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CAT/J/12

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW BOMBAY BENCH

~~O.A. No.~~
T.A. No. 483/87 198

DATE OF DECISION 29-7-1991

Shri H.P.Nanak, Petitioner

Applicant in person Advocate for the Petitioner(s)

Versus

Union of India through The Secretary Ministry of Defence New Delhi and ors. Respondent

~~Mr. R.K.Shetty.~~ Advocate for the Respondent(s)

CORAM

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

The Hon'ble Mr. T.C.Reddy, Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ? } No
4. Whether it needs to be circulated to other Benches of the Tribunal ?

P.S. Chaudhuri

(P.S. CHAUDHURI)
M(A)

(12)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH
NEW BOMBAY

Tr.A.No.483/87

Shri H.P.Nanak,
Welder 'B' Grade,
T.No.W-149 High
Explosive Factory,
Kirkee,Pune 411-003 ... Applicant

Vs

1) Union of India through
The Secretary Ministry of
Defence, New Delhi

2) General Manager,
High Explosive Factory-Pune

3) The Director General,
Ordinance Factory Board,
44, Park Street,Calcutta. ... Respondents

Appearance:

Applicant in person.

Mr. R.K.Shetty, Adv.
for the respondents.

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

Hon'ble Mr. T.C.Reddy, Member(J)

Dated:29-7-1991

Judgement
(Per Mr. P.S.Chaudhuri, Member(A)

This application has come to the Tribunal by way of transfer from the Bombay High Court in terms of its order dated 17-9-1987 on Writ Petition No.1390/84 which was filed before it on 21-3-1984. In it the applicant (petitioner), who was working as Welder 'B' grade in the High Explosive Factory, Kirkee, is challenging the order dated 3-6-1982 by which he is removed from service and the appelate order dated 31-5-1983 dismissing his appeal against the said order of removal from service.

2. The applicant was appointed in the High Explosive Factory, Kirkee as a Labourer 'B' grade in 1962. He was given promotions, the last being to Welder 'B' grade. By order dated 28-11-1980 he was placed under suspension with effect from 3-11-1980. He was served with a memorandum

dated 31-1-1981 containing two articles of charge, one pertaining to assault of a co-worker and the other to lending money on high interest. He replied to the memorandum on 9-3-1981 denying the charges. An inquiry was held. By his report dated 17-4-1982, the Inquiry Officer held that both the articles of charges had been established. By order dated 3-6-1982, the 2nd respondent enclosed a copy of the Inquiry Report and passed the order removing the applicant from service. The applicant submitted an appeal dated 24-7-1982 to the 3rd respondent but this was dismissed by the impugned order dated 31-5-1983. Being aggrived, the applicant (petitioner) filed this Writ Petition.

3. The respondents have opposed the Writ Petition by filing their affidavit in reply. We have heard the applicant in person and Mr. R.K.Shetty, learned counsel for the respondents.

4. As mentioned earlier it is undisputed that in fact no copy of the report of the Inquiry Officer was furnished to the applicant prior to imposing the penalty of removal from service. As we have no hesitation in holding that this itself would be sufficient ground for seting aside the impugned order of removal from service and the subsequent appelate order, we are of the view that it is unnecessary to enter into a detailed discussion about any of the other points raised in the pleadings of the parties and that it would be inappropriate to do so at this stage in view of the final order we propose passing.

5. In Union of India & Ors. V Mohd. Ramzan Khan 1990(2) SCALE 1094, the Supreme Court have held:-

> "14 This Court in Mazharul Islam Hashme V State of U.P. and Anr. -
> (1979)4 SCC 537 - pointed out:
> " Every person must know what he is to meet and he must have opportunity of meeting that case. The legislature, however, can exclude operation of these principles expressly or implicitly. But in the absence of any such exclusion, the principle of natural justice will have to be proved."
>
> 15. ..... While by law application of natural justice could be totally ruled out or truncated, nothing has been done here which could be taken

(14)

as keeping natural justice out of the proceedings and the series of pronouncements of this Court making rules of natural justice applicable to such an inquiry are not affected by the 42nd amendment. We, therefore, come to the conclusion that supply of a copy of the inquiry report along with recommendations, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delingquent would, therefore, be entitled to the supply of a copy thereof. The Forty Second Amendment has not brought about any change in this position.

16 .....

17 ..... There have been several decision in different High Courts which following the Forty Second Amendment, have taken the view that it is no longer necessary to furnish a copy of the inquiry report to delingquent officers. Even on some occasions this Court has taken that view. Since we have reached a different conclusion the judgements in the different High Courts taking the contrary view must be taken to be no longer laying down good law. We have not been shown any decision of a coordinate or a large Bench of this Court taking this view. Therefore, the conclusion to the contrary reached by any two-Judge Bench in this Court will also no longer be taken to be laying down good law, but this shall have prospective application and no punishment imposed shall be open to challenge on this ground.

18 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 delingquent guilty of all or any of the charges with proposal for any particular punishment or not, the delingquent 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.

19. On the basis of this conclusion, the appeals 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 revising 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."

6. Mr.Shetty attempted to distinguish this case on two grounds. The first was the observation in para 17 of the judgement to the effect that it shall have prospective application. We see no merit in this submission. What has really been meant by the observation in para 17 is that no case which has been finally decided after the filing of writs or appeals in a court of law shall be re-opened only on the strength of the judgment in Mohd. Ramzan Khan's case (supra) and not that it will be inapplicable in cases where only the disciplinary proceedings have been completed but such writs or applications or appeals are still pending. Such being the law laid down by the Supreme Court, we have no difficulty in rejecting any attempt at making a distinction on this ground.

7. Mr. Shetty's second ground for making a distinction was that the applicant had, in any case, had the opportunity of receiving a copy of the Inquiry Report before his statutory appeal and so the requirements of natural justice has been met. We are unable to go along with this submission also. We have already reproduced the law laid down by the Supreme Court and we have no difficulty in holding that the impugned order of removal from service is not sustainable in law in-as-much as no copy of the inquiry report was given to the applicant before the disciplinary authority made up his mind about the guilt of the applicant. So, the appellate authority should have held that the requirements of natural justice had not been met when the impugned order of removal was passed. Had he done so, he would not have been able to maintain the impugned order of removal.

8. In this view of the matter, we have no difficulty in holding that neither the impugned order of removal from service nor the impugned appellate order is sustainable in law.

(16)

9. We, therefore, allow the application and set aside the impugned order of removal from service dated 3.6.1982 and the impugned appellate order thereon dated 31.5.1983. We would clarify that this decision will not preclude the Disciplinary Authority from reviving the disciplinary proceeding and continuing with it in accordance with law and the applicable rules from the stage of the supply of the inquiry report, a copy of which has since been furnished to the applicant. In that case the applicant shall, of course, be afforded opportunity of making his representation to the Disciplinary Authority in regard to the inquiry report before the Disciplinary Authority comes to a conclusion thereon. We further order that the competent authority shall pass orders relating to the treatment of the period(s) from the applicant's date of removal from service and applicant's pay and allowances during the concerned period(s) at the appropriate time(s) in terms of the applicable rules and in accordance with law. In the circumstances of the case there will be no order as to costs.

(T.C.S.REDDY)
Member(J)

(P.S.CHAUDHURI)
Member(A)

29-7-1991