

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 705/90 199

~~XXXXXX~~

DATE OF DECISION 1.11.1991

Shri T.N.Katyal.

Petitioner

Shri G.S.Walia.

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

- Advocate for the Respondent(s)

CORAM:

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

The Hon'ble Mr. D.K.Agrawal, 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 ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

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(Signature)
(M.Y. PRIOLKAR)
MEMBER(A).

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

Original Application No.705/90.

Shri T.N.Katyal.

... Applicant.

V/s.

Union of India & Ors.

... Respondents.

Coram: Hon'ble Member(A), Shri M.Y.Priolkar,
Hon'ble Member(J), Shri D.K.Agrawal.

Appearances:-

Shri G.S.Walia for the applicant.
None for the respondents.

Oral Judgment:-

{Per Shri M.Y.Priolkar, Member(A)} Dated: 1.11.1991.

The applicant in this case while working as a Driver Gr.'A' (special) in Central Railway was proceeded with departmentally and after conducting an inquiry and based on the findings in the enquiry report, the applicant was removed from service by Senior Divisional Electrical Engineer (Traction-Operation) Bombay V.T. by order dated 21.1.1986. The appeal preferred by the applicant was rejected by the D.R.M. (Sub.) on 3.3.1986. A revision petition filed subsequently was also rejected by the General Manager on 17.7.1989. The prayer in this application is for setting aside these orders of the disciplinary authority, appellate authority and the revisional authority as illegal.

2. A number of grounds have been advanced by the applicant in support of his contention that these orders are bad in law. This application can however be disposed of only on the one short ground that a copy of the inquiry officer's report was not furnished to the applicant prior to the imposition of the penalty, but it was furnished along with the order dated 21.1.1986 the disciplinary authority imposing the penalty.

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It is now settled after the Supreme Court's decision in the case of Union of India v. Mohd. Ramzan Khan 1991(1) S.C.C. page 471 that wherever an inquiry is held and the Enquiry Officer in his report finds the delinquent official guilty of the charges, a copy of the inquiry report should be furnished to the delinquent official prior to the imposition of the penalty so that ~~he~~ ^{he has} an opportunity to make a representation against the findings in the inquiry report. It has also been held that non-compliance with this requirement is violative of the principles of natural justice.

3. Al-though in this case the respondents have not filed their reply inspite of giving four opportunities and more than 7 months time for this purpose, in our last order dt. 21.8.1991 we had made it clear that the case is fixed for final hearing on 1.11.1991 i.e. to day and that the respondents should file their reply if they so desire by 14.10.1991. Even to day neither ^{any} reply has been filed nor the counsel for the respondents is present. We therefore, proceed to deal with this case even in the absence of the reply and the absence of the counsel for the respondents.

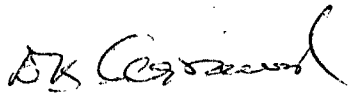
4. It is clear from the order dt. 21.1.1986 that a copy of the inquiry report submitted by the inquiry officer dt. 12.8.1985 was furnished to the applicant only along with its order dt. 21.1.1986. Although the applicant had taken this as one of the grounds in the present application, no reply has been filed by the respondents ~~by~~ giving any explanation for this contention of the applicant. Moreover, it is evident from this letter dt. 21.1.1986 that the copy of the inquiry officer's report has been furnished along with the penalty order. Accordingly, we hold that there


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there has been violation of principles of natural justice in this case and ~~accordingly~~ we set aside the order of the disciplinary authority dt. 21.1.1986 and the subsequent orders of Appellate as well as Revisional authority. The applicant will be entitled to all consequential benefits in accordance with law. The respondents shall, however, have the liberty to proceed against the delinquent departmentally ^{again,} if they so desire, from the stage ^{this} illegality had occurred, in accordance with law. No order as to costs.


(D.K. AGRAWAL)
MEMBER (J)


(M.Y. PRIOLKAR)
MEMBER (A).

B.S.M.

(15)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY 1

R.P. NO.186/92 IN O A NO.705/90

Trilok Nath Katyal
C/O. G S Walia, Advocate
89/10 Western Railway Employees Colony
Matunga Road, Bombay 19

Original Applicant

V/s

Union of India through
General Manager
Central Railway; Bombay VT
Bombay 1

Original Respondent

(Applicant in R P No.186/92)

Coram: Hon. Shri Justice S K Dhaon, Vice Chairman
Hon. Shri M Y Priolkar, Member (A)

TRIBUNALS ORDER:
(Per: S K Dhaon, Vice Chairman)

DATED: 1-1-93

This is a second review application.


Rule 17(4) of the Central Administrative Tribunal
(Procedure Rules) bars the second review application.

This Tribunal, on the basis of Mohd. Ramzan Khan's case, set aside the order of punishment. The Supreme Court has recently taken the view, in a Special Leave Petition filed against an order passed by this Tribunal, that this Tribunal overlooked the last part of the order passed by the Supreme Court in Mohd. Ramzan's case that the law laid by it would have a purely prospective operation.

One of the questions to be decided is whether the Tribunal can exercise suo-moto powers to review ~~upon~~ its own order on the ground that ~~it~~ overlooked certain aspects emphasised in the judgment of the Supreme Court.

We, therefore, feel that this question requires ~~re~~consideration.

Issue notices.

Date 14/1/93
5/1/93

(M Y Priolkar)
Member(A)

8/1/93
(S K Dhaon)
Vice Chairman

(14)

OA No.705/90

TRIBUNAL'S ORDER DATED: 9-7-92

This is an application filed on behalf of Union of India and others praying that the judgment and order dated 1.11.1991 passed by this Tribunal in OA 705/90 be recalled or reviewed.

In Paragraph 3 of the order of the Tribunal has relevance and the same is quoted below:

"3. Although in this case the respondents have not filed their reply in spite of giving four opportunities and more than 7 months time for this purpose, in our last order dated 21.8.1991 we had made it clear that the case is fixed for final hearing on 1.11.1991 i.e., to-day and that the respondents should file their reply if they so desire by 14.10.1991. Even to day neither any reply has been filed nor the counsel for the respondents is present. We, therefore, proceed to deal with this case even in the absence of the reply and the absence of the counsel for the respondents."


We may note that on 30.3.92 this Tribunal rejected the application made on behalf of the Union of India and Others praying ^{we} therefor that the order dated 1.11.1991 may be set aside. This application was filed on the assumption that on 1.11.1991 this Tribunal passed an ex-parte order. Dismissing the application, the Tribunal made an observation that since Union of India and others have been duly served with the notices and since they have failed to file a counter-affidavit, in spite of time granted to them repeatedly, ^{we} There is no question of this Tribunal passing an ex-parte order on 1.11.1991, and therefore, ^{of} remedy to the Union of India and other, if any, was to make an application for the Review of the order of 1.11.1991.

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The argument advanced on behalf of the applicant (Union of India) is that the Tribunal in the order dated 1.11.91 mixed up certain dates. It appears from a reading of the OA No.705/90 that the applicant came out with the specific case that the order passed on 21.1.1986 removing him from service had been ultimately set aside by the Reviewing Authority on 13.11.1986 with certain directions to the punishing authority and thereafter on 5.1.1987 the punishing authority passed a fresh order removing the applicant from service. This order was upheld in appeal and ultimately on 17.7.89 the General Manager rejected the revision application of the applicant. There is a reference to this in the order of the Tribunal dated 1.11.1991.

We are satisfied that even though there may be discrepancies in the dates in the order of this Tribunal no ground exists for reviewing this order as there is no error apparent on the face of the record. The intention of the Tribunal is clear. The B.P. No. 94/92 is accordingly rejected.


(Ms. Usha Savara)
Member (A)


(S K Dhaon)
Vice Chairman