## SUPPLY OF REPORT TO AN EMPLOYEE FACING INQUIRY

IN AN administrative proceeding it is not necessary that everything must be done by the same officer alone. He is permitted to take help from his subordinates. If it is not so, the administration would come to a grinding halt, because today it is ubiquitous and it impinges freely and deeply on every aspect of the individual's life.

In many cases, especially in disciplinary matters, it happens that the inquiry is entrusted to someone else and, on his report, action is taken by the competent authority. Under these circumstances, an important question is : Whether the copy of the report of the inquiry officer should be supplied to the employee who has been chargesheeted before final decision is taken by the competent authority ?

Keeping in view the importance of this question and its wide ramifications, Justice Thakkar in *Union of India* v. *E. Bashyan*[1] did not pronounce final judgment on it but referred it to a larger bench. This was a special leave petition by the Union of India from a judgment and order passed in November 1987 by the Central Administrative Tribunal (CAT). It answered the question in the affirmative by holding that the failure to supply the inquiry report to the employee before the disciplinary authority takes a final decision would constitute a violation of article 311(2) of the Constitution and of the principles of natural justice. This clause provides that no government employee can be dismissed, removed or reduced in rank without giving him a reasonable opportunity of being heard in respect of charges framed against him.

The question is important from the point of view of administrative and constitutional law. One of the cardinal principles of administrative law is that any action, which has civil consequences for any person, cannot be taken without complying with the principles of natural justice. Therefore, an administrative law question in disciplinary matters has always been whether the said failure would violate these principles. Similarly a constitutional law question in such a situation is whether such failure would violate the provisions of article 311(2). Therefore, it has always been a perplexing question whether the failure would amount to failure to provide "reasonable opportunity" as required by this provision. Another constitutional law question that arises is whether any final action taken by the competent authority on the basis of the inquiry report without first supplying a copy of it to the employee would be arbitrary and hence violative of article 14 which enshrines the harmonising and rationalising principle of equality.[2]

At the outset it must be made clear that supplying a copy of the inquiry report

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1. (1988) 2 S.C.C. 196.

2. *Satyavir Singh* v. *Union of India*, (1985) 4 S.C.C. 252. In this case the Supreme Court said that article 14 "applies not only to discriminatory class legislation but also to arbitrary or discriminatory State action. Violation of a rule of natural justice results in arbitrariness which is the same as discrimination, and where discrimination is the result of a State action, it is a violation of Article 14." *Id.* at 263.

to the employee before the final action on the basis of the report is not the same thing as "second opportunity" against the punishment, which has been abolished by the Constitution (Forty-second Amendment) Act 1976. After the amendment, second show cause notice as regards the measure of penalty is no more necessary as it refers to a situation where the disciplinary authority has already taken a decision on the guilt and the proposed punishment. However, the issue of supplying a copy of the report refers to a situation where the authority has yet to take a decision on the guilt and the consequential punishment on the basis of such report. Therefore, in this context the issue of the second notice is post-decisional and the isssue of supplying the report is pre-decisional. Justice Thakkar rightly observed:

> It needs to be highlighted that serving a copy of the Enquiry Report on the delinquent to enable him to point out anomalies, if any , therein before the axe falls and before finding about guilt is recorded by the Disciplinary Authority is altogether a different matter from serving a second show cause notice to enable the delinquent [to represent] in the context of the measure of the penalty to be imposed.[3]

After reaching this basic conclusion, the only question which remains to be answered is: Whether the failure to serve a copy of the report on the employee as to enable him to point out anomalies, if any, therein before a final decision is reached would violate the "reasonable opportunity" clause of article 311(2) in case of government employees and the principles of natural justice in case of others ?

It is important to note that, until recently, there was no precedent or law in this respect. However, it is for the first time in November 1987 that a full bench of CAT, speaking through Justice K. Madhava Reddy, its chairman, held that to supply a copy of the report to the employee before recording a finding against him was obligatory and the failure to do so would vitiate the inquiry.[4] Before this decision, the question had not been answered squarely by any court in India.

A similar question came up before the Supreme Court in 1964 in *Union of India* v. *H.C. Goel*,[5] though in a different context. In that case the inquiry officer found that the employee was not guilty of the charge of making an offer of bribe to the superior officer. The Union Public Service Commission also endorsed this conclusion. Nevertheless, the disciplinary authority, rejecting his report, found the officer guilty and punished him. This action was challenged on the ground that his decision was not based on evidence and hence void. The court, while quashing the administrative action, enunciated the following propositions:

> (1) [T]he Enquiry Officer holds the enquiry against the delinquent as a *delegate* of the government;

3. *Supra* note 1 at 198.
4. *Premnath K. Sharma* v. *Union of India*, (1988) 6 A.T.C. 904.
5. A.I.R. 1964 S.C. 364.

(2) the object of the enquiry by an Enquiry Officer is to enable the government to hold an investigation into the charges framed against a delinquent, so that the government can, in due course consider the evidence advanced and decide whether the said charges are proved or not;
(3) "the findings on the merits" recorded by the Enquiry Officer *are intended merely to supply appropriate material for the consideration* of the government. Neither the findings nor the recommendations are binding on the government as held in *A.N.D' Silva* v. *Union of India*;[6]
(4) the Enquiry Report along with the evidence recorded by the Enquiry Officer constitute the material on which the government has ultimately to act. That is the only purpose of the enquiry and the report which the Enquiry Officer makes as a result thereof.[7]

It is thus clear that the inquiry officer, as a delegate of the disciplinary authority, investigates the matter, collects evidence and makes his recommendations. Therefore, when the authority holds the employee guilty contrary to the material and recommendations in the report, then it is certainly acting on "no evidence" and hence its decision holding the employee guilty is not legal. The decision of the court in *H.C. Goel* is, therefore, a pointer to the fact that, if the authority disagress with the "not guilty" report of the inquiry officer and decides to hold the employee "guilty," the report must be supplied so as to give the employee a reasonable opportunity to address the authority. However, despite this pointer, the court did not clearly lay down the principle that the failure to supply a copy of the report to the employee before final action is taken violates the principles of natural justice and provisions of "reasonable opportunity" in article 311(2).

In 1964, the Supreme Court missed yet another opportunity of squarely answering this important question. In *Suresh Koshy George* v. *University of Kerala*,[8] instead of answering the question, the court raised another question: Whether the denial to furnish the copy of the report, when demanded, would amount to violation of the principles of natural justice? In this case the vice-chancellor instituted an inquiry into the charge of the use of unfair means by a student and, on the basis of the report, the university expelled him. This action was challenged on the ground that the copy of the report was not supplied. The court gave a diluted decision holding that, because it was not specifically asked for, there was no breach of the principles of natural justice.

The same question was again posed to the Supreme Court in *The Kesava Mills Co. Ltd.* v. *Union of India*.[9] In this case, the appellant company, after doing business for 30 years, suddenly had to be closed down because of the fall in

6. A.I.R. 1962. S.C. 1130.
7. *Supra* note 1 at 199. Emphasis in original. Justice Thakkar agreed with these propositions. *Id.* at 198-99.
8. A.I.R. 1969 S.C. 198.
9. A.I.R. 1973 S.C. 389.

production. As a result, 1,200 persons became unemployed. The Government of India appointed a commission to enquire into its affairs under section 15 of the Industries (Development and Regulation) Act 1951. On the basis of the report of inquiry, the government passed an order under section 18-*A* authorising the Gujarat State Textile Corporation to take over the mill for a period of five years. This decision was challenged before the court. One of the grounds was that the copy of the report was not furnished.

The court held that it was not possible to lay down any general principle on the question as to whether the report of an investigating body or an inspector appointed by an administrative authority should be made availabe to the person concerned before the authority reaches a decision on it. The answer must always depend on the facts and circumstances of each case. It is not at all unlikely that there may be certain cases where, unless the report is given to the employee, he cannot make any effective representation about the action taken on its basis. If its non-disclosure causes any prejudice, in any manner, to the employee, it must be disclosed; otherwise non-disclosure would not amount to a violation of the principles of natural justice.

Maintaining the same line of approach in *Bishnu Ram Borah* v. *Parag Saikia*,[10] the Supreme Court reiterated that the refusal to give a copy of the report would not amount to denial of the principles of natural justice in all cases for the obvious reason that these principles must necessarily vary with the nature of the right and the attendant circumstances.

Some argue that since there may be errors and omissions, mis-statements and the lack of evidence in the report which would go into the mind of the disciplinary authority, it would be a clear violation of the principles of natural justice, if no opportunity is given to the employee to make a representation on the basis of the report. This is the line of reasoning which found favour with Justice Thakkar when he observed:

> The Disciplinary Authority builds his final conclusion on the basis of his own assessment of evidence taking into account the reasoning articulated in the Enquiry Officer's report and the recommendations made therein. If the report is not made available to the delinquent, this crucial material which enters into the consideration of the... Authority never comes to be known to the delinquent and he gets no opportunity whatsoever to have a say in regard to this critical material at any point of time till the... Authority holds him guilty or condemns him.[11]

He further said:

> There can be glaring errors and omissions in the report. Or it may have been based on no evidence or rendered in disregard of or by overlooking

10. A.I.R. 1984 S.C. 898. See also *Chingleput Bottlers* v. *Majestic Bottling Co.*, (1984) 3 S.C.C. 258.

11. *Supra* note 1 at 198.

> evidence. Even so, the delinquent will have no opportunity to point out to the Disciplinary Authority about such errors and omissions and disabuse the mind of the...Authority before the axe falls on him and he is punished.[12]

The judge, after finding a similarity between the report of the inquiry officer in disciplinary proceedings and the report of the commissioner appointed by the court for taking accounts in a partnership suit, made the comment:

> It would be a startling proposition to propound that the court can accept or reject the report of the Commissioner with or without modification, without even showing the same to the parties or without hearing the parties in the context of the report.[13]

Others argue that the only virtue of the principles of natural justice is that they are not rigid like principles of law and hence can be moulded to suit the requirements of fairness in each individual case; therefore, it would not be proper to hold that in every case non-supply of the report would amount to their violation. They also argue that the second show cause notice under article 311(2) was abolished in 1976 only to avoid long delays in the prosecution of employees, which had led to deterioration in the discipline in public services. Thus it is in the public interest that the disciplinary proceedings must be brought to a final termination as quickly as possible. They further argue that the administrative process, which developed due to inadequacies of the judicial process, would lose its vitality and viability if any attempt is made to overjudicialise it.

It was perhaps this reasoning which led the House of Lords to suggest in *Local Government Board* v. *Arlidge*[14] that the report of the inspector need not be shown if it is not tendered as a piece of evidence. In this case the Hampstead Borough Council passed a closing order in respect of a dwelling house which was considered unfit for human habitation. On an appeal by Arlidge to the Local Government Board, the minister appointed an inspector to hold an inquiry. This order was challenged, *inter alia*, on the ground that the report was not shown to the petitioner before the authority took the final action on its basis. Rejecting the challenge, the House of Lords held that the report was merely a step in statutory procedure for enabling administrative authority to arrive at a conclusion; therefore, it need not be shown. This is still the law in England though, as a matter of practice, the report is usually shown to the other party.

The report of the inquiry officer in relation to a decision thereupon by the disciplinary authority may take any of the following broad shapes:

(*i*) The inquiry report may indict the employee and the disciplinary authority may exonerate him.

12. *Ibid.*
13. *Ibid.*
14. [1915] A.C. 120.

(*ii*) The report may exonerate the employee and the authority may indict him.
(*iii*) The report may indict the employee and the authority may also indict him.
(*iv*) The report may exonerate the employee and the authority may also exonerate him.

In the first and fourth situations, the supply of inquiry report would be unnecessary. In the second case, if the report is not supplied to the employee alongwith the comments of the disciplinary authority, it would violate the principles of fairness because, in its absence, the decision of the authority would be based on "no evidence." Similarly, in the third situation, it will be in the interest of fairness if a copy of the report is supplied to the employee. This will all the more be necessary in situations where inquiry has been held for the imposition of a major penalty. The report may contain errors, omissions or mis-statements, or it may be based on "no evidence" or "insufficient evidence." In this situation, unless the employee is given an opportunity to clear the matter, any decision holding him guilty would be against the principles of natural justice and the requirements of "reasonable opportunity" under article 311(2). In this behalf, it is gratifying to note that the rules relating to disciplinary proceedings against civil servants working in the Central Public Works Department require that, if a major penalty like dismissal, removal or reduction in rank is to be imposed on the employee, he has to be given a showcause notice alongwith a copy of the report to make a representation to the disciplinary authority.[15]

It is hoped that the larger bench to which the question has been referred by Justice Thakkar, would look into these various facets before laying down a final law on which would depend the claims of individual justice and of discipline in public services.

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15. *Disciplinary Proceedings against Government Servants: A Case Study* 124 (Indian Law Institute, 1962).

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