(14)

CAT/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~XXXX~~ NEW BOMBAY BENCH

O.A. No. 419/89 198

~~TXAXXXNo~~

DATE OF DECISION 28.4.92

Shri S.K.More Petitioner

Shri D.V.Gangal Advocate for the Petitione

Versus

Union of India & Ors. Respondent

Shri P.M.Pradhan Advocate for the Responde

CORAM

The Hon'ble Mr. M.Y.Priolkar, Member (A)

The Hon'ble Mr. S.F.Razvi, Member (J)

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 Judgement ? –
4. Whether it needs to be circulated to other Benches of the Tribunal ? NO

Syedazmi 28/4

(18)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 419/89

Shri S.K.More ... Applicant
V/S.
Union of India & Ors. ... Respondents

CORAM: Hon'ble Member (A) Shri M.Y.Priolkar
Hon'ble Member (J) Shri S.F.Razvi

Appearance

Mr.D.V.Gangal
Advocate
for the Applicant

Mr.P.M.Pradhan
Advocate
for the Respondents

JUDGEMENT Dated: 28th April 1992
(PER: S.F.Razvi, Member (J)

The disciplinary proceeding initiated by the issue of a Memorandum of charge dated 18.3.1983 by the 1st respondent against the applicant who was then working as Inspector of Income Tax in respect of 17 articles of charge has had a long and chequered carrier. It was a Proceeding initiated for the imposition of a major Penalty and the details of the articles of charge are enumerated in Annexure 'A' dated 6.9.88. what is the order passed by the 1st respondent Disciplinary authority (D.A. for short) imposing the Penalty of dismissal from service. When the charge memo dated 18.3.83 was served upon the ~~appli~~ applicant and he was asked to show cause and file his statement in defence, the applicant filed his statement denying all the charges. The D.A. thereupon appointed an Enquiry Officer (E.C. for short) to conduct an enquiry and submit a report. The E.O. conducted the necessary enquiry and submitted his report dated 29.11.85 holding that articles

28/4

.. 2/-

of charge at serial numbers XII, XIII, XIV and XV were not proved while the other articles of charge had been proved. The D.A. thereupon passed an order on 11.4.86 holding that all the articles of charge had been proved including those in respect of which the E.O. had found as not proved, and imposed the penalty of dismissal from service. Aggrieved by the same, the applicant preferred an appeal and the Central Board of Direct Taxes, i.e. Respondent No. 4 by order dated 25.6.87 allowed the appeal partly setting aside the report of the E.O. and directed the E.O. to record fresh findings after allowing an opportunity to the applicant to cross examine the witnesses through his counsel. The order of dismissal dismissing the applicant from service was also set aside by the Appellate authority (A.A. for short). Subsequently, the D.A. appointed another E.O. and the 2nd E.O. further held the enquiry and submitted his report dated 4.4.88 ~~interaling~~ reiterating the findings as already recorded by the 1st E.O. except in respect of article of charge at serial No.9 which came to be dropped pursuant to the direction given by this Tribunal in O.A.No.55 of 1987. A copy of the said report dated 4.4.88 was forwarded to the applicant. On receipt of the report, the D.A. accepting the report of the E.O. in respect of the articles of charge which the E.O. had found established, differed with the findings recorded by the E.O. in respect of articles of charges at S.Nos. XII, XIII and XV which the E.O. held as not proved, held the applicant guilty of even those charges. The D.A. accepted the finding in respect of the article of charge at Sr.No.XIV as recorded by the E.O. as not proved. By the impugned order dated 6.9.88 (vide Annexure'A'), the D.A. again imposed the Penalty of dismissal from service. Being aggrieved by the same, the applicant preferred an appeal and that appeal came to be dismissed during the pendency of this application vide order

AM 28/4

dated 17.10.89 passed by the 3rd respondent. The applicant by amendment which was allowed has sought the relief of quashing the order dated 17.10.89.(vide Annexure 'D') along with the impugned order vide Annexure 'A' passed by the D.A.

2. Though the application filed under section 19 of the Administrative Tribunal Act 1985 by the applicant runs into 39 pages and various aspects have been pointed out and several grounds have been taken to canvass that the impugned orders suffer from serious informities in law and for non adherence to the principles of natural justice and the reply filed by the respondents is also very lengthy covering the several aspects and grounds taken in the application and though the applicant has filed written arguments raising several contentions it is not necessary for us to go into all these aspects and points raised in the pleadings and the written arguments for the reason that the only contention that was urged before us by the learned counsel for the applicant was that the impugned orders are liable to be struck down on the sole ground that the D.A. before disagreeing with the findings recorded by the E.O. in respect of the articles of charge at Sr.Nos. XII, XIII and XV and finding the applicant guilty of those charges had not issued any show cause notice to the applicant and had given no opportunity whatsoever to the applicant to put forth his case. The learned counsel for the applicant urged that if the Tribunal were to uphold his contention on this point canvassed, it is not necessary to go into the other grounds taken in the application, for according to him the impugned orders are liable to be set aside on this ground alone. Accordingly he did not urge any other ground or point before us.

HA 25/4

3. Elaborating his contentions, the learned counsel for the applicant pointed out that though the copy of the E.O.'s report dated 4.4.88 was forwarded to him, no show cause notice much less any intimation was given to him by the D.A. to offer any explanation or to show cause against any action which the D.A. had in mind to take. He urged that the D.A., without issuing any show cause notice or giving at least any indication to the applicant and without affording any opportunity whatsoever to the applicant has disagreed with the findings recorded by the E.O. on some of the charges as not proved and has held the applicant guilty even on those charges and imposed the penalty and this clearly amounts to a negation and infringment of the principles of natural justice and as such the order passed by the D.A. has to be set aside and consequently the order passed by the ~~Annexure-A~~ AA has also to be quashed. To buttress this contention he strongly relied upon the ruling rendered by the Hon'ble Supreme Court in the case of Narayan Misra vs. State of Orissa reported in 1969 SLR page 657.

4. Countering the above contention, the learned counsel for the respondents urged that when once the copy of the E.O.'s report had been furnished to the applicant before the imposition of penalty, it was for the applicant to put forth his explanation or defence before the D.A. and the applicant not having done so, he cannot now make a grievance that the D.A. had not issued any show cause notice to him before differing with some of the findings recorded by the E.O. in his report. Tracing the legal position as it stood prior to the 42nd amendment of the constitution and subsequent thereto and the recent pronouncement by their Lordships of the Supreme Court in Mohd.Ramzan Khan's case reported in AIR 1991 S.C. 471 he urged that what is essential is that a copy of the E.O.'s report has to be furnished to the

JFM 28/4

.. 5/-

applicant before the imposition of Penalty by the D.A. and if that has been complied with, the question of issuing any show cause notice to the delinquent before differing with the findings recorded by the E.O. does not arise. His submission was that there has been no violation of the principles of natural justice in the passing of the impugned order in as much as the copy of the E.O.'s report had been furnished to the applicant before the D.A. imposed the penalty. He further urged that the ruling in Narayan Misra's case which is canvassed in support of the applicant's case is clearly distinguishable and would not apply to the facts of the present case.

5. It is common ground that the E.O. found that four of the charges i.e. those at Sr.Nos. XII, XIII, XIV and XV of the charge memo had not been proved and exonerated the applicant of those charges while the D.A. disagreed with the findings recorded on charges XII, XIII and XV and imported his own conclusion that the applicant was guilty of even those charges. It is the specific plea of the applicant that he was only supplied with a copy of the E.O.'s report and that no intimation or notice whatsoever was received from the D.A. before the imposition of the impugned penalty. This aspect has not been controverted by the respondents. At any rate there is nothing placed before us to show that the applicant was served with any show cause notice or any intimation that the D.A. was proposing to revise some of the findings recorded by the E.O. exonerating the applicant of some of the charges and indicating the grounds or the reasons for such disagreement. It is manifest that without giving any opportunity to the applicant to explain or show cause, the D.A. took the decision of reversing the findings recorded by the E.O. exonerating the applicant of these charges and substituting his own findings

JFD 28/4

on these charges and held the applicant guilty even on those charges. In our opinion this is a clear violation of the principles of natural justice. We are not impressed by the contention urged for the respondents that the furnishing of a copy of the E.C.'s report without anything more cures this defect and the D.A. was not required to intimate the applicant that he was differing with some of the findings recorded by the E.C. which findings were in applicant's favour and the grounds for such differing. Furnishing a copy of the E.C.'s report is only to enable the delinquent to know as to what is the report submitted by the E.C. and the grounds on which the findings have been recorded so that the delinquent cane make an effective representation before the D.A. for acceptance or non acceptance of the report. If only a copy of such report is made available to the deliquent, how is the delinquent to know that the D.A. proposes to reverse the findings recorded by the E.O. in favour of the delinquent and record findings of his own holding the deliquent guilty even in respect of charges for which the deliquent has been exonerated. The furnishing of a copy of the E.O.'s report by itself is not a substitute for the issue of a show cause notice to the deliquent intimating him that the D.A. was proposing to differ with the conclusions recorded by the E.O. and intending to hold the deliquent guilty. Unless the deliquent is made aware and is given an opportunity against such proposed action, he cannot effectively defend himself against such action.

6. On carefully considering the ruling in Narayan Misra's case we find no distinguishing features and in our opinion the principle laid down in that case applies on all fours to facts of the present case. We may point out that in Narayan Mishra's case, the D.A. had issued a show cause notice to show cause why the delinquent therein should not be dismissed

28/4

from government service on the ground that the punishment that had been proposed by the E.O. in that case was extremely light for such serious offences. In Narayan Misra's case the E.O. had found the delinquent therein guilty of the third charge and acquitted him ~~by~~ of the first two charges. The D.A. differing with the E.O. held the applicant guilty of all the charges and imposed the penalty of dismissal from service. Explaining the legal position, their Lordships observed thus in Para 6 of the reported ruling.

> "Now if the Conservator of Forests intended taking the charges on which he was acquitted into account, it was necessary that the attention of the appellant ought to have been drawn to this fact and his explanation, if any, called for. This does not appear to have been done. In other words, the Conservator of Forests used against him the charges of which he was acquitted without warning him that he was going to use them. This is against all principles of fair play and natural justice. If the Conservator of the Forests wanted to use them, he should have apprised him of his own attitude and given him an adequate opportunity. Since that opportunity was not given, the order of the Conservator of Forestsmodified by the State Government cannot be upheld. We accordingly set aside the order and remit the case to the Conservator of Forests for dealing with it in accordance with law. If the Conservator of Forests wants to take into account the other two charges, he shall give proper notice to the appellant intimating to him that those charges would also be considered and afford him an opportunity of explaining them."

7. The contention urged for the respondents that the principles of natural justice are not violated in the non issue of any show cause notice to the applicant and non giving of any opportunity to him before recording findings by the D.A. disagreeing with those of the E.O., once the copy of the E.O.'s report has been furnished, is not a sound principle and cannot be accepted. As pointed out by their Lordships of the Supreme Court in the case of Union of India vs. P.K.Roy (AIR 1968 S.C. 850) the extent and application of the doctrine of natural justice cannot be imprisoned within the straight Jacket of a rigid formula. The application of the doctrine

depends upon the nature of the jurisdiction conferred on the administrative authority, upon character of the rights of the person affected and the relevant circumstances disclosed in the particular case.

8. Following the principle laid down in Narayan Misra's case, CAT Ernakulam Bench in the case of K. Thulaseedhara vs SDI (P) 1991(1) ATJ 79 has held that there is violation of the principles of natural justice in such cases and the action of the D.A. gets violated. Similar is the view expressed also in the case of P.K.Shivananda vs. Collector of Excise (1987) 3 ATC 854 by the Bangalore Bench of the CAT.

9. For the reasons aforesaid we accept the contention urged for the applicant and hold that the impugned orders passed by the D.A. and the A.A. and the order of dismissal passed pursuant thereto are liable to be set aside on the ground that the D.A. before differing with some of the findings recorded by the E.O. exonerating the applicant of some of the charges and substituting it's own findings in place thereof adverse to the applicant, had not issued any notice and had afforded no opportunity to the applicant before taking such action and there is clear violation of the principles of natural justice.

10. In the result, this application is allowed. We hereby quash and set aside the impugned orders passed by the D.A. and the A.A. vide Annexure-'A' dated 6.9.1988 and Annexure-'D' dated 17.10.1989 respectively and so also the order dated 6.9.88 passed as per Annexure-'B' dismissing the applicant from service. The applicant shall be reinstated in service forthwith. It is open to the D.A., if it so desires, to continue the proceedings and complete the same from the

28/4

.. 9/-

(23)

stage where the illegality had occured after issuing notice and giving reasonable opportunity to the applicant, as pointed out in the course of this order. We leave it to the D.A. to consider as to how the period between the date of dismissal from service and the date of reinstatement should be treated depending upon the decision that the D.A. may take regarding the continuance or otherwise of the proceedings. The applicant shall be reinstated in service as expeditiously as possible and in any event not later than one month from the date of receipt of a copy of this order. Having regard to the fact that the disciplinary proceedings were commenced in 1983 and the ordeal which the applicant has been undergoing due to the long pendency of the proceedings, We further direct the respondents to continue the proceedings and complete the same, if they so decide to continue, within a period of four months from the date of receipt of a copy of this order.

No costs.

28/4/92

(S.F. RAZVI)
MEMBER (J)

28/4/92

(M.Y. PRIOLKAR)
MEMBER (A)

mrj.