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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

~~O/A/No~~ TR 465/87

T.A. No.

198

DATE OF DECISION 6.7.90

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Balrishna Pundalik Wasnik Petitioner

Shri G.D. Samant, Advocate for the Petitioner(s)

Versus

Union of India and others Respondent

Mrs P.R. Shetty Advocate for the Respondent(s)

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The Hon'ble Mr. G.Sreedharan Nair, Vice Chairman.

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? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *X*
4. Whether it needs to be circulated to other Benches of the Tribunal? *yes*

By 6/7
(G.Sreedharan Nair)
Vice Chairman.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH : NEW BOMBAY

TR. 465/87

Shri Balkrishna Pundalik Wasnik Applicant.
-versus-
Union of India and others Respondents.

P R E S E N T :

The Hon'ble Shri G.Sreedharan Nair, Vice Chairman.

The Hon'ble Shri P.S.Chaudhuri, Member(Admn).

For the applicant : Shri G.D.Samant, Advocate.

For the respondents- Mrs P.R.Shetty, Advocate.

Date of hearing - 3.7.90.

Date of Judgment & Order - 6-7-90.

JUDGMENT & ORDER :

G.Sreedharan Nair, Vice Chairman :

This relates to Writ Petition No.2802 of 1982
in the High Court of Bombay, received on transfer.

2. While working as Announcer in the Central Railway a Memorandum of Charges dated 9.6.1978 was issued against ~~him~~ ^{the applicant} under Rule 7 of the Railway Servants(Discipline & Appeal)Rules, 1968, for short, the Rules. Certain specific acts of commission and omission were imputed. The applicant submitted written statement of defence denying the charges. An enquiry was conducted. The Inquiry ^{officer} submitted his report holding that ~~all~~ Article 1 of the charges is not established but Articles-II and III are proved. The Disciplinary Authority arrived at the conclusion that all the articles of charges are established, and by the order dated 15.10.1981 imposed upon the applicant the penalty of removal from service. The appeal preferred by the applicant before the appellate authority was rejected by the order dated 4.3.1982.

3. The applicant prays for quashing the order of removal from service. It is urged that there has been denial of proper opportunity of defence and violation of the principles of natural justice.

4. A reply has been filed by the respondents traversing

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the various grounds urged in the application. At the time of hearing, counsel of the applicant submitted that the order of the Disciplinary Authority cannot be sustained as there has been denial of reasonable opportunity of defence guaranteed under Clause (2) of Article 311 of the Constitution of India in so far as before imposing the penalty the Disciplinary Authority did not furnish a copy of the report of the Inquiry Officer to the applicant. This submission has to prevail.

5. As early as in the year 1969, the Supreme Court in *State of Maharashtra v. B.A. Joshi* (AIR 1969 SC 1302) has upheld this proposition by upholding the judgment of the High Court of Gujarat in which it was held that the failure on the part of the competent authority to provide the plaintiff with a copy of the report of the Inquiry Officer amounts to denial of reasonable opportunity contemplated by Clause (2) of Article 311 of the Constitution of India.

6. While upholding the conclusion of the High Court the Supreme Court has lucidly stated the reasons in the following terms :

" The plaintiff was not aware whether the Enquiry Officer reported in his favour or against him. If the report was in his favour, in his representation to the Government ~~of~~ he would have utilised its reasoning to dissuade the Inspector General from coming to a contrary conclusion, and if the report was against him he would have put such arguments or material as he could do to dissuade the Inspector General from accepting the report of the Enquiry Officer. Moreover, as pointed out by the High Court, the Inspector General of Prisons had the report before him and the tentative conclusions arrived at by the Enquiry Officer were bound to influence him, and in depriving the plaintiff of a copy

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of the report he was handicapped in not knowing what material was influencing the Inspector General of Prisons".

7.2 It may also be pointed out that in arriving at the aforesaid conclusion, reliance was also placed by the Supreme Court on the earlier decision of a Constitution Bench in H.C.Goel's Case (AIR 1964 SC 364).

8. Within a few months of the constitution of this Tribunal, the Madras Bench of this Tribunal on which one of us (G.Sreedharan Nair) was a Member, had occasion to consider this question in V.Shanmugam v. Union of India, ^{ATR} 1986(2)CAT 226). It was held there :

" No doubt, in a case where the Disciplinary Authority happens to be the Inquiry Authority as well, having regard to its findings on the charges, if it is of opinion that any of the penalties specified in Clauses (v) to (ix) of Rule 9 should be imposed on the railway servant, it is competent to impose such penalty without giving an opportunity to the railway servant to make a representation on the proposed penalty. But in a case where the inquiry is conducted by another authority to whom the power is delegated, the Disciplinary Authority is expected to go through the records of inquiry and the conclusions of the Inquiry Authority and either to accept the same or disagreeing with the same to record its own findings. This is explicit from Sub-rule (3) of rule 18 of the Rules. Principles of natural justice demand that when the Disciplinary Authority considers the report and the findings of the Inquiry Office:

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he is also posted with the representation from the delinquent in respect of the reports of the Inquiry Officer. Fairness requires that the Disciplinary Authority, being a quasi-judicial authority arrives at his own conclusion with respect of the charges against the delinquent after examining the report of the Inquiry Officer alongwith the attack, if any, against the same by the delinquent. As such, the delinquent employee has necessarily to be supplied with a copy of the inquiry report before the Disciplinary Authority proposes the punishment..."

9. The proposition was reiterated ^{by the Madras Bench} sitting at Ernakulam in the decision in K.S. Shekharan Kutty v. Superintendent of Post Office (T.A.844/86, decided on 17.6.1987) and in Ravindran v. Inquiry Authority (O.A.741/86, decided on 8.1.1988).

10. The aforesaid view has gained approval in the Full Bench decision of this Tribunal in P.K. Sharma's case. Counsel of the respondents submitted that as the Administration has filed a Special Leave Petition (SLP) to appeal to the Supreme Court against that decision and a petition for stay has been filed on which the Supreme Court has stayed the operation of the judgment, the principle of law cannot be relied upon. We are unable to agree. The stay of operation can have ~~reference~~ only to the implementation of the final order in the case. So far as the proposition of law, which has been approved by the Full Bench, is concerned, it cannot be said that a Division Bench of the Tribunal is not bound by the same and can take a different view. That apart, the proposition has been laid down by the Supreme Court itself in B.A. Joshi's case as early as in the year 1969. Reference may also be made in this context to the decision of the Supreme Court in Union of India v. E. Bashyam, AIR 1988 SC 1000, where it has been held that non-supply of the

report would constitute violation of principles of natural justice and accordingly will be tantamount to denial of reasonable opportunity within the meaning of Article 311(2) of the Constitution of India. Reference has been made there to the earlier decision of the Supreme Court in H.C.Goel's case.

11. In view of the above, the order of the Disciplinary Authority dated 14.10.812 imposing upon the plaintiff the penalty of removal from service as confirmed by the Appellate Authority is hereby vacated. The plaintiff shall be reinstated in service and shall be treated as having been in continuous service. The Competent Authority shall pass orders under Cl.(1) of sub-rule(2) of ~~RR-54~~ *Rule 1344 of the Indian Railway Establishment Code, 1957* with respect to the pay and allowances during the period from the date of removal till such reinstatement.

12. It is made clear that in case the Disciplinary Authority desires to proceed with the enquiry, since a copy of the report of the Inquiry Officer has now been furnished, the Disciplinary Authority will be free to do so, in which case the plaintiff shall be afforded opportunity of making his representation with respect to the report of the Inquiry Officer, and a personal hearing if the Disciplinary Authority is of the view that the circumstances of the case warrant the same. If the enquiry is to be proceeded with, the Disciplinary Authority shall also be free to treat the plaintiff as under deemed suspension in accordance with sub-rule(4) of Rule 5 of the Rules during the pendency of the proceedings, and to defer the passing of the order under Cl.(1) of Sub-rule (2) of ~~RR-54~~ *Rule 1344* till the termination of the proceedings.

13. The application is disposed of as above.

P. S. Chaudhuri
(P.S.Chaudhuri)
Member(Admn)

G. Sreedharan Nair
(G.Sreedharan Nair)
Vice Chairman