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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

O.A. No. 54 of 1988.

Kuber Nath Applicant.

Versus

Regional Director Postal Services &
another Respondents.

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. A. B. Gorthi, A.M.

(By Hon'ble Mr. Justice U.C. Srivastava, V.C.)

The applicant was posted as Sub-Postmaster in the Section Grade of Rs.425-640. On 25.9.84, a memo was issued by the Regional Director of Postal Services, Allahabad to the applicant asking him as to why the disciplinary action be not taken against him and one other official in a common proceeding following the procedure prescribed in Rule 14 of CCS (CCA) Rules, 1965. The applicant was served with a charge sheet dated 9.11.89. The charge against the applicant was that while functioning as Sub Post Master, Laxmipur, he allowed re-discharge of two NSCs amounting to Rs.15,000/- which were already discharged from Kunraghan HPO and caused a loss of Rs.15,000/- to the Government by violating CCS (CCA) Conduct Rules, 1964 and also failed to verify the discharge before making payment. The applicant submitted his reply and the enquiry proceeded. The Enquiry Officer submitted his report to the Disciplinary Authority who acting on the basis of Enquiry Officer's report imposed major penalty by passing dismissal order. The applicant filed an appeal against the said dismissal order which remained unattended and, therefore, the applicant

approached this Tribunal.

2. The applicant has challenged the entire enquiry proceedings on various grounds. One of the grounds is that the Enquiry Officer's report was not given to the applicant to enable him to file effective representation against the same/thereby he was deprived of reasonable opportunity to defend himself. Therefore, there is violation of principle of natural justice which vitiates the entire enquiry proceedings. This plea was taken by way of amendment although necessary facts in this behalf were already on record.

3. On behalf of the applicant, it has been contended that as the applicant was deprived of reasonable opportunity to defend himself, the order is vitiated and this question has been contested despite the fact that this controversy has been set at rest by the Supreme Court and the Full Bench of this Tribunal earlier. Reference was made to the case of 'Premnath K. Sharma Vs. Union of India & others' reported in Full Bench Judgments of Central Administrative Tribunal Vo;I page 245 that non-giving of the Enquiry Officer's report by the Disciplinary Authority before passing the punishment order deprives the employee of the reasonable opportunity to defend himself and is violative of principle of natural justice. It was observed that the enquiry concluded only after the material was considered by the Disciplinary Authority which includes the Enquiry Officer's report and record of his findings on charges. The Enquiry continues until the matter is reserved for recording a finding on the charges and the penalty that may be imposed. Where the enquiry is delegated by the Disciplinary Authority to the Enquiry Officer,

the oral and documentary evidence which constitutes material, is recorded by the Enquiry Officer in the presence of the Charged Officer and the Charged Officer has an opportunity to challenge the evidence and make his representation. But thereafter when the enquiry report is submitted, under present Rules, the Charged Officer has no opportunity to challenge the report of the Enquiry Officer which constitutes further material which is also required to be taken into account by the Disciplinary Authority in arriving at its findings on the charges. Further reference was made to the case of 'State of Maharashtra Vs. Bhaishankar Avalram Joshi & another' reported in AIR 1969 Supreme Court page 1302 where it has been observed that

" The plaintiff was not aware whether the Enquiry Officer reported in his favour or against him. If the report was in his favour, in his representation to the Government he would have utilised its reasoning to dissuade the Inspector General from coming to a contrary conclusion, and if the report was against him, he would have put such arguments or material as he could to dissuade the Inspector General from accepting the report of the Enquiry Officer. Moreover, as pointed out by the High Court, the Inspector General of Prison had the report before him and the tentative conclusions arrived at by the Enquiry Officer were bound to influence him, and in depriving the plaintiff of a copy of the report he was handicapped in not knowing what material was influencing the Inspector General of Prison....."

4. The learned counsel for the applicant has also placed reliance on 'Union of India & others Vs. Mohd. Ramzan Khan' AIR 1991 Supreme Court page 471 and contended that this case again reiterates the contents which were observed earlier. Learned counsel for the respondents Shri K.C.Sinha contended that the applicant is not entitled to the benefit of the case of Ramzan Khan (Supra) in as much as this plea has been taken after the decision of Mohd. Ramzan Khan's case which was decided on 29.11.90, and as such in view of the observations made in paragraph 17 of Ramzan Khan's case that this judgment will have prospective effect and not retrospective effect, the applicant is not entitled to this relief. The learned counsel for the respondents did not only raise his contention on the observation made by the Supreme Court in paragraph 17 of Ramzan Khan's case but also on the latest decision of 'S.P.Vishwanathan Vs. Union of India & others' reported in 1992 Supreme Court Cases (L & S) page 155, in which it has been observed with reference to Mohd. Ramzan Khan's case that :-

" It is true 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 judgment (November, 29, 1990) as would be clear from para 17 of the judgment."

5. Obviously, in this case the order was passed prior to the decision of the case of Mohd. Ramzan Khan and as such in view of the observations made even

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in Vishwanathan's case, the order will be open to challenge. Learned counsel for the respondents further contended that as the Ramzan Khan's was decided in the year 1990 and if the word 'prospective' is read in correct perspective, the applicant will not be entitled to any relief as this plea has been taken later on and but the disciplinary case was decided on 29.11.90. If this contention is taken to its logical end, it means that the decision has set at naught the provisions of the statute itself. By virtue of Article 323(A) of the Constitution of India, the Administrative Tribunals Act came into force, and the powers of the Tribunal are specified therein. The Tribunal has got full power to enter into any order passed by the departmental authority, may be the Disciplinary Authority or the appellate authority. Learned counsel for the respondents placed reliance on the observations made by the Supreme Court in the case of 'Kailash Chand Asthana Vs. State of U.P. & others' reported in AIR 1988 Supreme Court page 1338 which was the case under the U.P. Disciplinary Proceedings (Administrative Tribunals Rules 1947) Rule 9(3). In this case, a reference was made to the explanation to Sub-rule (3) of Rule 9 of the Rules, stating that a copy of the recommendation of the Tribunal as to the penalty should be furnished to the charged Government servant. It has been pointed out by the learned counsel for the respondents that after the 42nd Amendment, the explanation was dropped. The question of service of copy of the report arose on account of a right of a second show cause notice to the Government servant before the 42nd Amendment and since the present disciplinary proceeding was held later, the petitioner cannot be legitimately demand second opportunity. That being the position, non-service of a copy of the report is immaterial. In the Kailash

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Chand Asthana's case, the case was considered from the angle of deletion of Article 311(2) of the Constitution of India, but the principle of natural justice enjoins a duty upon the Enquiry Officer as well as the Disciplinary Authority to give an opportunity to the delinquent employee to file an objection or to have his /say on the adverse report of the Enquiry Officer which is submitted to the Disciplinary Authority for action. In case, an action is taken by the Disciplinary Authority without giving an opportunity to the delinquent employee, it certainly violates the principle of natural justice. In this connection, it will be appropriate to make reference to the observation made by the Supreme Court in the case of 'Institute of Chartered Accountant Vs. L.K.Ratna reported in 1986 (4) S.C.C. page 537', in which it was observed by the Supreme Court that the post-decisional hearing by way of the appeal cannot afford an adequate remedy for procedural defect of absence of pre-decisional hearing. There is nothing in Regulation 14 which excludes the operation of the principle of natural justice entitling the member to be heard by the Council when it proceeds to render its finding. The principle of natural justice must be read into the unoccupied territories of the statute unless there is a clear mandate to the contrary. In this connection, reference may be made to the subsequent decision of the Supreme Court, though it was a decision by a Two Member Bench and Asthana's case was the decision by a Three Member Bench, in which case, the question of giving a reasonable opportunity of hearing under the provisions of the said U.P. Disciplinary Proceedings (Administrative Tribunals Rules 1947 arose. This question was considered in the case

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of 'State of U.P. Vs. Dr. S.P. Saxena' reported in 1987
SCG (L & S) page 490, in which it has been held that

"Failure to supply assessor's report is in violation of rules of natural justice and Rule 9(1) of U.P. Disciplinary Proceedings (Administrative Tribunals) Rules and vitiates the departmental proceedings and consequent order of dismissal"

6. So far as the question of applicability of prospective effect of Ramzan Khan's case is concerned, it will be pertinent to note that this legal position was existing from before and which was rather binding on the Tribunal and not that this position came into existence for the first time under the Ramzan Khan's case. Thus, the contention of the learned counsel for the respondents must fail and the position which emerges out is that in case the order has already been under challenge prior to the decision of the Ramzan Khan case, the challenge will continue and a final decision can be given on it. But Ramzan Khan's case itself will not constitute a cause of action giving opportunity to the litigant whose matter has become a closed Chapter to reopen it taking inspiration from the Ramzan Khan's case.

7. With the above observations, the objection raised by the learned counsel for the respondents is rejected and in view of the legal position, as stated above as the principle of natural justice is offended in this case, this application deserves to be allowed and the dismissal order dated 19.12.1986 is quashed. However, this judgment will not preclude the Discipli-

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Authority from going ahead with the enquiry proceedings after giving the Enquiry Officer's report to the applicant and giving him reasonable time to file objections against the same. No order as to costs.

Member (A)

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Vice Chairman.

Dated: February 17, 1992.

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