

(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A. NO: 806/87

199

T.A. NO:

DATE OF DECISION 5.8.1992

S.N.PARAB

Petitioner

P.K.DHAKEPHALKAR

Advocate for the Petitioners

Versus

Inspecting Assistant Commissioner Respondent  
of Income Tax-B-III Range,  
Ayakar Bhavan, Bombay-20 and 2 ors.

Shri V.M.Bendre for Mr.P.M.Pradhan Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. JUSTICE S.K.DHAON, Vice-Chairman

The Hon'ble Mr. M.Y.PRIOLKAR, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the judgement ? Y
2. To be referred to the Reporter or not ? Y
3. Whether their Lordships wish to see the fair copy of the judgement ? N
4. Whether it needs to be circulated to other Benches of the Tribunal ? N

*bjy*  
(S.K.DHAON)  
V/C

mbm\*

(2)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

ORIGINAL APPLICATION NO: 806/87

SHARAD NARAYAN PARAB

... Applicant

V/s

1. Inspecting Assistant Commissioner  
of Income Tax-B-III Range,  
Ayakar Bhavan, Bombay-20  
and two others

... Respondents

CORAM : HON'BLE MR.JUSTICE S.K.DHAON, Vice-Chairman  
HON'BLE MR.M.Y.PRIOLKAR, MEMBER (A)

Appearance :

Mr.P.K.Dhakephalkar, Adv.  
for the applicant

Mr.V.M.Bendre, Adv.  
for Mr.P.M.Pradhan, Adv.  
for the respondents.

ORAL JUDGEMENT

5th AUGUST 1992

(PER JUSTICE S.K.DHAON, Vice-Chairman)

The applicant, while working as an Upper Division Clerk in the Income Tax Office, was dismissed from service, on 18.8.1983, on account of the fact that he had been convicted by a competent Criminal Court, in a criminal trial. On 29th October 1983, the Appellate Court set aside his conviction and acquitted him, after giving him benefits of doubt. On 3rd December 1983 the order of removal was set aside. However, by the same order a departmental inquiry was set up and the applicant was placed under suspension with effect from 18th March 1983. A memorandum containing the charges was furnished to him. The applicant had given a reply thereto. The Enquiry Officer had submitted his report. He was called upon by the punishing authority to give his explanation.

He was supplied with the Enquiry Officer's report. On 9th September 1986, the Punishing Authority passed an order dismissing him from service. This order was upheld in appeal on 19th May 1987. The two orders are being impugned in the present application.

2. On 6th August 1986, the Punishing Authority by a memorandum informed the applicant that after careful consideration of the inquiry report, he agreed with the findings of the Enquiry Officer, and held that the articles of charge stood proved to the extent of findings by the Enquiry Officer. He, therefore, came to the conclusion that the applicant was not a fit person to be retained in service, and he proposed to impose a penalty of dismissal from service. The applicant was called upon to make a representation again on the question of penalty to be imposed upon. To the said memorandum the Punishing Authority enclosed its finding on each charge as levelled against the applicant. Finally, he summed up his opinion ~~on the said~~ on the said charges in these words:

"on careful consideration of the report and record of enquiry, I agree with the Enquiring Authority and the above charges stand proved".

3. Learned counsel for the applicant has urged that the Punishing Authority, while giving an opportunity to give explanation to the findings recorded by the Enquiry Officer, merely completed the formality as he had made up his mind that the applicant <sup>is</sup> found guilty

✓ and <sup>the</sup> only question on which he was to deliberate upon was with respect to the punishment to be awarded. It appears that there is some force in this contention. On perusal of the memorandum dated 6th August 1986 and annexure thereto, there can be no escape from the conclusion that the Punishing Authority had, in fact, come to the conclusion that the charges as levelled against the applicant had been brought home to him.

6) Indeed, in paragraph 5 of its order of the Punishing Authority, he remarked that the charged official had not given reply on the various articles separately. Learned counsel has pointed out that the applicant, after receiving the memorandum, thought that it was not worthwhile to give parawise reply to the charges as found proved by the Enquiry Officer as the scope of inquiry before the punishing authority was confined to the 6) <sup>Mention</sup> contents of punishment to be awarded to him (applicant). The possibility of such an understanding and the situation by the applicant <sup>could</sup> not be ruled out, in view of the facts recited in the memorandum and annexure thereto.

4. In Md. Ramzan Khan's case, AIR 1991, SC 471, it has been emphasised that inspite of doing away <sup>with</sup> of the second opportunity, as originally contemplated in Article 311 of the Constitution, the <sup>Principle</sup> of Natural Justice still requires that the delinquent <sup>employee</sup> should be given an opportunity to meet the finding recorded by the Enquiry Officer with a view to impress upon the Punishing Authority that the recommendations of the <sup>report of</sup>

the Enquiry Officer should not be accepted. In the instant case, even though the applicant was furnished with a copy of the Enquiry Officer's report and even though he had been given an opportunity to make a representation, yet the purpose of making a representation stood completely frustrated as the Punishing Authority had before coming to the final conclusion made up his mind that the applicant was, in fact, guilty. We, therefore, come to the conclusion that the procedure adopted by the Punishing Authority was not in conformity with the Principles of Natural Justice, and therefore, his order stood vitiated. The Appellate Authority has not considered this aspect of the matter and, therefore, its order too is not sustainable.

5. The net result is that the order of punishment has got to be set aside. Nonetheless, we make it clear that it will be open to the Punishing Authority to re-initiate the disciplinary proceedings. However, it will not be necessary for him now to give the applicant a copy of the Enquiry Officer's report afresh, as the same has already been given to him (applicant). The applicant shall give a detailed explanation to the Punishing Authority within <sup>one</sup> month from today. Thereafter the Punishing Authority shall proceed to pass a fresh order on merits and in accordance with the law and keeping in view the explanation offered by the applicant.

6. Application Applicant succeeds in part. The order passed on 9th September 1986 by the Punishing Authority is quashed. The order passed by the Appellate Authority is also quashed.

7. There shall be no order as to costs.

  
(M.Y.PRIOLKAR)  
MA

  
(S.K.DHADON)  
V/c