

16

Central Administrative Tribunal

~~HYDERABAD BENCH XXXXX HYDERABAD~~

NEW BOMBAY BENCH : CIRCUIT SITTING AT
NAGPUR

O.A. No. 326 of 1987

Date of Decision : 19-4-1991

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Dipak

Petitioner.

Shri S.P.Kshirsagar

Advocate for the
petitioner (s)

Versus

General Manager, Ordnance Factory,
Chanda.

Respondent.

Shri Ramesh Darda, Standing Counsel
for the Deptt.

Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR.

D.SURYA RAO, MEMBER (JUDICIAL).

THE HON'BLE MR.

P.S.CHAUDHURI, MEMBER (ADMN.).

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *No*
3. Whether their Lordships wish to see the fair copy of the Judgment ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

D. Surya Rao
(D.SURYA RAO)

P.S. Chaudhuri
(P.S.CHAUDHURI)

19-4-1991

IX

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : NEW BOMBAY
CIRCUIT BENCH AT NAGPUR

Original Application No.326 of 1987

Between:-

Dipak .. Applicant

and

The General Manager, Ordnance
Factory, Chanda.

.. Respondent

CORAM:

THE HONOURABLE SHRI D.SURYA RAO, MEMBER (JUDICIAL).

THE HONOURABLE SHRI P.S.CHAUDHURI, MEMBER (ADMN.).

Appearance:

For the Applicant : Shri S.P.Kshirsagar, Advocate.

For the Respondent : Shri Ramesh Darda, Standing Counsel
for the Department.

J U D G M E N T

DATE: 19-4-1991

(AS PER HON'BLE MEMBER (J), SHRI D.SURYA RAO)

1. The applicant was formerly working as 'B' Grade Technician under the General Manager, Ordnance Factory, Chanda. He has filed this application questioning the order No.069/11/L/203/Vig, dated 27.4.1984 passed by the respondent imposing upon the applicant the penalty of removal from service. This order of punishment was passed after framing of ^{a p} charge and holding of an inquiry against the applicant in accordance with the procedure prescribed under Rule 14 of C.C.S. (C.C.A.) Rules 1965.

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The charge against the applicant was that he had, while on duty, consumed alcohol and had created a nuisance using abusive and threatening language towards staff members. After a due inquiry, the Inquiry Officer submitted his report holding the applicant guilty of the charge. Thereupon the respondent passed the impugned order of punishment dated 27-4-1984 removing the applicant from service.

2. The applicant states that he submitted an appeal on 12-7-1984 to the Director-General, Ordnance Factories, Calcutta. Thereafter the applicant followed with a reminder dated 7.12.1984 and a legal notice dated 25.2.1986. No orders were passed thereupon. Hence the applicant states that he was constrained to file the present application questioning the order of punishment. Various grounds and reasons have been put forth by him questioning the inquiry proceedings and the order of punishment.

3. On behalf of the respondents a reply has been submitted denying the various contentions and allegations. It is contended that the Appellate Authority has disposed of the Appeal of the applicant by an order dated 9-4-1986 which was communicated to the applicant on 22-4-1986. However, this communication was returned with an endorsement that the applicant was not found at the address mentioned therein.

4. We have heard the arguments of Shri S.P.Kshirsagar, learned Counsel for the applicant, and Shri Ramesh Darda, learned Standing Counsel for the respondent factory.

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5. Apart from the various other grounds raised by the applicant in his application, Shri S.P.Kshirsagar, learned Counsel for the applicant, contends that no reasonable opportunity within the meaning of Article 311(2) of the Constitution was afforded to the applicant and that the punishment imposed upon the applicant pursuant to the order dated 27-4-1984 is contrary to the principles of natural justice. It is contended that after the inquiry by the Inquiry Officer and submission of his report, the disciplinary authority viz., the respondent ought to have furnished the applicant with a copy of the inquiry report before passing the final order of punishment. It is in this context that it is alleged that no reasonable opportunity was afforded and that non-furnishing of the Inquiry Officer's report is opposed to the principles of natural justice.

6. A perusal of the impugned order dated 27-4-1984 confirms that the copy of the inquiry report was not furnished prior to the disciplinary authority coming to a conclusion that the inquiry report should be accepted and that the punishment should be imposed.

The enquiry report was annexed to the punishment order dated 27-4-1984. The question whether furnishing of the Enquiry Officer's report before the disciplinary authority passes the final order of punishment is a ^{necessary &} ~~requirement of law~~ is concluded both by the decision of a Full Bench of this Tribunal in T.A.2 of 1986 (Premnath K.Sharma vs. Union of India) and subsequently by the Supreme Court in Union of India & others vs. Ramzan Khan case (1990 (4) S.C. 456 Judgements Today). It has been held by the Supreme Court in the latter decision as follows:-

" 15. Deletion of the second opportunity from the scheme of Art.311(2) of the Constitution has nothing to do with providing of a copy of the report to the delinquent in the matter of making his representation. Even though the second stage of the inquiry in Art.311(2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the Inquiry Officer holding that the charges or some of the charges are established and holding the delinquent guilty of such charges. For doing away with the effect of the enquiry report or to meet the recommendations of the Inquiry Officer in the matter of imposition of punishment, furnishing the proceeding completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. While by law application of natural justice could be totally ruled out or truncated, nothing has been done here which could be taken 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 delinquent would, therefore, be entitled to the supply of a copy thereof. The Forty-Second Amendment has not brought about any change in this position. "

" 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 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.


7. Applying the aforesaid decision of the Supreme Court it would follow that the impugned order dated 27-4-1984 is illegal, and contrary to the principles of natural justice. It is accordingly quashed and set aside.


8. This order, passed by us will not, however, preclude the respondent (disciplinary authority) from proceeding with the enquiry from the stage of receipt of the enquiry officer's report. Since the enquiry officer's report has already been made available to the applicant, the question of furnishing it once again does not arise. If the disciplinary authority proposes to continue with the enquiry, he shall give the applicant a reasonable opportunity of representing against the enquiry report and only thereafter proceed with the enquiry. This observation made by us is not a direction to the respondent (disciplinary authority) to take further action on the basis of the enquiry report and this is a matter left entirely to the discretion of the disciplinary authority. The question as to how the period, from the date of removal from service till the date of the order of the Tribunal, and the subsequent period, in the event of the disciplinary proceedings being continued, will be determined by the competent authority in accordance with the rules applicable to Government servants in regard to whom

22
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an order of removal/dismissal/compulsory retirement from service has been set aside pursuant to orders of a Court of Law/Tribunal.

9. With the above directions, the application is allowed. The parties are directed to bear their own costs.


(D.SURYA RAO)
MEMBER (JUDICIAL)


(P.S.CHAUDHURI)
MEMBER (ADMINISTRATION)

DATE:

19-4-1991

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