yes Removal

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~XXXXXXXXXXXXXXXX~~

O.A. No. 630 OF 1987 ~~xxx~~
~~TxAxxNxx~~

DATE OF DECISION 9-8-1991.

A.R. Parikh, Petitioner

Mr. Girish Patel for Mrs.D.N.Mehta
and Mr. Brahmbhatt, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. B.R. Kyada, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. Singh, Administrative Member.

The Hon'ble Mr. R.C. Bhatt, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? yes
2. To be referred to the Reporter or not? yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? yes.

MGIPRRND—12 CAT/86—3-12-86—15,000

(9)

A.R. Parikh,
'Ambica'
Bapunagar,
Surendranagar. .... Applicant.

(Advocate: Mr.Girish Patel for
Mrs.D.N.Mehta & Mr.Brahmbhatt)

Versus.

1. Union of India
(Notice to be served through
the Secretary, Ministry of
Railways, Rail Bhavan,
New Delhi)

2. Chief Commercial Superintendent(Estt)
Western Railway, Churchgate,
Bombay.

3. Divisional Railway Manager(Estt)
Western Railway,
Rajkot Division,
Rajkot.

4. Divisional Commercial Superintendent,
Western Railway,
Rajkot Division,
Rajkot. ..... Respondents.

(Advocate: Mr. B.R. Kyada)

J U D G M E N T

O.A.No. 630 OF 1987

Date: 9-8-1991.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

The applicant while working as Travelling Ticket Examiner (TTE for short) in the Western Railway was served a charge sheet dated 27.3.82 (Ann. A-5) by the Respondent No.4, Divisional Commercial Superintendent, Rajkot Division, which resulted in the punishment of his removal from service by order dated 3.1.1983 (Annex. A-3). The applicant's appeal succeeded partly. He was reinstated in service but with reduction to the scale Rs. 260-400 from his scale of Rs. 330-560 and posting as office clerk which changed his cadre. The applicant submitted a revision

M.M. Singh

(10)

application against the order in appeal. But the same was rejected on the ground that revision did not lie against penalty of reduction in scale. The applicant has impugned all these orders as also the charge sheet in this original application he filed under section 19 of the Administrative Tribunals Act, 1985.

2. The substance of the pleadings of the applicant is that the charge sheet is without jurisdiction as Rule 3(i) of Railway Services (Conduct) Rules 1966 has "General" for its caption and Supreme Court has held (1984 SCC(L&S) 497) that "general specifies a norm of behaviour without specifying that its violation will amount to misconduct. The enquiry officers report is attacked on grounds that the conclusions in it are not supported by evidence. The disciplinary authority's order in question on grounds that the enquiry officer's report was not given to the applicant and he was not heard before the final order on proposed penalty. The appellate authority's order is stated to suffer from nonapplication of mind and consequent failure to appreciate evidence correctly and the authority's exceeding jurisdiction in changing the cadre of the applicant to clerk without his consent which is held illegal (18 GLR 562 relied upon). The order on the revision application is stated to be bad because though there is provision for it in Rule 25 of the Discipline & Appeal Rule, the revision was not entertained.

3. The respondents' reply disputes all the above.

4. At the final hearing, learned counsel Mr.Patel for the applicant made his submissions under four major heads consisting of :(i) inquiry officer's report supplied to the applicant with the order of the disciplinary authority though ought to have been

(IV)

supplied before to enable him to represent against it. (JT 1990 Vol.IV 456 relied upon),(ii) findings of the inquiry officer are perverse; (iii) appellate order bad as it is based upon inquiry report the findings in which are perverse; and (iv) punishment awarded by the appellate authority grossly disproportionate to the charge ultimately held proved as the applicant's cadre came to be changed without his consent.

5. Mr. Kyada for the respondents submitted that this Tribunal cannot interfere with the quantum of punishment, that the applicant having accepted the punishment and resumed duty in the post given to him was barred by principle of promissory estoppel from questioning the action in this Tribunal long after and in any case the application is barred by limitation

6. The first submission of Mr.Patel is of prime importance. The procedural issues with bearing on natural justice arising out of 42nd Amendment to the Constitution discarding the second show cause notice in disciplinary proceedings against government servants and whether nevertheless the inquiry officer's report should or should not be furnished to a delinquent before awarding punishment gave rise to judgments not always unanimous on these issues. We need no more refer to them now that a bench of three judges of the Supreme Court in Union of India & Ors. Vs.Mohmed Ramzan Khan (JT 1990 (4) SC 456) settled the law on the subject. The Supreme Court decided in this case

> "18. 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

M M, Jr.

(12)

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 villation of rules of natural justice and make the final order liable to challenge hereafter."

It is undisputed that in the case before us the inquiry officer's report was furnished to the applicant along with the final order of the disciplinary inquiry. As the same was not furnished before the issue of the order of the disciplinary authority, the disciplinary authority's order and the appellate order are liable to be vitiated on that ground in view of the judgment, supra. But one question that has to be considered before that is the timing of the applicability of the judgment above. On this point the judgment contains the following direction :

"17. There have been several decision in different High Courts which, following the Forty-Second Amendment, have taken the view that it is no longer necessary to furnish a copy of the inquiry report to delinquent officers. Even on some occasions this Court has taken that view. Since we have reached a different conclusion the judgments in the different High Courts taking the contrary view must be taken to be no longer laying down good law. We have not been shown any decision of a coordinate or a large 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."

(emphasis supplied)

The part of the above para supplied with emphasis stipulates not only that the decision shall have

M. M. Sri.

prospective application but proceeds to clarify that "no punishment imposed shall be open to challenge on this ground". Now, punishment is imposed by the authority competent to impose it. The punishment thus becomes imposed. The punishment so imposed can be challenged, to begin with, by preferring an appeal application before the appellate authority prescribed in the relevant statutory discipline, punishment and appeal rules. Such authority decides the appeal application filed against the punishment imposed. The rules may also contain provision for second appeal or revision and even submission of a memorandum to the President of India or the Governor of a State, as the case may be. Then, the aggrieved may question the order which imposed punishment on him if he is not satisfied by the outcome of the departmental appeal, revision or memorandum, as the case may be, by questioning the order imposing punishment and appellate orders and orders in revision in judicial courts/Tribunals. The Supreme Court has used the words"..... and no punishment imposed shall be open to challenge on this ground". These words are unambiguous and their intent clear. When such is the case, the same have to be taken to mean what their literal construction means. The meaning of these words can neither be increased nor decreased by inserting any new terms or by deleting the terms that figure in the order of the Supreme Court. It was observed by the Supreme Court in M/s. Goodyear India Ltd. V/s. State of Haryana (AIR 1990 SC 781) that "a precedent is an authority for what it actually decides and not for what may remotely or even logically follows from it".(see para 23 of the judgment).In the literal construction of the order of Supreme Court, the punishment imposed shall not be open to challenge on the ground that delinquent was not given a copy of the enquiry report. Since the order can be challenged in various forums right from departmental appellate authority to judicial courts, the literal construction would mean that the order cannot be challenged in any

M. M. Sur

(19)

forum where it can be challenged under the law and rules. The part of the above para upto where the emphasis (we gave) starts in fact gives an idea of the thinking and purpose behind the emphasised provision of the judgment. Because of the difference in judicial views, inconsistence existed. The unambigious stipulation seems to have been made now by the Supreme Court so that the past orders which imposed punishment are not challenged on the basis of this judgment as that may result in reopening of endless number of disciplinary cases creating uncertainity and chaos so far as personnel side is concerned. It may be argued against this that the Supreme Court itself allowed the appeal on this ground and therefore the emphasised words should be taken to imply that challenge on this ground can be made till the order has been finalised, which may even involve finalisation at the level of the Supreme Court when an appeal is filed and leave given. But, as discussed above, such an interpretation cannot be given except by increasing the terms of the order for which there is no scope as the words and their literal meaning is crystal clear. Thus it is clear that where a punishment has been imposed by the disciplinary authority before the above judgment, the same shall not be open to challenge on the ground that copy of the inquiry officer's report was not furnished to the applicant and that he could therefore not make a successful representation against it in any forum. on that ground. We are thus of the view that applicants challenge to the disciplinary case based on the judgment of the Supreme Court above fails.

7. Regarding the arguments of Mr. Patel under the second head, we do not consider it necessary to enter into a discussion of evidence on the first charge and its

M. A. Lee.

appreciation by the Enquiry Officer and the Disciplinary Authority. The appellate authority gave benefit of doubt to the applicant on this charge and, on that account, reduced the punishment awarded by the disciplinary authority.

8. Regarding the second charge, Mr. Patel fairly conceded that the statement of Mr. Ranchhod G. Peon, a waiting list passenger, did support the charge that the applicant ignored the waiting list passenger.

9. Regarding the third charge, we find it difficult to agree with Mr. Patel that the findings on this charge are perverse and that the evidence does not support the same. The Enquiry Officer has heavily relied on the first statement dated 28.11.81 of the applicant before the Vigilance Inspector Rajkot. This statement was to the effect that he had not declared his private cash on 28.11.1981. We see no legal flaw, in the enquiry officer relying upon the delinquent's own statement during the preliminary inquiry for arriving at his findings provided of course the delinquent has been put on notice about it and given the opportunity to say about it. There is no such allegation before us. In fact, except on one account namely, nonsupply of enquiry report before final order, no other allegation of denial of opportunity to defend or violation of principles of natural justice has been made.

10. We thus are unable to accept Mr. Patel's submissions that the enquiry report is perverse with regard to second and the third charges. We must observe here about the role of Courts in this field. Courts are not expected to undertake a reappraisal of

(16)

the evidence but only to satisfy themselves that the conclusions of the Enquiry Officer, the Disciplinary Authority and the Appellate Authority are derived reasonably. For example, the Supreme Court, in Union of India Vs. Sardar Behadur (1972) 2 SCR 218) observed as follows :

> "A disciplinary proceeding is not a criminal trial. The standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the inference that Nand Kumar was a person likely to have official dealings, with the respondent was one which reasonable person would draw from the proved facts of the case, the High Court cannot sit as a court of appeal over a decision based on it. Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Article 226 to review the materials and to arrive at an independent findings on the materials. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court."

11. Our above views also cover the third head of Mr. Patel's arguments where he attacked the appellate order. He relied on the case Mysore State Road Transport Corporation Vs. Mirja Khasim (AIR 1977 SC 747). There is no doubt about the legal position that appeal order cannot cure any initial defect in the order of the disciplinary authority. But our finding is that the defect visualised was in appreciation of evidence regarding the first charge for which due relief came to be given. That is no initial defect but only a case of different conclusion as a result of appreciation of evidence.

M. H. L.

12. Coming to the arguments under the last head against the punishment as ultimately inflicted by the appellate authority, we first take up the issue of validity of the change of cadre of the applicant from TTE to clerical in the payscale Rs. 260-400. Mr. Patel submitted that the change of cadre of the applicant made even more disproportionate to the charge ultimately held by the appellate authority as proved the penalty of reduction from scale Rs. 330-560 to the scale Rs. 260-400 as by change of cadre the applicant stands condemned to find himself included in the cadre of clerks and to find his seniority in that cadre.

13. There is no doubt that only punishments prescribed in the rules can be awarded and a punishment which is not prescribed in the rules cannot be awarded (see M/s. Scooter India Ltd. V/s. Labour Court, 1990(60) Alld.HC.LB FLR 850) as inflicting of such a punishment would be arbitrary exercise of authority and therefore bad in law. Rule 6 of the Railway Servants (Discipline & Appeal) Rules, 1968 contains the list of penalties, minor and major. Mr. Patel is of the view that change of cadre does not figure in the list of penalties with which view Mr. Kyada differs. In the list of major penalties, figures the following:

> "(vi) Reduction to a lower time scale of pay, grade, post or service, with or without further directions regarding conditions of restoration to the grade or post or service from which the Railway servant was reduced and his seniority and pay on such restoration to that grade, post or service ; "

Reduction to a lower post or service is included in the above. The applicant was promoted to the post of TTE, payscale Rs. 330-560, from the post of TC, payscale

M. M. Smh.

Rs. 260-400. The payscale of TC is the same as of office clerk, the post in which the applicant is presently working. The appellate order says " I therefore order that the punishment to reduction in scale Rs. 260-400(R) to the stage of Rs. 320 permanently from your existing scale of Rs. 330-560(R) and that you should be posted only as an office clerk for office work". Undoubtedly, clerks are also Railway servants. In that view, the posting as clerk may not be construed as deputation for deputation ordinarily denotes transfer from one Government to another or from Government to a local body or other Corporation controlled by State or, may be, from one department of Government to another Department. In the case of the applicant, the Railway is also not changed in the sense that he continued in the Western Railway though as a clerk. The cadre of clerks is in "service" of the Railways. Their "service", as seen from the pleadings and submissions for the applicant, is viewed by the applicant as lower than of TTE or TT. The order of the appellate authority therefore, besides reduction to a lower payscale, also, simultaneously involved "reduction to a lower service", the service of clerks. In our this view of the above provision of rules, the punishment order of the appellate authority cannot be successfully questioned just on the ground that besides reducing the applicant to a lower pay scale, it also reduces him to what the applicant visualises a lower service, the service of clerks. Naturally when there is reduction to lower service, change of cadre from the higher service to the lower service is inevitable. But then in our analysis we find that the same is provided for in the list of penalties in the rules. The legality and rules applicable to "deputation"

(19)

urged by Mr. Patel to be attracted to cover the change of cadre in this case do not so cover. As this punishment awarded under the Railway Servants (Discipline & Appeal) Rules, 1968, is included in the punishments prescribed in the rules which in our view is the case herein, the punishment awarded will not be bad solely on the ground that the same involves a change of cadre.

14. The other submission on punishment that remain to be considered is on the quantum of punishment. Apart from implications of Supreme Court judgment in Parma Nanda's case (AIR 1989 SC 1185) on the ground that the Tribunal is of that Tribunal has no authority to modify the view that a different punishment is merited in case in which disciplinary inquiry has been held, the punishment awarded by the disciplinary authority, we are of the view that the punishment awarded is not disproportionate to the charge proved. Reading between the lines of the charges, lurks the shadow of the demon of corruption and violation of the licence and rights of a waitlisted passenger Mr.Ranchhod G. Railways provide the very essential travel facility to the millions of our country's citizen who pay for the facility. A Railway employee who, for whatsoever reason, waywardly, dishonestly or superciliously, denies to a bonafide user of Railways his rights accruing to him from the licence he has acquired on payment of the prescribed fee or charges, should deserve no further mercy at the hands of this Tribunal especially when the appellate authority has already shown mercy. We are strongly of the view that the punishment awarded by the appellate authority suits the misconduct. We see no failure of the principle of proportionality.

M. M. Singh.

(28)

We find it extremely difficult to agree with the submissions of Mr. Patel in this regard which he made relying on the Supreme Court judgment in Ranjit Thakur V/s. Union of India (AIR 1987 SC 2836) where the principle of proportionality has been visualised for further development of case law apart from illegality, irrationality and procedural impropriety as grounds of judicial review of administrative action.

15. At this stage we should advert to the part of the pleading of the applicant which, relying upon Supreme Court judgment in A.K. Kalra V/s. Project & Equipment Corporation of India Ltd. (1984 SCC(L&S) 497) says that "general" signifies a norm of behaviour without specifying that its violation will amount to misconduct. The change in the case herein is framed under the Railway Servants (Discipline & Appeal) Rules 1968 and is for "serious misconduct", the items of which are specified and it is alleged that thereby he violated Rule 3(1)(i)(ii) and (iii) of Railway Service (Conduct) Rules, 1966. Though this rule has the caption "General" it specifies what a railway servant "shall at all times" maintain and do. The misconducts are defined in the charges and did not involve ex post facto interpretation. The case law relied upon is on different facts and different rules than in the case herein.

16. This brings us to the last allegation of the applicant, namely, rejecting the revision application though provided for in the rules. The applicant relies on the provisions of Rule 25 of the Railway Servants (Discipline & Appeal) Rules for this contention. Suffice it to say that the rule provides for revision on the authorities "own motion or

M. M. Singh

(21)

otherwise". "Otherwise" may perhaps also cover a request coming from a Railway servant who has been punished and the appellate authority has either rejected his appeal or modified the punishment. But the rule does not provide for revision as a right of a Railway employee. It is discretionary.

17. As a result, the application is liable to be dismissed. We hereby do so without any order as to costs.

M. M. Singh

(R.C. Bhatt)
Judicial Member.

(M.M. Singh)
Administrative Member

Please see enclosed dissenting judgement given by me.

18. Para 15 above of the opinion of Hon'ble Mr.S.Santhana Krishnan, Judicial Member, dated 25.7.91 becomes the majority judgment in this case and is pronounced as the order of the Tribunal.

19. A issue similar to the one before us had arisen before the Calcutta Bench of this Tribunal in T.A.No. 798 of 1986 in which the Bench speaking through Hon'ble Justice Mrs. Pratibha Bonnerjea, Vice Chairman, observed as follows in paras 16 & 17 of the judgment. We reproduce these paras below:

.... 15/-

(22)

"16. It is unfortunate that another three-Judge Bench decision of the Supreme Court reported in A.I.R. 1988 SC 1338 (Kailash Chander Asthana V. State of U.P. & Ors.)was not cited during the hearing of Ramzan Khan's case. In Asthana's case, it was held in paragraph-5.

> "..... The question of service of copy of report arose on account of a right of a second show cause notice to the Government servant before the 42nd Amendment and since present disciplinary proceeding was held later, the petitioner cannot legitimately demand a second opportunity. That being the position, non-service of a copy of the report is immaterial."

It is no use speculating now what would have been the effect of Asthana's case on the decision of Ramzan's case.

17. It is, however, clear from paragraph 17 of Ramzan Khan's judgment, that the Supreme Court did not want to re-open the closed cases and by giving prospective effect of this judgment wanted to keep the pending cases outside the purview of its decision, as will be clear from its observation" no punishment imposed shall be open to challenge on this ground, (on the ground of non-service of enquiry report). The intention of the Supreme Court in Ramzan Khan's case appears to be quite clear, but in two recent decisions of three-Judge Bench of the Supreme Court, while disposing of two old pending matters, Ramzan Khan's case has been given retrospective effect and the punishments were set aside on the ground of non-service of enquiry report. These cases are Appeal No.657 of 1991(Union of India & Ors. v. Joseph Jacab) disposed of on 4.2.91 and S.L.P.No.16494 of 1990(Union of India & Anr. V.Manmohan Singh Chadna) disposed of on 21.12.90. We are bound by the recent decisions of the Supreme Court of Co-ordinate Benches."

I added this post script to bring further views of the Suppeme Court after the judgment in Ramzan Khan's case at one place on the issue of service of the inquiry officer's report.

M. M. Singh 9/8/91.

(M.M. Singh)
Administrative Member.

V/s. Mohmed Ramzan Khan (JT 1990(4) SC 456) where a punishment has been imposed by the disciplinary authority before the above judgment of the Hon'ble Supreme Court of India, the same shall not be open to challenge on the ground that copy of the enquiry officer's report was not furnished to the applicant and that he could not make successful representation against it on that ground. This finding of my learned brother goes at the root of the whole case and reading judgment of Mohmed Ramzan Khan's case (supra), I am of the opinion that wherever the enquiry has been conducted by an enquiry officer who has submitted a report to the disciplinary authority holding the delinquent guilty of the charges, the delinquent is entitled to a copy of such report and to make a representation against it even after the alteration of Article 311(2) under the 42nd Amendment of the Constitution and non-furnishing of copy of the report of the enquiry officer holding the delinquent guilty of the charges to the delinquent is violative of rules of natural justice as held in the above decision. It is undisputed that in the present case before us the enquiry officer's report was furnished to the applican only along with the final order of punishment passed by the disciplinary authority.

3. In my view para-17 of the judgment of the Hon'ble Supreme Court in Mohmed Ramzan Khan's case

(supra) read as a whole shows that as the Hon'ble Supreme Court by this judgment has reached a different conclusion contrary to the judgment reached by the different High Courts taking contrary view and those judgments would be no longer laying down good law as per this decision, ~~therefore~~ The Hon'ble Supreme Court in this para-17 observed "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". In my opinion, these observations apply to the cases which have been finalised previously by the High Court and the Supreme Court taking a contrary view and in those cases only punishment imposed shall not be open to challenge on the ground of non-supply of the enquiry report by the disciplinary authority before imposing penalty. However, these observations in para-17 would not mean that in a case where a punishment has been imposed by the disciplinary authority before the above judgment, it shall not be open to challenge on the ground that the copy of the inquiry officer's report was not furnished to the delinquent before order of punishment and therefore he was not able to make representation against it. In my view, this Tribunal cannot import such meaning. Moreover this is not the ratio of the said decision of

the Hon'ble Supreme Court of India. The fact that the Hon'ble Supreme Court in the above decision allowed the appeals and set aside the disciplinary action in every case before it, clearly indicates that this decision will apply to all pending matters before any forum in which the report of the enquiry officer is not given to the delinquent before the punishment is inflicted on him. The ratio of this decision as I understand is that the delinquent is entitled to supply of copy of report of enquiry officer before the punishment is imposed on him so that he can have opportunity to make a representation against it and if that is not done, and if it is challenged before the higher forum by way of appeal or application according to law and if that proceeding is pending at the time of the above judgment even then, that delinquent is entitled to the benefit of this judgment, no matter whether the disciplinary authority had imposed punishment on the delinquent before the pronouncement of this judgment of the Hon'ble Supreme Court. If in a given case, where the Disciplinary authority has not furnished the Inquiry report to the delinquent before the order of punishment and if the appeal filed by the delinquent against such order is pending before appellate or higher forum at the time of the above judgment, can it be said that the above decision of Hon'ble Supreme Court will not apply to that case? The answer would be that as per the ratio laid down in the above judgment of the Hon'ble Supreme Court, it will apply to all the pending proceedings before appellate or higher forum, and such a case where a

punishment has been imposed by the disciplinary authority without first giving the copy of the report of the enquiry officer to the delinquent is open to challenge on the ground that the copy of the enquiry officer's report is not furnished to the delinquent before the punishment had been imposed by him. Hence, the pending case before us shall have to be decided as per the ratio laid down by the Hon'ble Supreme Court. The decision of the Hon'ble Supreme Court amounts to declaration of law which is binding on the Tribunal under Article 141 of the Constitution. I, therefore, hold that the applicant will succeed on the first ground that the orders passed by the enquiry officer and the appellate authority should be quashed as the disciplinary authority had furnished a report of enquiry to the delinquent along with the final order of the disciplinary authority and the enquiry report was not furnished to him before the issue of the order of punishment resulting in the disciplinary authorities' order and the appellate authorities' order illegal and the said orders therefore deserve to be set aside.

4. In view of my above finding, it is not necessary for me to decide the other points raised by the learned advocate for the applicant which have been discussed at length by my learned brother Mr. M.M.Singh. Though I concur with him on the findings given by him on the remaining points,

(29)

I differ from him on his finding on the first point regarding the non-supply of the enquiry officer's report to the delinquent which goes at the root of the whole matter, and as I allow the application on that point alone.

5. In the result, the following order is passed. The impugned orders passed by the disciplinary authority and the appellate authority are quashed and set aside. However, the appellate authority are at liberty to proceed with the disciplinary proceedings from the stage of supply of enquiry officer's report and it will be open to the respondents to pass appropriate orders regarding the charges levelled against the applicant after supplying the report of the enquiry officer and after giving an opportunity to represent his case before any orders of penalties are passed. The application is allowed to that extent. The application is disposed of. No orders as to costs, having regard to the facts of this case.

(R.C. Bhatt)
Judicial Member

Shri A.R.Parikh,
"Ambica" Bapunagar,
Surendranagar. ...Applicant.

(Advocate : Mrs.D.N.Mehta &
Mr.Brahmbhatt)

Versus

1. Union of India
(Notice to be served through
the Secretary,
Ministry of Railways,
Rail Bhavan,
New Delhi).

2. Chief Commercial Superintendent (Estt),
Western Railway,
Churchgate,
Bombay.

3. Divisional Railway Manager (Estt),
Western Railway,
Rajkot Division,
Rajkot.

4. Divisional Commercial Superintendent,
Western Railway,
Rajkot Division,
Rajkot. ...Respondents.

(Advocate : Mr. B.R.Kyada)

O P I N I O N

O.A. NO. 630 OF 1987.

Date: 25-07-1991

Per : Hon'ble Mr.S.Santhana Krishnan : Judicial Member

This original application filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, came up for hearing before a Division Bench of Hon'ble Mr.M.M.Singh, (Administrative Member) and Hon'ble Mr.R.C.Bhatt, (Judicial Member). Learned counsel for the parties were heard and Judgment also reserved. Thereafter Shri M.M.Singh,(Administrative Member), expressed his opinion that the application is liable to be dismissed. Shri R.C.Bhatt, in his opinion held that the application has to be allowed and the impugned orders passed by the disciplinary authority and the appellate authority are to be quashed and that

..2..

the appellate authority are at liberty to proceed with the disciplinary proceedings from the stage of supply of inquiry officer's report.

2. In view of the difference of opinion, the direction was sought from the Chairman for placing the matter before an appropriate Bench. The Chairman by an order dated 8.7.1991, directed that the matter be placed before this Bench. Hence, the matter was placed before this Bench for opinion on 19.7.1991.

3. Heard counsel appearing for the applicant as well as respondents.

4. It is necessary to mention the relevant facts to appreciate the rival contention of the parties. The applicant while working as Travelling Ticket Examiner, in the Western Railway was served a charge sheet dated 27.2.1982, by the 4th respondent which resulted in the punishment of his removal from service by an order dated 3.1.1983. The applicant's appeal succeded partly and he was reinstated in service but with reduction to the scale of Rs.260-400 from his scale of Rs.300-560 and posting him as office clerk which changed his cadre. The applicant also submitted a revision application, but the same is rejected on the ground that revision did not lie against the penalty of reduction in scale.

5. The applicant raised several contentions before this Bench and the main contention is regarding the effect of the 42nd amendment and the judgment pronounced, by Hon'ble Supreme Court reported in JT 1990 (4) S.C. 456, (Union of India and Others Vs. Mohd. Ramzan Khan). Mr.M.M.Singh, Administrative Member in his judgment, placing reliance on some of the observations in para 17, of the above judgment came to the conclusion that once a punishment has been imposed by the concerned authority it cannot be reopened and as such the judgment

of Hon'ble Judges of the Supreme Court, referred above has got only prospective operation. He further points out that once the punishment was imposed by any authority it cannot be reopened, in view of the observations in the above said judgment (Viz)..." but this shall have prospective application and no punishment imposed should be open to challenge on this ground."

6. On the other hand Mr.R.C.Bhatt, Judicial Member, found that the judgment referred above has got retrospective operation and the disciplinary authority has not furnished the enquiry report to the delinquent before the punishment is imposed and if it is challenged before a higher forum by way of appeal or application according to law, and if that proceeding is pending the delinquent is entitled to the benefit of this judgment.

7. In view of the two conflicting views given by two Members, the matter is placed before this Bench in view of the order of the Chairman referred above.

8. Para-17 of this Judgment referred by Mr.M.M.Singh, Administrative Member, is as follows :

> "There have been several decisions in different High Courts which, following the Forty-Second Amendment, have taken the view that it is no longer necessary to furnish a copy of the inquiry report to delinquent officers. Even on some occasions this Court has taken that view. Since we have reached a different conclusion the judgment in the different High Courts taking the contrary

(23)

view must be taken to be no longer laying down good law. 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."

9. A perusal of this para clearly show that the Hon'ble Judges of the Supreme Court only point out that there are Judgments of various High Courts and also of the Supreme Court which have taken a contrary view and it is now settled that the contrary view must be taken to be no longer laying down good law. Therefore, the conclusion to the contrary reached by any two Judge's Bench in this Court will also no longer be taken to be laying of good law, but they shall have prospective application and no punishment imposed shall be opened to challenge on this ground. Hon'ble Mr.M.M.Singh, Administrative Member, had taken out later part of the sentence, and from that he has come to the conclusion that no punishment imposed by any authority shall be open to challenge the view of the above said judgment. The Hon'ble Judges only point out in this para that any decision taken by following the contrary's view and which has become final, cannot be reopened. In fact the Hon'ble Judges of the Supreme Court allowed all the applications before them and set aside the orders under challenge.

...5...

(34)

10. My attention was also drawn to a decision reported in OA/209/87, by the Central Administrative Tribunal,Ahmedabad (Full Bench), dated 11.7.1991. In this Judgment, the Tribunal considered that judgment of the Supreme Court reported above and the Hon'ble Members of the Full Bench point out "that the non furnishing of the enquiry report would amount to violation of rules of Natural Justice. They further emphasis that the 42nd amendment has not brought about any change in this regard." In this judgment while referring the judgment of the Hon'ble Judges of the Supreme Court it is pointed out that the Supreme Court has come to the conclusion" that the supply of a copy of the inquiry report along with the recommendations, if any in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof." The Hon'ble Members of the Full Bench further clarify that"this is the declaration of the law by the Supreme Court and it is binding on all concerned."

11. They have also extracted in their judgment para 17 of the udgment in Mohd.Ramzan Khan's case referred above and the observations in the Full Bench on this aspect is as follows :

"The last two sentences of the above paragraph have to be read together. The last sentence makes it clear that there be the conclusion to the contrary reached by any two-Judge Bench of the Supreme Court that would not be deemed laying down a good law.... But their Lordships took special care to spell out that this would not mean that their decision in Mohd.Ramzan Khan's case would afford any opportunity to the afflicted parties or aggrieved parties to reppen what have become

...6...

final. The use of thw word "but this shall have prospective application and no punishment imposed shall be open to challenge on this ground" refers to cases which have been heard and decided by the Division Benches of the Supreme Court earlier. Those cases will not be reopened. ..... In other words, all those cases which are pending before any Court of law or Administrative Tribunal in which punishment has been inflicted a plea of not having been provided with a copy of the inquiry report can be raised as infringing the rules of natural justice."

12. The Hon'ble Members of the Full Bench ultimately observes as follows : -

"The law laid down by Supreme Court case of Union of India and Others Vs. Mohd.Ramzan Khan is applicable to all cases where finality has not been reached and in cases where finality has been reached, the same cannot be reopened. The law laid down by the Supreme Court in the above case is binding on all concerned." In view of the above said judgment of the Full Bench it is now very clear that the judgment of the Hon'ble Judges of the Supreme Court will apply to all pending cases whether it is before any court of law or before the Administrative Tribunal. As the matter is pending before this Tribunal, the judgment of the Hon'ble Judges of the Supreme Court, referred above is applicable and it is not disputed that the delinquent before us was not given the inquiry report along with the recommandations before they proposed

...7...

(36)

punishment.

13. In view of the judgment of the Supreme Court referred above and in view of the pronouncement of the Full Bench of this Tribunal referred above, I have no hesitation to hold that the orders passed by the Inquiry officer and the appellate authority should be quashed as the disciplinary authority had furnished the report of the enquiry officer to the delinquent only along with the final order of the disciplinary authority and the enquiry report was not granted to him before the issue of the order of punishment. This violates the principles of natural justice and hence the order of disciplinary authority as well as appellate authority are illegal and therefore, they are liable to be quashed.

14. In respect of the other points raised before the division Bench both the Members agree and as such there is no necessity to consider them.

15. In view of the above, the impugned orders passed by the disciplinary authority and the appellate authority are quashed and they are set aside. However, the disciplinary authority (wrongly shown as appellate authority in the Judgment of Mr.R.C.Bhatt, Judicial Member), are at liberty to proceed with the disciplinary proceedings from the stage of supply of enquiry officer's report and it will be open to the respondents to pass appropriate orders regarding the charges levelled against the applicant, after supplying the report of the enquiry officer and after giving opportunity to represent his case before any order of penalty is passed. The application has to be allowed as stated above. No order as to costs.

(S.Santhana Krishnan)
Judicial Member
25/7/1991