

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

6

NEW BOMBAY BENCH

O.A. No.
T.A. No.

411/87

198

DATE OF DECISION 14.11.1991

Shri A.V.J.Mudaliar. Petitioner

Shri Y.R.Singh Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri M.G.Bhangade. Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice U.C.Srivastava, Vice-Chairman,

The Hon'ble Mr. M.Y.Priolkar, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓
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 ? ✓


(U.C.SRIVASTAVA)
VICE-CHAIRMAN.

7

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

CAMP AT NAGPUR.

Original Application No.411/87.

Shri A.V.J.Mudliar.

... Applicant.

V/s.

Union of India & Ors.

Coram: Hon'ble Shri Justice U.C.Srivastava, Vice-Chairman,
Hon'ble Shri ~~M.Y.Patel~~ Pralokar, Member(A).

Appearances:-

Applicant by Mr.Y.R.Singh.
Respondents by Mr.M.G.Bhangade.

Oral Judgment:-


[Per Shri Justice U.C.Srivastava, Vice-Chairman] Dt.14.11.91.

The applicant who was an Inspector in the Central Excise was working in the Anti-smuggling branch at the headquarters office, Nagpur since 1985. The applicant has raised grievance against certain officers and stated that during the short span of time he was transferred six times. But that is not very much relevant for the purpose of this case. It appears that of course a complaint was made against the applicant by one Shri Chetan Manek and thereafter the applicant was charge sheeted vide charge sheet dt. 15.10.1984. The charge against the applicant and one Shri V.M.Shambharkar was that he visited a shop of one Shri Chetan Manek without search warrant and had forcibly taken away one Radio Cassette Tape Recorder, of Sanyo make, one Casio Wrist Watch-cum-calculator and one safari brief case containing blank cheques, Rs.1500/- in cash etc. and demanded a bribe of Rs.5000/- for returning the goods. An inquiry officer was appointed. The applicant submitted his reply on the inquiry proceedings. The inquiry officer thereafter submitted a report holding the applicant guilty of other charges except the charge of demanding bribe of Rs.5000/-. The disciplinary authority disagreed with the finding of the Enquiry Officer on this

point also and without issuing a show cause notice saying that the applicant was guilty of the ^{said} charge also and awarded the punishment of removal from service. The departmental appeal against the same was dismissed. Thereafter the applicant has approached the Tribunal. The applicant has taken a number of grounds in this application for assailing inquiry proceedings and the punishment. But it has also been explained that there was difference of opinion between the Enquiry Officer and the Disciplinary Authority and that too in respect of the charge which alone was sufficient to dismiss the applicant from service, the applicant should have been given an opportunity of hearing and the opportunity of hearing was not given to him and the Disciplinary Authority's formed the opinion behind his back. Thus he has acted in violation of principles of natural justice. In this connection a reference has been made to the case of Shri Narainji Mishra v. State of Orissa 1969 SLR page.657 in which it has been said that notwithstanding the deletion of clause II of Article 311 of the Constitution of India, the principles of natural justice are in tact. The principles of natural justice require that in case there are difference of opinion between the Enquiry Officer and the Disciplinary Authority for giving show cause notice to the delinquent employee is a must and if that is not done further proceedings are vitiated. The very same principle is applied and as such the inquiry proceedings thereafter are vitiated. Although there is a plea that in this case the Enquiry Officer's report was not given to the applicant and there was yet violation of principles of natural justice as had been held in the case of Union of India v. Mohd. Ramzan Khan A.I.R. 1990(1) S.C. 471. But it is not necessary to enter into that question ~~xx~~ although we have taken a view that in cases of pending proceedings

it shall continue and the observations made by the Supreme Court ~~that~~ regarding retrospective and prospective effect will not apply in such cases and further that the case will hold the field notwithstanding the fact that any other decision of the Supreme Court or the earlier decision on the same point that the giving of the Enquiry Officer's report is a must reported in A.I.R. 1980 S.C. page 1320 Joshi v. Union of India.

2. Accordingly, this application is allowed and the Appellate Order and the Punishment Order dated 26.11.1986 and 17.3.1986 respectively are quashed. However, we make it clear that the disciplinary authority may go ahead with the disciplinary proceedings after giving notice to the applicant regarding the dis-agreement.



(M.Y. PRIOLKAR)
MEMBER (A)



(U.C. SRIVASTAVA)
VICE-CHAIRMAN.

B.S.M.