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CENTRAL ADMINISTRATIVE TRIBUNAL,

LUCKNOW BENCH,

LUCKNOW.

O.A.No.52/90 (L)

B.N. Singh : : : : : Applicant

Vs.

Union of India & : : : : : Respondents
Others.

Hon. Mr. Justice R.K. Verma, V.C.

Hon. Mr. B.K. Singh, A.M.

(By Hon. Mr. Justice R.K. Verma, V.C.)

By this petition, the petitioner has challenged three orders namely the order dated 14-10-86 (Annexure A-2 to the petition) whereby the petitioner was put off duty, order dated 9-5-89 (Annexure A-10) whereby the petitioner was dismissed from service and order dated 27-8-89 (Annexure A-12) whereby the petitioner's appeal has been rejected and sought directions to respondent No.2, Superintendent of Post Offices, Rae Bareily, to reinstate the petitioner on his original post of Extra Departmental Branch Post Master (EDBPM), Athnasa.

2. The facts giving rise to this petition briefly stated are as follows :-

While the petitioner was serving as E.D.B.P.M., Athnasa, he is said to have received a sum of Rs.2,500/- from the depositors for crediting the same in the Postal Savings Account, but the same was not entered in the relevant Pass Books and other concerned records and it is alleged that the petitioner misappropriated the said sum. The petitioner was consequently put off duty on 27-10-86 in pursuance of the order of respondent No.2 dated 14-10-1986 (Annexure A-2) in contemplation of disciplinary action against him. But it was after elapse

of one year i.e. on 11-11-1987 that he was served with a charge sheet (Annexure A-4) which marked the commencement of disciplinary proceedings. An enquiry was held against the petitioner on the charges levelled against him. The Enquiry Officer submitted the enquiry report to the disciplinary authority, who agreeing with the findings recorded in the enquiry report, found the charges proved against the petitioner and imposed a penalty of dismissal from service with immediate effect by order dated 9-5-89 (Annexure A-10).

2.1 The petitioner filed an appeal before the appellate authority i.e. respondent No.3 raising, inter-alia, the contention that he was not given adequate opportunity of defending himself during enquiry and was also not supplied a copy of the enquiry report submitted by the enquiry officer. The Appellate Authority repelled the contentions of the petitioner and dismissed the appeal.

2.2 Being aggrieved, the petitioner has filed this petition under section 19 of the Central Administrative Tribunal's Act, 1985.

3. The learned Counsel for the petitioner submitted that the petitioner was put off duty on 27-10-1986. But the disciplinary proceedings were commenced after one year i.e. on 11-11-87 and finalised by order of punishment dated 9-5-89. It is pointed out by the learned Counsel that the E.D.A. conduct and service rules provided guidelines as existing at the relevant time, for putting off duty, according to which the disciplinary authority was required to finalise the disciplinary proceedings and pass final orders so that the E.D.A. did not remain

'put off' duty for a period exceeding 120 days. It is, therefore, urged that the petitioner was illegally put off duty beyond a period of 120 days which rendered the order dated 14-10-86 illegal and invalid.

4. But the aforesaid contention of the learned Counsel for the petitioner does not have much substance since challenging the order of 'putting off duty' can have no bearing on the question of validity or otherwise of the enquiry and the final order of the disciplinary authority imposing the penalty of dismissal against the petitioner.

5. The only point of some substance urged on behalf of the petitioner is that according to the rules of natural justice, it was necessary to furnish the enquiry report to the petitioner on the basis of which the order of dismissal from service was passed, but since the petitioner was not supplied a copy of the enquiry report, the order of punishment cannot be sustained, the same having been passed in violation of the principles of natural justice. A decision of the Supreme Court in the case of Union of India & Others Vs. Mohammad Ramzan Khan was cited before us in support of the aforesaid argument of the Counsel for the petitioner.

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6. The relevant observation made by the Supreme Court are as follows :-

"Deletion of the second opportunity from the scheme of Art. 311 (2) of the Constitution has nothing to do with providing of a copy of the report to the delinquent in the

matter of making his representation. Even though the second stage of the inquiry in Art. 311(2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the Inquiry Officer holding that the charges or some of the charges are established and holding the delinquent guilty of such charges. For doing away with the effect of the enquiry report or to meet the recommendations of the Inquiry Officer in the matter of imposition of punishment, furnishing a copy of the report becomes necessary and to have the proceeding completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. While by law application of natural justice could be totally ruled out or truncated, nothing has been done here which could be taken as keeping natural justice out of the proceedings and the series of pronouncements of this Court making rules of natural justice applicable to such an inquiry are not affected by the 42nd amendment. We, therefore, come to the conclusion that supply of a copy of the Inquiry report along with recommendations, if any, in the matter of proposed punishment to be inflicted, would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof. The Forty-Second Amendment has not brought about any change in this position."

7. The learned Counsel appearing on behalf of the respondents has submitted that the principles of law laid down by the Supreme Court as above is of no help to the petitioner in this case since the aforesaid law laid down by the Supreme Court is to have prospective application and no punishment imposed would be open to challenge on the ground of non-supply of enquiry report as has been made clear in the said Supreme Court judgement itself.

8. As regards the prospective application of the law as stated by the Supreme Court, the relevant observation reads thus :-

" But this shall have prospective application and no punishment imposed shall be open to challenge on this ground. "

" We make it clear that wherever there has been an enquiry officer and he has furnished a report to the disciplinary authority at the conclusion of the enquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge."

9. In the instant case the order of dismissal was passed against the petitioner on 9-5-89 and his appeal was dismissed on 27-8-89 and the petitioner filed the present petition under section 19 of the C.A.T. Act on 12-2-90. The case of Mohammed Ramzan Khan (Supra) was decided on 20-11-90 and thus the law laid down by the Supreme Court became available on 20-11-90 i.e. during the pendency of the present petition. The ground that the final order of punishment is vitiated on account of violation of the rules of natural justice, due to non-furnishing of enquiry report was taken by the petitioner before the appellate authority itself and according to the submission of the learned Counsel for the petitioner the said ground is liable to be accepted on the authority of law as laid down by the Supreme Court

in Mohmed Ramzan Khan's case (Supra).

10. The learned Counsel for the respondents has, however, cited another case of the Supreme Court is decided on 6-3-1991 which / S.P. Viswanathan (I) Vs. Union of India & Others (1991 Supp (2) Supreme Court case 269) which seem to clarify the meaning of prospective application of law as stated in Mohmed Ramzan Khan's case. The relevant observations in this behalf are as follows :-

" Learned counsel for the petitioner urged that since a copy of the inquiry report was not supplied to the petitioner, the order of termination is vitiated. He placed reliance on the decision of this Court in Union of India Vs. Mohd. Ramzan Khan'. It is true that this Court has held that if inquiry report is not supplied to the delinquent employee before passing the order of punishment, the order would be rendered illegal. But the decision of this Court is given a prospective effect. It will not affect the orders passed prior to the date of rendering of the judgement (November 20, 1990) as would be clear from para 17 of the judgement. "

11. In view of the above clarification, the decision in Mohd. Ramzan Khan's case will not affect the order of punishment passed prior to the date of judgement pronounced (20-11-90) in that case. The order of punishment imposed in this case was passed on 9-5-89 i.e. prior to 20-11-90, the date of judgement rendered in Mohd. Ramzan Khan's case.

12. In view of the clarification made in the case of S.P. Viswanathan Vs. Union of India & Others (Supra), the

petitioner cannot get support of the law as laid down in Mohd. Ramzan Khan's case (Supra).

13. Accordingly this petition fails without any order as to costs.


Member (A)

R.K. Varma
Vice-Chairman.

Dated: 27/7/1993, Lucknow.

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