

(101)

Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 681/89.

Date of Decision : 3/10/92.

-T.A.No.-

G.S.Azariah

Petitioner.

Shri G.S.Azariah,
Party-in-person

Advocate for the
petitioner (s)

Versus

General Manager, S.C.Rly.,
Rail Nilayam, Secunderabad

Respondent.

Shri N.R.Devaraj, SC for Railways

Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. R. Balasubramanian : Member(A)

THE HON'BLE MR. C. J. Roy : 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 ? Yes
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 ? 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)

HRBS
M(A)

HCJR
M(J)

(02)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.681/89.

Date of Judgment 31.1.1992

G.S.Azariah

.. Applicant

Vs.

General Manager,
S.C.Rly.,
Rail Nilayam,
Secunderabad.

.. Respondent

Counsel for the Applicant : Shri G.S.Azariah, Party-in-person

Counsel for the Respondent : Shri N.R.Devaraj, SC for Railways

CORAM:

Hon'ble Shri R.Balasubramanian : Member(A)

Hon'ble Shri C.J.Roy : Member(J)

[Judgment as per Hon'ble Shri R.Balasubramanian, Member(A)]

This application has been filed by Shri G.S.Azariah under section 19 of the Administrative Tribunals Act, 1985 against the General Manager, S.C.Rly., Rail Nilayam, Secunderabad. The prayer in this application is to set aside the order No.E(O)I-88-PU2/6 dated 5.1.89 dismissing him from service w.e.f. 16.11.83.

2. The applicant joined ~~in~~ the Railways in 1956 ~~and~~ His career is a chequered one punctuated with a resignation by him in between and considerable ^{rounds of} litigation. As a consequence of disciplinary proceedings initiated by the respondent, the applicant was finally dismissed from service by the impugned order dated 5.1.89.

3. The respondent has filed a counter affidavit opposing the application.

4. The case was examined and heard on 31.12.91. At the time of the hearing it was brought to our notice that the copy of the enquiry report based on which the order of dismissal was issued was not furnished to the applicant before issue of the punishment order. This fact is borne out from memo

No.E(O)I-88-PU2/6 dated 5.1.89 from which it is seen that a copy of the enquiry report as also the letter dated 21.6.88 from the U.P.S.C. were enclosed to the punishment order. The question ~~necessarily~~ that had to be considered was quashing of the order since the case attracted the law laid down by the Hon'ble Supreme Court in the case of Union of India & others Vs. Mohd. Ramzan Khan [JT 1990(4) SC 456]. On this point of law, Shri N.R.Devaraj, learned counsel for the respondent argued that the applicant did not participate in the enquiry conducted against him and that the case is covered by a decision of the Bombay Bench of this Tribunal reported in 1990(3) SLJ (CAT) 291. It was his argument that since the applicant did not participate in the enquiry, furnishing a copy of the enquiry report prior to the imposition of the punishment was not required. We have seen the judgment referred to and extract the relevant portion below:

"In a case where a civil servant or a railway servant against whom proceedings are initiated does not choose to appear before the Inquiry Officer, who holds the inquiry as the delegate or agent of the Disciplinary Authority, it cannot be insisted that before the Disciplinary Authority arrives at a decision based on the report of the Inquiry Officer copy of the report has to be furnished to the delinquent employee. Of course, if he appeared before the Inquiry Officer, the position would have been different. The supply of the copy of the report of the Inquiry Officer is only to comply with the mandate under clause(2) of Article 311 of the Constitution of India of affording reasonable opportunity of defence. Despite the grant of the said opportunity when the delinquent employee does not appear at all before the authority who conducts the enquiry on behalf of the Disciplinary Authority, the failure to furnish a copy of the report of the Inquiry Officer before the Disciplinary Authority imposes the order of penalty does not amount to such denial, and hence cannot vitiate the proceedings."

5. When the Bombay Bench decided the case on 3.7.90, they had before them only the decision dated 6.11.87 of a Full Bench of this Tribunal in the case of Premnath K.Sharma Vs. Union of India & others. The Bombay Bench concluded that when a ~~delinquent~~ official had not chosen to avail of the opportunity of participating in the enquiry he had no right ^{prior to imposing the penalty} to a report thereon and that this would not amount to a

violation of the mandate under clause(2) of Article 311 of the Constitution of India. But then, much later, on 20.11.90 the Hon'ble Supreme Court pronounced the judgment in the case of Union of India & others Vs. Mohd. Ramzan Khan [JT 1990(4) SC 456]. After a detailed analysis, the Hon'ble Supreme Court came to the conclusion that furnishing a copy of the enquiry report before imposing the punishment was absolutely essential ~~and~~ to conform to the provisions of the Constitution. They did not make any distinction on the circumstances under which the enquiry report is prepared-whether with the cooperation of the delinquent official or not. On the other hand, in para 18 the Hon'ble Supreme Court has observed:

"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."

It is thus clear that ~~where~~ whenever there is an enquiry report if the same is not ~~furnished~~ ^{Learned} furnished beforehand to the delinquent prior to the imposition of the punishment it is a violation of the rules of natural justice.

6. Shri N.R. Devaraj, learned counsel for the respondent also argued that the decision of the Coordinate Bench at Bombay should be followed and any difference would have to be sorted out only by another Full Bench on this point. In view of the categorical observations and conclusions of the Hon'ble Supreme Court we have necessarily to set aside the order of punishment dated 5.1.89 imposed on the applicant. We, therefore, quash the impugned punishment order dismissing the applicant from service. This, however, will not preclude the respondent from supplying a copy of the enquiry report to the applicant and give him an opportunity to make his representation and proceeding to complete the disciplinary proceedings

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from that stage. The application is allowed to the extent indicated above but in the circumstances we make no order as to costs. If the respondent chooses 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. Nothing said herein would affect the decision of the Disciplinary Authority. At the same time, we hasten to add, that this order of the Tribunal is not a direction to necessarily continue the disciplinary proceeding. That is entirely left to the discretion of the Disciplinary Authority.

7. The application is thus disposed of with no order as to costs.

R.Balasubramanian
(R.Balasubramanian)
Member(A).

hsby
(C.J.Roy)
Member(J).

Dated 3rd January, 1992.

S. T. J.
Dy. Registrar (J)

Copy to:-

1. General Manager, South Central Railway, Rail Nilayam, Secunderabad.
2. One copy to Shri. G.S.Azariah, Party in person, C/o Headmistress Quarters, Centenary School, Parade Grounds, Secunderabad-500 003.
3. One copy to Shri. N.R.Devraj, SC for Rlys, CAT, Hyd.
4. Copies to reporters as per standard list of C.A.T. Hyd
5. One spare copy.

Rsm/-

Parashuram Rao
6/1/92