(14)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

~~O.A. No.~~
T.A. No. 476/87 198

DATE OF DECISION 5.7.1990

Shri V.A.Mistry Petitioner

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

Versus

Union of India & Ors. Respondent

Shri P.R.Pai Advocate for the Respondent(s)

CORAM

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

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

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

(G.SREEDHARAN NAIR)
VICE-CHAIRMAN.

(15)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Tr. Application No.476/87.

Shri V.A.Mistry,
House No.2604,
Methal Nagar,
Post Netaji Bazar,
Ambernath - 421 505,
Dist. Thane. ... Applicant.

V/s.

1. Union of India having its office at New Delhi.
2. The Divisional Sig. & Telcom Engineer (Axle Counter), Byculla, Bombay.
3. Dy. C.S.T.E. (S), Byculla, Dy. C.S.T.E.'s office, (S & T) Workshop, Byculla, Bombay - 400 027. ... Respondents.

Coram: Hon'ble Vice-Chairman, Shri G.Sreedharan Nair,
Hon'ble Member(A), Shri P.S.Chaudhuri.

Appearances:-

Applicant by Mr.G.D.Samant.
Respondents by Mr.P.R.Pai.

Oral Judgment:-

(Per Shri G.Sreedharan Nair, Vice-Chairman) Dt. 5.7.1990

This relates to Writ Petition No.1553/1983 on the file of the High Court of Bombay received on transfer.

2. The applicant while working as a Bench fitter under the respondents was proceeded against under the Railway Servants (Discipline & Appeal) Rules, 1968, for short the rules, by issue of a memorandum of charges dt.4.4.1981 alleging serious mis-conduct. The imputation was theft of Railway material. The applicant denied the charges. An inquiry was conducted, the Enquiry Officer held that the truth of the imputation is established. The first respondent the Disciplinary Authority acting upon the report of the Enquiry Officer, by the order dt. 10.8.1982

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held that the charge is established and impused upon the applicant the penalty of removal from service. The appeal prefered by the applicant was rejected. The applicant prays for quashing the order of removal.

3. Though various grounds have been urged in the application, at the time of hearing Counsel of the applicant stated that there has been denial of reasonable opportunity insofar as copy of the report of the Enquiry Officer was not furnished to the applicant before the Disciplinary Authority imposed the order of penalty.

4. Though a reply has been filed by the respondents traversing the various grounds urged in the application, there is no case that before passing the impugned order copy of the report of the Enquiry Officer was furnished to the applicant.

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 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,

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

7. 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 (1986(2)ATR CAT226). 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 Officer 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 along with 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....".

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9. This proposition was reiterated sitting at Ernakulam in the decision in K.S.Shekharan Kutty v. Superintendent of Post Offices (T.A.844/86, decided on 7.6.1987) and 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 thereto the earlier decision of the Supreme Court in H.C.Goel's case.

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11. Counsel of the respondents invited our attention to the decision of the Supreme Court in Kailash Chander Asthana v. State of Uttar Pradesh (A.I.R. 1988 S.C. 1338) and submits that after the amendment of Article 311 of the Constitution by the 42nd Amendment Act, the question of furnishing of a copy of the report of the Enquiry Officer does not arise. The decision does not relate to the point that we have propounded in the preceding paragraphs. The amendment of Article 311 by the Constitution (42nd Amendment) Act in no way belittles the mandate under Clause (2) of Article 311 of affording reasonable opportunity of defence. What has been done by the amendment is only to dispense with the notice in respect of the proposed penalty. Indeed after the amendment it is all the more necessary to comply with the mandate of affording reasonable opportunity since ~~after~~ before the imposition of the penalty the delinquent does not get a chance of making a representation at all before the disciplinary authority.

12. In view of the above the order of the Disciplinary Authority dt. 10.8.1982 imposing upon the applicant the penalty of removal from service as confirmed by the Appellate Authority is hereby vacated. The applicant shall be reinstated in service, and shall be treated as having been in continuous service. The competent authority shall pass orders under Clause (i) of Sub-rule (2) of ~~F.R. 54-A~~ Rule 1344 of the Railway Establishment Code with respect to the pay and allowances of the applicant during the period from the date of removal till such reinstatement.

13. It is made clear that in case the Disciplinary Authority desires to proceed with the enquiry, it is open to it to furnish a copy of the report of the Enquiry Officer to the applicant and the applicant shall be afforded opportunity of making his representation with respect to the same, and also a personal hearing if the Disciplinary

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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 applicant 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 issue of the order under Rule 134 till the termination of such proceedings.

14. The application is disposed of as above.

5.7.1990.

(P.S.CHAUDHURI)
MEMBER(A)

(G.SREEDHARAN NAIR)
VICE-CHAIRMAN.