



CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

[REDACTED]
[REDACTED] BOMBAY BENCH

O.A. No. 291/87
RAXX No.

198

DATE OF DECISION 1-10-1991

RAJESH KAURA

Petitioner

G K Masand

Advocate for the Petitioner(s)

Versus

Union of India & 2 others

Respondent

R C Master

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M Y Priolkar, Member (A)

The Hon'ble Mr. T C Reddy, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

MOIPRRND-12 CAT/86-3-12-86-15,000

[Signature]
(M Y PRIOLKAR)
MEMBER (A)

(13) (14)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, "GULESTAN" BUILDING NO.6
PREScot ROAD; BOMBAY-400001

0.A.291/87

Rajesh Kaura
Substitute Berth Reservation Clerk
in Bombay Central Reservation Office
Bombay Division, Western Railway
C/o. G K Masand
Advocate, CAT, Bombay

..Applicant

V/s.

1. Union of India
through General Manager
Western Railway
Churchgate
Bombay 400020

2. Divisional Railway Manager
Bombay Division
Western Railway
Bombay Central
Bombay 400008

3. Senior Divisional Commercial
Superintendent, Bombay Division
Western Railway
Bombay Central
Bombay 400008

..Respondents

** Cram: Hon. Shri M Y Priolkar, Member(A)
Hon. Shri T C Reddy, Member(J)

ORAL JUDGMENT
(PER: M Y PRIOLKAR, MEMBER(A))

DATED: 1-10-1991

The applicant in this case while serving as substitute Berth Reservation Clerk was issued with chargesheet on 29.12.1984 on the charge that he was not on duty on 3.12.1984 yet he issued a confirmed ticket unauthorisedly thereby violating Rule No. 3(1)(i) of the Railway Servants Conduct Rules, 1966. After holding an inquiry which found him guilty of the charge, the Disciplinary Authority agreeing with the Inquiry Officer's Report imposed on the applicant the penalty of removal from service by order dated 5.3.1986.

** APPEARANCE: Mr. G K Masand, Advocate for the applicant
Mr. R C Master, Advocate for the respondents

(H) (S)

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A copy of the findings of the inquiry was sent to the applicant along with the impugned order dated 5.3.1986. His appeal to the Divisional Railway Manager was subsequently decided by order dated 7.5.1986 which was challenged before this Tribunal by the applicant by filing O.A. No. 182/86. This Tribunal relying on the Supreme Court decision in the case of Ram Chander V. Union of India 1986(2) SLR 608 remanded the case back to the Divisional Railway Manager for a fresh decision after giving an opportunity to the applicant of being heard and passing a speaking order after discussing and deciding all the points raised in the appeal.

Various grounds have been advanced in the present application contending that both the Disciplinary Authority's order and the Appellate Authority's order are illegal and violative of Article 311 of Constitution of India and also Discipline and Appeal Rules 1968 of Railway Servants.

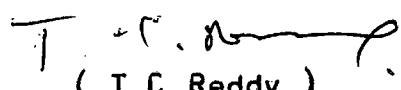
We have heard the learned counsel for the applicant and are of the view that the application deserves to succeed on one ground alone viz., that a copy of the Inquiry Report in this case was sent to the applicant along with the order imposing the penalty of removal by the disciplinary authority. It is now settled by the Supreme Court decision in the case of Union of India V. Ramzan Khan, AIR 1991, SC471 in which it has been held that wherever an inquiry has been held and the delinquent has been found guilty in the inquiry, a copy of the inquiry report has to be furnished to the delinquent official prior to the imposition of the penalty so that the delinquent official is able to make a representation against the findings in the inquiry report. Non-compliance with this requirement has been held to be violative of the principles of natural justice. Since admittedly

a copy of the inquiry report was furnished in this case only along with the disciplinary authority's order of removal from service, we have to hold that the disciplinary authority's order and the further order of the appellate authority are, ^{to be} set aside as violative of principles of natural justice.

The learned counsel for the respondents stated that since in our earlier order the direction was only to dispose of the appeal after considering all the points raised in the appeal and since this specific plea of non-furnishing of inquiry officer's report was not raised in the appeal made by the applicant it is not open for the applicant now to take this plea at this stage. Evidently this is a legal issue and there is no bar to the legal issues being raised at any stage during the course of hearing. Besides we have in our ^{interim} earlier orders dated 6.7.89; 28.11.89; 20.3.90; 14.6.90; etc., ^{in this case} we have specifically recorded that the plea taken is that the same point involved in the judgment of the Full Bench Judgment in the case of P.K. Sharma viz., that a copy of the inquiry report was not furnished prior to the imposition of the penalty also is involved in this case and hearing of the case was adjourned repeatedly awaiting ~~for~~ the judgment of the Supreme Court which has finally settled this issue ^{with its judgment cited above which} and is a binding law on the subject. We do not find, therefore, any substance in the contention of the learned counsel for respondent.

Accordingly, we set aside the order dated 5.3.1986 of the disciplinary authority removing the applicant from service as also the appellate authority's order dated 27.3.1987 confirming this order of disciplinary authority. Respondents shall, however, be at liberty

to proceed with the departmental action, if they so desire, from the stage the illegality was committed. The applicant will be entitled to all consequential benefits/reliefs in accordance with law. There would, however, be no order as to costs.


(T C Reddy)
Member (J)


(M Y Prakar)
Member (A)