

(16)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

~~T.A. No.~~

T.A. No. ~~1245~~ 270/87

1983

DATE OF DECISION

19-4-1991

Sheikh Mustafa

Petitioner

Shri M.M. Sudame, Advocate.

Advocate for the Petitioner(s)

Versus

Shri S.K. Sanyal, SC for Rlys. Respondent
Union of India & 2 others

Shri S.K. Sanyal, SC 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.Surya Rao
(D.SURYA RAO)
MEMBER (J)

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

19-4-1991

(11)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL : NEW BOMBAY
BENCH : CAMP AT NAGAPUR

Transferred Application No.270 of 1987

Between:-

Sheikh Mustafa .. Applicant

and

1. Union of India through Additional
Divisional Railway Manager, Central
Railway, Nagpur.
2. Divisional Railway Manager, Central
Railway, Nagpur.
3. General Manager, Central Railway,
V.T., Bombay.

.. Respondents

CORAM:

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

Appearance

For the Applicant : Shri M.M.Sudame, Advocate.

For the Respondents : Shri S.K.Sanyal, Standing
Counsel for Central Railway.

JUDGMENT

DATE: 19-4-1991

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

1. The applicant herein is a former Fitter in the Locoshed, Central Railway, Wardha. He had filed Writ Petition No.1215 of 1983 before the High Court of Bombay, Nagpur Bench. The said Writ Petition was transferred to this Tribunal under section 29 of the Administrative Tribunals Act 1985 by an order of the Bombay High Court dated 18.11.1986.



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2. The relief that the applicant seeks in this case is to quash the order of removal from service passed by the Additional Divisional Railway Manager, Central Railway, Nagpur (1st respondent) by his order dated 7-9-1982. The said order of removal from service was passed as a consequence to the charges framed against the applicant, ^{and} ~~an~~ enquiry was conducted, on the basis of the report of the Enquiry Officer, finding the applicant guilty of the charges.

3. The respondents ^{have} filed a reply denying the various contentions and allegations put forth by the applicant.

4. We have heard Ms. M. S. Neelam R. Sarina, Advocate, holding the brief of Shri M. M. Sudame, learned Counsel for the applicant, and Shri S. K. Sanyal, learned Standing Counsel for Railways, for the respondents.

5. Apart from the various other grounds raised by the applicant in his Writ Petition/Transferred Application, Ms. Neelam R. Sarina 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 7-9-1982 ~~has been~~ passed 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 (respondent No. 1) 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 7-9-1982 confirms that the copy of the enquiry report was not furnished prior to the disciplinary authority coming to a conclusion that the enquiry report should be accepted and that the punishment should be imposed. The enquiry report was annexed to the punishment order dated 7-9-1982. The question whether non-furnishing of the Enquiry Officer's report before the disciplinary authority passed the final order of punishment is necessary 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 case (1990 (4) Judgements Today S.C.456). It has been held by the Supreme Court in the later 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 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. Applying the aforesaid decision of the Supreme Court it would follow that the impugned order dated 7-9-1982 is illegal, and contrary to the principles of natural justice. It is accordingly quashed and set aside.

8. This order, passed by us, will not, however, preclude the respondents 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 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

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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.

9. 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

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