A UNION OF INDIA AND ORS.

v.

C.L. VERMA

FEBRUARY 12, 1993

B [N.M. KASLIWAL AND R.M. SAHAI, JJ.]

Civil Services—Dismissal—Non-furnishing copy of the enquiry report to delinquent official—Effect of—Application to cases pending before the court on the crucial date of judgment—Matter referred to larger bench.

C *Words and Phrases—"Prospectively"—Meaning of*

The respondent-employee was dismissed from service without supplying him a copy of the enquiry report at the time to hearing. The order of dismissal was challenged in the Central Administrative Tribunal, and
D **the same was set aside on the ground that since the employee was not supplied the copy of the enquiry report, the dismissal stood vitiated.**

The appellants have challenged the order of the Tribunal in this court. Relying on the decision in *Ramzan's* case, the appellants have contended that the said ruling of the Supreme Court holding that the
E **delinquent should be supplied the copy of the enquiry report before dismissal should apply prespectively.**

Referring the matter to the Constitution Bench, this Court,

HELD : 1. This appeal may be heard alongwith the Civil Appeal
F **arising out of the Special leave petition in - *Managing Director, Electronics Corporation of India* v. *Karunakar,* in which a reference has already been made to the Constitution Bench. [1048D]**

2. It is not proper in the interest of justice to give any direction of
G **reinstatement of the respondent in service or award of any back wages as done in *B. Karunakar's* case. The respondent would be Governed by an appropriate direction that may be given at time of the final decision. The operation of the impugned order in appeal shall remain stayed so far as the respondent is concerned. [1048G-H]**

H *Union of India & Ors.* v. *Mohd. Ramzan Khan,* **[1991] SCC 188,**

relied on. A

Managing Director Electronics Corporation of India **v.** *B. Karunakar,* **and JT (1992) 3 SC 605 and** *Kailash Asthana* **v.** *State of U.P.,* **JT (1988) 2 SC 291, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 611 of B 1993.

From the Judgment and Order dated 8.8.91 of the Central Administrative Tribunal Bombay Bench, in Original Application No.171 of 1987.

C

V.R. Reddy, Additional Solicitor General, R. Sasiprabhu and Vijay Kumar Verma for the Appellants.

Ms. Indira Jaising and Mukul Mudgal for the Respondent.

The Judgment of the Court was delivered by D

KASLIWAL, J. Delay condoned.

Special leave granted.

The respondent C.L. Verma was an employee of Western Railway, E Church Gate, Bombay, He was served with a charge sheet dated 30.9.1983. He was dismissed from Railway service with effect from 29.8.1985 by the disciplinary authority. An appeal filed by the respondent was dismissed by the President of India vide order dated 21.8.1986. The respondent challenged his dismissal in the Central Administrative Tribunal. The Tribunal F by an order dated 8.8.1991 set aside the order of dismissal on the ground that the respondent was not supplied the copy of the Enquiry Officer's report. The Tribunal placed reliance on a decision of this Court in *Union of India and Others* v. *Mohd. Ramzan Khan,* [1991] 1 SCC 588. The Tribunal considered the effect of the observations made in *Mohd. Ramzan's* case (supra) that the said decision shall have prospective ap- G plication and no punishment imposed shall be open to challenge on this ground. The Tribunal in this regard held that no inference can be drawn from the observations made by the Hon'ble Supreme Court in *Ramzan Khan's* case (supra) that all the pending matters will also abate. The Tribunal further held as under:- H

A "Thus all the pending matters which were open for adjudication and would be so open after the decision in *Ramzan Khan's* case (supra) would be adjudicated upon not having become final and would be thus within the ambit of plural judgments would have prospective effect used in *Ramzan Khan's* case (supra)."

B

The Tribunal further clarified that this decision may not preclude the disciplinary authority from reviving the proceeding and continuing with it in accordance with law from the stage of supply of the enquiry report in cases where dismissal or removal was the punishment.

C

Aggrieved against the aforesaid order, the Union of India has come in appeal before this Court.

We have considered the arguments advanced by the learned counsel for the parties. In para 17 of the judgment of *Mohd. Ramzan Khan's* case D (supra) it was held as under:-

"There have been several decisions in different High Court 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 E 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 corrdinate or a larger bench of this F 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."

G After the decicion in *Mohd. Ramazan Khan's* case, the matter came up for consideration again before a three Judge Bench of this Court in *Managing Director, Electronic Corporation of India* v. *B. Karunakar,* JT (1992) 3 S.C. 605. In this case, notice was taken of an earlier decision of this Court in *Kailash Chander Asthana* v. *State of U.P.,* JT (1988) 2 S.C. H 291 = [1988] 3 SCC 600 wherein it had been observed by a Bench of three

Judges that the question of furnishing a copy of the report of enquiry in disciplinary proceedings held after Forty-second Amendment does not arise. This Court therefore, held that there was seeming conflict as to the entitlement of a copy of the enquiry report to the delinquent officer in between the cases of Kailash Chander Asthana and Mohd. Ramzan Khan and as such it was considered necessary to refer this matter to a larger bench. This Court, therefore, in *B. Karunakar's* case (supra) granted special leave on this question and directed the papers to be placed before the Chief Justice for constitution of a larger bench. This Court in *B. Karunakar's* case also gave the following directions:-

> "Since the matter is likely to take a long time for desposal of the matter, any stay order would prejudicially effect the interest of the respondent in whose favour there is an order of reinstatement with liberty reserved for continuing the inquiry. We, therefore, direct that respondent be reinstated in service within a month from today with the payment of one half of the back wages."

It has come to our notice that in several cases the view has been taken that the ratio of *Mohd. Ramzan Khan's* case shall apply prospectively and shall not apply in the cases where the order of dimissal was passed prior to the said decision in *Mohd. Ramzan Khan's* case. One of such cases is Civil Appeal No. 4523 of 1992 entitled *Union of India & Others* v. *A.K. Chatterjee,* decided on 19.10.1992 by a Bench of two Judges, of which P.B. Sawant, J. was a member and was also one of the judges in *Mohd. Ramzan Khan's* case. In the aforesaid case the respondent A.K. Chatterjee was dismissed for service by order dated 6.1.1988. On appeal filed by A.K. Chatterjee, the order was modified to the extent that the order of dimissal was reduced to removal vide appellate order dated 22.2.1980. On a further revision, the General Manager reduced the penalty of removal of service to that of compulsory retirement vide order dated 1.8.1988. The tribunal vide its judgment dated 18.2.1992 set aside the order of compulsory retirement placing reliance on *Mohd. Ramzan Khan's* case. On appeal by the Union of India this Court held that the Tribunal had not noticed the operative part of the judgment in *Mohd. Ramzan Khan's* case, where it was made clear that the law laid down there will apply prospectively. It was held that admittedly in the case, the order of dismissal was passed prior to

A the said decision and as such the decision of the Tribunal was set aside and the matter was remanded to the Tribunal for decision on merits of other points.

It was thus contended before us by the learned counsel for the Union
B of India that in *Mohd. Ramzan Khan's* case, it was clearly laid down that the said decision will apply prospectively and will not affect such orders of dismissal which had been passed prior to the date of the said decision. On the other hand, it was contended on behalf of the respondent that the aforesaid observations cannot apply to a case in which the delinquent officer had already challenged the order of dismissal before the Ad-
C ministrative Tribunal and the observations made in *Mohd. Ramzan Khan's* case should only apply in such cases where the order of dismissal had become final and not in such cases where the proceedings were pending.

We, therefore, direct that this appeal may also be heard along with
D the Civil Appeal No. 3056 of 1991 arising out of Special Leave Petition No. 12103 of 1991 entitled *Managing Director, Electronic Corporation of India* v. *B. Karunakar,* in which a reference has already been made to the Constitution Bench. Now, so far as the question of granting the stay order is concerned, in our view it should depend on the facts and circumstances
E of each case. In the case in hand before us, the charge levelled against the respondent was of having accepted Rs. 2,000 as illegal gratification from a 'Khalasi' employed in the Workshop for getting him allotted a railway quarter out of turn. The respondent has been found guilty of the said charge in disciplinary proceedings and the order of dismissal has been set aside by the Tribunal only on the ground of non supply of enquiry report
F and following the decision in *Mohd. Ramzan Khan's* case.

Thus, taking note of the aforesaid decisions as well as the gravity of the charge levelled against the respondent and the same having not been set aside on merits, we do not consider it proper in the interest of justice
G to give any direction of reinstatement of the respondent in service or award of any back wages as done in *B. Kamuakar's* case. The respondent would be governed by an appropriate direction to be given at the time of the final decision of the case. It view of the circumstances mentioned above, we direct that the operation of the impugned judgment of the Central Ad-
H ministrative Tribunal, Bombay Bench dated 8.8.1991 shall remain stayed so

far as the respondent - C.L. Verma is concerned. This appeal may now be heard by the Constitution Bench along with the appeal arising out of Special Leave Petition No. 12103 of 1991 entitled *Managing Director, Electronic Corporation of India* v. *B. Karunakar.* A

J.R.J. Referred to Constitution Bench.