

Yes
Reduction in
pay

3 CAT/11/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~NO EXCEEDING~~

O.A. No. 659 of 1988.
~~Ex. No.~~

DATE OF DECISION 23.4.1991

Ambalal Khodabhai Patel Petitioner

Shri I.S. Supehia Advocate for the Petitioner(s)

Versus

Union of India & Anr. Respondent

Shri P.M. Raval Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.H. Trivedi Vice Chairman

The Hon'ble Mr. S. Santhana Krishnan Judicial Member

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

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Ambalal Khodabhai Patel,
Asstt. Director Telecom (Admn)
Office of Chief General Manager,
Gujarat Telecom Circle,
Ashram Road,
Ahmedabad - 380 009.
(Advocate - Mr. I.S. Supehia)

.. Applicant

Versus

1. The Director General,
Department of Telecommunication,
Parliament Street,
New Delhi.- 110 001.

2. Union of India,
Through, The Director (VM)
Govt. of India,
Ministry of Telecommunications,
Dak Tar Bhavan,
New Delhi - 110 001.
(Advocate - Mr. P.M. Raval)

.. Respondents

CORAM : Hon'ble Mr. P.H. Trivedi

.. Vice Chairman

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

O.A. No. 659 of 1988

ORDER

Dated : 23.4.1991

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

.. Vice Chairman

In this case, the applicant has sought relief in terms of quashing and setting aside the penalty imposed and confirmed by the appellate authority in orders dt. 6.9.1983 by which he was held guilty of irregularities being committed by him and by which the punishment of reduction of pay by one stage for a period of two years w.e.f. 1.10.1983 was imposed upon him. The applicant's appeal was disposed of by the appellate authority by order dt. 24th June, 1988 annexed at A-5 by which that authority observed that on accepting the advice of U.P.S.C. on the appeal, it was rejected. Before the disposal of the appeal, the applicant filed a Special

Civil Application No. 4767/83 which was withdrawn on 26.12.1983 and an appeal was filed on 7.1.1984. He obtained stay order from the High Court which continues in operation. He has satisfied that on account of time required taken upto 10.10.1988 for filing application before the Tribunal, there is satisfactory and adequate reason and bar of limitation is not attracted. The applicant's case is that of a flaw on various grounds among which the main is that the inquiry report was not furnished to him prior to the order of punishment being imposed by the disciplinary authority. This is not disputed and in fact this ^{is the stand} ~~stands~~ in the appellate order on the ground that at that stage requirement was not operative. After the amendment of the Constitution in which the relevant proviso for furnishing second show cause notice was taken away by the amendment, On this question after Ramzan Khan's case of the Supreme Court and in view of the case being admittedly pending after that judgment non-furnishing of inquiry report prior to the punishment order of the disciplinary authority is held to be violative of natural justice and on this ground alone, the impugned orders of punishment and in appeal have to be quashed and set aside. There are other grounds taken by the applicant among which are that the joint inquiry has been conducted against the applicant and his subordinate who is ~~accuser~~ in the proceedings against the applicant and in view of the various instructions which are cited by the applicant in his pleadings, the Government have held that such a joint inquiry in such a manner is an irregularity, whether such irregularity makes proceedings illegal or void, may be the question on which there may be room for argument but it is plain that with this instruction, the Government have ~~not~~ accepted the position that such a joint inquiry will constitute an irregularity. They cannot take the plea

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that the inquiry is proper one and any result thereof has to be upheld. We also find that there are observations made in judgment in the Gujarat High Court which have been part of the pleadings and annexed which supports the petitioner that such a joint inquiry is vitiated and flawed.


2. Learned advocate for the applicant has taken the ground of the findings of the inquiry report being in^{to}consistance and vague and showing non-application of mind and the conclusions thereof being found without any ^{evidence based on} individual conflicted evidence. We have refrained from going into merits of these please and in fact learned advocate also ^{has} not pressed them because of the reasons and circumstances stated below.

3. In view of the admitted position that the inquiry report was not furnished to the applicant prior to the order of punishment, it is ^{the} in^{ex}capable conclusion that the impugned orders of punishment and in appeal are illegal, void and set aside. Further, in the facts and circumstances of the case, there is a ^{evidence} strong instruction that a joint inquiry attracts the ^{charge of} irregularity according to the instruction of the Government referred to in the application. It is not proper that the inquiry should be allowed to be proceeded with from the stage of furnishing of inquiry report to the applicant a fresh and giving him a notice to show cause against him prior to the passing of the order of punishment if any by the disciplinary authority. The flaw of the inquiry ^{is deeper} ^{anterior} go better and ~~has~~ interfered to that stage. For that reason the whole inquiry has to be regarded as void. However, the respondents are at liberty to proceed against the applicant by a fresh inquiry if they so decide.

4. In the result, the application is found to have

merit. The impugned orders are quashed and set aside. The applicant is allowed the monetary benefits if any as a result of this orders and directions. The orders in this regard be passed within four months of the date of this order. No order as to costs.


(S Santhana Krishnan)
Judicial Member


(P H Trivedi)
Vice Chairman

*Mogera