

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

XXXXXX XXXX XXXX

NEW BOMBAY BENCHO.A. No. 189 of
XXXXXX

1987

DATE OF DECISION 4.1.1988

Shri K.S. Tiwari

Petitioner

Mr. B. Marlapalle

Advocate for the Petitioner(s)

Versus

The General Manager,
High Explosive Factory, Pune.

Respondent

Mr. M.I. Sethna

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P. Mukerjee, Member(A)

The Hon'ble Mr. M.B. Mujumdar, Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? N
4. Whether it needs to be circulated to other Benches of the Tribunal? N

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
NEW BOMBAY BENCH

Original Application No.189 of 1987

Shri K.S. Tiwari,
187/5, Moola Road,
Kirkee,
Pune-411 003

.. Applicant

V/s.

1. The General Manager,
High Explosive Factory,
Kirkee,
Pune.
2. The Director General
Ordnance Factories,
10 Auckland Road,
Calcutta-700 001

.. Respondents.

Coram: Hon'ble Member(A) Shri S.P.Mukerjee
Hon'ble Member(J) Shri M.B.Mujumdar

Appearance:

1. Mr. B.Marlapalle,
Advocate
for the applicant.
2. Mr. M.I.Sethna,
Counsel
for the respondents.

JUDGMENT:

Date: 4.1.1988

¶PER: S.P.Mukerjee, Member(A)

The applicant Shri Tiwari who is a dismissed Fireman employed in the High Explosive Factory, Kirkee under the Director General Ordnance Factory in the Ministry of Defence has moved this application dated 31.1.1987 under Section 19 of the Administrative Tribunals Act 1985 praying that the impugned order dtd. 7.2.1986 removing him from service be quashed and he should be reinstated as Fireman Grade-II with all consequential benefits with retrospective effect.

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2. The brief facts of the case are that he was recruited as Labour on 20.2.1981 and promoted as Fireman with effect from 3.11.1982. According to him he developed some psychiatric problems with mental depression as a result of which he was in an 'imbalanced frame of mind' from July/August, 1984 till 14.7.1986. During this period he was under specialist treatment of a psychiatrist Dr. K. Thombre a leading medical specialist in Pune. The applicant could not attend duty with effect from 14.8.1984 as a result of which the respondents charge-sheeted him on 23.8.1985. He has repeatedly stressed that the charge-sheet was never received by him. In any case in response to a call by the Enquiry Officer on 16.12.1985, the applicant when he was in a very depressed mental condition, met the Enquiry Officer who according to the applicant induced him to plead guilty of the charge of unauthorised absence by stating that the authorities will take a lenient view. His signature were obtained on a statement ~~and~~ admitting all the charges. The Enquiry Officer on that very day wrote a one page report and the Disciplinary Authority agreeing with the Enquiry Officer passed the impugned order dtd. 7.2.1986 removing him from service from 8.2.1986. The applicant emphasises that the order of punishment was communicated to him without sending to him a copy of the inquiry report. In his representations and appeal dated 5.8.86 and 22.11.86 also ~~to~~ he repeatedly stated that he had not received the charge-sheet and no enquiry report had been communicated to him. His appeal was rejected on 19.5.1987. In accordance with the respondents the applicant during five years of service

remained absent for one year and seven months and was a habitual absentee. They have indicated that the applicant was not suffering from any mental ailment but was merely absconding from his place of duty and his whereabouts were not known even to his mother and other relatives. The respondents have denied that his confessional statement was taken under inducement.

3. We have heard the arguments of the learned advocates for both the parties and gone through the documents carefully. The respondents have admitted that the chargesheet which was sent to the applicant by post was returned undelivered but that itself should be deemed to be sufficient service. They have also admitted that though the applicant appeared before the Enquiry Officer on 16.12.1985, the chargesheet was not served on him but merely read out. The respondents in their counter affidavit denied that enquiry report was not communicated along with the order of punishment, but the Learned Counsel for the respondents conceded that the applicant's allegation of non receipt of the enquiry report, in his representations dtd. 5.8.1986 and 24.11.1986 had not been specifically denied by the Appellate Authority. We have gone through the letter which the applicant had written to his mother from Delhi in 1985. A copy of this letter was enclosed with the counter affidavit of the respondents themselves. This letter makes a dismal reading, spewing out depression and thoughts of death and utter hopelessness. The fact that the applicant disappeared for about one and half years when his whereabouts were not known even to his mother and close relatives also

shows that he was a psychiatric case. In that context the typed statement of confession dtd. 26.11.1985 (Ex.2 to the counter affidavit) and the confessional oral statement recorded before the Enquiry Officer on 16.12.85 cannot be accepted as a product of a sober and sound mind given after reasonable contemplation.

4. The respondents plea that the charge-sheet can be deemed to have been served on him even though it was returned undelivered from his address may be technically correct but is not ~~inconformity~~ with the desiderata of natural justice. When the applicant himself appeared before the Appellate Authority on 16.12.1985 it was incumbent upon the latter to serve him ^{with} the written charge-sheet along with its enclosures. Instead of this, the Enquiry Officer read out the charge-sheet and got his signature admitting his guilt. It is not clear from the signed statement what charge and how much of it was read out to him and whether the chargesheet was correctly read out and understood by the applicant. In any case the annexures to the charge-sheet were ^{clearly} not read out. Thus the mere reading out of the charge-sheet alone cannot be held to be sufficient service of the charge-sheet and its annexures which are parts of the charge-sheet. It has been held in various judicial pronouncements from the Supreme Court downwards (Surath Chandra Chakravarty Vs. State of West Bengal, AIR 1971 SC 752; A.R. Mukharjee Vs. Dy. Chief Mech. Engineer, AIR 1960 Cal. 40 etc) that the chargesheet must be specific, clear and should be accompanied by statement of allegations etc., ^{and} should be served on the delinquent officer properly and in writing

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in the interest of natural justice and in order to give him proper opportunity of defence. Reading out the chargesheet alone when the applicant was not in a normal frame of mind and getting him to sign the statement of confession there and then admitting the charge do not meet the elementary principles of natural justice.

5. We have further grave doubts whether a copy of the enquiry report had really reached the applicant. He had been making a grievance of it in his various representation and appeals, but the respondents have been keeping icily silent on this aspect. Even the appellate authority did not touch on the question of chargesheet and enquiry report not being ^{made} available to the applicant even after the punishment order had been passed. A Full Bench of this Tribunal in its judgment dtd. 6.11.1987 in Premnath K. Sharma V/s. Union of India and Others (Tr.Application 2/86) held that if a copy of enquiry report has not ^{made} available to the delinquent officer before the disciplinary authority passes the final order, the rules of natural justice are violated and the order of punishment passed by the disciplinary authority without showing a copy of the enquiry report to the delinquent officer and without giving ^{him} an opportunity to meet the findings of the enquiry officer is bad in law. In the instant case not to speak of the enquiry report not being made available to the applicant before the impugned order of punishment was passed, the report was not made available to him even after the impugned order ~~was~~ was passed. This further deprived him of an opportunity of making an effective post-punishment appeal to the

appellate authority when after the 42nd amendment of the Constitution the only pre-punishment opportunity available to him to challenge the proposed penalty had been taken away.

6. We have no reason to accept the contention of the respondents that the certificate given by Dr.Thombre is false. On the other hand the erratic and abnormal behaviour of the applicant vindicates the presumption that the applicant had been in a state of unsound mind.

7. In the facts and circumstances we set aside the impugned orders dtd. 7.2.1986 and 19.5.1987 and direct the respondents to reinstate the applicant to service with effect from the date of his removal and to pay him the salary and allowances from the date of his reinstatement. The respondents shall cover the period of his absence prior to his reinstatement by such leave with or without pay as due to him under the rules. The respondents will be at liberty to revive disciplinary proceedings against him in accordance with law after serving him with the charge-sheet and complete the proceedings as far as possible within three months from the date of service of charge sheet. There will be no order as to costs.

S.P. 4.1.88.
(S.P. MUKERJEE)

Member(A)

M.B. MUJUMDAR
(M.B. MUJUMDAR)
Member(J)