

(5)

Central Administrative Tribunal

NEW BOMBAY HYDERABAD BENCH : AT HYDERABAD NEW BOMBAY

Circuit Bench at Nagpur

O.A. No. 345/89

Date of Decision :

19-4-1991

T.A.No.

Mr. Abrar Hussain

Petitioner.

Mr. Mohan Sudame

Advocate for the
petitioner (s)

Versus

The General Manager, Ordnance Factory, Nagpur and another. Respondent.

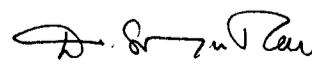
Mr. Ramesh Darda, SC for respondents Advocate for the
Respondent (s)

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)
MEMBER (J)


(P.S. CHAUDHURI)
MEMBER (A)

19-4-1991

(6)

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

Original Application No. 345/89.

Between:-

Abrar Hussain .. Applicant

Vs.

1. The General Manager,
Ordnance Factory,
Ambazari, Nagpur.

2. The Director General of
Ordnance Factory,
(The Secretary Ordnance
Factory Board), 10-A
Auckland Road, Calcutta.

.. Respondents

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CORAM:

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

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

Appearance:

For the Applicant : Mr. Mohan Sudame, Advocate

For the Respondents : Mr. Ramesh Darda, Standing
Counsel for the respondents.

JUDGEMENT

DATE:

19-4-1991

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

1. This application has been filed by a former
Skilled Machinist of the Ordnance Factory, Ambazari,

(Contd...)



Nagpur questioning order No. NIE/14/37/AH/VIG. dt. 26.4.86 passed by the first respondent imposing upon the applicant the penalty of revision to the lower grade / Skilled Machinist from the post of Supervisor 'B' for a period of three years. This order was confirmed in appeal by an order dated 19.4.1988 by the appellate authority viz., Director General of Ordnance Factory, Calcutta. The applicant states that he has submitted a review application to the Chairman of the Ordnance Factory Board on 10.9.1988 but no action has been taken thereupon. The applicant was placed under suspension on 18.10.1984 pending contemplated disciplinary proceedings. This was followed by a chargesheet dt. 7.12.1984 comprising three charges. The first charge was that he has not accounted for an amount of Rs. 2,477.50 drawn for transportation expenses for collection of materials from transport carriers. The second charge was that he had taken out 26 barrels / drums of 205 liters capacity for collection of O.D Spirit on 3.9.1984 and 29.9.1984, but the same were not brought back by him to the factory. The third charge was that he had obtained 24 Nos. empty barrels for spirit collection from M/s. Bharat Company, Nagpur and did not restore the same to the Company. The Enquiry Officer, after enquiry held that the applicant cannot be held guilty of misappropriation of funds in regard to the non-return of cash or in regard to failure to give accounts when called upon. He was however found guilty in regard to taking out a large number of oil drums in excess of actual requirements.


(Contd....)

The final conclusion of the Enquiry Officer was ^{however} that the applicant was guilty of all the three charges. The disciplinary authority by his order dt. 26.4.1986 agreed with the Enquiry Officer's report and imposed upon the applicant the penalty of reduction in rank to the post of Machinist Skilled for a period of three years. Along with these orders a copy of the Enquiry Officer's report was enclosed. As already stated earlier the appeal preferred by the applicant was rejected on 19.4.1988. The applicant has sought to question the order of removal and the appellate order on various grounds as set forth by him.

2. On behalf of the respondents a reply has been filed. It is denied that the applicant had preferred a revision application and that no action has been taken thereupon. In so far as the merits of the case are concerned it is contended that the applicant was found guilty of ^{the} charge of misappropriation of material after due enquiry though the charge relating to misappropriation of money has not been established.

3. We have heard the learned counsel for the applicant Mr. Mohan Sudame and Shri Ramesh Darda, Standing Counsel for the respondents.

4. Apart from the various other grounds raised in Counsel for the the application, the applicant contends that no reasonable opportunity within the meaning of Article 311(2) of the Constitution was afforded to him and that the punishment imposed upon the applicant pursuant to the order dated 26-4-1986 is contrary to the principles of natural justice. It is contended that after the enquiry by the Enquiry Officer and submission of his report, the disciplinary authority (respondent No.1) ought to have furnished the applicant with a copy of the enquiry report before passing the final order of compulsory retirement. It is in this context that it is alleged that no reasonable opportunity was afforded and that non-furnishing of the Enquiry Officer's report is opposed to the principles of natural justice.

5. A perusal of the impugned order dated 26-4-1986 confirms that the copy of the enquiry report was not furnished, prior to the disciplinary authority coming to a conclusion, that the enquiry report should be accepted and that the punishment should be imposed.

.../...

The enquiry report was annexed to the punishment order dated 26-4-1986. The question whether furnishing of the Enquiry Officer's report before the disciplinary authority passes the final order of punishment is a ~~necessary & requirement of law~~ 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. Mohd. Ramzan Khan (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."

6. Applying the aforesaid decision of the Supreme Court it would follow that the impugned order dated 26.4.1986 and 9.4.1988 are illegal, and contrary to the principles of natural justice. They are 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 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

Mvs