CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00113/2016

DATED THIS THE 14TH DAY OF DECEMBER, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C. V. SANKAR, MEMBER (A)

K. Haribabu
S/o K. Narayana,
Aged about 60 years,
Retd. Upper Division Clerk,
R/o No. 17/134, Ramaiah Colony,
Near Hussain Nagar,
4th Cross, Bellary – 583 101 .....Applicant

(By Advocate Shri K. Hanifa)

Vs.

1. The Disciplinary Authority Cum Director,
Central Soil and Water Conservation Research
And Training Institute,
No. 218, Kaulagarh Road,
Dehradun – 248 195 (Uttarakhand)

2. The Head,
Central Soil and Water Conservation Research
And Training Institute,
Cantonment,
Bellary – 583 104 (Karnataka) .....Respondents

(By Shri B.A. Chandrashekar, Counsel for the Respondents)

ORDER (ORAL)

DR. K.B. SURESH, MEMBER (J):

This is a matter in which on a mistaken belief that there is no visible challenge against the allegations raised in the course of the inquiry, applicant had been summarily imposed a punishment of compulsory retirement against Rule 15 sub clause (6) (A) 1 and 2 which we quote below:

> (6) (A) *Supply of copy of inquiry report to the accused Government servant before final orders are passed by the Disciplinary Authority. – Reference is invited to O.M. No. 11012/13/85-Estt. (A), dated the 26th June, 1989 (not printed), on the subject mentioned above wherein it has been prescribed that in all cases, where an inquiry has been held in accordance with the provisions of Rule 14 of the CCS (CCA) Rules, the Disciplinary Authority, if it is different from the Inquiring Authority, shall before making final order in the case, forward a copy of the inquiry report to the Government servant concerned requiring him to submit within 15 days, his representation, if any, on the report of the Inquiring Authority.*
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> *2. It was also stated that the said instructions will be reviewed after the final decision of the Supreme Court in the matter. The Supreme Court has decided the matter finally in its judgment, dated 1-10-1993, in the case of Managing Director (ECIL), Hyderabad v. B. Karunakar [JT 1993 (6) SC.I.]. It has been held by the Supreme Court that wherever the Service Rules contemplate an inquiry before a punishment is awarded and when the Inquiry Officer is not the Disciplinary Authority, the delinquent employee will have the right to receive the Inquiry Officer's report notwithstanding the nature of the punishment. Necessary amendment providing for supply of copy of the Inquiry Officer's report to the delinquent employee has been made in Rule 15 of the CCA (CCA) Rules, 1965, vide Notification No. 11012/4/94-Estt. (A), dated 3-5-1995 [sub-rules (1-A) and (1-B)]. All Disciplinary Authorities are, therefore, required to comply with the above-mentioned requirement without failure in all cases.*

2. The matter is also covered by the judgment of the Hon'ble Apex Court in Union of India and Others Vs. Mohd. Ramzan Khan reported in (1991) 1 SCC 588. We quote from the judgment of the Hon'ble Apex Court which had dealt with all the issues in relation to the matter:

“RANGANATH MISRA, C.J. - Special leave granted in special leave petitions. All the civil appeals by special leave are heard together.

2. The short point that falls for determination in this bunch of appeals is as to whether with the alteration of the provisions of Art. 311 (2) under the Forty-second Amendment of the Constitution doing away with the opportunity of showing cause against the proposed punishment, the delinquent has lost his right to be entitled to a copy of the report of enquiry in the disciplinary proceedings.

3. Sub-article (2) of Article 311 in the original Constitution read thus:

> *"311. (2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him;"*

The effect of this provision came to be considered by a Constitution Bench of this Court in Khem Chand v. Union of India. The learned Chief Justice traced the history of the growth of the service jurisprudence relating to security of the civil service in the country beginning from the Government of India Act of 1915 followed by Section 240 of the Government of India Act of 1935. This Court on that occasion also noticed the judgments of the Privy Council in the cases of R. Venkata Rao v. Secretary of State for India, High Commissioner for India v. I. M. Lall and the judgment of the Federal Court in Secretary of State for India v. I.M. Lall, and summed up the meaning of 'reasonable opportunity' thus: (SCR pp. 1096-97)

> *"The reasonable opportunity envisaged by the provision under consideration includes –*
>
> *(a) an opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;*
>
> *(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally.*
>
> *(c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposed to inflict one of the three punishments and communicates the same to the government servant.";*

4. The Fifteenth Amendment effective from October 6, 1963 brought about change in sub-article (2) which thereafter read as hereunder:

> *"311. (2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry."*

5. After the amendment this Court decided a series of cases wherein it indicated that a failure to furnish a copy of the report of the Inquiry Officer would result in violation of the guarantee of reasonable opportunity: State of Maharashtra v. Baishankar Avalram Joshi; Avtar Singh v. Inspector General.

6. A Constitution Bench in Union of India v. H.C. Goel proceeded to say: (SCR pp. 723-25)

> "*Article 311 consists of two sub-articles and their effect is no longer in doubt. The question about the safeguards provided to the public servants in the matter of their dismissal, removal or reduction in rank by the Constitutional provision contained in Article 311, has been examined by this court on several occasions. It is now well settled that a public servant who is entitled to the protection of Article 311 must get two opportunities to defend himself. He must have a clear notice of the charge which he is called upon to meet before the departmental enquiry commences, and after he gets such notice and is given the opportunity to offer his explanation, the enquiry must be conducted according to the rules and consistently with the requirements of natural justice. At the end of the enquiry, the enquiry officer appreciates the evidence, records his conclusions and submits his report to the Government concerned. That is the first stage of the enquiry, and this stage can validly begin only after charge has been served on the delinquent public servant.*
>
> *After the report is received by the Government, the Government is entitled to consider the report and the evidence led against the delinquent public servant. The Government may agree with the report or may differ, either wholly or partially, from the conclusions recorded in the report. If the report makes findings in favour of the public servant, and the Government agrees with the said findings, nothing more remains to be done, and the public servant who may have been suspended is entitled to reinstatement and consequential reliefs. If the report makes*

findings in favour of the public servant and the Government disagree with the said findings and holds that the charges framed against the public servant are prima facie proved, the Government should decide provisionally what punishment should be imposed on the public servant and proceed to issue a second notice against him in that behalf. If the enquiry officer makes findings, some of which are in favour of the public servant and some against him, the Government is entitled to consider the whole matter and if it holds that some or all the charges framed against the public servant are, in its opinion, prima facie established against him, then also the Government has to decide provisionally what punishment should be imposed on the public servant and give him notice accordingly. It would thus be seen that the object of the second notice is to enable the public servant to satisfy the Government on both the counts, one that he is innocent of the charges framed against him and the other that even if the charges are held proved against him, the punishment proposed to be inflicted upon him is unduly severe. This position under Article 311 of the Constitution is substantially similar to the position which governed the public servants under Section 240 of the Government of India Act, 1935."

7. Then came the Forty-second Amendment of the Constitution under which the sub-article (2) was substantially altered. As amended in 1976 the sub-article now reads:

"311. (2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed, after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed."

In terms, the omission of the words 'and where it is proposed, after such inquiry, to impose on him any other penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry as also the proviso clearly omit the second part of the inquiry as envisaged in Goel case and the concept of 'reasonable opportunity' is satisfied by the delinquent being informed of the charges and of being heard in respect thereof.

8. We may now refer to the rules relating to disciplinary inquiry against government servants. The Central Civil Services (Classification, Control and Appeal) Rules in force are of 1965. In the States they have

their own rules but the rules whether of the Centre or of the States have adopted a common pattern. In respect of major penalties the procedure in the Rules (see Rule 14) seems to be that the disciplinary authority may himself hold the inquiry into the charges or he may appoint an Inquiry Officer who would conduct the inquiry and submit the proceedings of enquiry to the disciplinary authority for being finalised. When the disciplinary authority himself inquires into the charges there is no occasion for submission of an inquiry report. The entire evidence – oral and documentary – along with submissions, if any, are available to him to proceed to arrive at final conclusions in the inquiry. Where, however, the disciplinary authority delegates the inquiry to another, such Inquiry Officer may furnish a report on the basis of the evidence recorded by him and in some cases the Inquiry Officer even recommends the punishment to be imposed. In cases where the Inquiry merely transmits the records of inquiry proceedings to the disciplinary authority there is indeed no distinction to be drawn between the inquiry conducted by the disciplinary authority himself or the inquiry officer. This is so on account of the fact that there is no further material added to the record at the time of transmission to the disciplinary authority.

9. Where, however, the Inquiry Officer furnishes a report with or without proposal of punishment the report of the Inquiry Officer does constitute an additional material which would be taken into account by the disciplinary authority in dealing with the matter. In cases where punishment is proposed there is an assessment of the material and a tentative conclusion is reached for consideration of the disciplinary authority and that action is one where the prejudicial material against the delinquent is all the more pronounced.

10. A three Judge bench of this Court in State of Gujarat v. R.G.Teredesai has indicated that the Inquiry Officer was under no obligation or duty to make any recommendations in the matter of punishment to be imposed on the government servant against whom the departmental inquiry is held and his function merely is to conduct the inquiry in accordance with law and to submit the record along with the findings or conclusions on the delinquent servant. But if the Inquiry Officer has also make recommendations in the matter of punishment, that is likely to affect the mind of the punishing authority with regard to penalty or punishment to be imposed on such officer which must be disclosed to the delinquent officer. Since such recommendation forms part of the record and constitutes appropriate material for consideration of the government, it would be essential that that material should not be withheld from him so that he could while showing cause against the proposed punishment make a proper representation. The entire object of supplying a copy of the report of the Inquiry Officer is to enable the delinquent officer to satisfy the punishing authority that he is innocent of the charges framed against him and that even if the charges are held to have been proved the punishment proposed to be inflicted is unduly severe. At p.254 of the reports Grover, J. speaking for this Court stated:

(SCC p.131, para 5)

> *"The requirement of a reasonable opportunity, therefore, would not be satisfied unless the entire report of the Enquiry Officer including his views in the matter of punishment are disclosed to the delinquent servant."*

Another three Judge Bench decision of this court is that of Uttar Pradesh Government v. Sabir Hussain where this Court held: (SCC p.708, para 16)

> *"In view of these stark facts the High Court was right in holding that the plaintiff (respondents) was not given a reasonable opportunity to show cause against the action proposed to be taken against him and that the non-supply of the copies of the material documents had caused serious prejudice to him in making a proper representation."*

11. The question which has now to be answered is whether the Forty-second Amendment has brought about any change in the position in the matter of supply of a copy of the report and the effect of non-supply thereof on the punishment imposed.

12. We have already noticed the position that the Forty-second Amendment has deleted the second stage of the inquiry which would commence with the service of a notice proposing one of the three punishments mentioned in Article 311(1) and the delinquent officer would represent against the same and on the basis of such representation and/or oral hearing granted the disciplinary authority decides about the punishment. Deletion of this part from the concept of reasonable opportunity in Article 311(2), in our opinion, does not bring about any material change in regard to requiring the copy of the report to be provided to the delinquent.

13. Several pronouncement of this Court dealing with Article 311(2) of the Constitution have laid down the test of natural justice in the matter of meeting the charges. This Court on one occasion has stated that two phases of the inquiry contemplated under Article 311(2) prior to the Forty-second Amendment were judicial. That perhaps was a little stretching the position. Even if it does not become a judicial proceeding, there can be no dispute that it is a quasi-judicial one. There is a charge and a denial followed by an inquiry at which evidence is led and assessment of the material before conclusion is reached. These facets do make the matter quasi-judicial and attract the principles of natural justice. As this Court rightly pointed out in the Gujarat case, the disciplinary authority is very often influenced by the conclusions of the Inquiry Officer and even by the recommendations relating to the nature of punishment to be inflicted. With the Forty-second Amendment, the delinquent officer is not associated with the disciplinary inquiry beyond the recording of evidence and the submissions made on the basis of the material to assist the Inquiry Officer to come to his conclusions. In case his conclusions are kept away from the delinquent officer and the Inquiry Officer submits his conclusions with or without recommendation as to punishment, the delinquent is precluded from knowing the contents

thereof although such material is used against him by the disciplinary authority. The report is an adverse material if the Inquiry Officer records a finding of guilt and proposes a punishment so far as the delinquent is concerned. In a quasi-judicial matter, if the delinquent is being deprived of knowledge of the material against him though the same is made available to the punishing authority in the matter of reaching his conclusion, rules of natural justice would be affected. Prof. Wade has pointed out:

> *"The concept of natural justice has existed for many centuries and it has crystallised into two rules: that no man should be judge in his own cause; and that no man should suffer without first being given a fair hearing… They (the courts) have been developing and extending the principles of natural justice so as to build up a kind of code of fair administrative procedure, to be obeyed by authorities of all kinds. They have done this once again, by assuming that Parliament always intends powers to be exercised fairly."*

14. This Court in Mazharul Islam Hashmi v. State of U.P. pointed out:

> *"Every person must know what he is to meet and he must have opportunity of meeting that case. The legislature, however, can exclude operation of these principles expressly or implicitly. But in the absence of any such exclusion, the principle of natural justice will have to be proved."*

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. Even though 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 Forty-second 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.

16. At the hearing some argument had been advanced on the basis of Article 14 of the Constitution, namely, that in one set of cases arising

out of disciplinary proceedings furnishing of the copy of the inquiry report would be insisted upon while in the other it would not be. This argument has no foundation inasmuch as where the disciplinary authority is the Inquiry Officer there is no report. He becomes the first assessing authority to consider the evidence directly for finding out whether the delinquent is guilty and liable to be punished. Even otherwise, the inquiries which are directly handled by the disciplinary authority and those which are allowed to be handled by the Inquiry Officer can easily be classified into two separate groups – one, where there is no inquiry report on account of the fact that the disciplinary authority is the Inquiry Officer and inquiries where there is a report on account of the fact that an officer other than the disciplinary authority has been constituted as the Inquiry Officer. That itself would be a reasonable classification keeping away the application of Article 14 of the Constitution.

17. There have been several decisions in different High Courts which, following the Forty-second Amendment, have taken the view that it is no longer necessary to furnish a copy of the inquiry report to delinquent officers. Even on some occasions this Court has taken that view. Since we have reached a different conclusion the judgments in the different High Courts taking the contrary view must be taken to be no longer laying down good law. We have not been shown any decision of a co-ordinate or a larger bench of this Court taking this view. Therefore, the conclusion to the contrary reached by any two Judge bench in this Court will also no longer be taken to be laying down good law, but this shall have prospective application and no punishment imposed shall be open to challenge on this ground.

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 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.

19. On the basis of this conclusion, the appeals are dismissed and the disciplinary action in every case is set aside. There shall be no order for costs. We would clarify that this decision may not preclude the disciplinary authority from revising the proceeding and continuing with it in accordance with law from the stage of supply of the inquiry report in cases where dismissal or removal was the punishment."

3. Shri Hanifa, learned counsel for the applicant, relies on several other judgments of this Tribunal also but then since the Hon'ble Apex Court has

given the final word there is no reason to go beyond it. Therefore, the compulsory retirement order is hereby quashed. It will be as if applicant is still continuing in service and eligible for the service as he had been continuing till now but the respondents is granted liberty to issue a copy of the Inquiry Report to him and upon receipt of which within two weeks' time the applicant is to give his defence and thereupon the Disciplinary Authority can pass appropriate order as he sees fit.

4. The learned counsel for the respondents submits that the punishment was in 2012, the applicant came to the Court only in 2016 and therefore it is hit by delay. But then the Hon'ble Apex Court in several cases has held that for a reason of poverty and that too imposed through sudden losing of employment the delay concerned need not be taken into account but then we hold that for the benefits applicant will be eligible only from the date of filing of the OA and that too at the rate of 50% of the emoluments due to him in the circumstances.

5. We will now direct the concerned Disciplinary Authority to issue the applicant with a copy of the Inquiry Report to which the applicant will file a defence within two weeks and within the next two weeks the Disciplinary Authority will pass an appropriate order as is fit in the circumstances of the case.

6. The OA is therefore disposed off with the above directions. No order as to costs.

(C. V. SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No.170/00113/2016

Annexure-A1: Copy of the complaint dated 01.03.2011
Annexure-A2: Copy of the order dated 15.11.2011
Annexure-A3: Copy of the memorandum dated 30.04.2012
Annexure-A4: Copy of the defence statement of the applicant dated 14.05.2012
Annexure-A5: Copy of the order dated 09.07.2012
Annexure-A6: Copy of the order dated 09.07.2012
Annexure-A7: Copy of the punishment order dated 29.11.2012

Annexures with reply statement

Annexure-R1: Copy of the memorandum dated 30.04.2012
Annexure-R2: Copy of the office order dated 03.02.2012
Annexure-R3: Copy of the relevant papers of examination of the applicant by the Inquiry Officer on 29.08.2012

Annexures referred in MA

Annexure-A7: Copy of the Medical Certificate

Annexure-A8: Copy of the judgment dated 24.08.2017 in O.A. No. 113/2016

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