

14

Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD
NEW BOMBAY NAGPUR

O.A. No.
T.A.No. 14/88

Date of Decision : 19-4-1991

Subhash Gojerao Ingle Petitioner.

Mr. R.R. Pillai, Advocate for the petitioner (s)

Versus

Chairman/Director - General, Respondent.
 Ordnance Factory Board,
 Calcutta, & 2 others. Advocate for the Respondent (s)

CORAM :

THE HON'BLE MR.

D. Surya Rao, Member (J)

THE HON'BLE MR.

P.S. Chandhuri, Member (Admin.)

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. Chandhuri
(P.S. Chandhuri)
19-4-1991

(15)

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

Transfer Application No. 14 of 1988

Between:-

Subhash Gojerao Ingle .. Applicant

and

1. Chairman/Director-General,
Ordnance Factories Board,
6, Esplanade (East),
Calcutta-700069 (W.B.)

2. General Manager,
Ordnance Factory,
Chandrapur-442501.

3. S. Balchandran,
Dy. General Manager (Engg)
& Inquiry Officer,
Ordnance Factory,
Chandrapur-442501. ..

Respondents

CORAM:

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

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

Appearance:

For the Applicant : Mr. R. R. Pillai, Advocate.

For the Respondents : Mr. Ramesh Darda, Standing
Counsel for the Department.

J U D G E M E N T

DATED: 19-4-1991

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

1. The applicant herein was formerly a Gr. II labour in the Ordnance Factory, Chandrapur. He has filed Writ Petition No. 2809 of 1983 before the High Court of Bombay at Nagpur Bench, Nagpur, for quashing the order No. 069/11/L/255/Vig., dated 12-12-1983 passed by the

.../...

(16)

: 2 :

General Manager, Ordnance Factory, Chandrapur (2nd respondent) imposing upon the applicant the punishment of dismissal from service. The said Writ Petition has been transferred to this Tribunal under section 29 of the Administrative Tribunals Act 1985 consequent to the orders passed by the High Court of Bombay dated 7-1-1988.

2. The order of punishment dated 12-12-1983 imposed upon the applicant is consequent to the charges that have been framed against the applicant under a Memorandum of Charges dated 28-1-1983 issued to the applicant. ~~In that~~ 3 articles of charge were framed against the applicant. The 1st article ^{of charge} ~~was~~ related to obstructing the staff members and willing workers from going to duty on 15.12.1982 by threatening the said staff members. The 2nd article of charge was that he, alongwith 60/70 workers was found obstructing the way ^{of} ~~for~~ a Government vehicle No. MHG 9881 driven by one T.S. Babu, CMD Gr. I on duty near Sector-III junction O.F. Estate on 17.12.1982 at about 7.00 a.m. The 3rd article of charge was that the applicant alongwith other strikers threw stones on staff members and beat them with lathies on 23.12.1982 when those staff members were proceeding for duty.

3. An Inquiry Officer was appointed to inquire into the charges. The Inquiry Officer submitted a report on 7-12-1983 holding the applicant guilty of all the 3 charges. Thereafter the Disciplinary Authority passed the impugned order of dismissal dated 12.12.1983 enclosing thereto a copy of the Inquiry Officer's report

Q-

.../..

(17)

: 3 :

dated 7.12.1983. The applicant did not seek to prefer any appeal against this impugned order on the ground that he has no faith in the Appellate Authority. The Inquiry Report and the impugned order of punishment dated 12-12-1983 are sought to be questioned on various grounds as contained in the application.

4. On behalf of the respondents a reply had been filed even at the stage of admission, which was requested to be taken as the reply in the main case.

5. We have heard the arguments of Shri R.R.Pillai, learned Counsel for the applicant, and Shri Ramesh Darda, learned Standing Counsel for the respondents.

6. Apart from the various other grounds raised in the application, the Counsel for the applicant contends that no reasonable opportunity within the meaning of Article 311(2) of the Constitution was afforded to him and that the punishment imposed upon the applicant pursuant to the order dt.12.12.83 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 (respondent No.2) ought to have furnished the applicant with a copy of the inquiry report before passing the final order of compulsory retirement. 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.

7. A perusal of the impugned order dated 12-12-1983 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 12-12-'83. The question whether furnishing of the Enquiry Officer's report before the disciplinary authority passes the final order of punishment is a ~~requirement of law~~ ^{necessary &} 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.

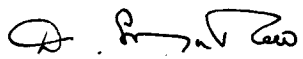
7. Applying the aforesaid decision of the Supreme Court it would follow that the impugned order dated ~~12-12-83~~ is illegal, and contrary to the principles of natural justice. It is accordingly quashed and set aside.
8. This order, passed by us will not, however, preclude the respondent (disciplinary 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


95

: 6 :

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

10. 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

nsr