

Change of Increment

CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, DELHI

Ahmedabad Bench, Ahmedabad

O.A No. 76
Tx No.

1988

DATE OF DECISION

2/4/1991

Mr. J. R. Shaikh

Petitioner

Mr. A. S. Yamani

Advocate for the Petitioner (s)

Versus

Union of India & Ors.

Respondent

Mr. P. M. Raval

Advocate for the Respondent(s)

CORAM.

The Hon'ble Mr. P. H. Trivedi

: Vice Chairman

The Hon'ble Mr. R. C. Bhatt

: Judicial Member

JUDGMENT

Shri J.R.Shaikh,
Draftsman, Planning Section,
Office of the General Manager,
Telecom, Gujarat Circle,
Ahmedabad.
(Advocate: Mr.A.S.Yamani)

6 : Petitioner

Versus

1. Union of India
Through:
Secretary, Communications,
Department Govt. of India,
New Delhi.
2. The Deputy General Manager(Admn)
O/O G.M.Telcom,
Gujarat Circle,
Ahmedabad.
3. The General Manager, Telecom,
Gujarat Telecom Circle,
Ahmedabad-9.
4. The Member(Personnel)
Telecom Board,
Department of Telecommunication,
Telecom Directorate,
New Delhi.

: Respondents.

(Advocate: Mr. P.M.Raval)

O R D E R
O.A./76/88

Date: 2/4/1991

Per: Hon'ble Mr. P.H.Trivedi : Vice Chairman

Heard Mr.A.S.Yamani and Mr.M.R.Raval, learned advocates for the applicant and the respondents.

2. On hearing the learned advocate for the petitioner, at the outset we came accross the question of the inquiry officer's report having been submitted after the order of disciplinary authority imposing the punishment. It is not disputed that the disciplinary authority ordered punishment by its Memorandum dated 25.2.1985 against which the appeal was disposed of by the order dated 5.9.1986 and as shown by Annexure A/16 it cannot be disputed that the inquiry Officer's report was furnished by the memorandum dated 29.3.1985. After the law declared by three Member Bench of Supreme Court in Mohmed Ramzan Khan's case if the inquiry report is furnished only at the time or after the order

of punishment the delinquent officer does not get an opportunity to report his case both regarding the inquiry report and about the punishment before the order of punishment is passed and in so far as the inquiry officer's report becomes a material which is considered by the disciplinary authority's order of punishment, such material not having been available to the delinquent officer, such order of punishment is held by the Supreme Court to be violative of natural justice and that the amendment of Article 311 of the constitution dispensing with the ^{deemed} section show cause notice does not in any way exempt the respondents Govt, from ^{the obligation of} ^{app} comply with the requirement of the rules of natural justice which if so violated would render the order of punishment illegal. It is possible that the respondents were under the impression that the inquiry officer's report was not required to be furnished prior to the order of punishment ^{Values} on the basis of ^{deemed} judgment, which upheld the position in view of the amendment of the Article of the constitution but there can be no doubt that after Mohamed Ramzakhan's case the law which now holds ^{deemed} makes such a proceeding violative of natural justice. For these reasons, we have now thought it necessary to go into other grounds which have been taken by the petitioner. We therefore quash and set aside the said order of punishment dated 25.2.1985 and the appellate order dated 5.9.1986. The petitioner is entitled to ~~be reinstated~~ ^{be reinstated} in the post from which he was reduced in rank and all consequential benefits regarding pay and allowances arising from such reinstatement. It is further directed that the respondents calculate the pay and allowances to which the petitioner is so entitled within four months from the date of this order and pay the same within that period failing which for any further delay, the petitioner is declared to be entitled to interest at the rate of 12 % thereon. It is observed however that if the respondents wish to proceed with the disciplinary proceedings from the stage of

furnishing the inquiry report and after giving due opportunity to the petitioner to represent regarding the same they would be at liberty to do so. It is further observed that in deciding upon the cause of action the respondents would no doubt consider whether the delay in this case in framing the charges ~~of~~ proceeding ^{with} the inquiry and the punishment that was sought to be given to the petitioner would ~~not~~ now be of such a nature as to make it desirable ^{to} proceed with the inquiry in the facts and circumstances of this case. The case is accordingly disposed of. There shall be no order as to costs.

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(R.C.Bhatt)
Judicial Member

Pratik

(P.H.Trivedi)
Vice Chairman

a.a.b.