IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 482 1989
~~T.A. No.~~

DATE OF DECISION ~~31.12.1990~~

Anagur Bhaskar _____ Applicant (s)

Mr. V. K. Raveendran _____ Advocate for the Applicant (s)

Versus

The Gnl. Manager, S.Rly, Madras and others _____ Respondent (s)

Mr. M. C. Cherian _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S. P. MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. N. DHARMADAN, 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? Yes
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

SHRI N. DHARMADAN, JUDICIAL MEMBER

The applicant filed this case challenging the punishment imposed against him after conducting disciplinary inquiry while he was in service. But he retired on superannuation on 28.2.1990 during the pendency of this application.

2. The applicant was working as the Station Master at the Ullal Railway Station, Palghat Division, when Annexure-1 memo of charges dated 9.12.1981 was issued to him containing the following four charges:

> "Article 1: That the said Sri Anagur Bhasker, 15146 while functioning as SM/KQK during Feb. 81, has committed serious misconduct in that, he claimed OTA under H & R without obtaining proper sanction from the competent authority and without performing extra duty for the period from 4.2.81 to 23.2.81;

Article 2: That the said Sri Anagur Bhasker,SM/KQK unauthorisedly exchanged duties with ASMS from 9.2.81 to 12.2.81 and from 16.2.81 to 23.2.81 with a view to claim OT allowance;

Article 3: That the said Sri Anagur Bhasker, on 14.2.81, took up the duty of Sri K. M. Balakrishnan ASM from 8 to 12 and claimed OT duly marking the muster roll as Sri Balakrishnan present for the whole day on 14.2.81 from 8.00 Hrs though Sri Balakrishnan had actually performed 22 to 24 Hrs. duty only

Article 4: That the said Sri Anagur Bhasker, had deliberately foregone weekly rest during 10.2.81, 17.2.81 and 17.3.81 and claimed OTA even though RG was available, without getting exemption under Rule 71 (D) of HOER"

3. After conducting the enquiry the inquiry officer submitted a report dated 20.7.84 finding that the charges in respect of article 2, 3 and 4 are not proved. Considering the report, the disciplinary authority passed Annexure A-7 proceedings, "rejecting the report" and renominating the same inquiry officer to conduct a fresh inquiry in the charges framed against the applicant under Annexure A-1 dated 9.12.1981. Thereafter a further inquiry was conducted from the stage of 59th question and the report dated 4.12.82 was submitted with the following findings on the charges:

" Findings:

Article I	Proved
Article II	Proved
Article III	Not proved
Article IV	Not proved."

4. The disciplinary authority after considering the report of the inquiry officer passed Annexure-15 penalty order dated 28.1.1983, by which the applicant was placed at the minimum of Rs. 425 in the scale of pay of Rs. 425-640 for a period of three years (NR). The applicant filed O.P. 1302/83 before the High Court of Kerala,without filing an appeal,which was dismissed. But he filed Writ Appeal 104/83 against the judgment of the Single Judge which was also heard and dismissed with the direction to the Divisional Railway Manager to entertain the appeal against the punishment order if the applicant decides to present the same within a period of one month. Accordingly the applicant filed an appeal, Annexure A-16, before the appellate authority,which was disposed of

by the order at Annexure A-17 dated 8.2.1988 modifying the punishment order with the following conclusion:

> "It is,however, seen that Shri Anangur Bhaskar has been subsequently promoted to grade Rs. 455-700 with effect from 1.8.83 (proforma from 1.8.1982) at the time of restructuring of cadre. He has also been promoted to grade Rs. 550-700 with effect from 1.8.86. This has been done because of the inoperation of the punishment, consequent on the interim orders of the Hon'ble High Court of Kerala. The punishment may, therefore, be modified suitably, taking the monetary aspect of Rs. 5,580/- into consideration. Accordingly the punishment is modified to one of reduction of pay in grade Rs. 1600-2660 and by fixing the pay at Rs. 1600/- for a period of nine months (NR)."

5. The applicant submitted a revision petition against the appellate order which was dismissed by Annexure A-19 order dated 8.7.1988.

6. The applicant is challenging the Annexure -1 memo of charges, Annexure-15 order of punishment, Annexure-17 order of the appellate authority and Annexure-19 order passed on the revision petition.

7. The learned counsel for the applicant raised the following contentions:

i) the fourth respondent's decision to reject the inquiry report submitted by the enquiry officer and to conduct a fresh inquiry is against the provisions of Rule 10 of the Railway Servants (Ddiscipline & Appeal)Rules 1968.

ii) The second inquiry conducted in this case is vitiated as violative of the principles of natural justice because of the failure to give earlier proceedings of the firstinquiry, major portion of which was relied on by the disciplinary authority for imposing the punishment in this case;

iii) The punishment imposed by the disciplinary authority without giving an opportunity to the applicant especially when there is disagreement by him with the findings of the inquiry officer is illegal and the entire proceedings are vitiated on that ground. and

iv) The failure to give a copy of the inquiry report to the applicant before the imposition of the punishment also vitiates the punishment order.

8. The respondents have filed a detailed counter affidavit denying all the averments in the application. They have stated in the counter affidavit specifically that

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inquiry officer submitted his report Ext. R-1(f), finding that only the first charge against the applicant has been proved, but the fourth respondent, the disciplinary authority, "felt that it is feasible and proper to remit the case to the very same inquiry officer for further inquiry and report. This was done in due consideration of the complaints of the applicant..." So the fourth respondent only ordered a "further" inquiry and not a "fresh" inquiry. They have also submitted that Annexure A-15, Annexne A-17 and Annexure A-19 are legal and valid orders and they are not liable to be set aside by this Tribunal.

9. We have heard learned counsel appearing on both sides and carefully perused the documents.

10. The first contention raised by the applicant relates to interpretation of sub rule 2 of Rule 10 of the Railway Servants (D&A) Rules 1968 which is quoted below:

> " The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall there upon proceed to hold further inquiry according to the provisions of Rule 9 as far as may be."

11. The disciplinary authority while conducting the inquiry through the inquiring authority after receipt of the inquiry report is of opinion that the inquiry has not been conducted properly he may record the reason thereof and remit the case to the inquiring authority for further inquiry and submitting report. Thereafter the inquiring authority shall follow the procedure under Rule 9 so far as it applies for continuing the proceedings and completing it in accordance with the direction of the disciplinary authority. The disciplinary authority has no power or jurisdiction to set aside the original inquiry report and direct a fresh reinquiry as if an appellate authority as

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indicated in Annexure A-7 order passed in this case. The disciplinary authority cannot arrogate to himself the powers of the appellate authority so as to examine the findings and conclusion of the inquiring authority and set aside the same. The maximum that can be done by him is only to consider the report and either agree with the findings and conclusions therein or disagree with the views of the inquiry officer. In case if he is disagreeing he may either follow the procedure for recording his reasons and impose the punishment after giving notice to the delinquent employee or remit the matter to the inquiring authority again for conducting 'further inquiry' dn the lines indicated by him in the written order.

12. In the instant case though the respondents had stated in Annexure A-7 order that inquiry report is set aside and remitted the matter for fresh inquiry he had actually directed to conduct a further inquiry to be conducted by the same inquiring authority in respect of the same charges from the stage of 59th question so as to rectify the mistake committed by the inquiry officer in the original inquiry. This is made very clear in the counter affidavit. It is stated that the fourth respondent came to the conclusion that "it is feasible and proper to remit the case to the very same inquiring authority for further inquiry and report." The applicant was unambiguously told that what has been ordered is a "further inquiry" and not a "fresh inquiry" as contended by the applicant. The learned counsel for the respondents referred to us Annexures A-7, A-8, A-10, A-11, A-13 and A-14 in order to satisfy us that the fourth respondent had decided to conduct further inquiry and remitted the matter to the same inquiring authority. According to the learned counsel, the further inquiry was conducted

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by the inquiry officer strictly in accordance with sub rule 2 of Rule 10 of the Rules. On going through the documents we are satisfied that it was only a further inquiry contemplated under the Rules 9 and 10 of the Rules in respect of the same charge covered by Annexure-I dated 9.10.1981 through the same inquiry officer. The inquiry proceedings Annexure-14 also support the stand of the learned counsel for the respondents.

13. The duty of the Courts or Tribunals is to find out the reality and decide the issues in the interest of justice notwithstanding technicalities and technical pleas. The Supreme Court in Union of India Vs. Jyoti Chit Fund and Finance, 1976 3 SCC 607 held:

> "Processual law is neither petrified nor purblind but has a simple mission- the promotion of justice. The Court cannot content itself with playing umpire in a technical game of legal skills but must be 'activist' in the cause of deciding the real issues between the parties. And one guiding principle is not to exaggerate the efficacy of procedural defects where issues of public concern are involved and a a public authority vitally interested in the correct principle alerts xx the attention of the court to the problem".

Having regard to the facts and circumstances of this case the order at Annexure A-7 only gives a mistaken version of what actually happened in this case. By passing the above proceedings the disciplinary authority really intended xx only to conduct a further inquiry as contemplated in Rule 10 read with the provisions of Rule 9 and not a fresh inquiry and he had not actually set aside the earlier report. Hence we are of the view that there is no substance in the first ground raised by the applicant.

14. The ground No. 2 and 3 can be considered together. With regard to the second ground urged by the learned counsel for the applicant we feel that the applicant has a strong case. It is seen from Annexure A-12 that the applicant submitted a letter during the course of the second inquiry

requesting production of some documents and findings entered into by the inquiry officer during the course of the inquiry. According to the applicant these documents have been relied on and they are required for shaping his defence. But this request was rejected as per Annexure A-12 order stating that only the findings accepted by the disciplinary authority need be sent to the charged employee. Though in the second inquiry proceedings as evidenced by Ext. R-1(a) only questions from Sl. No. 60 onwards alone were asked and the inquiry report and orders of the disciplinary authority and the appellate authority disclose that matters covered by earlier questions before question No. 60 were also referred to and relied on for coming to the conclusion. According to the applicant the denial of relevant documents and materials even after request of the applicant has prejudicely affected him in meeting the charges levelled against him and there is violation of principles of natural justice. The Supreme Court in U.P. Govt. Vs. Sabir Hussain, AIR 1975 SC 2045 considering a more or less similar issue held as follows:

> " Further, it is an uncontroverted fact found by courts that no copy of the report, findings and "comments" of the Enquiring Officer, was supplied to the delinquent servant. Another undisputed fact is that no copy of the enquiry report and allied documents was given to him even when he applied for the same in order to file an appeal to the higher authorities against the order of removal. The servant was told that he was not entitled to those copies excepting a copy of the impugned order of punishment and that too, on payment of Rs. 3/- as copying charges.
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> In view of these stark facts, the High Court was right in holding that the plaintiff (respondent) was not given a reasonable opportunty to show cause against the action proposed to be taken against him and that the non-supply of the copies of the material documents had caused serious prejudice to him in making a proper representation. There was a disobedience of the mandate of Section 240(3) of the Government of India Act, 1935 and the impugned order stood vitiated on that score alone. Reference to Rule 5-A of the Appeal Rules, made by the High Court in support of its conclusion, was unnecessary because application of that Rule to the employees of the Jail Department had been expressly excluded by Rule 6 of the Appeal Rules. Moreover, Rule 5-A was inserted in 1953, while we are dealing with a removal order made in 1949."

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15. The further contention of the applicant that the applicant was not given opportunity before imposing the punishment because he is entitled to a notice due to the disagreement by the disciplinary authority with the findings of the inquiring authority is also well founded. The penalty order Annexure A-15 shows that there is disagreement by the disciplinary authority so far as the findings and conclusions of the enquiring authority in respect of the charge No.3. The relevant portion is extracted below for reference:

> "In his final report submitted on 4.12.82, the Enquiry Officerhas held charges listed under article I and II of this office charge memorandun No. J/P.65 /Tfc.Bills/1/82 dated 9.12.81 have been proved whereas charges framed under article III and IV of the same charge memorandum have not been proved. I have studied the proceedings of the further enquiry as well as the report submitted by Enquiry Officer very carefully. I accepted the report of the Enquiry officer that charges framed under article I and article II of this office charge-memorandum No. J/P.65/Tfc.Bills/82 dated 9.12.81 are proved. In addition, I also feel that charges framed under article III of the above mentioned charge memorandum dated 9.12.81 are also proved. To this extent, I do not agree with the report submitted by the Enquiry Officer.
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> I agree with the report of the Enquiry Officer that charges framed under article IV of the above mentioned charge memorandum dated 9.12.81 are not proved."

16. From the above conclusion of the disciplinary authority it can be seen that there is disagreement (adverse to the applicant) by the disciplinary authority with the finding of the enquiring authority in respect of one of the charges covered by article-III. Under these circumstances the disciplinary authority cannot proceed with the further steps without notifying the decision to disagree with the enquiring authority to the applicant. It is incumbent upon him to give the applicant an opportunity to explain his views before actually imposing the punishment on him. It has been admitted that no such notice has been issued or opportunity was given to the applicant. We have recently

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considered this issue in detail in T. K. Gopinathan V. Union of India and 4 others, O.A. K. 259/88, the same Bench held as follows:

> ".. By taking a unilateral decision behind the back of the applicant who was found to be not guilty on the first and third elements of the charge, the disciplinary authority has violated the elementary principles of natural justice and the principle of reasonable opportunity enshrined under Article 311(2) of the Constitution of India. It was held by the Supreme Court in Narayan Misra V. State of Orissa, 1969 SLR 657 that if the Enquiry Officer exonerates the charged officer but the disciplinary authority disagrees, the charged officer must be given a notice before the disciplinary authority comes to a conclusion against him. The following observations made by the Supreme Court in that case will be pertinent to be quoted:
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> "Now if the Conservator of Forests intended taking the charges on which he was acquitted into account, it was necessary that the attention of the appellant ought to have been drawn to this fact and his explanation, if any, called for. This does not appear to have been done. In other words, the Conservator of Forests used against him the charges of which he was acquitted without warning him that he was going to use them. This is against all principles of fair play and natural justice. If the Conservator of Forests wanted to use them, he should have appraised him of his own attitude and given him an adquate opportunity. Since that opportunity was not given, the order of the Conservator of Forests modified by the State Government cannot be upheld. We accordingly, set aside the order and remit the case to the Conservator of Forests for dealing with it in accordance with law. If the Conservator of Forests wants to take into account, the other two charges, he shall give proper notice to the appellant intimating to him that those charges would also be considered and afford him an opportunity of explaining them' (emphasis added) (in the above quotation the term 'acquitted' was with reference to the acquittal by the enquiry officer and not by any Court)..."

Similarly in M. D. Mathew V. Union of India and two others, O.A. 478/89, this Bench in which one of us (Shri N. Dharmadan was a party considered an identical question and held as follows:

> "... Legal position on this subject is well settled that when there is disagreement between the enquiry authority and the Disciplinary Authority with regard to the findings and conclusions to the disadvantage of the delinquent, before the imposition of punishment on the delinquent, he should be given an opportunity of being heard.

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> Fairness requires such an opportunity to be given by the Disciplinary Authority. This Tribunal is consistently taking the view that such an opportunity has to be given to the delinquent Government employee in the interest of justice before the imposition of the punishment or passing adverse orders in that behalf...."

17. The learned counsel for the applicant also placed considerable reliance on the latest judgment of the Supreme Court in Union of India V. Mohd Ramzan Khan, JT 1990(4)SC 456 and submitted that the whole enquiry proceedings are vitiated because of the failure on the part of the disciplinary authority in serving a copy of the enquiry report before imposing the punishment. In this case admittedly the enquiry report was served on the applicant along with the punishment order Ext. A-15. There is no explanation by learned counsel for the respondents for the failure to serve a copy of the report in advance before imposing the punishment. But he submitted that it has been made clear in the decision that the principles laid down therein has only prospective application.

19. Having considered the matter in detail, we are of the view that the applicant is entitled to succeed. Accordingly, we quash the impugned orders at Annexure A-15, A-17 and A-19 and direct the respondents to restore the applicant in his grade of pay and grant other consequential benefits legally due to him as if there was no punishment. This judgment will not stand in the way of the respondents in taking appropriate action against the applicant permissible in law in case the respondents decide to do so. In the result, the application is allowed. There will be no orders as to costs.

31.12.90

(N. Dharmadan)
Judicial Member

31.XII.90

(S. P. Mukerji)
Vice Chairman

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