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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

Original Application No.114 of 1990

Dt. of Decision:

15-2-1991

Between:-

P.Jeevan Kumar

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Applicant

and

The Director of Postal Services,
A.P.Northern Region, Hyderabad-1.

Respondent

Appearance:

For the Applicant : Shri S.Prabhakar, Advocate.

For the Respondent : Shri Naram Bhaskar Rao,
Addl.Central Govt.Standing
Counsel.

CORAM:

THE HONOURABLE SHRI B.N.JAYASIMHA, VICE-CHAIRMAN.

THE HONOURABLE SHRI D.SURYA RAO, MEMBER (JUDICIAL).

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE SHRI D.SURYA)
RAO, MEMBER (JUDICIAL).

1. The applicant herein was formerly an Assistant
Sorting Assistant in HRO, RMS 'Z' Division, Hyderabad.
In this application he seeks to question the proceedings
No.RDH/ST/21-3/6/89, dated 31-10-1989 passed by the
Director of Postal Services, A.P. Northern Region,
Hyderabad (Respondent) passed in Appeal questioning the
order dated 7-9-1988 issued by the Senior Superintendent

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of RMS, Hyderabad Sorting Division, Hyderabad, imposing upon the applicant the punishment of removal from service. The order of punishment was passed consequent on the charges framed against the applicant by Charge Memo dated 1-10-1983. The charge against the applicant was that he alongwith the assistance of one T.Sreenivasa Rao, had unauthorisedly opened the Mail Bag and abstracted the contents of the registered bag. An Enquiry Officer was appointed and enquiry conducted under C.C.S.(C.C.A.) Rules, 1965. After submission of the Enquiry Officer's Report, the Disciplinary Authority viz., the Senior Superintendent of RMS, Hyderabad Sorting Division, passed an order dated 7-9-1988 imposing upon the applicant the penalty of removal from service. Alongwith the said order dated 7-9-1988, a copy of the Enquiry Officer's report dated 19-8-1988 were furnished to the applicant. The applicant thereafter preferred an appeal dt.16.1.1989 to the Director of Postal Services/ ^{(Respondent),} A.P.Northern Region, Hyderabad. The Appeal was rejected by the impugned order dated 31-10-1989 by the respondent. Thereafter the present application has been filed questioning the impugned order dated 31.10.1989 ~~by the respondent~~ raising various contentions.

2. On behalf of the respondents a counter has been filed denying the various contentions raised by the applicant in his application.

3. We have heard Shri S.Prabhakar, learned Counsel for the applicant, and Shri Naram Bhaskar Rao, learned Addl. Central Govt. Standing Counsel, on behalf of the respondents.

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5. Apart from the various other grounds raised by the applicant in his application, Shri S. Prabhakar, learned Counsel for the applicant, contends that no reasonable opportunity within the meaning of Article 311(2) of the Constitution was afforded to the applicant and that the punishment imposed upon the applicant pursuant to the order dated 31-10-1989 is contrary to the principles of natural justice. It is contended that after the inquiry by the Inquiry Officer and submission of his report, the disciplinary authority viz., the respondent ought to have furnished the applicant with a copy of the inquiry report before passing the final order of punishment. It is in this context that it is alleged that no reasonable opportunity was afforded and that non-furnishing of the Inquiry Officer's report is opposed to the principles of natural justice.

6. A perusal of the impugned order dated 31-10-1989 confirms that the copy of the inquiry report was not furnished prior to the disciplinary authority coming to a conclusion that the inquiry report should be accepted and that the punishment should be imposed.

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The enquiry report was annexed to the punishment order dated 31-10-'89. The question whether furnishing of the Enquiry Officer's report before the disciplinary authority passes the final order of punishment is ^{necessary &} ~~requirement of law~~ is concluded both by the decision of a Full Bench of this Tribunal in T.A.2 of 1986 (Premnath K.Sharma vs. Union of India) and subsequently by the Supreme Court in Union of India & others vs. Ramzan Khan case (1990 (4) S.C. 456 Judgements Today). It has been held by the Supreme Court in the latter decision as follows:-

15. Deletion of the second opportunity from the scheme of Art.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. Even though the second stage of the inquiry in Art.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 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.

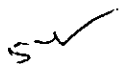
18. We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to 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. Applying the aforesaid decision of the Supreme Court it would follow that the impugned order dated 31-10-89 is illegal, and contrary to the principles of natural justice. It is accordingly quashed and set aside.

8. This order, passed by us will not, however, preclude the respondent (disciplinary authority) from proceeding with the enquiry from the stage of receipt of the enquiry officer's report. 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 the applicant a reasonable opportunity of representing against the enquiry report and only thereafter proceed with the enquiry. This observation made by us is not a direction to the respondent (disciplinary authority) to take further action on the basis of the enquiry report and this is a matter left entirely to the discretion of the disciplinary authority. The question as to how the period, from the date of removal from service till the date of the order of the Tribunal, and ^{the} subsequent period, in the event of the disciplinary proceedings being continued, will be determined by the competent authority in accordance with the rules applicable to Government servants in regard to whom



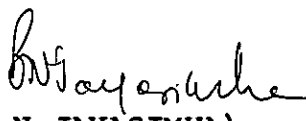


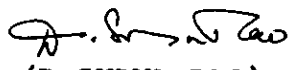
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an order of removal/dismissal/compulsory retirement from service has been set aside pursuant to orders of a Court of Law/Tribunal.

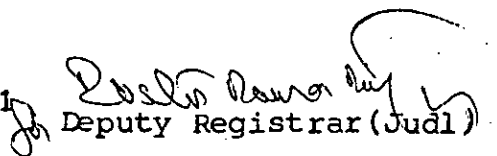
9. With the above directions, the application is allowed. The parties are directed to bear their own costs.

(Dictated in Open Court)


(B.N. JAYASIMHA)
VICE-CHAIRMAN


(D. SURYA RAO)
MEMBER (JUDICIAL)

Date: 15-2-1991


Deputy Registrar (Judl)

To

1. The Director of Postal Services,
A.P. Northern Region, Hyderabad-1.
2. Shri S. Prabhakar, Advocate, 6-1-320, Walker Town, Secunderabad.25
3. One ^{nsr} copy to Mr. N. Bhaskar Rao, Addl. CGSC. CAT. Hyd. Bench.
4. One spare copy.

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CHECKED BY

APPROVED BY

TYPED BY

COMPARED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR.B.N.JAYASIMHA : V.C.

AND

THE HON'BLE MR.D.SURYA RAO : M(J)

AND

THE HON'BLE MR.J.NARASIMHA MURTY:M(J)

AND

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

Dated: 15-2-1991.

~~ORDER~~ / JUDGMENT:

M.A./R.A. /C.A. NO.

in

T.A.No.

W.P.No.

O.A.No. 114/90

Admitted and Interim directions
issued.

Allowed ✓

Disposed of with direction

Dismissed

Dismissed as withdrawn

Dismissed for default

M.A. Ordered/Rejected 15/2/1991

No order as to costs.

