

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH, HYDERABAD

D.A. No. 539 of 1989.

Case No:

DATE OF DECISION 20-12-1989.

Petitioner

Advocate for the
Petitioner(s)

Versus

Respondent

Advocate for the
Respondent(s)

CORAM

The Hon'ble Mr. D.SURYA RAO : MEMBER (JUDL)(I)

The Hon'ble Mr. R.BALA SUBRAMANIAN : MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgment ? *NO*
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
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)

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DSR
HM(J)

RS
RBS
HM(A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD
BENCH : AT HYDERABAD :

O.A.No.539 of 1989.

Date of Judgment: 20-12-1989.

A.Venkateswarlu

....Applicant

Versus

The Chief Mechanical Engineer,
South Central Railways,
Secunderabad & 2 others.

....Respondents

Counsel for the Applicant : Shri P.Krishna Reddy

Counsel for the Respondents : Shri N.R.Devaraj

CORAM:

HONOURABLE SHRI D.SURYA RAO : MEMBER (JUDL) (I)

HONOURABLE SHRI R.BALA SUBRAMANIAN : MEMBER (A)

(Judgment dictated by Hon'ble Shri D.Surya Rao,
Member (J)).

The applicant herein who working as Diesel Driver Instructor in the Guntupally Division of South Central Railway has filed this application questioning the order No.G/TP.80/V/NRE dated 12.5.87 passed by the second respondent compulsorily retiring him from service after conducting an enquiry. He also seeks to question the order No.P.90/D & A/GTL/766 dated 24-7-87 confirming the order of the 2nd respondent. Apart from the various grounds raised in the application, the applicant by way of an Additional Affidavit raised a further contention that the Enquiry Officer's Report should have been furnished to him by the Disciplinary Authority before arriving at the find-

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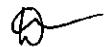
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ing accepting the Enquiry Officers Report. ^{In support of} For this contention the counsel for the Applicant Shri P.Krishna Reddy relies on the Full Bench Decision rendered by the New Bombay Bench of the Central Administrative Tribunal in Premnath K.Sharma Vs. Union of India reported in 1988(6) ATC 904, wherein it was held as follows :-

" Even after the amendment of Article 311(2) by the 42nd Amendment, the Constitution guarantees a reasonable opportunity to show cause against the charges levelled against the charged officer during the course of the enquiry. In order to fulfil the constitutional requirement he must be given an opportunity to challenge the enquiry report also. The Enquiry Officer enquires into the charges, the evidence is recorded and the charged officer is permitted to cross-examine the witnesses and challenge the documentary evidence during the course of the enquiry. But the enquiry does not conclude at that stage. The enquiry concludes only after the material is considered by the Disciplinary Authority, which includes the Enquiry Officer's report and findings on charges. The enquiry continues until the matter is reserved for recording a finding on the charges and the penalty that may be imposed. Any finding of the Disciplinary Authority on the basis of the Enquiry Officer's report which is not furnished to the charged officer would, therefore, be without affording a reasonable opportunity in this behalf to the charged officer. It therefore follows that furnishing a copy of the enquiry report to the charged officer is obligatory ".

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Admittedly, in the instant case, the Enquiry Officer's Report has been given to the applicant only on 12th of May, 1987 along with punishment order. Following the aforesaid decision in Premnath K. Sharma's case, we hold that the order of punishment No. G/TP.80/V/NRE dated 12-5-1987 ^{be} ~~is~~ ^{order} quashed. This, however, will not preclude the respondents from further proceeding with the enquiry by enabling the applicant to make his representation against the Enquiry Officer's report and to complete the disciplinary proceedings from that stage. Since, in this case, the applicant has received a copy of the Enquiry Officer's report it would be unnecessary to direct the respondents to once again furnish a copy of the Enquiry Officer's report. If the respondents choose to continue the disciplinary proceedings, they are directed to intimate the applicant accordingly and to give him an opportunity to assail the correctness of the Enquiry Officer's report. They are directed to do so within one month from the date of receipt of this order. On receipt of such notice from the respondents, the applicant is directed to submit his representation against the Enquiry Officer's report within a period of one month thereafter and the disciplinary authority is further directed to dispose of the representation of the applicant within six weeks of the receipt of the same. As observed in the case decided by the Full Bench, nothing said herein would affect the decision of the disciplinary authority and we would hasten to add that this order of the Tribunal is not a direction to necessarily continue the disciplinary proceedings. That is entirely left to the discretion of the disciplinary authority.



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2. Accordingly we allow the application to the extent indicated above. In the circumstances there will be no order as to costs.

D. Surya Rao

(D.SURYA RAO)
Member (J)

R. Bala Subramanian

(R.BALA SUBRAMANIAN)
Member (A)

Dt.20th December, 1989.
Dictated in open court.

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S. Venkateswara
DEPUTY REGISTRAR(J)

TO:

1. The Chief Mechanical Engineer, south central railway, Rail Nilayam, Secunderabad.
2. The Divisional Railway Manager, south central railway, Guntakal, Anantapur District.
3. The Divisional Mechanical Engineer(Loco) south central railway, Guntakal, Anantapur district.
4. One copy to Mr.P.Krishna Reddy, Advocate, 3-5-899, Himayatnagar, Hyderabad.
5. One copy to Mr.N.R.Devaraj, SC for Rlys.,CAT,Hyderabad.
6. One spare copy.

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kj.

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