

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 3/1986
~~DAXXXXXX~~

198

DATE OF DECISION

12.8.1991

R.B.Gade

Petitioner

Shri S.M.Shetty for Mr.C.Nathan Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri M.I.Sethna

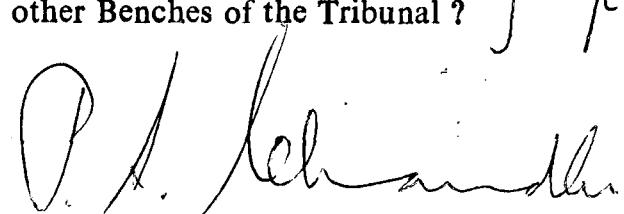
Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. U.C.Srivastava, Vice-Chairman.

The Hon'ble Mr. P.S.Chaudhuri, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
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 ?


 (P.S.Chaudhuri)
 Member (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY
* * * * *

Original Application No.3/1986

R.B.Gade,
Block 21/124, Dattapada Road,
Borivali (East),
Bombay 400 066

... Applicant

v/s

1. Union of India

2. Commissioner of Income Tax,
Bombay City-I, 3rd Floor,
Aayakar Bhavan,
Maharshi Karve Marg,
Bombay 400 020

... Respondents

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

Appearances:

Mr. S.M.Shetty for Mr. C.
Nathan, Advocate for the
applicant and Mr. M.I.
Sethna lead by Mr.A.I.
Bhatkar, counsel, for the
respondents.

JUDGEMENT:

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

Dated : 12.8.1991

This application under Section 19 of the
Administrative Tribunals Act, 1985 was filed on
9.1.1986. In it the applicant, an Income Tax Officer,
Group-B, in the office of the second respondent is
challenging the order dated 7.2.1985 by which he is
dismissed from Government service with effect from
7.2.1985 and the appellate order thereon dated 7.1.1988.

2. While the applicant was working as Income Tax
Officer, Group-B, Bombay by order dated 26.4.1983 he
was placed under suspension with immediate effect. By
order dated 17.8.83 his appeal dated 16/17.6.83 for
revocation of suspension was rejected. On 17.8.83 he
was served with a memorandum containing one article of charge

Cont'd. . . 2/-

that during the period 1979 to 1980 he made assessments in several cases in dishonest and malafide manner and caused wrongful loss of revenue to the Government and displayed gross negligence as well as carelessness in the discharge of his official duties. The applicant denied the charges. An Inquiry Officer was appointed and an enquiry was held. The applicant was dismissed from service by the impugned order dated 7.2.1985 along with which a copy of the enquiry report was enclosed. On 10.4.87, after this application had been admitted, the applicant showed the Tribunal an order dated 25.3.1987 whereunder the President had dismissed the appeal. By our order dated 10.4.87 the decision dated 25.3.87 was quashed and the appellate authority was directed to decide the appeal before 31.7.1987 in the light of the observations made in the order and in accordance with the principle laid down by the Supreme Court. Extension of time was granted by the Tribunal for deciding the appeal which was finally decided by the impugned order dated 7.1.1988.

3. We have heard Mr. S.M.Shetty, holding the brief of Mr. C.Nathan, learned counsel for the applicant and Mr. M.I.Sethna, learned counsel for the respondents. ~~Both~~ The pleadings are voluminous and although various and varied contentions were raised before us, we do not go into the merits of these because we are of the opinion that the application deserves to succeed on the ground of ~~failure~~ ^{violation} of clause (2) of Article 311 of the Constitution ~~as~~ ^{and} denial of reasonable opportunity of defence, since a copy of the report of the Inquiry Officer was not furnished to the applicant and he was not heard on it before the Disciplinary Authority passed the impugned order. Though the

learned counsel for the respondents attempted to establish that the applicant is not entitled to have a copy of the enquiry report before the Disciplinary Authority imposes the penalty and as such there was no infraction of any principle of natural justice, we are not persuaded to accept the argument.

4. As early as in the year 1969, the Supreme Court in State of Maharashtra v. B.A. Joshi (AIR 1969 SC 1302) has upheld this proposition by upholding the judgement of the High Court of Gujarat in which it was held 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 clause(2) of Article 311 of the Constitution. ~~of India~~

5. While upholding the conclusion of the High Court 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 Enquiry 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".

6. It may also be pointed out that in arriving at the aforesaid conclusion, reliance was also placed by the Supreme Court on the earlier decision of a Constitution Bench in H.C. Goel's case (AIR 1964 SC 364).

7. The aforesaid view has gained approval in the Full Bench decision of this Tribunal in Premnath K. Sharma v. Union of India & Ors. - (1988) 6 ATC 904. The definitive judgement in the matter has been passed by the Supreme Court in Union of India & Ors. v. Mohd. Ramzan Khan - 1990(2) SCALE 1094.

8. It was also submitted by the learned counsel for the respondents that after the amendment of Article 311 of the Constitution by the 42nd Amendment Act the concerned Government servant cannot legitimately demand a second opportunity and as such non-service of a copy of the report of the Inquiry Officer is immaterial. It will be clear from the discussion in the preceding paragraphs that the necessity to furnish a copy of the report of the Inquiry Officer forms part of the obligation on the part of the administration to afford reasonable opportunity of defence to the civil servant as enshrined in clause (2) of Article 311 of the Constitution ~~as made~~ and not with respect to the penalty that is proposed to be imposed upon him. We reiterate that the obligation, being within the realm of affording of reasonable opportunity of defence, arises before the Disciplinary Authority arrives at a conclusion as to the truth of the imputation contained in the memorandum of charges and not thereafter. Hence the Constitution (42nd Amendment) Act does not in any way alter the proposition or the principle.

It was then submitted by the learned counsel for the respondents that it is well settled that rules of natural justice cannot be invoked for supplementing the law and hence so long as it is not provided specifically in the Rules that the copy of the report of the Inquiry Officer should be furnished before the Disciplinary Authority issues the order imposing the penalty there is no obligation to do so. This submission too has to be rejected. This is a case where a principle of natural justice is actually embodied in clause(2) of Article 311 of the Constitution by affording the delinquent Government servant a reasonable opportunity of being heard. The complaint is that there has been violation of the same. As such no principle of natural justice is being invoked here to supplement the law. No doubt, the Rules which lay down the procedure for the conduct of the Enquiry do not specifically provide for the furnishing of a copy of the Enquiry report before the Disciplinary Authority passed the order. But the rules do not override the law that is enshrined in clause (2) of Article 311 of the Constitution.

9. In view of what we have stated above the order of the Disciplinary Authority dated 7.2.1985 dismissing the applicant from service, as confirmed by the Appellate Authority on 7.1.1988 has to be quashed, and we do so.

10. We are not giving any direction for the reinstatement of the applicant in service as it is clear from the application itself that the applicant has crossed the normal age of superannuation well before the application was filed. As such we hereby

direct that the applicant shall be treated as having been in continuous service till the normal age of superannuation and his pensionary benefits shall be fixed accordingly. The competent authority shall also pass orders with respect to the pay and allowances during the period from the date of dismissal till the aforesaid date in accordance with the rules.

11. We would clarify that we specifically make it clear that this decision may not preclude the disciplinary authority from reviving the proceeding and continuing with it in conformity with relevant service rules and in accordance with the law from the stage of supply of the enquiry report. In the circumstances of the case there will be no order as to costs.



(P.S.Chaudhuri)
Member (A)



(U.C.Srivastava)
Vice-Chairman

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