

9

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH.

Original Application No.77/88.

Shri V.N.Mumbarkar,
Chargeman 'B' (Inspection),
Western Railway, Carriage Workshop,
Lower Parel.
Bombay - 400 013.

... Applicant.

V/s.

1. Union of India through
General Manager,
Western Railway,
Churchgate,
Bombay - 400 023.
2. General Manager,
Western Railway,
Churchgate,
Bombay - 400 023.
3. Chief Workshop Manager,
Carriage & Wagon Workshop,
Western Railway,
Lower Parel,
Bombay - 400 013.
4. Dy. Chief Mechanical Engineer(P),
Chief Workshop Manager's Office,
Western Railway,
Lower Parel,
Bombay - 400 013.

... Respondents.

Coram: Hon'ble Vice-Chairman, Shri U.C.Srivastava,
Hon'ble Member(A), Shri P.S.Chaudhuri.

Appearances:-

Applicant by Mr.J.R.Azad.
Respondents by Mr.P.R.Pai.

JUDGMENT:-

(Per Shri P.S.Chaudhuri, Member(A))

Dated: 13.9.1991

This application under section 19 of the Administrative Tribunals Act, 1985 was filed on 21.1.1988. In it the applicant who is working as Chargeman 'B' on Western Railway is challenging the order dt. 14.3.1987 by which the penalty of stoppage of increment for two years with future effect has been imposed on him and the appellate order thereon dt. 7.5.1987 rejecting his appeal.

...2.

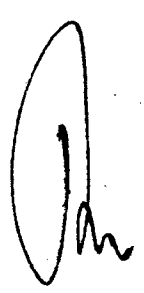
2. The applicant is working as Chargeman 'B' (Inspection), Carriage Workshop, Western Railway, Lower Parel. On 23.4.1985 the applicant was called by Shri Subir Ray, Chargeman 'B', Carriage Workshop, Lower Parel to inspect the job executed under his charge against Work Order No. MW/PO/153 dated 30.3.1985 for "24 Nos. Foundation Bolts to be milled - Operation 1/1 Mill Square." Accordingly the applicant went to the Machine Shop and after inspection of the material recorded the following certificate:

"I hereby certify that the operation No.1 Mill Square for Foundation Bolts 24 Nos., were physically checked and certified by me on 23.4.85 against the above quoted work order".

In May, 1985 the applicant received a charge sheet for major penalty under Dy. C.M.E.(P) Parel's letter No.E-308/CW/VN/59 dated 17.5.1985 wherein it was alleged that the applicant had connived with Shri Subir Ray in committing fraud on incentive working and by so doing had exhibited conduct unbecoming of a Railway servant. He was therefore charged with contravention of Rule 3(1) (ii) & (iii) of the Railway Servants (Conduct) Rules 1966. A departmental inquiry was conducted. The Inquiry Officer found:

"With above facts and evidences taken into consideration I find Shri Vinayak and Narayan Chargeman 'B' P.C.O. Inspection/PL T.No.7345, Not Guilty of the Charges levelled against him vide Memorandum E-308/CW/VN/59 dated 17.5.1985".

However, the Disciplinary authority did not accept the findings of the Inquiry Officer and passed the impugned order of penalty. The applicant preferred an appeal dt. 8.4.1987, By letter dt. 17.5.1987 the appeal was rejected. The applicant preferred a Mercy appeal by letter dt. 21.5.1987, but this, too, was rejected by letter dated 4.8.1987.



3. The respondents have opposed the application by filing their written statement. We have heard Mr.J.R.Azad, learned counsel for the applicant and Mr.P.R.Pai, learned counsel for the respondents.

4. It is not disputed that a copy of the inquiry report was furnished to the applicant only when the impugned order of penalty was served on him, i.e. it was not furnished to the applicant till after the Disciplinary Authority had come to a conclusion thereon before passing the impugned order of penalty. Although no rule applicable to the case of the applicant specifically required the furnishing of a copy of the inquiry report to the applicant before the Disciplinary Authority came to a conclusion thereon, but the principles of natural justice do require that this be done. As early as 1969 the Supreme Court in State of Maharashtra v. B.A.Joshi, AIR 1969 SC 1302, has upheld this proposition and while upholding the judgment of the Gujarat High Court holding that the failure on the part of the competent authority to provide the plaintiff with a copy of the report of the Inquiry Officer amounts to denial of reasonable opportunity contemplated by Article 311(2) of the Constitution, the Supreme Court has lucidly stated the reasons in the following terms:-

"The plaintiff was not aware whether the Enquiry Officer reported in his favour or against him. If the report was in his favour, in his representation to the Government he would have utilised its reasoning to dissuade the Inspector General from coming to a contrary conclusion, and if the report was against him he would have put such arguments or material as he could do to dissuade the Inspector General from accepting the report of the Inquiry Officer. Moreover, as pointed out by the High Court, the Inspector General of Prisons had the report before him and the tentative conclusions arrived at by the Enquiry Officer were bound to influence him and in depriving the plaintiff of a copy of the report he was handicapped in not knowing what material was influencing the Inspector General of Prisons".

As mentioned in Institute of Chartered Accountants of India v. L.K.Ratna and others. AIR 1987 SC 71, the principles of natural justice must be read into the unoccupied interstices of the statute unless there is a clear mandate to the contrary. The case of the applicant is also fully covered by the Supreme Court judgment in Union of India and others v. Mohammad Ramzan Khan, AIR 1991 SC 471 in which it has been held:

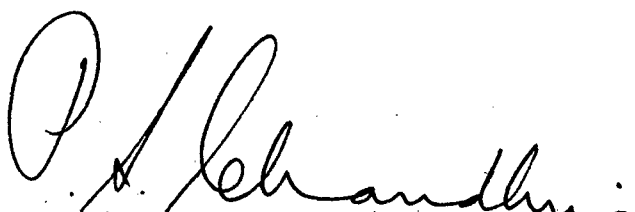
"We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a 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 thereafter."


In this view of the matter, as a copy of the inquiry report was not furnished to the applicant before the Disciplinary Authority came to a conclusion thereon, we have no hesitation in holding that there has been a violation of the principles of natural justice when passing the impugned order of penalty. It is true that a copy of the inquiry report was made available to the applicant before he submitted his appeal. But, in view of the observations of the Supreme Court (supra), we are of the view that lack of opportunity of knowing what material was influencing the disciplinary authority handicapped the applicant and the failure to recognise this vitiates the appellate order. It also vitiates the orders passed on the mercy appeal.

5. In this view of the matter, we are of the opinion that the application deserves to succeed inasmuch as the impugned order of penalty, the appellate order and the order on the mercy appeal in this regard deserve to be

quashed and set aside. We do not say anything more at this stage on the various other contentions raised in the application in view of the final order that we propose passing.

6. We accordingly order that the impugned order of penalty dated 14.3.1987, the appellate order thereon dt. 17.5.1987 and the order dt. 4.8.1987 on the mercy appeal be quashed and set aside. 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 thereonth in accordance with law. In the circumstances of the case there will be no order as to costs.


(P.S. CHAUDHURI)
MEMBER (A)


(U.C. SRIVASTAVA)
VICE-CHAIRMAN.

13.9.1991