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Central Administrative Tribunal

HYDERABAD BENCH - AT HYDERABAD
NEW BOMBAY BENCH - Circuit sitting at Nagpur.

O.A. No. 471 of 1986

~~TAX NOX~~

Date of Decision: 19-4-1991

R.S.Sharma

Petitioner.

Shri B.P.Dharmadhikari

Advocate for the
petitioner (s)

Versus

Union of India & others

Respondent.

Shri S.V.Gole, SC for Deptt.

Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. D.SURYA RAO, MEMBER (JUDICIAL).

THE HON'BLE MR. P.S.CHAUDHURI, MEMBER (ADMN.).

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
(H.D.S.R.)
MEMBER (J)

P.S. Chaudhuri
(P.S.CHAUDHURI)
MEMBER (A)

19-4-1991

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

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Original Application No.471 of 1986

Between:-

R.S.Sharma

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Applicant

and

1. Deputy Director-General (T)
Vig., Dak Tar Bhawan, Sansad
Marg, New Delhi.
2. Union of India, New Delhi.
3. Secretary, Ministry of Communi-
cations, Dak Tar Bhawan,
Sansad Marg, New Delhi.

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Respondents

CORAM:

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

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

Appearance:

B.P.

For the Applicant : Shri/Dharmadhikari, Advocate.

For the Respondents : Shri S.V.Gole, Standing Counsel
for the Department.

J U D G M E N T

DATE: 19-4-1991

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

1. The applicant herein ^a ~~was~~ formerly a Divisional Engineer working under the General Manager (Maintenance), Western Telecom Region, Bombay at Nagpur. He has filed this application questioning the orders No.8/28/83-Vig. II, dated 18/19-6-1986 passed by the Deputy Director-General, (Vig.-T), New Delhi (Respondent No.1), communicating the

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decision of the President of India dismissing the applicant from service. The applicant also seeks to question the order No.2/23/86-Vig-II, dated 9-9-1986 issued by the 1st respondent communicating the order of the President of India rejecting the Appeal/Memorial submitted by the applicant against the order of dismissal dated 19.6.1986. Prior to imposition of the order of dismissal, charges were framed against the applicant vide charge memo dated 14.6.1984. The first charge was that he had committed irregularities in relation to the purchase of stores. The second charge was that he had misused his authority as Divisional Engineer and pressurised his subordinate Assistant Engineers to include some bogus cash memos in their Imprest Bill account and had himself received cash payments from his Assistant Engineers. The third charge was that he had misused his authority as Head of the Office at Nagpur Accounting Unit for getting some bogus bills passed and irregularly received cash payments. The fourth charge was that the applicant while functioning as DET Coaxial Maintenance, Nagpur, and later on as DET Coaxial Maintenance II, Hyderabad, had given false certificates on some cash memos and bills. The fifth and final article of charge was that he had falsely implicated late Shri G.S.Mahule, a Technician in the Microwave Repair Centre, Nagpur, whereas late Shri G.S.Mahule was critically ill during the period when most of these transactions took place. ~~An Inquiry Officer was appointed and~~ An inquiry was held into the charges by the Commissioner for Departmental Inquiries, who was appointed as Inquiry Officer. The Inquiry Officer held that Article-I was proved, Articles

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II & III have been partly proved, Article IV was not proved and Article V was proved. The matter was referred to the Union Public Service Commission and the advice of the UPSC was obtained. By the impugned order dated 18/19-6-1986 it was held that Article-I is fully proved, Article-II is partly proved to the extent of not entering the material purchased vide Cash Memos in the Stock Register of Assistant Engineer Coaxial Maintenance, Bhusawal, Article-III is partly proved, Article-IV has not been proved and that Article-V has been proved beyond doubt. The President, therefore, came to the conclusion that the applicant is not a fit person to be retained in service and passed the order of dismissal from service with immediate effect. Alongwith the impugned order dated 18/19-6-1986 copies of the Inquiry Officer's report and the recommendations of the U.P.S.C. dated 10-6-1986 were enclosed. As stated supra the applicant preferred an appeal on 16-7-1986 to the President. Since no Appeal lies, the Appeal was treated as Memorial and was rejected on 19-9-1986. It is these orders viz., the order of removal dated 18/19.6.1986 and the rejection of the Memorial dated 19.9.1986 which are sought to be impugned in the present application on various grounds mentioned by the applicant in his application.

2. The respondents have filed a reply denying the various contentions and allegations putforth by the applicant.

3. We have heard the arguments of learned Counsel for the applicant, Shri B.P.Dharmadhikari, and learned Standing Counsel for the Department, Shri S.V.Gole.



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4. Apart from the various other grounds raised by the applicant in his application, Shri B.P.Dharmadhikari, learned Counsel for the applicant, contends that no reasonable opportunity within the meaning of Article 311(2) of the Constitution was afforded to the applicant and that the punishment imposed upon the applicant pursuant to the order dated 18/19-6-1986 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.1) ought to have furnished the applicant with a copy of the inquiry report before passing the final order of punishment. 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.

5. A perusal of the impugned order dated 18/19-6-1986 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.

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The enquiry report was annexed to the punishment order dated ¹⁸19-6-1986. 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.

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6. Applying the aforesaid decision of the Supreme Court it would follow that the impugned order dated ¹⁸19-6-1986 is illegal, and contrary to the principles of natural justice. It is accordingly quashed and set aside.

7. 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 ^{1/45} 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


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

8. 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

C. P. NO 71/91 fixed
for order at NCCyPWL
on 22-1-92.

Peji 20/12

Inbunka letter sent to
the applicant on 27-12-91

Peji 23/12