

(1993) 06 MAD CK 0042

In the Madras High Court

Case No : Writ Petition No. 7496 of 1989

K. Manickam

APPELLANT

Vs

Bharat Heavy Electricals Ltd. and Others

RESPONDENT

Date of Decision : 30-06-1993

Acts Referred:

Bharat Heavy Electricals Conduct Discipline and Appeal Rules, 1975 — Rule 32

Citation : (1994) 1 LLJ 508

Hon'ble Judges : Bakthavatsalam, J

Bench : Single Bench

Advocate : N.R. Chandran, for M.P. Chandrasekaran, for the Appellant; B.T. Seshadri, for the Respondent

Final Decision : Allowed

Judgement

Baktha Vatsalam, J.—Four writ petitions have been filed by the same delinquent officer, a Manager in Bharat Heavy Electricals Ltd. (hereinafter referred to as "BHEL" in short), one against the imposition of penalty, one petition praying for promotion as Senior Manager, one petition claiming as Deputy General Manager and petition to declare the promotion of one Parameswaran, junior to the petitioner as null and void. In so far as the petition in W.P.No. 7496 of 1989 is concerned, the prayer is to the following effect:

"....to call for the records relating to the penalty advice of the second respondent bearing No. BP:P2:2068338 dated November 3, 1988 as confirmed by the order of the third respondent bearing No. BP:P2-2068338 dated February 17, 1989 and quash the same by issue of writ of certiorarified mandamus and consequently restore the petitioner to the position of Senior Manager (Promotion post) on and from June 25, 1987 and admit him to the benefit thereon..."

2. Mr. N.R. Chandran, the learned senior counsel, contended that the enquiry report was not furnished to the petitioner and that it vitiates the order of the second respondent. The other contention raised by the learned senior counsel for

the petitioner was that the enquiry report was referred to the Vigilance Commission, that the Vigilance Commission tendered advice, that the report of the Vigilance Commission seems to be in favour of the petitioner and as such a copy of the Vigilance Commission's report ought to have been given to the petitioner. According to the learned senior counsel for the petitioner, the failure to give the vigilance commission's report to the petitioner vitiates the order of punishment. The learned senior counsel further contended that the petitioner was not given an opportunity of having an assistance during the enquiry, when the case was presented by the Inspector of Vigilance, on behalf of the management. The last contention raised by the learned senior counsel is that the order of the appellate authority is cryptic, that no reasons are given and that the appellate Authority had not applied its mind while passing such an order, under the Rules governing the service of the petitioner.

3. Mr. B.T. Seshadri, the learned counsel appearing for the respondents, stoutly opposed the contentions raised by Mr. N.R. Chandran, the learned senior counsel appearing for the petitioner.

4. I have given my careful consideration to the arguments of the learned counsel on either side and also have gone through the file submitted by the respondents. With regard to the first contention the learned senior counsel appearing for the petitioner relies upon the decision in *J.Vincent v. Tamilnadu Electricity Board Rep.* by its Chairman and Anr. 1994-I-LLJ-220 wherein Janarthanam J. has distinguished the case in *Union of India v. Mohamed Ramzan Khan* (1991)-I-LLJ-29. Learned senior counsel also relies upon the decision in *Trd Nair & G.N. Kurup v. Union of India* (1993) 1 LLJ 868 with regard to the interpretation of the decision in *Union of India v. Mohamed Ramzan Khan* (supra) as to how far the orders passed prior to the pronouncement of the judgment of the Supreme Court in the case cited (supra), wherein the Supreme Court has stated in paragraph 17 that no punishment imposed shall be open to challenge on the ground that the enquiry report was not given. The learned senior counsel also refers to the judgment of the Division Bench of this Court wherein the Division Bench has held that the principle of natural justice requires that the copy of the enquiry report should be given to the delinquent officer. The Supreme Court in *Union of India v. Mohamed Ramzan Khan* (supra), was concerned with whether in a disciplinary proceeding, under Article 311 of the Constitution of India, a delinquent officer is entitled to have a copy of the enquiry report and whether Forty-Second amendment will stand and what was its position. The Supreme Court, by three Judges' Bench, in the above mentioned case has held that the Forty-Second Amendment has not brought about any change in its position. This judgment is dated November 20, 1990. The learned senior counsel for the petitioner contends that the principle of natural justice requires that the enquiry report has got to be given to the delinquent officer. In the abovementioned decision in *Union of India v. Mohd. Ramzan Khan* (supra) (paragraph 17) the Supreme Court has held as follows: (p 34-35)

"....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 judgment 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 coordinate 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...."

This paragraph 17, mentioned hereinabove, came up for consideration before two learned Judges of this Court, separately. M. Srinivasan, J. in *M. Kasi v. Indian Bank* (1993)-II-LJJ-911

"....It is rightly pointed out by learned counsel for the respondents that the Supreme Court has in that decision clearly stated that the law laid down thereby shall have prospective application only and no punishment imposed already shall be open to challenge on the ground that a copy of the enquiry report was not furnished to the delinquent officer. In para 17 at page 34 the Court has observed thus:

"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...."

The position is reiterated in *S.P. Viswanathan v. Union of India and Ors.*, 1992-II-LLJ-32, in which the Supreme Court has held that the decision in *Mohamed Ramzan Khan* case (*supra*), is given a prospective effect and it will not affect the orders passed prior to the date of rendering of that judgment viz. 29 November 1990....."

Further, *Janarthanam J. in J. Vincent v. Tamilnadu Electricity Board* Rep. by its Chairman and Anr. (*supra*) has held as follows:

"Learned counsel for the respondents would however submit that the ratio, as laid down by the Supreme Court in the aforesaid decision, is not at all "....applicable to the facts of the instant case, inasmuch as the punishment on the delinquent-petitioner had been imposed long before the judgment of the

Supreme Court, which came into existence only on November 20, 1990. No doubt this argument of learned counsel for the respondents is built upon the last portion of the sentence in paragraph 17, namely, "....but this shall have prospective application and no punishment imposed shall be open to challenge on this ground." To this interpretation, as put by learned Counsel for the respondents on the aforesaid portion of the judgment of the Supreme Court, I am unable to affix my seal of approval. That perhaps Their Lordships of the Supreme Court wanted to convey by the phraseology employed therein was that the punishment imposed on a delinquent employee once and for all concluded and set at rest is not liable to challenge by reference to writ proceedings subsequent to their decision. If such an arrangement is thrown open to challenge, it is nothing"but opening of a Pandora's box, thereby making no end to litigations.

Since the petitioner had been removed from service by order dated January 20, 1984 with retrospective effect from December 28, 1982 for and the same thing had been agitated further by resortment to the present action, it cannot be stated that the ratio of the decision of the Supreme Court is not at all applicable..."

This order is dated March 8, 1993. In that order, the learned Judge also has taken note of the decision of the Supreme Court in *Union of India v. Mohamed Ramzan Khan* (supra). So, on this issue, there are two views as to whether a delinquent officer has to be furnished with an enquiry report or not. When I pointed out this to the learned senior counsel appearing for the petitioner, he submitted that this Court can decide the other points leaving out this question as it is.

5. Coming to the next contention on which heavy reliance is placed by the learned counsel for the petitioner that the order of the appellate Authority is cryptic and that no reasons have been given therein, seems to be of some substance. I have gone through the materials placed before the respondents and also the order of the appellate Authority. I agree with the learned senior counsel for the petitioner that the order of the appellate Authority has got to be set aside on the ground that no reasons are given by the respondents. Learned senior counsel for the petitioner referring to the decision in *Ramchander v. Union of India* (1986)-II-LLJ-334 contends that R. 32 of the Conduct, Discipline and Appeal Rules, 1975 is in pari materia with the Rules with which the Supreme Court was concerned in that case and that since no reasons have been given, the impugned order in this writ petition also has got to be set aside. He also relies upon the decision in *G. Srinivasan v. Government of Tamil Nadu* (Labour Industrial Cases - 1984 -page 382) for the same proposition. However, Mr. B.T. Seshadri, the learned counsel appearing for the respondents strenuously contends that it is not necessary to give reasons, when the appellate Authority affirms the order of a disciplinary Authority. He relies upon the decision of the Supreme Court in *Tara Chand v. Delhi Municipality* (1977)-I-LLJ-331. Rule 32 of

the Conduct, Discipline and Appeal Rules, 1975 reads as follows:

"(i) An employee may appeal against an order imposing upon him any of the penalties specified in Rule 23 or against the order of suspension referred to in Rule 20. The appeal shall lie to the authority specified in the Schedule,

(ii) An appeal shall be preferred within one month from the date of communication of the order appealed against. The appeal shall be addressed to the Appellate Authority specified in the schedule and submitted to the authority within 15 days. The authority whose order is appealed against shall forward the appeal together with its comments and the records of the case to the appellate authority who shall consider whether the findings are justified or whether the penalty is excessive or inadequate and pass appropriate orders within three months of the date of appeal. The appellate authority may pass orders confirming, enhancing, reducing".... or setting aside the penalty or remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.

Provided that if the enhanced penalty which the appellate authority proposes to impose is a major penalty specified in Clauses (e), (f) and (g) of Rule 23 and an enquiry as provided in Rule 25 has not already been held in the case, the appellate authority shall direct that such an enquiry be held in accordance with the provisions of Rule 25 and thereafter consider the record of the inquiry and pass such orders as it may deem proper. If the appellate authority decides to enhance the punishment but an enquiry has already been held as provided in Rule 25, the appellate authority shall give a show cause notice to the employee as to why the enhanced penalty should not be imposed upon him. The appellate authority shall pass final order after taking into account the representation, if any submitted by the employee..."

A reading of Rule 32, mentioned above, clearly states that Sub-rule (ii) of Rule 32 cast upon a duty on the appellate Authority to see whether the findings are justified or whether the penalty is excessive or inadequate and pass appropriate orders. So in my view, a reading of Rule 32 casts upon a duty on the appellate Authority to go into the matter in detail and the appellate Authority cannot pass a non-speaking order like that of the impugned order herein. Recently the Supreme Court had an occasion to consider as to whether reasons must be recorded by an administrative authority in *S.N. Mukherjee Vs. Union of India*, . In that case, the Supreme Court took note of the fact that in view of the expanding horizon of the principles of natural justice, the requirements to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The only limitation the Supreme Court has given is except in cases where requirement is dispensed with expressly or by necessary implication. In that case, the Supreme Court has observed as follows: (at p. 1984)

".....The recording of reasons by an administrative authority serves a salutary

purpose, namely, it excludes chances of arbitrariness"....and assures a degree of fairness in the process of decision - making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. Therefore, the requirement that reasons must be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It is however not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or".....revisional authority agrees with the reasons contained in the order under challenge...."

The above mentioned case arose under the provisions of Army Act and the order therein had been passed by General Court Martial. On the facts of that case, the Supreme Court has held that no reasons had been stated by the appellate Authority. But, on the facts of this case and on reading of the Rules, it will be seen that the principle laid down by the Supreme Court has got to be applied and the appellate Authority has to state reasons for passing such an order. This view of mine is in consonance with the view taken by the Supreme Court in Board of Trustees, Port of Bombay v. Dilipkumar (1983)-1-LLJ-1 and also by the Supreme Court in Ram Chander v. Union of India (supra). So I am of the view that on the ground that the appellate Authority has not stated reasons while disposing of the appeal for arriving at such a conclusion, this writ petition has got to be allowed.

6. Though Mr. N.R. Chandran, the learned senior counsel raised the contentions that the Vigilance Commission's report has not been furnished and that an opportunity to have an assistance for defence was not given, since I have decided the issue on the ground that the appellate Authority has not applied its mind properly in arriving at the conclusion and had not given reasons. I think that it is not necessary to go into the questions raised by the learned senior counsel for the petitioner at this stage.

7. In the result, the order of the appellate Authority dated February 17, 1989 is set aside, the writ petition is allowed, the matter is remitted back to the appellate Authority and the Appellate Authority is directed to consider the appeal afresh and pass appropriate orders, having in mind the principle laid down by the Supreme Court in Ram Chander v. Union of India and Ors., (supra) and in S.N. Mukerjee v. Union of India (supra). The appellate Authority shall pass orders, as stated above, within three months from to-day. Mr. N.R. Chandran, the learned senior counsel for the petitioner submits that the petitioner may be permitted to file additional grounds before the appellate Authority and also a personal hearing

to be given to the petitioner. I do not think that Mr. B.T. Seshadri learned counsel appearing for the respondents can possibly have any serious objection to follow the principles of natural justice when the appellate Authority-respondent is to decide about the impending of punishment on the petitioner. With these directions, the writ petition shall stand allowed. However, there will be no order as to costs.