

R. K. Vashisht

Vs

Union of India and Others

Civil Appeal No. 3161 of 1991

(CJI Ranganath Misra, S. Mohan, N. M. Kasliwal JJ)

04.12.1991

ORDER

1. This appeal is directed against the judgment and order of the Central Administrative Tribunal, Principal Bench, New Delhi, dated October 29, 1990.
2. The appellant was a member of the Indian Police Service of the Gujarat Cadre. While he was serving as a District Superintendent of Police, Bulsar, a number of charges were framed against him. The Enquiring Authority constituted under Rule 8(2) of the All India Services (Discipline and Appeal) Rules, 1969, held enquiry into the charges levelled against the appellant. It appears that due to certain reasons the Enquiring Authority was reconstituted by orders dated February 6, 1973, December 11, 1973 and May 7, 1975. The Enquiring Authority submitted its report to the Disciplinary Authority holding that some of the charges were proved against the appellant. On the basis of this report of the Enquiring Authority, the State Government recommended that the appellant be dismissed from service which was received by Union Government on May 29, 1979. On the recommendation of the State Government the Union Government was in a dilemma as to whether a second show-cause notice should be issued to the appellant or not. Ultimately, the government decided that it was not necessary to serve a second show-cause notice in view of the amendment of Article 311(2) of the Constitution by the Forty-second Amendment. Ultimately, the President of India, who is the appointing authority, issued order on August 14, 1987 dismissing the appellant from service. The appellant thereupon challenged the order of dismissal before Central Administrative Tribunal on a number of grounds. The Tribunal dismissed the appellant's application by the impugned order.
3. The appellant had raised a number of grounds in assailing the order of dismissal before the Central Administrative Tribunal. A copy of the report of the Enquiring Authority was not supplied to the appellant before dismissal order was passed as a result of which the appellant could not make representation to the disciplinary authority. The Tribunal rejected this contention on the ground that since the report submitted by the Enquiring Authority had been despatched by registered post at the appellant's address there was a presumption of its service, therefore, the appellant's grievance could not be accepted. The Tribunal proceeded on the assumption that the appellant had been served with a copy of the enquiry report. Same contention is raised by the appellant before this Court.
4. After hearing learned counsel for the parties and on perusal of the record we find merit in the appellant's contention. The report of the Enquiring Authority was sent to the appellant at his Ahmedabad address by the Ministry of Home Affairs of the Union Government under a covering letter dated August 6, 1987 under Registered Acknowledgment Due, and the same was received back in the Ministry on August 24, 1987 with an endorsement that the appellant was not found at

the address. These facts are clear from Annexure C. It is evident that the enquiry report was not received by the appellant till August 24, 1987, but meanwhile the order of dismissal was passed on August 14, 1987. The order of dismissal was thus passed before the postal cover was received back in the Ministry. In these circumstances, it is not possible to uphold the finding of the Central Administrative Tribunal. No doubt when a registered cover with acknowledgment due is served on the addressee a presumption would arise about its service but that presumption is rebuttable. In the instance case, Annexure C itself shows that the postal cover was returned back and the same was received back in the Ministry on August 24, 1987. There is no material on record to show that the registered cover was tendered to the appellant before August 14 or that he deliberately avoided service of the letter. Admittedly, the postal cover could not be served on the appellant and he has stated on oath that the registered cover was never tendered to him. In these circumstances, no presumption could ever arise. It, therefore, follows that the copy of the enquiry report was not supplied to the appellant prior to the imposition of penalty of dismissal.

5. In *Union of India v. Mohd. Ramzan Khan* [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505], this Court held that even after the amendment of Article 311(2) of the Constitution, it is necessary to supply copy of the report of the Enquiry Officer to the delinquent. The Court further held that if the Enquiry Officer records findings against the delinquent officer, and the delinquent officer is deprived of the material used against him, though the same is made available to the punishing authority in reaching the conclusion, the rules of natural justice would be contravened. In the instant case the appellant had made a request for the supply of the enquiry report but the same was not supplied to him prior to the issue of order of dismissal, therefore the order of dismissal is vitiated.

6. In view of the above discussion, we allow the appeal, set aside the order of the Tribunal and also the order of dismissal. The appellant is entitled to all consequential benefits. Even though we are setting aside the order of dismissal, but this will not preclude the disciplinary authority from reviving the proceedings and continuing the same in accordance with law from the stage of supply of enquiry report.

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