

(5)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

.....
Registration O.A.No. 1043 of 1987

Nagendra..... Applicant

Vs.

Union of India & Others..... Respondents

Hon'ble Mr.K. Obayya, Member (A)

Hon'ble Mr.S.N.Prasad, Member (J)

(By Hon.Mr.K. Obayya, A.M.)

This application under Section 19 of the Administrative Tribunals Act, 1985 has been filed for quashing the order of compulsory retirement of the applicant dated 10.9.86 and to re-instate the applicant in service with all consequential benefits.

2. The applicant while working as a labourer in the office of the Controllerate of Inspection Textile and Clothing, Kanpur under the Ministry of Defence was served with a chargesheet dated 15.4.85 for alleged absence from the duty without leave and also being absent from his seat, and was asked to submit his explanation for taking departmental action. The applicant did not submit his explanation, therefore, an enquiry was ordered. After conclusion of enquiry the Enquiry Officer submitted his report returning that the charges are proved. The disciplinary authority accepted the findings of enquiry office and passed impugned order dated 10.9.86 compulsorily retiring the applicant from services (Annexure-14). The applicant preferred appeal which was rejected by the appellate authority vide order dated 20.5.1987 (Annexure-20).

3. The impugned orders are assailed inter alia on the ground that the authorities were prejudiced against

b

the applicant because of his involvement in trade union activities and that the enquiry was not properly held, documents asked for were not supplied and that his Defence Assistant was not allowed and that the Enquiry Officer conducted the proceedings in inquisitorial manner. It is assailed that the order of disciplinary authority and also that of appellate authority are arbitrary, illegal and mala fide.

4. The respondents have contested the case and filed a counter in which it is denied that there was any illwill or malice against the applicant because of his trade union activities. According to them the performance of the applicant was not satisfactory. In para 9 it is denied that the applicant has made any application for leave for the period he was served chargesheet and that applicant remained absent from duty from 17.12.84 to 7.1.1985 and 2.3.1985 to 19.3.1985 without submitting any leave application and he was also not found on the seat at 4 P.M. on 19.9.84 in the office. It is also stated that the applicant failed to submit his explanation inspite of repeated reminders, though he was given sufficient time and on receipt of his reply dated 23.5.1987 a court of enquiry was set up, the Enquiry Officer also asked the applicant to name his Defence Assistant, but the applicant furnished no name of his Defence Assistant. It is stated that the enquiry was held as per rules and that asking questions by the Enquiry Officer cannot be said to be irregular as it was done only with a view to ascertain facts and that the questions were all relevant to the charges. It is further stated that the disciplinary

P

authority and also appellate authority passed the orders in appreciation of the facts that were established in the enquiry report.

5. We have heard the counsel of the parties. We have also carefully perused the record. The record discloses that the enquiry was held on several dates between 19.7.1985 and 9.8.85 and that the applicant was present during the enquiry. The disciplinary authority considered the report of the Enquiry Officer and passed the order of compulsory retirement on 10.9.86. The disciplinary order clearly indicates that copy of the enquiry report was sent to the applicant along with punishment order. In other words the enquiry report was not furnished to the applicant prior to imposition of punishment.

6. In Union of India and others Vs. Mohd. Ramzen Khan (AIR 1991 SC 471) Supreme Court held that:

"Disciplinary inquiry is quasi-judicial in nature. There is a charge and a denial followed by an enquiry at which evidence is led and assessment of the material before conclusion is reached. These facts do make the matter quasi-judicial and attract the principles of natural justice. With ^{the} Forty-Second Amendment, the delinquent officer is not associated with the disciplinary inquiry beyond the recording of evidence and the submissions made on the basis of the material to assist the Inquiry Officer to come to his conclusions. In case his conclusions are kept away from the delinquent officer and the Inquiry Officer submits his conclusions with or without recommendation as to punishment, the delinquent is precluded from knowing the contents thereof although such material is used against him by the disciplinary authority. The report is an adverse material if the Inquiry Officer records a finding of guilt and proposes a punishment so

for as the delinquent is concerned. In a quasi-judicial matter, if the delinquent is being deprived of knowledge of the material against him though the same is made available to the punishing authority in the matter of reaching his conclusion, rules of natural justice would be affected.

The Supreme Court further held that:

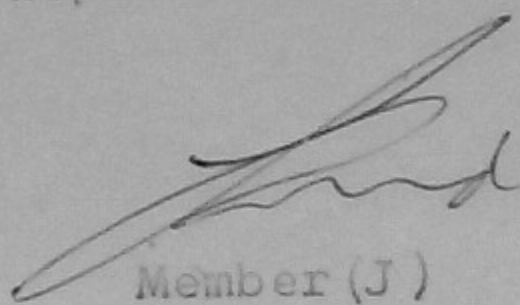
"Wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not the delinquent is entitled to a copy of such report and 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.

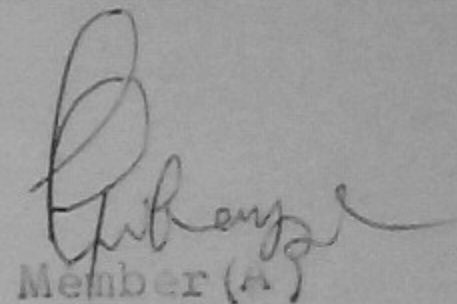
In view of decision of the Supreme Court laying down that the order of disciplinary authority^{is} vitiated if it has been passed without considering the representation of the Charged Officer on the Enquiry Report. As the enquiry^{report} was not furnished^{to} applicant before the imposition of punishment we consider with the order of the disciplinary authority cannot be sustained. The order of disciplinary authority is liable to be quashed and the same is quashed. The matter is remanded to disciplinary authority to start the disciplinary proceedings from the stage of furnishing the enquiry report. He may provide opportunity to the applicant to make representation and pass orders as deemed to be fit. After taking into consideration the relevant material and also the representation of the applicant. The applicant will also be entitled for preferring an appeal if he is aggrieved against the order of the disciplinary authority. If he is also aggrieved by the order of the

(A31) (u)

-5-

appellate authority, It is open to him to seek legal remedies as are available to him. The petition is disposed of as above parties to bear their costs.


Member (J)


Member (A)

4th October, 1991. Allahabad

(sph)