BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEWBOMBAY BENCH
NEW BOMBAY

O.A.149/89, O.A.607/89, O.A.629/89,O.A.721/89,O.A.724/89
O.A.726/89, O.A.736/89, O.A.743/89,O.A.744/89,O.A.745/89,
O.A.829/89,O.A.833/89, O.A.867/89,O.A.869/89,O.A.75/90,

1. Munnalal Prabhulal Pawar .. Applicant in O.A.149/89

2. Gautam G.Sonawane .. Applicant in O.A.607/89

3. Laxman R.Tupare .. Applicant in O.A.629/89

4. Ampaty Abraham .. Applicant in O.A.721/89

5. V.G.Kadam .. Applicant in O.A.724/89

6. Pradeep S.Bhogale .. Applicant in O.A.726/89

7. R.K.Singh .. Applicant in O.A.736/89

8. N.B.Khobrekar .. Applicant in O.A.743/89

9. Pandurang Gopal Mhatre .. Applicant in O.A.744/89

10.Ajit D.Tawade .. Applicant in O.A.745/89

11.A.V.Waingankare .. Applicant in O.A.829/89

12.P.M.Tapania .. Applicant in O.A.833/89

13.Jaganath P.Mane .. Applicant in O.A.867/89

14.S.V.Kulkarni .. Applicant in O.A.869/89

15.B.P.Apparao .. Applicant in O.A.75/90

Vs.

Union of India and
various others. .. Respondents

Coram: Hon'ble Shri Justice U.C.Srivastava,
Vice-Chairman.

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

ORAL JUDGMENT: Date: 14-8-1991
(Per U.C.Srivastava,Vice-Chairman)

In this bunch of cases which have been heard together a common question has been raised,

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namely, whether the non-supply of inquiry officer's report will violate the principles of natural justice and will vitiate the proceedings leading to the quashing of the entire disciplinary proceedings as was decided in Union of India and others v. Mohammad Ramzan Khan etc. etc. , AIR 1991 SC 471 and earlier by a Full Bench of this Tribunal in Premnath K. Sharma v. Union of India, (1988) 6 ATC 904.

2. In this bunch there are two types of cases i.e. one in which there was an ex parte inquiry and the other in which there was an admission of guilt. In O.A. 149/88 the applicant was chargesheeted for unauthorised absence. The chargesheet was sent by registered post but was returned back unserved and consequently exparte proceedings were taken against him and the punishment order was passed. The applicant filed an appeal challenging the punishment order and ex parte proceedings against him stating that he was sick and even though it was a known fact that he was bedridden, ex parte proceedings were taken against him. In O.A's 607/89, 724/89 and 726/89 all the applicants were working as labourers in different capacities in the Naval Dockyard, Bombay and the charge against them was having committed gross misconduct in securing employment by fraudulent means by producing fictitious certificates. It has been said that all of them have admitted their guilt. They filed appeals and also review petitions in which they raised the grievance that no guilt as such was admitted by them and rather the language which was used by them was not understood. They were under the impression that they were being regularised and the so called admission was obtained by fraud/mis-representation and misleading information. The grievance is also that the signatures of witnesses were also not

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obtained on the proceedings. Besides, they were told that a lenient view would be taken and so they need not worry. In a number of such cases only minor punishment was awarded when the employees concerned pleaded guilty. They, too, have stated that the Inquiry Officer's report was not given to them and if it would have been given to them they would have got an opportunity to state all the facts. In O.A's No.629/89 and 721/89 ex parte proceedings were taken against the applicants. The case of the applicants therein is that they were on the sick list and that is why they could not attend the inquiry. Even though this fact was known to the Inquiry Officer ex parte proceedings were initiated and copy of the Inquiry Officer's report was not made available to them. The applicants stated all these facts before the appellate authority and challenged the proceedings.

3. On behalf of the applicants it was contended that the Inquiry Officer's report was not given to any of the applicants which would have enabled each of them to file a tentative representation against the inquiry so held. Thus they were denied this opportunity. On behalf of the respondents this plea of the applicants has been challenged and it has been stated that guilt has been admitted/ ex parte proceedings have been taken and so it is not necessary that a copy of the Inquiry Officer's report should be given and non-giving of the copy would not offend the principles of natural justice.

4. Reference was made by the respondents to the case of Dr.D.B.Rathod v. Union of India and others, Tr.450/87 decided on 3-7-1990 by the New Bombay Bench of the Tribunal and with which one of us (P.S.Chaudhuri,A.M.) was associated. In that case after holding that the delinquent employee did not

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participate in the ex parte inquiry, it was held that there was no fault on the part of the Inquiry Officer in holding the inquiry ex parte in the circumstances of the case. On the plea that even thereafter the Inquiry Officer's report was not given to the applicant to enable him to make a representation, it was held that the supply of copy of the report of the Inquiry Officer is only to comply with the mandatory clause(2) of Article 311 of the Constitution for affording a reasonable opportunity of defence.

5. The applicants' attempted to counter this by submitting that even in the case of an ex parte inquiry or even if the delinquent officer withdraws from the inquiry it is incumbent upon the Inquiry Officer to have at least some evidence on the basis of which he can record the findings. Merely because the delinquent has abstained or does not participate in the inquiry it is not open to the Disciplinary Authority to conclude the proceedings without giving a copy of the inquiry report to the delinquent showing what was the evidence against him on the basis of which the charges against him are sought to be established. They made reference to State of Maharashtra v. B.A.Joshi, AIR 1969 SC 1302, in which the Supreme Court observed:

> "The plaintiff was not aware whether the Inquiry 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 fro 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. Morever, 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 Inquiry 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. But all doubts in this regard have now been resolved by the Supreme Court in Mohammad Ramzan Khan's case(supra) decided on 20-11-1990, i.e. after Dr.D.B.Rathod's case (supra) was decided on 3-7-1990. In paragraph 18 of the judgment in Mohammad Ramzan Khan's case the Supreme Court observed:

"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."

This observation will obviously not exclude cases in which there is an ex parte inquiry by the Inquiry Officer or cases in which there is an admission of guilt before the Inquiry Officer. In all cases in which there is an Inquiry Officer and he has furnished an inquiry report to theDisciplinary Authority regardless of the circumstances under which the inquiry report came to be written, even if the Inquiry Officer's report is written ex parte or after admission of guilt before the Inquiry Officer, it is always open to the delinquent employee to assert before the Disciplinary Authority that he never admitted guilt or never meant to admit the guilt or that the admission was made under misapprehension. Even in cases of ex parte inquiry it is always open to the employee to contend that he failed to attend because of the circumstances he sets forth. The Disciplinary Authority will have to take a view on all such submissions and it is only thereafter that the Disciplinary Authority can come to a finding

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regarding the delinquent employee's guilt or otherwise. In all those circumstances also the giving of the Inquiry Officer's report ~~xxxx~~ is a must and non-giving of the Inquiry Officer's report will violate the principles of natural justice and so invalidate the entire disciplinary proceedings. All this was obviously not before the Bench in Dr.D.B.Rathod's case ~~xx~~ which was decided on 3-7-1990, i.e. before Mohammad Ramzan Khan's case (supra) was decided by the Supreme Court on 20-11-1990. In view of the Supreme Court's clear decision in Mohammad Ramzan Khan's case (supra) we have no hesitation in holding that Dr.D.B.Rathod's case no longer constitutes good law and that it is not necessary to make any reference to a Larger Bench.

7. In the result the applications are allowed and the order of the disciplinary authority and appellate authority are quashed and set aside. We would clarify that this decision may not preclude the disciplinary authority from reviving the proceedings and continuing with it in accordance with law from the stage of supply of the inquiry report. There will be no order as to costs.