of the Department are self contained. We may also observe that there is no scope for interpretation of the said judgment of Supreme Court to the effect that the judgment was prospective in its application. It only means that the cases which have been decided wherein it has been held that supply of the copy of enquiry report was not necessary, would not be re-opened, i.e. the judgment of the Supreme Court would not be applicable retrospectively in respect of cases already decided. It does not prohibit the courts to apply the principle of law laid down by the Supreme Court in Mohd. Ramzan Khan's case (Supra) ^{in punishment cases}. The Supreme Court itself set aside the punishment order with liberty to the disciplinary authority to continue to proceed from the stage of supply of enquiry report.

5. The application is therefore, allowed and the impugned order dated 11.3.85 as confirmed in appeal on 28.2.87 is set aside. It shall be, however, open to the respondents to re-open the proceedings from a stage immediately after submission of the enquiry report. The disciplinary authority shall provide an opportunity to the applicant to make a representation within a specified time and thereafter pass orders in accordance with law.

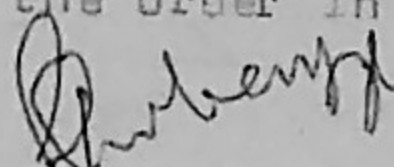
6. Before we part, we may mention that the counter affidavit filed by Shri Ram Kishore, Superintendent, Post Offices, Basti Division, Basti in this case does not contain verification of different paragraphs, nor the name of the person identifying the deponent has

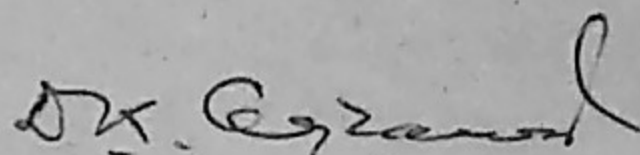
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been mentioned at the end of the counter affidavit and space meant for verification of different paragraphs and space of identifying the deponent has been left blank wherein we have drawn line by red dot pen. Thus, the counter affidavit filed is not valid in eye of law. We expect care to be taken ^{in future} ~~in future~~ in this regard. There is possibly no reason for not complying with the legal provisions.

7. This Claim petition is disposed of in terms of the order in paragraph 5 above.


A.M.


J.M. 7.8.91.

Shakeel/

Allahabad Dated: 7-8-91

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Hon' Justice K. Nath, V.C.

Mon' I K. Paschka. A.M.

(By Hon' Justice K. Nath, V.C.)

This application under section 19 of the Administrative Tribunals' Act, 1985, is for quashing an order dated 6-10-84 by which the applicant was removed from service as Senior Clerk, under the Station Master, Shikohabad, Northern Railway, after disciplinary inquiry. There is also a prayer to quash the appellate order dated 10-9-85 and the order dated 25-3-1988 in review confirming the removal order of the disciplinary authority.

2. It is not necessary to go into the merits of this case, because we notice that one of the grounds raised by the applicant was that before the disciplinary authority passed the punishment order, he had not been furnished with the report of Inquiry Officer on the basis of which the disciplinary authority proceeded to pass the impugned order. We have heard Shri Deva Sharma learned counsel for the applicant and Shri A.V. Srivastava learned counsel for the respondents. The point clinched by the latest decision of the Hon'ble Supreme Court in the case of Union of India vs Mohd Ramzan Khan & ors

reported in Judgment Today 1990 (4) S.C. 456. The Hon'ble Supreme Court after consideration of the previous decisions held that the obligation to furnish a copy of the inquiry report in a disciplinary proceeding before the order is passed by the disciplinary authority, is an obligation arising out of principles of natural justice and remains un-affected by the 42nd Amendment of the Constitution of India.

3. Shri A.V. Srivastava learned counsel for the respondents urged that Hon'ble Supreme Court has written in para 17 of the judgment that the view taken, "was for prospective application and the punishment imposed shall be open to challenge on this ground." The contention is that since the impugned punishment was passed long ago, the decision of the Hon'ble Supreme Court will not apply to it, because, it is expected to apply only prospectively. That is not the correct reading of the observation of Hon'ble Supreme Court as contained in para 17 of the judgment. The observation was made only with regard to certain decisions of the High Court and also of the Supreme Court rendered earlier. In that context the cases decided holding that furnishing of the copy of Inquiry Report was not necessary would remain where they were and in that light the view taken in the judgment under review would be prospective. We may also mention that indeed in that very case Hon'ble Supreme Court set aside the punishment order in disciplinary proceeding with liberty to the disciplinary authority to continue the proceedings from

the stage of supply of inquiry report in cases of dismissal or removal.

4. The application is allowed and the impugned order dated 6-10-84, the appellate order dated 10-9-85 and the revised order dated 25-3-1988 are quashed. It shall be open to the respondents to re-open the proceedings from a stage immediately after making the inquiry report. Since admittedly a copy of the inquiry report has been furnished to the applicant along with removal order, it would not be necessary to supply a copy of the inquiry report afresh. It shall be open to the applicant to make a representation to the disciplinary authority within four weeks from the date of receipt of a copy of this judgment, who shall after due consideration of the material on the record and the representation of the applicant, pass final orders in this case. In the meantime the respondents shall reinstate the applicant and shall pay him the back-wages from the date of removal from service.

S. d.
MEMBER (A)
11/14/90

S. a. b.
VICE CHAIRMAN

(sns)

December 6, 1990.

Allahabad.