

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 674/87
T.A. No.

198

DATE OF DECISION 23-9-1991

T.J.Bhoir PetitionerMr.D.V.Gangal Advocate for the Petitioner(s)

Versus

Union of India & Ors. RespondentMr.A.I.Bhatkar 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? Yes
2. To be referred to the Reporter or not? X
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? X

MGIPRRND-12 CAT/86-3-12-86-15,000

(M.Y.PRIOLKAR)

(.....)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.674/87

T.J.Bhoir,
Dresser,
Naval Hospital,
Karanja,
Uran.

.. Applicant

vs.

1. Union of India
through
The Secretary,
Ministry of Defence,
New Delhi.
2. The Commodore,
Chief Staff Officer(P&A),
Western Naval Command,
Shahid Bhagat Singh Road,
Bombay - 400 001.
3. Vice-Admiral,
Flag Officer Commanding-in-Chief,
Western Naval Command,
Shahid Bhagat Singh Road,
Bombay - 400 001.
4. The Chief of Naval Staff,
Naval Headquarters,
New Delhi. .. Respondents

Coram: Hon'ble Shri Justice U.C.Srivastava,
Vice-Chairman

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

Appearances:

1. Mr.D.V.Gangal
Advocate for the
Applicant.
2. Mr.A.I.Bhatkar
for the respondents.

ORAL JUDGMENT:
(Per M.Y.Priolkar, Member(A))

Date: 23-9-1991

The applicant while working in Naval Armament Depot, Naval Hospital, Karanja as Dresser was proceeded with departmentally on the three charges of (i) misusing government transport for personal use (ii) refusal to give written statement during preliminary enquiry and (iii) making derogatory remarks against his superiors. After holding domestic

inquiry the Inquiry Officer found that the charges were not established or not completely established. The disciplinary authority, however, disagreed with the views expressed by the Inquiry Officer and punished the applicant by imposing the penalty of reduction by three stages in the time scale of pay for a period of three years with cumulative effect by order dtd.

21st October, 1985.

2. The grievance of the applicant is that the Inquiry report was furnished to him only along with the order of punishment dtd. 21st October, 1985. According to the applicant, after obtaining the inquiry proceedings after several attempts, he filed an appeal dtd. 13th January, 1986 against the punishment order. But the appeal was rejected by the appellate authority by order dtd. 2nd September, 1986. He subsequently filed a review/revision petition on 30th October, 1986 which was also rejected by the competent authority by order dtd. 7th August, 1987.

3. It is not in dispute that the report of the Inquiry Officer was furnished to the applicant in this case, not before imposing the penalty but along with the copy of the punishment order dtd. 21st October, 1985 of the disciplinary authority. In this order, the disciplinary authority has disagreed with the findings of the Inquiry Officer who had held that out of the three articles of charge, two ~~was~~ were not established and the third article of charge was not completely established. Disagreeing with the findings of the Inquiry Officer the Disciplinary Authority had held that Article II and Article III of the charges have been proved by the

statements made and recorded during the course of the inquiry.

4. The learned Counsel for the applicant argued that it has now been settled by the decision of the Supreme Court in the case of Union of India v. Mohd. Ramzan Khan, AIR 1991 SC 471, that wherever an inquiry has been held, the delinquent employee is entitled to a copy of the inquiry report prior to the imposition of the penalty so as to enable him to make a proper representation against the findings of the Inquiry Officer and that non-compliance with this requirement has been held to be violative of principles of natural justice. This Supreme Court judgment (AIR 1991 SC 471), however, states clearly (para 18 of the judgment) "wherever there has been an Enquiry Officer and he has furnished a report.....holding the delinquent guilty of all or any of the charges, 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 the rules of natural justice and make the final order liable to challenge hereafter." Since the Enquiry Officer had held that the articles were not established or not completely established, and a copy of the enquiry report had been furnished along with the punishment order and it was available to the applicant when he made an appeal to the appellate authority, we are of the view that this case is not fully covered by the decision of the Supreme Court in the case of Union of India v. Mohd. Ramzan Khan (supra). However, we find that the

decision of the Supreme Court in the case of Narayan Misra v. State of Orissa, 1969 SLR 657, decided on 25-3-1969 would apply to the facts of this case.

In this case before the Supreme Court, the delinquent official had been acquitted in the inquiry of some charges and found guilty of some other charges.

The punishing authority, however, ~~was~~ differed from the findings of the inquiry officer and held him guilty of the charges from which he was acquitted by the Inquiry Officer. No notice or opportunity was given to the delinquent official about the attitude of the punishing authority.

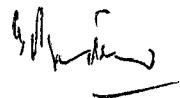
The Supreme Court, therefore, set aside the order of removal in that case holding it to be violative of principles of natural justice and fair play.

4. In the present case also, since there is no dispute that there was no opportunity given to the delinquent official before the Disciplinary Authority came to the conclusion to disagree with the findings of the Inquiry Officer and held the applicant guilty of the charges framed from which he was acquitted by the Inquiry Officer, we hold that this judgment of the Supreme Court in the case of Narayan Misra v. State of Orissa(supra) will be squarely applicable to this case. Accordingly, we set aside the punishment order dtd. 21st October, 1985 and also the subsequent orders of the appellate authority and the reviewing authority. The respondents shall, however, have the liberty to continue the departmental action from the stage the illegality has occurred. The applicant will be entitled to

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continuity of service and all consequential reliefs in accordance with law. There will be no order as to costs.



(M.Y.PRIOLKAR)
Member(A)

(U.C.SRIVASTAVA)
Vice-Chairman

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