(18) (19)

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

1) Tr.414/87, 2) Tr.418/87, 3) Tr. 54/88, 4) OA 55/86, 5) OA 437/86, 6) OA 447/86, 7) OA 171/87, 8) OA 239/87, 9) OA 256/87, 10) OA 622/87, 11) 761/87, 12) O.A. 766/87, 13) OA 776/87, 14) OA 792/87, 15) OA 800/87, 16) OA 73/88, 17) OA 183/88, 18) OA 325/88, 19) OA 458/88, 20) OA 750/88, 21) OA 771/88, 22) OA 24/89, 23) OA 840/89, 24) OA 17/89, 25) OA 46/89, 26) OA 147/89, 27) OA 336/89, 28) OA 398/89, 29) OA 426/89, 30) OA 555/89, 31) OA 559/89, 32) OA 288/88, 33) OA 44/87, 34) OA 26/88, 35) OA 782/89, 36) OA 321/90, 37) OA 473/89, 38) OA 369/89, 39) OA 294/89, 40) 407/90.

1. Tr. Application No.414/87.

   Shri H.K.Pardeshi.

2. Tr. Application No.418/87.

   Shri P.G.Harne.

3. Tr. Application No.54/88.

   Shri S.D.Pandey.

4. Original Application No.55/86.

   Shri V.S.Gidwani.

5. Original Application No.437/86.

   Shri V.P.Ayachit.

6. Original Application No.447/86.

   Shri K.S.Bajwa.

7. Original Application No.171/87.

   Shri Chandalal Varma.

8. Original Application No.239/87.

   Shri D.N.Bhagat.

9. Original Application No.256/87.

   Shri Gayadali Imdadali.

10. Original Application No.622/87.

    Shri R.G.Sable.

11. Original Application No.761/87.

    Shri D.G.Deo.

12. Original Application No.766/87.

    Shri S.V.Gangal.

13. Original Application No.776/87.

    Shri A.B.Khan.

14. Original Application No.792/87.

    Shri D.D.Modak.

15. Original Application No.800/87.

    Shri V.A.Malekar.

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16. Original Application No.78/88.
Shri S.M.Iqbal.

17. Original Application No. 183/88.
Shri R.K.Ram.

18. Original Application No. 325/88.
Shri V.G.Masudkar.

19. Original Application No. 458/88.
Shri B.N.Pawar.

20. Original Application No. 750/88.
Shri P.G.Gaikwad.

21. Original Application No.771/88.
Shri S.D.Gade.

22. Original Application No.24/89.
Shri R.Tanwar.

23. Original Application No.840/89.
Shri V.B.Nagare.

24. Original Application No.17/89.
Smt. A.B.Kadrolkar.

25. Original Application No. 46/89.
Shri A.K.Mahajan.

26. Original Application No.147/89.
Shri N.Gopalan.

27. Original Application No. 336/89.
Shri P.T.John.

28. Original Application No.398/89.
Shri Ravi Joharale.

29. Original Application N .426/89.
Shri A.Vasu.

30. Original Application N .555/89.
Shri B.R.Pandey.

31. Original Application No. 559/89.
Shri Rajendra Jha.

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32. Original Application No.288/88.

Shri T.K.Nath.

33. Original Application No. 44/87.

Shri C.Pande.

34. Original Application No.26/88.

Shri V.C.Pradhan.

35. Original Application No. 782/89.

Shri P.N.Nikalje.

36. Original Application No.321/90.

Shri S.D.Patinge.

37. Original Application No.473/89.

Shri D.S.Modi.

38. Original Application No. 369/89.

Shri M.B.Hashmi.

39. Original Application No. 294/89.

Shri B.Y.Mujawar.

40. Original Application No.407/90.

Shri Narendrakumar Sadna. ... Applicants.

V/s.

Union of India & Ors. ... Respondents.

(18) (12)

ORAL JUDGMENT:

(Per Shri U.C.Srivastava, Vice-Chairman) Dated: 8.8.1991

In all these cases which are being heard and disposed of punishment has been awarded to the applicants as a result of disciplinary proceedings and after exhausting all the remedies the applicants have approached this Tribunal challenging the disciplinary proceedings and order passed thereon. One of the grounds which have been taken in these cases is that after the conclusion of the inquiry the Enquiry Officer's report were not given to them and as such they were not able to make any representation against conclusion arrived at by the Enquiry Officer or the punishment suggested by them and thereby the principles of natural justice have been abandoned. This matter has engaged the attention of the Full Bench of Central Administrative Tribunal in P.K.Sharma v. Union of India & Ors. A.S.L.J. 1988(2) 449 wherein it was held that after the 42nd amendment of Article 311(2) of the Constitution of India, the show cause notice provision had been removed but not reasonable opportunity which could be complied with by giving a copy of inquiry report was upheld. The Full Bench also held that a copy of the inquiry report was not furnished to the delinquent, it would tantamount to not affording reasonable opportunity to defend himself. A doubt was expressed by the Madras Bench of the Tribunal in the case of A.Philip v. Director General of Ordnance Factories & Anr. A.I.S.L.J, 1990 (2) CAT 631 wherein it was held that the Judgment referred in the case of P.K.Sharma (supra) will have the force of law from the date the judgment was rendered and that is why the matter was referred to a Full Bench of this Tribunal which decided the matter on 1.7.1991 sitting at Ahmedabad Bench. Prior

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to the decision of the Full Bench the matter came to the attention of the Supreme Court in a reference which was necessitated in view of the two conflicting decisions on the point. The controversy has now been set rest by Hon'ble Supreme Court of India in the case of Union of India & Ors. v. Mohammed Ramzan Khan,CAT 1990 S.C. 56. The Supreme Court in that case has observed that:

> "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."

In the concluding portion of the Judgment it was observed that the conclusion of the contrary reached by any two Judge Bench in this Court will also no longer be taken to be laying down good law, this shall have prospective application and no punishment imposed shall be open to challenge on this ground. This observation made by their Lordship of the Supreme Court again became subject of controversy in some cases before the Tribunals and that is why a reference was made to Full Bench of Central Administrative Tribunal. The Full Bench of Central Administrative Tribunal sitting at Ahmedabad in the case of Shri Balwantsingh Kumarsingh Gohil v. Union of India & Another (O.A. No.209/87) decided on 11.7.1991 observed that Mohd. Ramzan Khan's case is applicable to all cases where finality has not been reached and any case where finality has been reached, the same cannot be reopened. The law laid down by the Supreme Court in the

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above case is binding on all concerned. The question which has been raised and was not specifically answered by Full Bench referred to above is as to whether in the pending cases before the Tribunal in which the Disciplinary Proceedings and the punishment order have been challenged could be said to be a matter which has not become final or not in view of the order passed by the Disciplinary Authority or Revisional or any other authority, before the decision in Ramzan Khan's case (Supra). The Administrative Tribunals have got full Jurisdiction not only to quash the disciplinary proceedings as well as the punishment order passed by the disciplinary authority, Appellate authority or revisional authority affirming it or reversing it or modifying it. The Administrative Tribunals Act have got the same powers which the High Court have under Article 226 and 227 of the Constitution as has been held by the Hon'ble the Supreme Court in the case of Sampat Kumar v. Union of India and others A.T.R. 1987(1) S.C. 34. The proceedings under 226 of the Constitution of India, undoubtedly, are original proceedings, but once proceedings or the order are quashed the proceedings stands wiped out and the order goes off the record as it never existed. Similar powers are exercisable by the Administrative Tribunals also. The Tribunals can also quash and set aside the Disciplinary Proceedings and the order passed thereon.

3. The Administrative Tribunals Act derives its birth and existence by virtue of the Article 323A of the Constitution of India. The preamble of the Act reads as follows:

> "The act provides for the adjudication or trial by Administrative Tribunal of disputes and complaints with respect to recruitment and

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conditions of service of persons appointed to public services and posts in connection with the affairs of the Union of any State or of any local or other authorities within the territory of India or under trial of the Government of India or under the Corporation (or Society) owned and controlled by Government of India within the provisions of Article 323A of the Constitution and for the matters connected therewith are incidental thereto."

This Act is thus for adjudication of or resolution of service disputes of those covered by the Act and complaints in respect not only the recruitment but the conditions of the service are also entertainable by it. It cannot be denied that a disciplinary proceedings and the punishments also are matter of service.

3. Section 14 of the Administrative Tribunals Act provides the jurisdiction powers and authofities of Central Administrative Tribunal which is not only confined to the manner of recruitment but all service matters concerning service of the persons to whom it has been made applicable. 'Service Matters' includes Disciplinafy Proceedings as well as the Punishment order as the order passed by the Superior Authority or Reviewing Authority which has a jurisdiction to interfere with the same. Section 19 of the said Act provides that an aggrieved person can file an application with the Tribunal for redressal of his grievances against any order passed by the Government or local authority or by an Officer other body etc. Thus an order passed by any authority pertaining to service matter can be challenged by an aggrieved person before the Tribunal. After coming into existence of the Administrative Tribunals the jurisdiction of the Civil Court and the High Court has come to an end in the matters cognisable by it and the Tribunals constituted under the Administrative Tribunals Act.

4. In case pending matters are taken punishment orders have been passed before the decision of Ramzan Khan's case and even the same are under challenge and can even be set aside if such matters are taken not to be

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of prospective nature. The provisions of the Administrative Tribunals Act rendered negators and would stand defeated to that extent. A Judgment with a statute is not to be read or interpreted frustrating the purpose of the statute or rendering its provision redundant or negatory. No inference that can be drawn from the observations made by the Hon'ble Supreme Court in Ramzan Khan's case (Supra) that all the pending matters will also abate in view of the fact that the same are to be deemed to be a closed or dead matter. Pending matters which may result in not allowing the order under challenge to be final can not be treated to be final. Obviously, those matters in which the parties have remained satisfied or not challenged and challenge was barred by time in view of the provisions of the act prescribing one year's limitation cannot be re-opened after Ramzan Khan's case (supra) the cases which have already been instituted before the Judgment of the Supreme Court may be after the plea of limitation in which the delay has been condoned. The limitation in such even would date back on the last date of limitation and the same can also be not treated to be a matter which has become final.

5. Thus all the pending matters which were open for adjudication and would be so open after the decision in Ramzan Khan's case (supra) would be adjudicated upon not having become final and would be thus within the ambit of plural judgments would have prospective effect used in Ramzan Khan's case (Supra)

6. In all these applications enquiry was held the Enquiry Officer's report was not supplied to the employee to make a representation against the same before award of punishment and thus principles of natural justice were vitiated and the applications deserve to be allowed

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and the same are allowed and the disciplinary action in every case is set aside. There shall be no order for costs. We would clarify that this decision may not preclude the disciplinary authority from reviving the proceeding and continuing with it in accordance with law from the stage of supply of the inquiry report in cases where dismissal or removal was the punishment.)

Portion within bracket ( ) are deleted vide order dt. 6/2/92 is placed below.