

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: **616/91**

Transfer Application No:

DATE OF DECISION: **8/11/1994**

A. P. Jadhav Petitioner

Shri. Y.R. Singh Advocate for the Petitioner

Versus

Union of India & Ors. Respondent

Shri. P.M. Pradhan Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri **Justice M.S. Deshpande, V.C**

The Hon'ble Shri **P.P. Srivastava, Member (A)**

1. To be referred to the Reporter or not ? *no*
2. Whether it needs to be circulated to other Benches of the Tribunal ? *no*


(M.S. Deshpande)
V.C

(6)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 616/91

A.P. Jadhav

.. Applicant

Vs.

1. Union of India,
through
Secretary
Ministry of Defence
New Delhi.

2. General Manager
Ordnance Factory
Ambernath

3. Jt. Director (Vigilance)
Ordnance Factory Board
Calcutta.

.. Respondents

CORAM :

1. Hon'ble Shri. Justice M.S. Deshpande, V.C
2. Hon'ble Shri. P.P. Srivastava, M(A)

APPEARANCES

1. Shri. Y.R. Singh, Counsel
for applicant
2. Shri. P.M. Pradhan, Counsel
for respondents.

ORAL JUDGMENT

DATED : 8/11/1994

X Per. Shri. Justice M.S. Deshpande, V.C X

By this application, the applicant challenges
the order holding him guilty and dismissing him from
service, passed by the Disciplinary Authority on

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9/7/1983 and the order passed by Appellate Authority on 14/1/1991 dismissing the appeal.

2. The applicant was appointed on 15/10/1965 as Durban in Ordnance Factory at Ambernath and in 1975 he was promoted as Furnace Charger. On 2/10/1982 he was suspended and on 9-10-1982 he was charge-sheeted. The enquiry against him proceeded and the Enquiry Officer by his report dated 21st May 1983 found the applicant guilty of the charges. The Disciplinary Authority by the order dated 9th July 1983 accepted the report of the Enquiry Officer and imposed penalty of dismissal on the applicant. The applicant applied on 15th July 1983 to the Appellate Authority for furnishing a copy of Enquiry Report which was furnished to him and after considering the appeal, the Appellate Authority by its order dated 14th January 1991 upheld the order of dismissal. The applicant challenges these two orders.

3. The contention of the applicant is that since the Enquiry Officer's report had not been

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furnished to the applicant before the
Disciplinary Authority passed the order of
dismissal, in view of the observations of
the Supreme Court in Union of India Vs.
Mohammed Ramzan Khan (1991 SCC 588)
the order of dismissal was bad. It is however
obvious from the decision in Managing Director,
ECIL, Hyderabad Vs. B. Karunakar & Ors (1994 27
ATC 767) that requirement of furnishing a copy
of Enquiry Report to the Charged Officer will
be held obligatory only from the date of judgment
in Mohammed Ramzan Khan's case, namely 20.1.1990
and since in that case the order of dismissal
of the respondent was far earlier to the said
date the dismissal cannot be said to be vitiated
by non-furnishing of the Enquiry Officer's report.
Shri. Y.R. Singh, learned counsel for applicant
however referred to the case of S.S. Rathore v.
State of M.P (AIR 1990 SC 10) and particularly
the observations made in para 20 thereof. There
however the question was one of limitation under
Limitation Act and it was in that context that the
Supreme Court held that the cause of action shall

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be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six month's period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen.

Mr. Y.R. Singh urged that on the same analogy, it must be held that the applicant could not have approached this Tribunal till the Appellate Authority decided the appeal i.e. 14.1.1991 and even if the proposition in Mohammed Ramzan Khan's case is applied prospectively, the present case will be governed by the law as laid down in Mohammed Ramzan Khan's case. It is difficult for us to accept this proposition because in Managing Director, ECIL, Hyderabad Vs. B. Karunakar & Ors (1993 SCC 1184) seven points were formulated for consideration. In para 33 of the report, while dealing with the question as to from what date the law requiring furnishing of the report should come into operation and what was the law prevailing prior to November 20, 1990, the Supreme Court observed that till November 20, 1990 the position of law on the subject was not settled

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by the Court and it was for the first time in Mohammed Ramzan Khan case that the Court laid down the law. That decision made the law laid down there prospective in operation and it was not applicable to the orders of punishment passed before that date notwithstanding the fact that the proceedings arising out of the same were pending in courts after that date. It was laid down that the said proceedings had to be decided according to the law prevalent prior to the said date which did not require the authority to supply a copy of the enquiry officer's report to the employee and only exception to this was where the service rules with regard to the disciplinary proceedings themselves made it obligatory to supply a copy of the report to the employee. In para 44, the Court observed that to reopen all the disciplinary proceedings now would result in grave prejudice to administration which will far outweigh the benefit to the employees concerned. Both administrative reality and public interests do not, therefore, require that the orders of punishment passed prior to the decision in Mohammed Ramzan Khan case without furnishing the report of

the enquiry officer should be disturbed and the disciplinary proceedings which gave rise to the said orders should be reopened on that account.

4. Mr. Singh urged that the disciplinary proceedings terminated only with the passing of the Appellate Authority's order dated 14.1.1991 and till then the disciplinary proceedings should be deemed to have been pending. This contention over-looks the position laid down by Constitution Bench in 1993 SCC (L & S) 1184 that both administrative reality and public interest do not therefore require that the orders of punishment passed prior to the decision in Mohammed Ramzan Khan case without furnishing the report of the Enquiry Officer should be disturbed and the disciplinary proceedings which gave rise to the said orders should be reopened. It is difficult to read the proposition as including as also the appellate order which came to be passed in the disciplinary proceedings affirming the punishment imposed by the disciplinary authority. Before imposing the penalty which in the present case was ^{done} on 9.7.83, the disciplinary authority's furnishing a copy of the Enquiry Officer's report was a step which could be regarded as only procedural


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and the procedural requirement as laid down in Mohammed Ramzan Khan case was that a copy of Enquiry Officer's report should be furnished before the disciplinary authority passes the order. We cannot enlarge the requirement by construing the date of decision by including also the date on which the appellate authority passed the order. On the contrary, such a view if taken will run counter to the aforesaid decisions of Supreme Court. We therefore find that there was no procedural vice in the enquiry proceedings which would go to invalidate the order of dismissal.

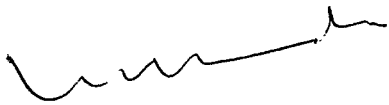
5. The second point urged was that the applicant had raised a plea before the enquiry officer by an application dated 21.5.83 that Mr. A.K.R.Pillai subjected the applicant to vigorous search to wreak vengeance due to an earlier incident, but that incident had taken place on 21.9.1982 and this position was also considered by the enquiry officer in his report. We have perused the report of the enquiry officer and we find that the contention regarding framing up of the case against the applicant at the behest of Mr. Pillai, was considered by the enquiry officer and he has given good reasons for the view he was taking. We do not find that the enquiry suffered from non-consideration of relevant material and we also find

that there was adequate material before the enquiry officer to reach the findings he did. We, therefore see no merit in the second contention either.

6. In the result, we find no substance in the present application. It is dismissed. There is no order as to costs.



(P.P. SRIVASTAVA)
MEMBER (A)



(M.S. DESHPANDE)
VICE CHAIRMAN

J*