

Dismissal

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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~NEW DELHI~~

O.A. No. 776 of 1988.
~~Ex. No.~~

DATE OF DECISION 8.8.1991

F.D. Bhatti & Anr. Petitioner

Mr. D.M. Thakkar 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. M.M. Singh Member (A)

The Hon'ble Mr. R.C. Bhatt Member (J)

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

1. F.D. Bhatti,
Opp. S.T. Colony,
Gujarat Housing Board,
Block No. L/20, Room - 235,
Kapadvanj Road,
Nadiad. Dist. Kheda.

2. Jaswantlal P. Solanki,
Near Our Own High School,
Station Road,
At & Post-Prantij
Dist. Sabarkantha.
(Advocate - Mr. D.M. Thakkar)

: Applicants

Versus

1. Union of India,
Through :
The Under Secretary,
Govt. of India,
Ministry of Finance,
Department of Revenue,
New Delhi.

2. The Collector of Central
Excise & Customs,
Ahmedabad.

3. The Deputy Collector,
Central Excise & Customs,
Ahmedabad.
(Advocate - Mr. P.M. Raval)

: Respondents

O.A. No. 776 of 1988

ORAL - ORDER

Dated : 8.8.1991

Per : Hon'ble Mr. M.M. Singh : Member (A)

The two applicants, in this Original Application filed by them under section 19 of the Administrative Tribunals Act, 1985, have challenged the order of their dismissal from service in the Central Excise and Customs department under provisions of C.C.S.(C.C.A.) Rules, 1965.

2. The material facts in their application are that the applicants were charge sheeted by memorandum dt.

24.11.1983 and the applicants had participated in the

departmental inquiry held against them. An Inquiry Officer was appointed who, after completing the inquiry submitted his report to the Disciplinary Authority being the Deputy Collector (P & E), Central Excise & Customs, Ahmedabad. The said Disciplinary Authority disagreed with the findings of the Inquiry Officer and by his order dated 24.4.1986 found the applicants guilty of the charges levelled against them and imposed major penalty of dismissal from service in exercise of powers under rule 11 of the C.C.S. (C.C.A.) Rules, 1965. The report of the Inquiry Officer who according to the allegation of the applicants concluded that the applicants were not guilty was never supplied to the applicants either before the issue of the order of the Disciplinary Authority or even after it. It is however, clear from the "Order in Original" dated 24.4.1986 which ^{is} comprising ^{surprisingly} has been marked confidential and in which the evidence of various witnesses has been discussed, ^{was} the Disciplinary Authority in the order portion of the final order came to the conclusion, ^{which is} appears to differ from the findings of the Inquiry Officer for the reasons mentioned in the order and held that the charges levelled against the applicants are conclusively proved. The penalty of dismissal from service was imposed. In this order of the Disciplinary Authority, no where it is stated that the copy of the Inquiry Officer's report was furnished to the applicants before imposition of the penalty or even with the punishment order.

3. The applicant preferred an appeal against the dismissal order which was decided by the appellate authority by order in appeal dated 7.6.1986. In this order in appeal, the appellate authority referred in para 8.3 to the contention of the applicant that they

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were given no notice with regard to the proposed penalty nor personal hearing was afforded to them so as to enable them to make appropriate submissions against the punishment. This contention was disposed of by the appellate authority with reference to provisions of rule 15(4) of C.C.S.(C.C.A.) Rules, 1965 which lays down that the disciplinary authority having regard to its finding on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, being of the opinion that any of the penalty specified in the clauses (v) to (ix) of rule 11 should be imposed on the Government servant, ^{and} shall make an order imposing such penalty and it shall not be necessary to give the Govt. servant any opportunity of making representation on the penalty proposed to be imposed.

4. We would mention here that in the absence of supply of the inquiry officer's report to the applicant at any stage, the applicant would naturally be handicapped in preferring a proper appeal application on the order of the disciplinary authority. Presuming for the ^{sake} ^{of} sack of argument that the disciplinary authority was not required to furnish a copy of the inquiry officer's report to the applicant before the issue of the final order, rule 17 of the C.C.S. (C.C.A.) Rules requires that the order made by the disciplinary authority shall be communicated to the Government servant who shall also be supplied with a copy of the report of the inquiry if any held by the inquiry authority and copy of its findings on each article of charges or where the disciplinary authority is not the inquiry authority ^{and} a statement of findings of the inquiry authority together with brief reasons ^{for} its disagreement

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if any with the findings of the inquiry authority unless they have already been supplied to him. It is thus compulsory for compliance of rule 17 of the C.C.S. (C.C.A.) Rules, 1965 to supply a copy of the inquiry officer's report to delinquent when the inquiry officer is different from the disciplinary authorityⁿ that not having been done in this case is a basic flaw in the inquiry. Further flaw in the inquiry on this ground arises because of the judgment of the Supreme Court in Union of India v. Mohd. Ramzankhan - JT (1990) (4) S.C. 456, according to which non-supply of inquiry officer's report when the disciplinary authority is not the inquiry officer himself amounts^{to} denial of opportunity to the delinquent to make representation on the inquiry officer's report before the issue of the final order of the disciplinary authority.

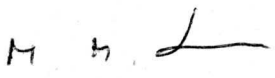
5. Because of the above basic flaws, the order of the disciplinary authority has to be set aside and because that order has to be set aside, the subsequent order^{- in - appeal n} which follows the disciplinary authorityⁿ also^{order has} have to be set aside. The respondents chooseⁿ to file no reply to the application despite repeated opportunity given to them. When the issue of written arguments by the learned counsel for the applicant aroseⁿ, learned counsel for the respondents also submitted that the respondents will make written submission. By order dt. 3.6.1991^{it was decided n} that both the learned counsel may exchange their written submission before the date of the final hearing. Mr. D.M. Thakkar, learned counsel for the applicant makes a statement at the bar that he has served a copy of his written arguments on Mr. P.M. Raval the learned counsel for the respondents on 12.6.1991. He produced copy of the same today. Despite a copy

of the written submissions made available, respondents' counsel has not choosen^m to file his written arguments or even appear at the time of final hearing for making any submission.

6. In view of the above, we direct that the Confidential order in original No. II/10(A) (Con)1/83 dated 24.4.1986 of the disciplinary authority is set aside as not issued and all subsequent orders thereafter in this departmental inquiry are also set aside as not issued.

7. We may clarify here that the respondents will have liberty to hold further departmental inquiry from the ⁿinitial stage^{g default. n}. Application allowed to the above extent. This order ^{shall n}may be implemented within 15 days ^{of a copy n}on receipt thereof by respondent No. 3 Deputy Collector, Central Excise & Customs, Ahmedabad.


(R C Bhatt)
Member(J)


(M M Singh)
Member(A)

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