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Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 114/89.

Date of Decision : 5.2.1992

~~Ex.No.~~

P. Satyanarayana

Petitioner.

Sri V. Jogayya Sarma

Advocate for the
petitioner (s)

Versus

Union of India, rep. by its Secretary, Min.
of Agriculture, Deptt. of Rural Dev., Krishi
Bhavan, New Delhi & 2 others

Respondent.

Sri Naram Bhaskara Rao, Addl. Standing Counsel
for Central Govt.

Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. R. BALASUBRAMANIAN, MEMBER (ADMN.)

THE HON'BLE MR. C.J. ROY, MEMBER (JUDL.)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
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)

HRBS
M(A)

HCJR
M(J)

(86)

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

O.A.No.114/89.

Date of Judgment: 5.2.1992.

Between:

P. Satyanarayana .. Applicant

Vs.

1. Union of India, rep. by its
Secretary, Min. of Agriculture,
Deptt. of Rural Development,
Krishi Bhavan, New Delhi.

2. Director and Chief Vigilance
Officer, Govt. of India,
Min. of Agriculture, Deptt.
of Rural Development, Krishi
Bhavan, New Delhi.

3. The Union Public Service
Commission, rep. by its
Secretary, Dootpoor House,
New Delhi.

.. Respondents

For the applicant : Shri V.Jogayya Sharma, Advocate.

For the respondents : Shri Naram Bhaskara Rao, Addl.
Standing Counsel for Central
Government.

CORAM:

HON'BLE SHRI R. BALASUBRAMANIAN, MEMBER (ADMN.)

HON'BLE SHRI C.J. ROY, MEMBER (JUDL.)

{ JUDGMENT OF THE BENCH AS PER HON'BLE SHRI C.J.ROY, M(J) }

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This is an application filed under section 19 of the
Administrative Tribunals Act, 1985 with a prayer to set
aside the orders No.C-14012/2/83-Vig. dt. 25/26.6.1987 &
of Directorate of Marketing & Inspection, Ministry of Agri-
culture, Deptt. of Rural Development, Government of India
and C.16011/1/87-Vig. dt. 12-7-1988 and to compel the res-
pondents to treat the applicant's services from 9-12-1986
as continuous, and for other reliefs.

....2.

2. The applicant was working as Assistant Marketing Officer, Directorate of Marketing and Inspection at Guntur and proceeded on leave from 2-6-1980 on the ground that his wife was suffering from serious disease. The applicant states that he had applied for leave in the beginning from 2-6-1980 to 31-12-1981 and the same was granted. He alleges that he had sent applications for leave for the subsequent periods seeking extension, and had issued a telegram as there was no response. It is alleged that the respondents by letter dt. 1-10-1982 down favoured the leave sought for and was threatened disciplinary action for his wilful absence. The applicant states that he was transferred to Nagpur during the said period and was directed to report for duty at Nagpur by proceedings dt. 23-8-1983. The applicant averred that the action was taken arbitrarily against him and therefore he was not able to report for duty. The applicant stated that he had requested by letter dt. 9.12.1986 to permit him on duty at Nagpur and that he was not allowed to join duty by proceedings dt. 24.4.1987 of Deputy Director of Agriculture (DDA) Nagpur.

3. The applicant states that a charge memo dt. 29-8-1984 was issued to him alleging unauthorised absence and that an enquiry was conducted at Faridabad within 3 months period. The applicant alleges that no opportunity was given to him to be present himself in the enquiry and an order of removal was passed by the respondents dt. 25/26.6.1987. The applicant also averred that he had also preferred an appeal before the appellate authority but the same was rejected by order dt. 12.7.88

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The applicant alleges that the appellate authority has not taken into consideration any of the grounds raised before him and rejected the appeal, and/hence filed this application.

4. The respondents filed their reply and countered the allegations and justified their action stating that the applicant was granted leave upto 31-12-1981 and for subsequent periods the leave was not granted. It is also contended that the applicant was communicated the decision of the competent authority in refusing leave from 1-1-1982 onwards besides advising him to join at Nagpur immediately. It is alleged that the applicant failed to join and report for duty and therefore disciplinary action was initiated against him by issuing a charge memo dt. 29-8-1984 and an enquiry officer was appointed for the purpose. It is also stated that based on the inquiry report and findings therein, order dt. 25/26.6.1987 was issued imposing penalty of removal of applicant. The respondents denied the allegation that appellate authority who had rejected the appeal of the applicant and the disciplinary authority who had imposed the penalty are one and the same and stated that they are issued as per Rules. The respondents averred that the appellate authority after seeking the advice of the UPSC and the Director & Chief Vigilance Officer had authenticated the orders of the appellate authority. The respondents allege that the penalty of removal from service was awarded against the applicant after carefully considering the gravity of the charge which was fully proved, and desired the application be dismissed.

5. We heard Shri V. Jogayya Sarma, learned counsel for the applicant and Shri Naram Bhaskara Rao, Addl. Standing Counsel for Central Government and perused the material papers filed by the respective parties carefully. We are proposing to

dispose-of the application on the legal contentions raised by the learned counsel for applicant before going into merits of the case.

6. We find from page-22 of the material papers filed by the applicant that an order^{of} punishment dt. 25/26.6.87 bearing No.C-14012/2/83-Vig. imposing the penalty of removal was passed by the respondents and the said order of punishment was communicated to the applicant along with the report of the Inquiry Officer. The Hon'ble Supreme Court of India in Union of India and others Vs. Ramzan Khan X 1990 (4) SC 456 Judgments Today para-15 & 18 X held as under:-

"Para-15: Deletion of the second opportunity from the scheme of Article 311 (2) of the Constitution has nothing to do with providing of a copy of the report to the delinquent in the matter of making his representation. Eventhough the second stage of the inquiry in Article 311 (2) has been abolished by amendment, the Delinquent is still entitled to represent against the conclusion of the Inquiry Officer holding that the charges or some of the charges are established and holding the delinquent guilty of such charges. For doing away with the effect of the enquiry report or to meet the recommendations of the Inquiry Officer in the matter^{of} imposition of punishment, furnishing a copy of the report becomes necessary and to have the proceeding completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. While by law application of natural justice could be totally ruled out or truncated nothing has been done here which could be taken as keeping natural justice out of the proceedings and the series of pronouncements of this Court making rules of natural justice applicable to such an inquiry are not affected by the 42nd amendment. We, therefore, come to the conclusion that supply of a copy of the inquiry report along with recommendations, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof. The Forty Second Amendment has not brought about any change in this position."

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In the same Ruling at para-18 Their Lordships observed that -

"Para-18: 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".

7. Based on the above principles of rulings, this Tribunal in a case filed by one Shri K.Nagarajan in O.A.No.301 of 1988 against the Divisional Commercial Superintendent, South Central Railway, Vijayawada and others allowed the application by Judgment dt. 8-3-1991. On this a Review was also filed in R.P.No.66 of 1991 but the said Review petition was also dismissed by orders dt. 24-12-1991.

8. It is apparent on the face of the record that inquiry report was furnished to the applicant herein along with the impugned order of punishment dt. 25/26-6-1987 bearing No. C-14012/2/83-Vig. thus applicant had no opportunity to make a representation before passing the orders by the disciplinary authority. The said action amounts to violation of rules of natural justice. Therefore, applying the aforesaid principles in the ruling, it would follow that the impugned order dt. 25/26-6-1987 bearing No.C-14012/2/83-Vig. passed by the Directorate of Marketing and Inspection, Deptt. of Rural Development, Ministry of Agriculture, Government of India and confirmed by the appellate authority in his proceedings No. C/16011/1/86/Vig. dt. 12-7-1988 is illegal and contrary to the provisions of natural justice and accordingly set aside.

....6.

15 JV

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9. This order, however, will not preclude the disciplinary authority (respondents) from proceeding with the enquiry from the stage of receipt of the report of the Inquiry Officer by the applicant. Since the enquiry officer's report has already been made available to the applicant, the question of furnishing it once again does not arise. If the disciplinary authority proposes to continue with the enquiry, he shall give reasonable opportunity to the applicant to represent against the enquiry report and only thereafter proceed with the enquiry and complete the same, and 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.

10. With the above directions, the application is disposed-of with no order as to costs.

R. Balasubramanian
(R. BALASUBRAMANIAN)
MEMBER (A)

C. J. Roy
(C.J. ROY)
MEMBER (J)

Date: 5th February 1972
S. S. S. S.
Deputy Registrar (J)

grh.

To

1. The Secretary, Union of India, Min. of Agriculture,
Dept. of Rural Development, Krishi Bhavan, New Delhi.
2. The Director and Chief Vigilance Officer,
Govt. of India, Min. of Agriculture,
Dept. of Rural Development, Krishi Bhavan, New Delhi.
3. The Secretary, Union Public Service Commission,
Dholpur House, New Delhi.
4. One copy to Mr. V. Jogayya Sarma, Advocate
5-1-896/6, Putli Bowli, Koti, Hyderabad.
5. One copy to Mr. N. Bhaskar Rao, Addl. CGSC. CAT. Hyd.
6. One spare copy.

pvm.

6/2/72
S. S. S. S.
2/2/72

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TYPED BY *A.S.*
CHECKED BY *27/2*

COMPARED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.

V.C.

THE HON'BLE MR. R. BALASUBRAMANIAN : M(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY :
M(JUDL)

AND

THE HON'BLE MR. C. J. ROY : MEMBER (JUDL)

DATED: 5 - 2 - 1992

ORDER/JUDGMENT:

~~R.A/C.A/~~ M.A.N.

in

O.A.No. *114/89.*

T.A.No.

(W.P.No. *114/89.*)

~~Admitted and interim directions~~
~~issued.~~

~~Allowed~~

Disposed of with directions.

~~Dismissed~~

~~Dismissed as withdrawn~~

~~Dismissed for Default.~~

~~M.A. Ordered/ Rejected~~

~~No order as to costs.~~

p.m.

