

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.

132

1989

~~T.A. No.~~DATE OF DECISION 4-10-89

Petitioner

Advocate for the Petitioner(s)

Versus

Respondent

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. *B. N. Jagannath, vice chairman*The Hon'ble Mr. *D. Surya Rao, Member (J)*

1. Whether Reporters of local papers may be allowed to see the Judgement? *No*
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*

for
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DSR

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

O.A.No.132 of 1989

Date of Order 4.10.1989

S.Phanibhushana Rao

...Applicant

versus

Union of India, represented by
Secretary, Ministry of
Communications, New Delhi.
and 2 others

...Respondents.

For Applicant: Shri T. Jayant, Advocate.

For Respondents: Shri E. Madan Mohan Rao, Addl. CGSC.

...

C O R A M:

THE HON'BLE SHRI B.N.JAYASIMHA: VICE CHAIRMAN

THE HON'BLE SHRI D.SURYA RAO: MEMBER (J)

(Judgment of the Bench delivered by Hon'ble
Sri D.Surya Rao, Member (Judl)).

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The applicant herein who was working as a Telephone Operator question's the order of 3rd respondent dated 28-7-1987 dismissing them from service. On 27-3-1985 a charge was framed against the applicant alleging that while submitting his application for the post of Telephone Operator, he had furnished certain information viz., that the marks obtained by him in Hindi in the S.S.C. Examination were 79.8%. The charge alleges that this was verified and found to be incorrect and he thereby obtained employment wrongly. An enquiry was conducted under the CCS(CCA) Rules. The Applicant alleges that the Enquiry Officer rejected his request for examining certain defence witnesses and for production of certain additional documents sought for him.

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He further alleges that the statements of the witnesses during the preliminary enquiry were not made available. Another ground raised by the applicant is that the Enquiry Officer's report was not furnished to him before passing the dismissal order dated 28-7-1987 and thus no reasonable opportunity was given to defend himself.

2. We heard Shri T. Jayant, learned counsel for the applicant and Shri E. Mahan Mohan Rao, learned Standing counsel for the department. The matter can be disposed of on the ground that the Enquiry report was not furnished to the applicant by the Disciplinary Authority before passing the order of dismissal dated 28-7-1987. The right of an employee to be furnished with a copy of the Enquiry report before ^{issue of} the final order of punishment, has been upheld in Full Bench decision of the Tribunal reported in 1988 (6) ATC 904 in the case of Premnath K. Sharma Vs. Union of India. The decision is 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 fulfill 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 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 charge officer is obligatory."

3. For the aforesaid reasons, we hold the enquiry is vitiated and the order imposing the penalty of dismissal from service must be quashed. This, however, will not preclude the respondents from supplying a copy of the enquiry report to the applicant, ^{giving} ~~and~~ give him an opportunity to make his representation and proceeding to complete the Disciplinary Proceedings from that stage. If the respondents choose to continue the disciplinary proceedings and complete the same, the manner as to how the period spent in the proceedings should be treated would depend upon the ultimate result. Accordingly we allow the application to the extent indicated above but in the circumstances we make no order as to costs.

B.N. Jayasinha
(B.N. JAYASINHA)
Vice-Chairman

D. Surya Rao
(D. SURYA RAO)
Member (J)

Dt. 4th October, 1989.
Dictated in open court

(D. Surya Rao)
DEPUTY REGISTRAR(J).

AVL.

P.T.O.

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IN THE

HYDERABAD BENCH

HON'BLE MR. B.N. JAYASIMHA:
AND
HON'BLE MR. D. SURYA RAO: MEMB
AND
HON'BLE MR. D.K. CHAKRAVORTY: MEM
AND
HON'BLE MR. J. NARASINHAMURTHY: ME

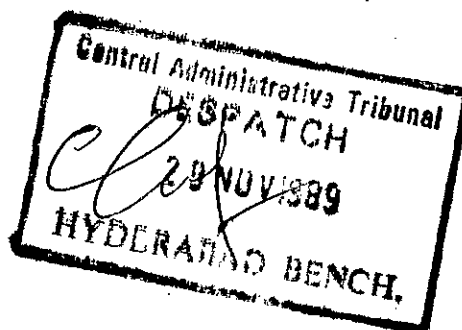
DATED:

4/10/89

ORDER / JUDGMENT

F.A. / O.A. 132/89 ✓
(U.P. No.)

Allowed no order as to costs



[Signature]
27/11/89