

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

CXXXNo.  
T. A. No. 52/88

198

DATE OF DECISION 6.2.1990

A.S.Gujral \_\_\_\_\_ Petitioner

V.M.Bendre \_\_\_\_\_ Advocate for the Petitioner(s)

Versus

Union of India &amp; ors. \_\_\_\_\_ Respondent

P.M.Pradhan \_\_\_\_\_ Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. G.Sreedharan Nair, Vice-Chairman

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

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

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH

(23)

Tr. Appln. No. 52/88

Shri A.S.Gujral,  
61/1601, 2nd Floor,  
Kannanwar Nagar,  
2nd Vikhroli(E),  
Bombay - 400 083.

.. Plaintiff

vs.

1. Union of India  
through  
The Secretary,  
Department of Defence  
Production,  
Ministry of Defence,  
New Delhi - 110 011.
2. The General Manager,  
Machine Tool Prototype  
Factory,  
Abernath.
3. The Director General of  
Ordnance Factories,  
6, Esplanade East,  
Calcutta - 700 069.

.. Defendants

Coram: Hon'ble Vice-Chairman Shri G.Sreedharan Nair  
Hon'ble Member(A) Shri M.Y.Priolkar

Appearances:

1. Mr.V.M.Bendre  
Advocate for the  
Applicant.
2. Mr.P.M.Pradhan  
Advocate for the  
Respondents.

ORAL JUDGMENT

(Per Shri G.Sreedharan Nair, Vice-Chairman) Date: 6.2.1990

This relates to transferred suit No.1614/81  
in the Court of the Jt.Civil Judge, S.D., Thane.

2. The Plaintiff while functioning as Senior Planner was proceeded against under Rule 14 of CCS(CCA) Rules, 1965, for short the Rules, by issue of a memorandum of charges dated 13.10.1979. There were three articles of charges relating to the irregular attendance, unauthorised absence from duty w.e.f. 28.8.1979 and the violation of clause (ii) and (iii) of Rule 3 of the CCS(Conduct)Rules 1964. An enquiry was conducted. The Inquiry Officer held that articles 1 and 2 are established. As regards article 3 he held that only a portion of the charge under the said

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article was proved. However, the Disciplinary Authority ~~holding that all the articles of agreeing with enquiry charges are established~~ imposed upon the plaintiff the penalty of removal from service by the order dated 10.3.1980. An appeal was preferred by the ~~plaintiff~~ applicant. The Appellate Authority by the order dated 12.1.1981 modified the penalty to one of reduction of pay by two stages without cumulative effect ~~in~~ to the post of Chargeman Gr.II with effect from the date of his joining ~~the~~ duty.

3. The Plaintiff has prayed for quashing both the aforesaid orders. It is alleged that the annexures to the memorandum of charges were not served on him and as such he was not in a position to submit the written statement of defence or to effectively participate in the enquiry. It is alleged that this has amounted to denial of reasonable opportunity guaranteed under the Rules. There is also a plea that the Disciplinary Authority without giving valid reasons has disagreed with the findings of the Inquiry Officer on article no.3. The plaintiff has assailed both the orders on the further ground that they are not speaking orders.

4. In the written statements filed on behalf of the Defendants it is stated that the annexures to the memorandum of charges was actually given to the plaintiff on 8.12.1979 in token of which he has given acknowledgment in writing. It is stated that though opportunity was afforded the plaintiff ~~he~~ did not participate in the enquiry. It is contended that both the orders have been passed after due application of mind.

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5. We have heard counsel on either side and have perused the records. We are not satisfied that there is any merit in the plea of the plaintiff that the annexures to the memorandum of charges were not actually supplied to him. In support of the statement in the reply <sup>where</sup> filed by the defendants it is stated that they were ~~actually~~ furnished to the plaintiff, the acknowledgment given by the plaintiff receiving the memorandum of charges along with the enclosures has been produced by the defendants. Though an attempt was made by the counsel for the plaintiff to establish that actually the enclosures were not furnished, so long as the acknowledgment is not disputed there is no reason to think that the enclosures were kept back and only <sup>was</sup> the memorandum of charges ~~were~~ served. Besides, on a perusal of the Inquiry Officer's report we find that since the plaintiff has raised this objection before him the plaintiff was afforded an opportunity to go through the enclosures so as to enable him to file the written statement of ~~the~~ defence, but he did not avail <sup>of</sup> that opportunity.

6. It appears that the enquiry was conducted practically ex parte since the plaintiff did not file written statement of defence, though he appeared before the Inquiry Officer on certain hearing dates. Even the witnesses were not cross examined by the plaintiff. Nor did he file a written brief before the Inquiry Officer. In the circumstances of the case the Inquiry Officer cannot be faulted for having proceeded with the enquiry ex parte.

7. However, there is a circumstance that the copy of the Inquiry Officer's report has been furnished to the applicant only along with the order imposing the penalty.

The penalty that has been imposed upon the plaintiff was removal from service, one of the three penalties contemplated under Article 311 of the Constitution of India. Clause (2) of Article 311 behoves the Disciplinary Authority to afford reasonable opportunity of defence to the applicant before the imposition of such penalty, and failure to do so has resulted in violation of one of the well recognised principles of natural justice.

8. Adverting to the order of the Appellate Authority, it ~~would~~ cannot be disputed that the attack against the same ~~has~~ as not satisfied the requirements under Rule 25 of the Rules ~~has~~ force. The Appellate Authority has not at all applied its mind on the question whether the truth of the imputations against the plaintiff is established. Anyway since the penalty of removal from service has been modified by the Appellate Authority to one of reduction of pay by two stages without cumulative effect we are of the view that there is no necessity to remit ~~back~~ the matter to the Disciplinary Authority. We quash the order of the Appellate Authority and remit the matter to that authority for ~~further~~ <sup>fresh</sup> consideration of the appeal submitted by the plaintiff in accordance with law and in the light of what <sup>is</sup> stated in the order. The Appellate Authority shall also duly consider the effect of the non ~~speaking~~ supply of the copy of the Inquiry Officer's report to the plaintiff before the Disciplinary Authority imposed the penalty, ~~and~~ <sup>In</sup> case the Appellate Authority arrives at the conclusion that the matter has to be reconsidered by the Disciplinary Authority, it is open to the Appellate Authority to remit ~~back~~ the matter to the Disciplinary Authority for fresh consideration. The Appellate Authority shall dispose of the matter within a period of four months

from the date of receipt of a copy of this order.

It is needless to add that before the appeal is disposed of the Appellate Authority shall afford the applicant an opportunity of being heard with respect to the various grounds urged in the memorandum of appeal.

9. The suit is disposed of as above.

*6/2/90*  
(M.Y.PRIOLKAR)  
Member(A)

*6/2/90*  
(G.SREEDHARAN NAIR)  
Vice-Chairman

Judgment dtd. 6.2.90

Send to parties  
on 28.2.90.

*Slated*

Judgment dtd. 6.2.90

served on applicants  
R.Nos 2 & 3 on 5.3.90.

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26/3/90*