(1992) 03 CAL CK 0002

Calcutta High Court

Case No: F.M.A.T. No. 2488 of 1991

Industrial Security Force and Others		APPELLANT
	Vs	
Bhopal Singh and Another		RESPONDENT

Date of Decision: March 12, 1992

Acts Referred:

- Constitution of India, 1950 - Article 311(2)

Citation: 96 CWN 627

Hon'ble Judges: N.P. Singh, C.J; Tarun Chatterjee, J

Bench: Division Bench

Advocate: B. Ghosal and Dipak Kumar Mukherjee, for the Appellant; Madan Mallick and Benay Rej, for the Respondent

Final Decision: Dismissed

Judgement

Nagendra Prasad Singh, Chief Justice

1. This appeal has been filed on behalf of the Commandant, Central Industrial Security Force and others for setting aside a judgment passed by a learned Judge of this Court on the writ application filed on behalf of the writ petitioner-respondent (hereinafter referred to as "the respondent"). The respondent had been appointed as a Security Guard by the Commandant, Central Industrial Security Force and while working as such, a departmental proceeding was initiated against him. An enquiry was held by an Inquiry Officer who submitted his report on 16.3.1982 saying that charges levelled against the respondent had been established. On the basis of that enquiry report the Disciplinary Authority passed an order of dismissal on 16.6.1982 in accordance with Rule 29-A of Central Industrial Security Force Rules, 1969 (hereinafter referred to as "the Rules").

2. Thereafter the respondent filed an appeal before the competent authority and later a revision application, which were dismissed respectively on 21.12.82 and 20th

July 1983. Thereafter the writ application aforesaid was filed before this Court on 17.4.84. A learned Judge of this Court on 8th July 1991 allowed the said writ application in part and a direction was given to serve a copy of the enquiry report on the respondent and thereafter to proceed in accordance with law in view of a recent judgment of the Supreme Court in the case of Union of India and others Vs. Mohd. Ramzan Khan,

3. In the aforesaid case of Union of India and Others vs. Mohd. Ramzan Khan it has been held that even after deletion of the second opportunity from the scheme of Article 311(2) of the Constitution, a copy of the enquiry report has to be served on the delinquent so that he can make a representation on well-known rule of principles of natural justice. In that connection it has been pointed out:

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 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 any change in this position.

4. There is no dispute in the facts of the present case that before the order of removal was passed against the respondent the copy of the enquiry report was not served on him.

5. The learned counsel appearing for the appellants urged that ratio decidendi of the Judgment aforesaid shall not be applicable to the facts of the present case because the requirements of service of a copy of the enquiry report before an order of dismissal or removal Is passed has been directed to be made applicable prospectively. As such the principles laid down in the judgment of Union of India and Others vs. Mohd. Ramzan Khan (supra) shall not be applicable to cases where orders of removal or dismissal have been passed before the date of the judgment in

that case. In this contention reference was made to the following paragraph of the judgment:

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 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.

(emphasis added)

6. As a first impression this argument appears to be attractive. In many cases the Supreme Court, while declaring any provision of the Act or Rule as ultra vires, has at the same time directed that any action taken before such judgment shall not be invalid and it shall be applicable prospectively. But from para 19 of that very judgment of the Supreme Court it appears that having held that the requirement to serve a copy of the inquiry report before order of dismissal is passed shall be prospective in application and no punishment imposed shall be open to challenge on that ground, the appeals which were pending before the Supreme Court since 1985-86 were allowed saying :

On the basis of this conclusion, the appeals are allowed 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.

7. If the law which has been declared by the judgment in question, was to operate prospectively and was not to invalidate the orders of removal and dismissal which had been passed against the delinquents concerned on dates prior to the date of the aforesaid judgment of the Supreme Court, there was no occasion to quash the orders of removal and dismissal by allowing the appeals in question. According to me, it is not possible to hold that the law declared by the Supreme Court in respect of furnishing an inquiry report to a delinquent before an order of removal or dismissal is passed shall not be applicable to orders of removal or dismissal which have been challenged and are pending consideration in appeals before authorities or before different High Courts or Supreme Court and which have not attained finality. In other words, the observation of the Supreme Court in the aforesaid judgment that the law laid down shall have prospective application and no punishment imposed shall be open to challenge on this, ground, according to me,

refers to such punishment imposed which had been challenged before a court of law, but by disposal of the concerned writ application, or an appeal arising thereform has attained finality. But that principle will apply to an order which has been challenged in the writ application, or in the appeal which is pending before the High Court or the Supreme Court. In the present case although the order of removal was passed against the respondent as early as on 16.6.82, the respondent has been pursuing his remedy. In this background can it be said that benefit of the judgment of the Supreme Court should not be extended to the respondent although he has challenged the legality of the said order of removal at different forums, and before his writ application could be disposed of, the Supreme Court delivered the judgment aforesaid.

8. It was then submitted that as the statutory rule framed in exercise of power conferred by Section 72 of the Central Industrial Security Force Act, 1968 prescribes a procedure for imposing major penalties including removal from service, the principle enunciated by the Supreme Court in the judgment referred to above should not be made applicable in case of the respondent who is governed by those statutory rules. In this connection reference was made to Rule 34(10) which is as follows : -

(10)(i) If the disciplinary authority, having regard to its findings on the charges, is of the opinion that any of the penalties specified in Clauses (a) to (h) or Rule 31 should be imposed, it shall pass appropriate orders in the case.

(ii) If it is of the opinion that any of the penalties specified in Clauses (a) to (d) of rule 31 should be imposed, such penalty may be imposed on the basis of evidence adduced during inquiry and it shall not be necessary to give the member of the Force any opportunity of making representation on the penalty proposed.

(emphasis added)

9. It may be pointed out that Rule 34(10)(ii) which envisages that it shall not be necessary to give the member of the Force any opportunity of making representation on the penalty proposed, virtually reproduces the last part of the first proviso to Article 311(2) of the Constitution which was introduced by Constitution Forty-Second Amendment Act, 1976. The relevant Part of Article 311(2) is as follows:

No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry 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 imposed.

(emphasis added)

10. In the case of Union of India (UOI) Vs. Col. J.N. Sinha and Another, it was said as follows :

As observed by this Court in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, "the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law but supplement it". It is true if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power.

11. Again in the well-known judgment of Union of India and Another Vs. Tulsiram Patel and Others, out of a Bench of five Judges, four Judges expressed the view on the question as to whether the principle of natural justice can be excluded, by a statute or a rule as follows :

Not only, therefore, can the principles of natural justice be modified but in exceptional cases they can even be excluded. There are well-defined exceptions to the memo judex in cause sua rule as also to the audi alteram partem rule. The memo judex in cause sua rule is subject to the doctrine of necessity and yields to it as pointed out by this Court in J. Mohapatra and Co. and Another Vs. State of Orissa and Another, : J. Mohapatra and Co. and Another Vs. State of Orissa and Another, So far as the audi alteram partem rule is concerned, both in England and in India. It is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct the taking of promt action, such a right can be excluded. This right can also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion; nor can the audi alteram partem rule be invoked if importing it would have the effect of paralysing the administrative process or where the need for promptitude or the urgency of taking action so, demands, as pointed out in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, If legislation and the necessities of a situation can exclude the principles of natural justice including the audi alteram partem rule, a fortior so can a provision of the Constitution, for a Constitutional provision has a far greater and all-pervading sancity than a statutory

provision.

12. No doubt it can be urged that when the first proviso to Article 311(2) of the Constitution itself says that it shall not be necessary to give such person any opportunity of making representation on penalty imposed, which has also been incorporated in the statutory rule 34(10(ii) referred to above, the principle laid down by the Supreme Court in the case of Union of India and Others vs. Mohd. Ramzan Khan (supra) should not have been made applicable in the facts and circumstances of the present case. But from paragraph 15 of the judgment in the case of Union of India and Others vs. Ramzan Khan, quoted above, it shall appear that the Supreme Court took note of deletion of the second opportunity from the scheme of Article 311(2) of the Constitution and held that in spite of deletion of the said requirement a copy of the enquiry report has to be served on the delinquent before an order of removal or dismissal is passed against him on principle of natural justice. In that very paragraph it has been said:

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.

13. It may be pointed out that in that case the orders of removal in different appeals appear to have been passed in exercise of the powers conferred by the Central Civil Services (Classification, Control and Appeal) Rules which are in force since 1965. In the judgment there is a specific reference to Rule 14 which prescribes the procedure for initiation of the disciplinary proceeding. It is not very clear from the judgment whether the attention of the Court was drawn to Rule 15(4) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 which is as follows :

15(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed:

(emphasis added)

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before

making an order imposing any such penalty on the Government servant.

14. From reference to Rule 15(4) it appears that last part of Rule 15(4) is identical to the last part of first proviso to Article 311(2) of the Constitution and the last part of Rule 34(10(11) with which we are concerned in this case. Although Rule 15(4) has not been mentioned in the judgment of the Supreme Court in the case of Union of India and others vs. Mohd. Ramzan Khan aforesaid, but it has to be presumed that in spite of Rule 15(4) being there in the Central Civil Services (Classification, Control and Appeall Rules, 1965, it was held that before an order of removal or dismissal is passed against a Government servant, a copy of the inquiry report has to be furnished to such Government servant to enable him to file representation against the conclusion of the Inquiry Officer holding that the charges or some of the charges are established.

15. The facts of the present case are no way different. On the basis of Rule 34(10)(ii) of the Rules, now it is difficult for this Court to hold that requirement to furnish a copy of the inquiry report to enable the respondent to make representation against the conclusion of the Inquiry Officer has been taken away. In such a situation it has to be held that in spite of there being a statutory Rule saying that it shall not be necessary to give the member of the Force any opportunity of making representation on the penalty proposed, in view of the aforesaid judgment of the Supreme Court it was obligatory on the part of the disciplinary authority to furnish a copy of the inquiry report to the respondent giving him an opportunity to make representation against the conclusion arrived at by the Inquiry Officer before an order of removal could have been passed against him. Accordingly, the appeal is dismissed. However, in the circumstances of the case there will be no order as to costs.

Tarun Chatterjee, J.

I agree.