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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 209 OF 1987. ~~198~~
~~K.A. No.~~

DATE OF DECISION 26-10-1990.

BALWANTSINGH KUMARSINGH GOHIL Petitioner

MR. M.M. XAVIER Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondents.

MR. R.M. VIN Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. TRIVEDI, VICE CHAIRMAN.

The Hon'ble Mr. D.K. AGRAWAL, JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal.

Decided

Balwantsingh Kumarsingh Gohil,
Boiler Maker,
Under Loco Foreman,
Bhavnagar Para,
Western Railway,
Bhavnagar Para.

... Applicant.

(Advocate : Mr.M.M. Xavier)

Versus.

1. The Union of India,
Owning and representing
Western Railway, through
its General Manager,
Western Railway,
Churchgate, Bombay.
2. The Divisional Rly. Manager,
Western Railway,
Bhavnagar Division,
Bhavnagar Para.

... Respondents.

(Advocate : Mr.R.M. Vin)

J U D G M E N T

O.A. No. 209 OF 1987

Date : 26-10-1990.

Per : Hon'ble Mr.D.K. Agrawal : Judicial Member.

This application is directed against the order of punishment dated 15.1.1986 passed by the disciplinary authority whereby the applicant was reduced to lowest stage of the scale/grade with future effect. The order of the disciplinary authority was confirmed by the appellate authority by an order dated 3.3.1986. The main ground of attack is that the delinquent was not furnished copy of the enquiry officer's report before the penalty order was passed. On the basis of the judgment of Full Bench rendered on 6.11.1987 in the case of Shri Prem Nath K. Sharma V/s. Union of India and Ors. All India Service Law Journal, 1988 (3) (CAT) 449, it was urged that since copy of the report of enquiry officer was furnished to the delinquent it would tantamount to, not affording reasonable opportunity to defend himself.

Dr. Aggarwal

offend Clause (2) of Article 311. Thus it is urged that the order of the disciplinary authority dated 15.1.1986 be set aside, following the judgment in the case of Prem Nath K. V/s. Union of India & Ors. However a Division Bench sitting at Madras, in the case of A. Philip V/s. Director General of ⁰¹ Audinance Factories & Anrs., All India Service Law Journal, 1990 (2) CAT 631, has held that the judgment rendered in the case of Premnath K. Sharma (supra) will have the force of law from the date the judgment was rendered. The Division Bench interalia has observed as follows :

"However, the question arises as to what should be the date from which the decision will have the force of law. When a decision or ruling of a Court is in the nature of interpretation of any provision of the Constitution, Act, or Rule, that ruling will necessarily have effect from the date of the legal provision interpreted. But, when a judicial pronouncement is in the nature of a fresh Rule elaborated by a Court in the interest of justice, it can have effect only from the date of the judicial pronouncement. Its effect will be only prospective and not retrospective like any other new rule of law emanating from the Parliament or the Executive.

As far as the disciplinary proceedings are concerned, the Central Civil Service (Classification, Control and Appeal) Rules, 1965, enumerate step by step, how the inquiry proceedings should be conducted from the beginning till the imposition of the penalty. Those rules do not contain any provision enjoining the disciplinary authority, to furnish a copy of the report prior to penalty. Till the advent of the Full Bench decision no disciplinary authority was aware that such a requirement existed. The decision of the Tribunal in this connection is not in the nature of

Dr. G. S. Sreenivasulu Reddy ...4...

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interpretation but in the nature of a fresh rule. Further the fact of giving retrospective effect to that requirement would entail the wholesale invalidation of all disciplinary actions otherwise conducted in conformity with known rules. Such a course would be against the basic principles of the administration of justice. Therefore, the requirement of prior communication of the inquiry report would not apply to penalties imposed prior communication of the inquiry report would not apply to penalties imposed prior to the Full Bench decision, like the present one."

2.. The question of law which requires consideration is whether the rule laid down in the case of Premnath K. Sharma (Supra) will apply prospectively only as held in the above noted Division Bench case.

3. There may be number of cases arising hereinafter or already decided wherein a question would arise as to applicability of the rule laid down in the case of Premnath K. Sharma V/s. Union of India & Ors. (Supra). The Full Bench in the case of Premnath K. Sharma V/s. Union of India & Ors. (Supra) did not lay down that the rule laid down by it will apply hereinafter, on the other hand, the Division Bench has laid down that the rule of supply of copy of report of enquiry officer will apply only on or after the judgment in Premnath K. Sharma (supra). Thus there is conflict as to the retrospective applicability of the principle of law of supply of the copy of the report of the inquiry officer.

Dr. G. S. D. S.

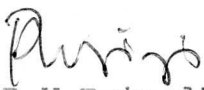
4. The above conflict can only be resolved ⁽⁹⁾ by a Larger Bench. We are a Division Bench only. We, therefore, refer the following question for consideration of the Larger Bench.

"Whether the rule laid down in the case of Premnath K. Sharma V/s. Union of India & Ors. will apply prospectively and not retrospectively as held in the case of A.Philip V/s. Director General ordinance Factories & Ors."

5. In the circumstances we refer the matter to Hon'ble Chairman of the Tribunal for constitution of Larger Bench.

6. The Registry shall place the matter before Hon'ble Chairman with a copy of the order.


(D.K.Agrawal) 29.X.90.
Judicial Member


(P.H.Trivedi)
Vice Chairman