

8

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH.

Original Application No.46/88.

Shri Subir Ray,  
Chargeman 'A' (M&P),  
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 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 7.1.1988. In it the applicant who is working as Chargeman 'A' 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. 21.8.1987 rejecting his appeal.

...2.

Ah

(9)

- 2 -

2. The applicant is working as Chargeman 'A' at Production Control Office, Western Railway Carriage Workshop, Lower Parel. On 23.3.1985 Shri M.N.Prabhu, Shop Supdt., Workshop Modernisation, approached the applicant to do the Milling Operation for foundation bolts. When asked by the applicant for the work order and job card, etc. for doing the job Prabhu said that Dy. CME (P) had ordered that this be carried out urgently and that a Work order would be given afterwards with proper timings and the quantity. The applicant complied with the order without delay. Such a transaction was repeated the next day again. The applicant complied with the work and made a note in his diary and showed the same to the Inspector and the Rate Fixer. However, when work Order No.MW/PO/153 dated 30th March, 1985 was issued to the Applicant later for 4 Nos. of Bolts only with allowed timing of 0.30 hrs. he was surprised and enquired from the Shop Superintendent, Modernisation and the Rate Fixer about the less quantity and allowed time. The applicant was again assured that he would get proper timing and quantity according to the actual made by the applicant. Subsequently a preliminary investigation was held. Later on, the applicant received Charge sheet No.E 308/CW/SR 315 dt. 17th May, 1985 for exhibiting conduct unbecoming of a Railway Servant by committing fraud on incentive working and charged with contravention of Rule 3(1)(iii) of the Railway Services (Conduct) Rules, 1966. The applicant gave his written explanation on 30.5.1985 wherein he said that he was not at fault. An inquiry was held and the Inquiry Officer

...3.

Ph

held:

"Based on the statements and evidence I find that Shri Subir Ray, Chargeman, Machine Shop Parel, No.3124 Not Guilty of the charges levelled against him vide Memorandum No.E-308/CW/SR/315 dated 17.5.1985."

The Disciplinary Authority however, did not accept the above findings of the Inquiry Officer for reasons recorded in his order and imposed the impugned order of penalty. The applicant made an appeal by his letter dated 12.5.1987. He was granted a personal hearing by the Appellate Authority on 10.7.1987. By letter dated 21st August, 1987 his appeal was rejected. Finally the Applicant preferred a Review Petition. By letter dt. 17th December, 1987, the Review Petition was rejected.

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 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 hereafter."

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 review petition.


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 and the Appellate and Review orders thereon deserve to be quashed and set aside.

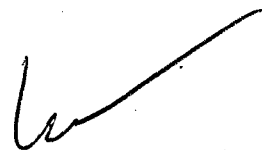
We do not say anything more at this stage on the various other contentions raised in the application in view of the final order that we propose passing.

6. We accordingly order that the impugned order of penalty dated 14.3.1987, the appellate order thereon dated 21.8.1987 and the order dated 17.12.1987 on the review petition 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

13

to the inquiry report before the Disciplinary Authority comes to a conclusion<sup>thereon</sup> 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