

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.No.202/98

Friday this the 24th day of April, 1998.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE SHRI S.K.GHOSAL, ADMINISTRATIVE MEMBER

P.M.Abdul Salam,
Ex-Junior Engineer(Civil),
Office of the Executive Engineer, Posts & Telegraph Civil
Divisions,
Poona. Applicant

(By Advocate Mr.M.R.Rajendran Nair)

vs.

1. The Superintending Engineer(C),
Telecom Civil Circle,
Bombay.
2. Advisor, Human Resources Development,
Government of India, Ministry of Communications,
Dak Bhavan, Sansad Marg, New Delhi.
3. The Chairman, Telecom Commission, New Delhi.
.... Respondents

(By Advocate Mr.S.Radhakrishnan, ACGSC)

The Application having been heard on 3.4.98, the Tribunal on
24.4.1998 delivered the following:

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The applicant was proceeded against under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 ("CCS CCA Rules" for short) for a charge of unauthorised absence. On the conclusion of the enquiry, the first respondent the disciplinary authority issued the impugned order (Annexure A3) dated 10.5.93 holding the applicant guilty of the charge and imposing on him a penalty of removal from service. Before passing the impugned order

Annexure A3 the first respondent did not supply the applicant a copy of the enquiry report nor did he give the applicant an opportunity to make a representation against the acceptability of the finding of the Enquiry Officer. The applicant filed an appeal to the second respondent raising various grounds including that the order of the disciplinary authority is bad for denial of reasonable opportunity to the applicant to defend himself as a copy of the enquiry report was not given to him before the disciplinary authority entered a finding that he was guilty. The second respondent the appellate authority confirmed the order of the disciplinary authority. On the contention raised by the applicant in the appeal that the non-supply of the copy of the enquiry report and denial of an opportunity to make a representation before the disciplinary authority took a decision that he was guilty, amounted to denial of reasonable opportunity to defend, the second respondent held that the passing of the order by the disciplinary authority along with sending a copy of the enquiry report was quite in order as per rules on the subject. Aggrieved by the appellate order Annexure A5 dated 4.1.95 the applicant filed a revision petition in which also he inter alia contended that non-supply of a copy of the enquiry report and denial of an opportunity to make a representation before the disciplinary authority took a decision that he was guilty amounted to deprivation of reasonable opportunity to defend himself. As there was no response to the revision petition the applicant sent a reminder on 13.11.96. Still finding no response the applicant filed O.A.No.806/97. O.A.No.806/97 which was disposed of by this Tribunal with a direction to the third respondent to consider the revision petition in accordance

with law and to give the applicant a speaking order within a period of 3 months from the date of receipt of a copy of the order. Pursuant to the order in O.A.No.806/97 the third respondent has passed the order dated 24.9.97 (Annexure A9) rejecting the revision petition. In Annexure A9 order also on the contention of the applicant that the failure on the part of the disciplinary authority to supply a copy of the enquiry report and to afford him an opportunity to make a representation vitiated the proceedings, the revisional authority held that the supply of a copy of the enquiry report and affording an opportunity before the disciplinary authority takes a decision, is not mandatory and that as a copy of the enquiry report was furnished to the applicant along with the order of the disciplinary authority, the provisions of the rules stood complied with. Since the appellate authority as also the revisional authority have refused to interfere with the impugned order of removal from service, the applicant has filed this application praying for setting aside the impugned orders at Annexures A3, A5 and A9, for a declaration that the termination of his services is illegal and for a direction to the respondents to reinstate him in service with all consequential benefits including back wages, continuity of service etc. The applicant has raised various grounds in the Original Application. He has inter alia contended that the impugned orders are unsustainable as the penalty of removal from service has been imposed on the applicant without giving him a copy of the enquiry report and affording him an opportunity to make a representation before the disciplinary authority entered a finding of guilt thereby denying him a reasonable opportunity to defend himself.

2. The respondents seek to justify the impugned orders on various grounds. In answer to the contention of the applicant that non-supply of a copy of enquiry report and denial of an opportunity to him to make a representation to the disciplinary authority before it took a decision that the applicant was guilty basing on the report, the respondents contend that as a copy of enquiry report was given to the applicant alongwith the disciplinary authority's order he could urge all the grounds in appeal and review and therefore no prejudice has been caused to him.

3. We have perused the pleadings and other materials on record and heard Shri M.R.Rajendran Nair, learned counsel appearing for the applicant and Shri S.Radhakrishnan, Addl. CGSC appearing for the respondents.

4. The short question that arises for consideration in this application is whether the non-supply of a copy of the enquiry report and denial of an opportunity to the applicant to make his representation against the finding in the report has vitiated the proceedings and is the impugned orders liable to be set aside. Learned counsel of the applicant placing reliance on the rulings of the Hon'ble Supreme Court in Union of India vs. Mohammed Ramzan Khan reported in 1991(1) SCC 588 and in Managing Director, ECIL vs. B. Karunakar reported in 1993(4) SCC 727, argued that in the light of the declaration of law by the Hon'ble Supreme Court that the non-supply of a copy of the enquiry report and denial of opportunity to the delinquent employee to make a representation would amount to denial of reasonable opportunity to defend, it is idle to contend that the impugned orders do not suffer from any infirmity because

it is admitted that the copy of the enquiry report was not furnished to the applicant before the disciplinary authority arrived at a finding that the applicant was guilty and imposed on him the penalty of removal from service. Learned counsel of the respondent argued that as a copy of the enquiry report was given to the applicant along with the order of the disciplinary authority and as the applicant had raised all his contentions in the appeal and review the omission to supply the copy of the report has not caused any prejudice at all to the applicant. The requirement of furnishing a copy of the enquiry report and giving an opportunity to make a representation is not mandatory according to the learned counsel. In support of this argument, the learned counsel referred us to the ruling of the Supreme Court in S.K.Singh vs. Central Bank of India and others, 1997 SCC(L&S)40. We do not find any merit in this argument. The Hon'ble Supreme Court has not in S.K.Singh's case declared that the non-supply of a copy of the enquiry report and denial of an opportunity to make a representation would not amount to denial of reasonable opportunity to defend. On the other hand, the Court has reiterated the principle enunciated in Mohammed Ramzan Khan's case and in ECIL's case. In S.K.Singh's case the High Court of Madhya Pradesh required the petitioner before it to show whether any prejudice was caused to him by not supplying a copy of the enquiry report before the disciplinary authority found him guilty, but the petitioner failed to show that any prejudice was caused. It was therefore that the High Court refused to interfere with the order of penalty. In the special facts and circumstances of that case as was found that no prejudice was caused to the petitioner on account of

non-supply of a copy of the enquiry report in time, the Hon'ble Supreme Court found no necessity to interfere with the order of the High Court. Therefore S.K.Singh vs. Central Bank of India and others is not an authority for the proposition that non supply of a copy of enquiry report and denial of an opportunity to the employee to make a representation to the disciplinary authority before it enters a finding as to the employee is guilty or not would not amount to denial of reasonable opportunity to defend. On the other hand the Court has accepted and reiterated the law declared in Mohammed Ramzan Khan's case and the ECIL case. It is profitable to extract what the Supreme Court observed in S.K.Singh's case in para 4 of its judgment. It reads as follows:

"4. It is contended by Shri Khanduja, learned counsel for the petitioner, that since this Court has laid down the law that supply of copy of the enquiry report is a precondition for a competent officer to take disciplinary action, the appropriate course would have been to send back the case to the disciplinary authority. For this course, normally there is no quarrel, as this Court had settled the law that a copy of the report needs to be supplied to the delinquent employee to enable him to make representation against the proposed action or punishment, and, thereafter, the authority is required to consider that explanation offered by the petitioner and then to take decision on the quantum of punishment. In this case, though copy of the report was not supplied, he was asked by the learned Single Judge as well as by the Division Bench as to what prejudice he suffered on account of non-supply of the report; but he was not able to satisfy

the learned Judges as to the prejudice caused to him on account of non-supply of the enquiry report. On the facts, we find that there is no illegality in the decision taken by the High Court."

Though the disciplinary authority is expected to reach its own conclusion on the question whether a delinquent employee is guilty or not on the basis of the evidence, the report of the enquiry officer is an important material that would be considered by the disciplinary authority for reaching his conclusion. Therefore it is necessary that the delinquent employee is given a copy of this report and an opportunity to make his representation against the acceptability of the finding in the report. The non-supply of the copy of the enquiry report and denial of an opportunity to make a representation therefore undoubtedly amounts to denial of reasonable opportunity to defend. It is because of this position that sub-rules I-A and I-B have been added to Rule 15 of the CCS CCA Rules making it compulsory for the disciplinary authority to furnish a copy of the enquiry report to the Govt. servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority and to consider the representation submitted by the Govt. servant before proceeding further in the manner specified in sub-rules (2) to (4) of Rule 15. In view of the declaration of law by the Hon'ble Supreme Court in Mohammed Ramzan Khan's case and in Managing Director, ECIL vs. Karunakar that the non-supply of a copy of the enquiry report and failure to afford an opportunity to the Govt. servant to make a representation would amount to denial of reasonable opportunity to defend and in view of

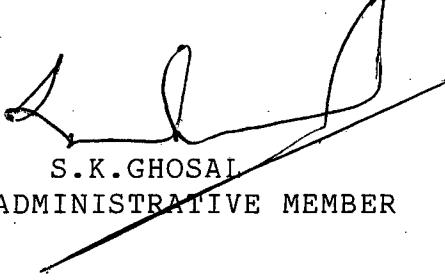
the guarantee in Article 311(2) of the Constitution against dismissal, removal or reduction in rank except after an enquiry in which the Govt. servant is to be given a reasonable opportunity of being heard in respect of the charges, it has to be held that the requirement to supply a copy of the enquiry report and to give the Government servant an opportunity to make a representation to the disciplinary authority before it decides whether the Govt. servant is guilty or not is mandatory in nature. As this mandatory requirement has not been complied with by the first respondent before he decided that the applicant was guilty, we are of the considered view that the impugned order Annexure A3 is bad in law and is unsustainable. The orders of the appellate and revisional authorities Annexures A5 and A9 are also unsustainable in law for the same reason. In view of our finding that the impugned order Annexure A3 is unsustainable for the reason as aforesaid we are not going into the merits of the other contentions of the parties in this application.

5. In view of our finding that the impugned orders are unsustainable, the application is allowed. The impugned orders Annexures A3, A5 and A9 are set aside declaring that the removal of the applicant from service is illegal and unsustainable in law. However, we would clarify that this decision shall not preclude the disciplinary authority from reviving the proceedings and continuing it in accordance with law from the stage of supply of copy of the enquiry report to the applicant. If the disciplinary authority decides to do so, the applicant shall be deemed to have been placed under suspension in accordance with the provisions contained in sub-rule 4 of Rule 10 of the CCS CCA Rules and he should be paid subsistence allowance and arrears for this period. If a decision to revive the

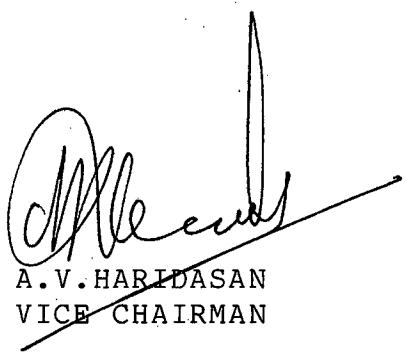
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proceedings is not taken within a period of one month from the date of communication of this order, the respondents shall reinstate the applicant in service forthwith with all consequential benefits such as continuity of service etc. and to pay him full back wages within a period of three months from the date of receipt of a copy of this order. There is no order as to costs.

Dated the 24th April, 1998.



S.K.GHOSAL
ADMINISTRATIVE MEMBER



A.V.HARIDASAN
VICE CHAIRMAN

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LIST OF ANNEXURES

1. Annexure A3:

Order No.7(100) 93/SET(B) AMAS/152-C DATED 10.5.1993
issued by the Disciplinary Authority and Ist respondent.

2. Annexure A5:

Order No. I-24/93-Vig.III dated 4.1.95 issued by the
2nd respondent.

3. Annexure A9:

Order No. I-24/93-Vig.III dated 24.9.97 issued by the
Director(DE & VP), Government of India, Ministry of
Communications, Department of Telecommunications,
Dak Bhavan, Sansad Marg, New Delhi.
