

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL- LUCKNOW BENCH,

LUCKNOW.

D.A. No. 180 of 1991.

Bhuwaneshwar Misra..... Applicant.

Versus

The Union of India & others..... Respondents.

Hon'ble Mr. Justice U.C. Srivastava - V.C.

Hon'ble Mr. K. Chayya - A.M.

(By Hon'ble Mr. Justice U.C. Srivastava V.C.)

The applicant at the relevant point of time was posted as Asstt. Superintendent, Post Offices in District Saharanpur in the year 1976-77. A charge-sheet was served upon him on 17.3.1983 in respect of theft by omission or commission ~~was~~ committed by him in the year 1976-77.

2. The applicant filed a Writ Petition challenging the said charge-sheet. The said Writ Petition was transferred to this Tribunal and was ultimately disposed of vide order dated 7th of March, 1991. The Tribunal rejected the application with the observation that it will be open for the applicant to file an appropriate application under the Administrative Tribunals Act as the application has become infructuous.

3. This order was passed in view of the fact that in the mean time the Enquiry Proceedings ended in a punishment order dated 29.8.90. The applicant grievance is that no date, time and place for the examination of witnesses was fixed and the inquiry has been taken behind his back and prosecution witnesses were not named in the charge-sheet. The show cause notice was also illegal as the copy of the inquiry report and statement of witnesses was not supplied to him alongwith show cause notice. The applicant challenged the show cause notice vide his representation dated 2.6.89 in which it was pointed out by him that as deductions have

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already been made there was no question of any disciplinary proceedings against him, and the deductions so made are also illegal, but in that application it was nowhere stated by him that he has not been given any opportunity by the disciplinary Authority.. Although the proceedings started when the applicant was still in service, but in the mean-time he retired from the service, it was converted into proceedings under Pension Act under relevant sanction. The matter was referred to U.P.G.C. in which order the penalty contained in the judgment was which approved the penalty so suggest. The penalty which has been given to the applicant that his pension was reduced by 20% per month and that a sum of Rs. 1276/- being amount which was claimed by him to be recovered from his death cum Retirement gratuity, payable to him. According to the applicant the said amount has already been deducted and the same cannot be deducted twice. The main ground on this challenge is that no opportunity of hearing was given to the applicant and that inquiry officers' report was also not given. So far the inquiry proceedings are concerned, the respondents have denied this allegation and they have stated that opportunity of hearing was given to the applicant which he did not file any defence statement and he himself avoided to participate the proceedings. The applicant also did not make any complaint in this behalf in his reply to show cause notice. This indicates that the applicant himself did not like to avail the opportunity which in fact was given to him, but giving of inquiry Officer's report to the applicant was the must. The show cause notice was given to the applicant without the inquiry officer's report. In case the inquiry Officer's report which has been given to the applicant

the applicant would have got an opportunity to point out the flaw in the same or that the allegations against him has not been proved or the deductions have been made more than once and that he cannot be made liable for the extra amount which was being deducted or that the quantum of punishment is not excessive, harsh and / commensurate with the charge proved against him.

The giving of inquiry Officer's report, even after decision of Article 311 (2) of Constitution of India as required in the principle of Natural Justice has been up-held in the case of Union of India Vs. Moh. Ramjan Khan A.I.R. 1991 S.C. - 471. Dr. D. Chand learned counsel for the respondent ~~disciplinatory~~ contended that in Ramjan Khan case, it has been specifically laid down that this judgment will have a prospective effect and not retrospective effect. In the instant case the punishment order was passed in the month of August, 1990. The applicant has challenged the said order within a period of one year before this Tribunal. It may be that there was no inquiry officer report was given to the applicant as such the applicant should not have said any thing against his reply. He had one year's time to challenge the said order and challenged the said order. It can not be said that the benefit of Ramjan Khan is being claimed on retrospective basis and accordingly this application deserves to be allowed, and the punishment order dated 29.8.90 is quashed. However it will be open for the disciplinary authority to go ahead with the inquiry proceedings beyond that stage only as the applicant has failed to make

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out a case for holding a fresh inquiry. After giving him Inquiry Officer's report and reasonable time to file the representation against the same. It is only thereafter the disciplinary authority will pass the necessary orders in accordance with law. No order as to the costs.

Member (A).


Vice Chairman.

Dt: May 20, 1992.

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