

(16)

# Central Administrative Tribunal

NEW BOMBAY HYDERABAD BENCH : AT HYDERABAD NEW BOMBAY  
Circuit Bench at agra

O.A. No. 360/87

Date of Decision : 19-4-1991

T.A.No.

Shri Madhukar Ilkey

Petitioner.

Mr. M. Husain & Mrs. Kaneez Husain

Advocate for the  
petitioner (s)

Versus

The Secretary, Min.of Railways, New  
Delhi and 3 others

Respondent.

Mr. P.N. Chandurkar

Advocate for the  
Respondent (s)

**CORAM :**

THE HON'BLE MR. D. SURYA RAO, MEMBER (J)

THE HON'BLE MR. P.S. CHAUDHURI, MEMBER (A)

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 Judgment? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*
5. Remarks of Vice Chairman on columns 1, 2, 4  
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

*D. Surya Rao*  
(D. SURYA RAO)  
MEMBER (J)

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

19-4-1991

(17)

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

Original Application No. 360/87.

Between:-

Shri Madhukar Ukey

.. Applicant

and

1. The Secretary,  
Ministry of Railways,  
New Delhi.

2. General Manager,  
South Eastern Railway,  
Calcutta.

3. Divisional Mech. Engineer,  
South Eastern Railway,  
Nagpur.

4. Divisional Railway Manager,  
South Eastern Railway,  
Nagpur.

.. Respondents

..

CORAM:

THE HONOURABLE SHRI D. SURYA RAO, MEMBER(JUDICIAL)

THE HONOURABLE SHRI P.S.CHAUDHURI, MEMBER(ADMN.,)

Appearance:

For the Applicant : Mr. M. Husain & Mrs. Kaneez Husain,  
Advocates

For the respondents : Mr. P.N.Chandurker, Standing  
Counsel for the Department.

JUDGEMENT

DATE:

19-4-1991

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

1. The applicant herein was formerly working as Senior

(P)

(Contd...)

Clerk, Wagon Shed, South Eastern Railway, Nagpur.

He has filed this application, aggrieved by an order dt. 6.12.85 passed by the 3rd respondent imposing upon him the punishment of removal from service. This order of removal was confirmed in appeal by the 4th respondent by an order communicated to the applicant by the 3rd respondent by his letter dt. 10.2.1986. On revision however the Chief Mechanical Engineer, Garden Beach, South Eastern Railway, Calcutta by an order dt. 25/30.6.86 reduced the punishment of removal from service to one of compulsory retirement from service.

The applicant is questioning the orders of removal and also the order reducing the punishment to one of compulsory retirement. The punishment was imposed on the applicant after framing the charges, holding the enquiry under D&A Rules and after consideration of enquiry report. Various reasons have been given by the applicant in his application assailing the enquiry report, the order of punishment imposed by the disciplinary authority and the orders of the appellate and revisionary authorities.

2. On behalf of the respondents a reply has been filed denying various contentions and allegations. It is contended that he had committed misconduct while working as Incharge of the O.T. Van on line at Nagpur Workshop.

(Contd.....)

The charge was that the Van was checked by the O.C./R.P.F., of the workshop and some Railway material was found therein without challan. It is contended on behalf of the respondents that the charge against the applicant has been duly proved and thereafter the punishment was imposed.

Shri M. Hussain,

3. We have heard the arguments of ~~the applicant~~ learned Counsel for the applicant, ~~examiner~~, and Shri P.N. Chandurker, learned Standing Counsel for the respondents.

4. Apart from the various other grounds raised in ~~the~~ Counsel for the application, the applicant contends that no reasonable opportunity within the meaning of Art.311(2) of the Constitution was afforded to him and that the punishment imposed upon the applicant pursuant to the order dated 6.12.1985 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 compulsory retirement. It is in this context that it is alleged that no reasonable opportunity was afforded and that non-furnishing of the Enquiry Officer's Report is opposed to the principles of natural justice.

5. A perusal of the impugned order dt.6.12.1985 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 6.12.85.. The question whether furnishing of the Enquiry Officer's report before the disciplinary authority passes the final order of punishment is ~~necessary for requirement of law~~ is concluded both by the decision of 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. Mohd. Ramzan Khan (1990 (4) S.C. 456 Judgements Today). 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 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.

" 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."

6. Applying the aforesaid decision of the Supreme Court it would follow that the impugned orders viz., the order dt. 6.12.85 and the order of the Chief Engineer dt. 25/30.6.86 are illegal, and contrary to the principles of natural justice. The impugned orders are accordingly quashed and set aside.

7. This order, passed by us will not, however, preclude the respondent (disciplinary authority) 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 respondent (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 the 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 orders of a Court of Law / Tribunal.

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

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

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

DATE: 19-4-1991

Mvs