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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 81 of 1987 198
 T.A. No.

DATE OF DECISION 19-4-1991

Govardhan

Petitioner

Shri V.S.Sirpurkar

Advocate for the Petitioner(s)

Versus

Union of India & 2 others

Respondent

Shri P.N.Chandurkar
S.C. for Rlys.

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. D.SURYA RAO, MEMBER (JUDICIAL).

The Hon'ble Mr. P.S.CHAUDHURI, MEMBER (ADMN.).

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

D.S.Rao
(D.SURYA RAO)

P.S.Chaudhuri
(P.S.CHAUDHURI)

19-4-1991

(17)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL: NEW BOMBAY
CIRCUIT BENCH AT NAGPUR

Original Application No. 81 of 1987

Between:-

Govardhan .. Applicant

and

1. Union of India, through its Secretary, Ministry of Railways, Sachivalaya, Delhi.
2. Divisional Railway Manager, Central Railways, Nagpur.
3. Divisional Operating Superintendent (M), Central Railways, Nagpur.

.. Respondents

CORAM:

THE HONOURABLE SHRI D.SURYA RAO, MEMBER(JUDICIAL).
THE HONOURABLE SHRI P.S.CHAUDHURI, MEMBER(ADMN.).

Appearance:

For the Applicant : Shri V.S.Sirpurkar, Advocate.

For the Respondents : Shri P.N.Chandurkar, Standing Counsel for Railways.

JUDGEMENT

DATED: 19-4-1991

(AS PER HON'BLE MEMBER (J), SHRI D.SURYA RAO)

1. The applicant herein, who had been working as Ex-Guard 'A' Division in the Central Railway, Nagpur, has filed this O.A. questioning the order of removing him from service dated 24-3-1986 issued by the Divisional Safety Officer, Nagpur, as also the order dt.23-9-1986 passed by the Divisional Operating Superintendent,

On

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Central Railway, Nagpur, setting aside the order of removal dated 24-3-1986 issued by the Divisional Safety Officer, Nagpur, and imposing upon the applicant the same punishment of removal from service. This punishment was imposed upon the applicant consequent to an enquiry held under the Railway Servants (Discipline and Appeal) Rules 1968. Various contentions have been raised in the application seeking to impugn the orders of removal from service.

2. On behalf of the respondents a reply has been filed denying the various contentions and allegations put forth by the applicant, and contended that the orders of removal are proper and valid.

3. We have heard the learned Counsel for the applicant, Shri V.S.Sirpurkar, and the learned Standing Counsel representing the respondents, Shri P.N.Chandurkar.

4. By an order dated 1-10-1985 the Divisional Safety Officer, Nagpur, issued a Memo of Charges to the applicant under rule 9 of the Railway Servants (Discipline and Appeal) Rules 1968. The allegation against the applicant was that while working as Guard incharge of 16 DN GT Express on 12-9-1985 he had consumed liquor, that he had demanded relief at BPQ Station, that he was unable to work ~~xx~~ the Train upto Kazipet, that he was examined by the A.D.M.O. and that the latter certified that the applicant was under the influence of liquor. The applicant was accordingly charged with serious misconduct of having violated GR.2.09(1) and (2) of G & S Rules. The Divisional Safety Officer, who has initiated the enquiry, appointed an Enquiry

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Officer, who after conducting the enquiry, submitted a report holding the applicant guilty of the charges framed. Thereafter the Divisional Safety Officer passed an order dated 24-3-1986 imposing upon the applicant a punishment of removal from service. The applicant states that he submitted an appeal dated 12-4-1986 to the competent authority. This appeal was dealt with and was disposed of by the 3rd respondent, who, by an order dated 23-9-1986, set aside the orders passed by the Divisional Safety Officer dated 24-3-1986. By the same order, the 3rd respondent agreed with the findings of the Enquiry Officer and imposed upon the applicant the punishment of removal from service. The applicant preferred an appeal dated 29-9-1986 against the order dated 23-9-1986 to the Divisional Railway Manager (2nd respondent), who rejected the same by his order dated 1-10-1985. Thereafter the applicant has filed the present application. Apart from the various contentions raised in the application, Shri Sirpurkar, learned Counsel for the applicant, has sought to contend that the Divisional Safety Officer, who had initiated disciplinary proceedings was not competent to do so. It is his contention that the Divisional Safety Officer could not have imposed the major penalty of compulsory retirement/dismissal/ removal from service on the applicant and as such he was not competent to initiate the disciplinary proceedings. Under rule 8(2) of Railway Servants (Discipline & Appeal) Rules read with rule 2(1)(a)(ii) an authority competent to impose any of the major penalties, is empowered to initiate disciplinary proceedings for the imposition of the major penalty against a non-gazetted

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Railway servant. Under the schedule to the Railway Servants (Discipline & Appeal) Rules, the Divisional Safety Officer, being a senior officer, is competent to impose the major penalty of reduction in rank upon an employee of the grade or scale of pay to which the applicant belongs. He was, therefore, competent to initiate the disciplinary proceedings against the applicant. This contention is, therefore, rejected.

5. Apart from the ~~various~~ other grounds raised by ^{Sir} ~~to~~ the applicant in his application, Shri V.S. Purkar, learned Counsel for the applicant, contends on behalf of the applicant that no reasonable opportunity within the meaning of Article 311(2) of the Constitution was afforded to the applicant and that the punishment imposed upon the applicant pursuant to the order dated 24-3-1986 is contrary to the principles of natural justice. It is contended that after the enquiry by the Enquiry Officer and submission of his report, the disciplinary authority (Divisional Safety Officer) ought to have furnished the applicant with a copy of the Enquiry Report before passing the final order of punishment. It is in this context that it is alleged that no reasonable opportunity was afforded and non-furnishing of the Enquiry Officer's report is opposed to the principles of natural justice.

6. A perusal of the impugned order dated 24-3-1986 confirms that the copy of the enquiry report was not ^{to the applicant} furnished prior to the disciplinary authority coming to a conclusion that the enquiry report should be

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accepted and that the punishment should be imposed. The enquiry report was annexed to the punishment order dated 24-3-1986. The question, whether furnishing of the Enquiry Officer's report before the disciplinary authority passes the final order of punishment is a requirement of law, is concluded both by a Full Bench of this Tribunal in T.A.2 of 1986 (Premnath K.Sharma vs. Union of India) and subsequently by the Supreme Court in Union of India & others vs. Ramzan Khan (1990 (4) Judgements Today S.C. 456). It has been held by the Supreme Court in the latter decision as follows:-

" 15. 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 alongwith 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. "

" 18. We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular

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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 hereafter.

7. Shri P.N.Chandurkar, learned Counsel on behalf of the respondents, has sought to contend, that, ~~while~~ no doubt when the Divisional Safety Officer had passed the order dated 24-3-1986, the Enquiry Officer's report had not been furnished to the applicant. However, before the date of passing the impugned order of punishment dated 23-9-1986 by the 3rd respondent, the applicant had been furnished a copy of the Enquiry Officer's report. He, therefore, seeks to ~~argue~~ contend that the decisions rendered namely the decisions in Premnath K.Sharma and in Ramzan Khan's cases cited supra are not applicable to the facts of the present case. We are unable to agree with this contention. The applicant had, against the order dated 24-3-1986, submitted his appeal dated 12-4-1986 and by the time he had submitted his appeal, he had not received a copy of the Enquiry Officer's report. This is clear from the order dated 23-9-1986 which clearly mentions that the enquiry report had been furnished to him on 30-4-1986. Hence as on 12-4-1986 the applicant had no opportunity to assail the findings of the Enquiry Officer. It is also clear that the 3rd respondent has not either adverted to or considered any objections of the applicant raised in his subsequent appeals in respect of the findings of the Enquiry Officer. This is ^{apparently} clear from a reading of the order dated 23-9-1986 wherein

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the 3rd respondent has referred only to the appeal dated 12-4-1986 and also stated that he has acted on a consideration of the enquiry report and the proceedings, before deciding to impose the punishment. It is, clear, therefore, that the order dated 23-9-1986 punishing the applicant by the 3rd respondent was passed without giving an opportunity to the applicant to represent against the findings of the Enquiry Officer.

~~as the~~
Clearly this matter is covered by the Full Bench decision rendered in 'Premnath K. Sharma vs. Union of India' case and the Supreme Court's decision in Ramzan Khan's case. The order dated 24-3-1986 has already been set aside by the order dated 23-9-1986. Consequently it would suffice ~~the~~ the said order dated 23-9-1986 passed by the 3rd respondent and ~~consequently~~ ~~quently~~ the appellate order dated 24-11-1986 passed by the 2nd respondent, are set aside.

8. Applying the latest decision of the Supreme Court cited supra, it would follow that the impugned order dated 23-9-1986 passed by the 3rd respondent and the consequent appellate order dated 24-11-1986 are illegal, and contrary to the principles of natural justice. They are accordingly quashed and set aside.

9. This order passed by us will not, however, preclude (disciplinary authority) the respondent from proceeding with the enquiry from the stage of receipt of the enquiry officer's report. Since the enquiry officer's report has already been made available to the applicant, the question of furnishing it once again does not arise. If the disciplinary authority proposes to continue with the enquiry, he

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shall give the applicant a reasonable opportunity of representing against the enquiry report and only thereafter proceed with the enquiry. This observation made by us is not a direction to the respondents/disciplinary authority to take further action on the basis of the enquiry report and this is a matter left entirely to the discretion of the disciplinary authority. The question as to how the period, from the date of removal from service till the date of the order of the Tribunal and subsequent period in the event of the disciplinary proceedings being continued, will be determined by the competent authority in accordance with the rules applicable to Government servants in regard to whom an order of removal/dismissal/compulsory retirement from service has been set aside pursuant to ~~the~~ orders of a Court of Law/Tribunal.

10. With the above directions, the application is allowed. The parties are directed to bear their own costs.

D. Surya Rao
(D.SURYA RAO)
MEMBER (JUDICIAL)

P.S. Chaudhuri
(P.S.CHAUDHURI)
MEMBER (ADMINISTRATION)

Date: 19-4-1991