

PETITIONER:
UNION OF INDIA AND ORS.

Vs.

RESPONDENT:
MOHD. RAMZAN KHAN

DATE OF JUDGMENT 20/11/1990

BENCH:
MISRA, RANGNATH (CJ)
BENCH:
MISRA, RANGNATH (CJ)
SAWANT, P.B.
RAMASWAMY, K.

CITATION:
1991 AIR 471 1990 SCR Supl. (3) 248
1991 SCC (1) 588 JT 1990 (4) 456
1990 SCALE (2) 1094
CITATOR INFO :
R 1992 SC2219 (139)

ACT:

Constitution of India, 1950--Article 311(2)--Deletion of second notice proposing punishments mentioned in Article 311(2), by the Forty-Second Amendment--Whether delinquent entitled to copy of inquiry report before imposing punishment--Non-supply of report--Whether violates rules of natural justice.

Constitution of India, 1950--Articles 14, 311--Supply of inquiry report in the case of the inquiry officer not being the disciplinary authority and non-supply of the report in the case of the inquiry officer being the disciplinary authority--Whether Article 14 attracted.

HEADNOTE:

In the civil appeals by special leave, the short point for determination was whether with the alteration of the provisions of Article 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 no right to be entitled to a copy of the report of inquiry in the disciplinary proceedings.

Dismissing the appeals, this Court,

HELD: 1. 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 Art. 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 Art. 311(2) does not bring about any material change in regard to requiring the copy of the report to be provided to the delinquent. [255H-256C]

2. Deletion of the second opportunity from the scheme of Art. 311(2) has nothing to do with providing of a copy of the report to the delinquent in the matter of making his

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in Art. 311(2) has been abolished by amend-

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ment, 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. [257C-F]

3. 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. 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. [257E-H]

4. 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. [258A-C]

5. 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. [258E-G]

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Venkata Rao v. Secretary of State for India, 64 IA 55; High Commis-

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sionerror India v. LM. Lall, 75 IA 225; Secretary of State for India v. I.M. Lall, [1945] FCR 103; State of Maharashtra v. Paishankar Avalram Joshi & Anr., [1969] 3 SCR 917; Avtar Singh v. Inspector General, SLR (1968) SC 131; Union of India v. H.C. Goel, [1964] 4 SCR 718; State of Gujarat v. R.G. Teredesai & Anr., [1970] 1 SCR 251; Uttar Pradesh Government v. Sabir Hussain, [1975] Suppl. SCR 354; Mazharul Islam Hashmi v. State of U.P. & Anr., [1979] 4 SCC 537, referred to.

Prof. Wade on Administrative Law, referred to.

JUDGMENT:

JUDIS