

(20)

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 349/86  
~~ExAxxxNo.~~

198

DATE OF DECISION 5-7-1990

Ramnath Narsinha Naik Petitioner

Mr.G.K.Masand Advocate for the Petitioner(s)

Versus

Under Secretary to the Govt. of India,  
Ministry of Finance & another. Respondent

Mr.R.C.Kotiankar for Mr.M.I. Sethna Advocate for the Respondent(s)

**CORAM**

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

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

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

(21)  
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH

O.A.349/86

Ramnath Narsinha Naik  
C/o. M/s.Gagrat and Co.,  
Advocates and Solicitors,  
Ali Chambers, 3rd Floor,  
Nagindas Master Road, Fort,  
Bombay - 400 023.

.. Applicant

vs.

1. Under Secretary to  
the Govt. of India,  
Ministry of Finance,  
Deptt. of Revenue,  
Govt. of India,  
North Block,  
New Delhi - 1.

2. The Collector of Customs,  
New Customs House,  
Ballard Estate,  
Bombay - 400 038.

.. Respondents

Coram: Hon'ble Shri G.Sreedharan Nair, Vice-Chairman

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

Appearances:

1. Mr.G.K.Masand  
Advocate for the  
Applicant.
2. Mr.R.C.Kotiankar  
for Mr.M.I.Sethna  
Advocate for the  
Respondents.

ORAL JUDGMENT:

Date: 5-7-1990

(Per G.Sreedharan Nair, Vice-Chairman)

The applicant who was a Customs  
Appraiser under the respondent was proceeded  
against by issuing a memorandum of charges dtd.  
2.5.1984. The applicant denied the charges.  
An enquiry was conducted in accordance with the  
CCS(CCA)Rules, for short, the Rules. The Inquiry  
Officer reported that the imputation is true.  
The Disciplinary Authority accepting the report  
of the Inquiry Officer imposed upon the applicant

the penalty of dismissal from service by <sup>an</sup> order dated 23-3-1985. The appeal preferred by the applicant was rejected on 24-1-1986.

2. The applicant has challenged the order imposing the penalty on various grounds. It is urged inter-alia that there has been violation of principles of natural justice insofar as the copy of the report of the Inquiry Officer was not furnished by the Disciplinary Authority before the imposition of the penalty.

3. The respondents have filed reply traversing the various grounds urged in the application.

4. At the time of ~~the~~ hearing, <sup>A</sup> Advocate <sup>appearing on behalf of the applicant,</sup> Shri Masand, stated that the impugned order cannot be sustained as there has been violation of clause 2 of Article 311 of the Constitution of India and denial of reasonable opportunity of defence, since copy of the report of the Inquiry Officer was not furnished to the applicant and he was not heard on the same before the Disciplinary Authority passed the impugned order. Though the counsel of the respondents attempted to establish that the applicant is not entitled to have the copy of the enquiry report before the Disciplinary Authority imposes the penalty and as such there <sup>is</sup> no infraction

23

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of any principles of natural justice, we are persuaded to accept the submission of the counsel of the applicant.

5. 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 judgment 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.

6. 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.

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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".

7. 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).

8. Within a few months of the constitution of this Tribunal, the Madras Bench of this Tribunal on which one of us(G.Sreedharan Nair) was a Member, had occasion to consider this question in V.Shanmugam v. Union of India,(ATR 1986(2)CAT 226). It was held there:

"No doubt, in a case where the Disciplinary Authority happens to be the Inquiry Authority as well, having regard to its findings on the charges, if it is of opinion that any of the penalties specified in Clauses(v) to (ix) of Rule 9 should be imposed on the railway servant, it is competent to impose such penalty without giving an opportunity to the railway servant to make a representation on the proposed penalty. But in a case where the inquiry is conducted by another authority to whom the power is delegated, the Disciplinary Authority is expected to go through the records of inquiry and the conclusions of the Inquiry

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Authority and either to accept the same or disagreeing with the same to record its own findings. This is explicit from Sub-rule(3) of rule 18 of the Rules. Principles of natural justice demand that when the Disciplinary Authority considers the report and the findings of the Inquiry Officer he is also posted with the representation from the delinquent in respect of the reports of the Inquiry Officer. Fairness requires that the Disciplinary Authority, being a quasi-judicial authority arrives at his own conclusion with respect of the charges against the delinquent after examining the report of the Inquiry Officer alongwith the attack, if any, against the same by the delinquent. As such, the delinquent employee has necessarily to be supplied with a copy of the inquiry report before the Disciplinary Authority proposes the punishment...."

9. *by the same Bench*  
The proposition was reiterated sitting at Ernakulam in the decision in K.S.Shekharan Kutty v. Superintendent of Post Office(T.A.844/86,decided on 17-6-1987)and Ravindran v. Inquiry Authority (O.A.741/86, decided on 8.1.1988).

10. The aforesaid view has gained approval in the Full Bench decision of this Tribunal in P.K.Sharma's case. Counsel of the respondents submitted that as the Administration has filed a Special Leave Petition(SLP) to appeal to the Supreme Court against that decision and a petition for stay has been filed

on which the Supreme Court has stayed the operation of the judgment, the principle of law cannot be relied upon. We are unable to agree. The stay of operation can have reference only to the implementation of the final order in the case. So far as the proposition of law, which has been approved by the Full Bench, is concerned, it cannot be said that a Divisional Bench of the Tribunal is not bound by the same and can take a different view. That apart, the proposition has been laid down by the Supreme Court itself in B.A.Joshi's case as early as in the year 1969. Reference may also be made in this context to the decision of the Supreme Court in Union of India v. E.Bashyam, AIR 1988 SC 1000, where it has been held that non-supply of the report would constitute violation of principles of natural justice and accordingly will be tantamount to denial of reasonable opportunity within the meaning of Article 31(2) of the Constitution of India. Reference has been made there to the earlier decision of the Supreme Court in H.C.Goel's case.

11. Counsel of the respondents invited our attention to the decision of the Supreme Court in Kailash Chander v. State of U.P. (AIR 1988 SC 1338)

and submitted that after the amendment of Article 311 of the Constitution by the 42nd <sup>Act</sup> Amendment, the concerned Govt. 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 the 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 of India 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 <sup>the</sup> imputation contained in the memorandum of charges, and not thereafter. Hence the <sup>Constitution</sup> (42nd amendment) Act does not in any way alter the proposition or the principle. ~~on which it is based.~~

12. It was also submitted by the counsel of 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 govt. servant a reasonable opportunity of being heard, ~~and 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 the 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.

13. In view of what we have stated above the order of the Disciplinary Authority dt. 23-3-1985 dismissing the applicant from service, as confirmed by the Appellate Authority on 24-1-1986 has to be quashed, and we do so.

14. We are not giving any direction for the reinstatement of the applicant in service as

it is admitted that since the filing of the present application the applicant has crossed the normal age of superannuation. As such we hereby direct that till the said date the applicant shall be <sup>treated</sup> as having ~~been~~ in continuous service and his pensionary benefits shall be fixed accordingly. The competent authority shall also pass orders under clause(1) of Sub-Rule(2) of FR 54A with respect to the pay and allowances during the period from the date of dismissal till the aforesaid date.

15. We would hasten to add that in case the Disciplinary Authority desires to proceed with the enquiry, since a copy of the report of the Inquiry Officer has now been furnished along with the order of the Disciplinary Authority, the Disciplinary Authority will be free to do so, in which case the applicant shall be afforded opportunity of submitting written representations with respect to the report of the Inquiry Officer, and a personal hearing in case the Disciplinary Authority is of the view that the circumstances of the case warrant the same. It is needless to point out that since the applicant has crossed the age of superannuation, in case the enquiry is continued it shall be under Rule 9 of the

CCS(Pension) Rules, and the order under Cl (1) of sub-rule (2) of F.R. 54-A may be deferred till the termination of the proceedings.

16. Counsel of the respondents stated that by order passed by this Tribunal on 10-6-87 the respondents have been restrained from evicting the applicant from the quarters allotted to him and in his occupation, till the disposal of the original application. Since the original application has been finally disposed of by this order the said direction contained in the order dtd. 10-6-1987 shall not have effect from this date.

*P. S. Chaudhuri*

(P.S. CHAUDHURI)  
Member(A)

*G. Sreedharan Nair*

(G. SREEDHARAN NAIR)  
Vice-Chairman

6.7.1990

Decree sent — dtd. 5.7.90  
Sent to parties on  
16.7.90.

*Abdullah*

Decree sent dtd.  
5.7.90 served n  
Applicant R. No. 29  
dtd. 18.7.90  
MO  
25/7/90