CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 746/89

New Delhi this the 15th day of March, 1994

CORAM :

THE HON'BLE MR. JUSTICE V. S. MALIMATH, CHAIRMAN
THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

Sri Pal S/O Hari Ram,
Ex Postal Assistant,
R/O Village & Post Baghra,
District Muzaffar Nagar (UP) ... Applicant

By Advocate Shri V. P. Sharma

Versus

1. Union of India through
the Member (Personnel),
Postal Service Board,
Dak Tar Bhawan,
New Delhi.

2. The Post Master General,
U.P. Circle, Lucknow.

3. The Director of Postal Services,
Dehradoon (UP).

4. The Sr. Supdt. of Post Offices,
Muzaffar Nagar (UP). ... Respondents

None for the respondents

O R D E R (ORAL)

Hon'ble Mr. Justice V. S. Malimath --

When the petitioner, Sri Pal, was working as an Extra Departmental Agent, a disciplinary inquiry was held against him. The charge was held duly proved and the Senior Superintendent of Post Offices, Muzaffar Nagar passed an order on 17.7.1985 (Annexure A-6) imposing a penalty of recovery from the petitioner of a sum of Rs.3504/-. The petitioner did not prefer an appealquestioning either the finding on merits recorded against him or the appropriateness of the

punishment imposed. The Director of Postal Services, however, suo moto exercised its power of revision conferred by Rule 29 of the C.C.S. (C.C.A.) Rules, 1965. The petitioner was given an opportunity of showing cause as to why the penalty should not be enhanced. On considering the cause shown by the petitioner by his representation dated 18.10.1985, the Director passed an order Annexure A-3 dated 28.11.1987 dismissing the petitioner from service. The petitioner challenged the said order on 14.3.1988. On the said representation of the petitioner, an order was passed as per Annexure A-1 on 13/19.10.1988 by the Member (Personnel), Postal Service Board reducing the penalty of dismissal to that of compulsory retirement. He further directed the return of Rs.3504/- recovered from the petitioner by way of penalty. It is in this background that the petitioner has approached this Tribunal challenging the impugned orders Annexures A-1 and A-6.

2. Shri V. P. Sharma, learned counsel for the petitioner, submitted at the outset that he has only one contention to advance in support of his case, namely, that the petitioner was required to be given a personal hearing when the penalty imposed on him by the Sr. Supdt. of Post Offices was enhanced by the Director of Postal Services to one of dismissal, and further reduced to that of compulsory retirement by the subsequent order made as per Annexure A-1.

3. In support of his contention, the learned counsel for the petitioner placed reliance firstly on the decision of the Supreme Court reported in 1986 (2) SLR 608 - Ram Chander vs. Union of India and Ors. and

the decision of the Bombay Bench of the Tribunal in 1988 (2) CAT SLJ 568 - Krishanji Hari Hoshi vs. Union of India & Ors. As prima facie both these cases appear to support the case of the petitioner, we shall examine each one of them.

4. Before we examine the two decisions relied upon by the learned counsel for the petitioner, we should first advert to the statutory provisions bearing on the question. The power of revision, exercise of which has been challenged in this case on the ground that no personal hearing was given to the petitioner, is contained in Rule 29 of the C.C.S. (C.C.A.) Rules. That is the provision which confers power of revision on the authorities specified in sub-rule (1). The prescribed revisional authorities have specifically been conferred by sub-rule (1) power to enhance the penalty imposed on the delinquent official. The first proviso to sub-rule (1) which is relevant for our purpose may be extracted as follows :-

> "Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of Rule 11 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if any inquiry under Rule 14 has not already been held in the case no such penalty shall be imposed except after an inquiry in the manner laid down in Rule 14 subject to the provisions of Rule 19, and except after consultation with the Commission where such consultation is necessary."

It is not the case of the petitioner that no inquiry as contemplated by Rule 14 was held in this case or that there is any infirmity in regard to consultation with the Commission. The proviso in express terms makes it clear that no order imposing or enhancing any penalty shall be made by the revising authority unless the Government servant has been given a reasonable opportunity of making a representation against the penalty proposed. The statutory provision, therefore, imposes an obligation on the revising authority before enhancing the penalty imposed of affording a reasonable opportunity of making a representation against the penalty proposed. It does not expressly contemplate an opportunity of hearing being given to the Government servant. There is a considerable difference between an opportunity of making representation against the penalty proposed and an opportunity of hearing being given before the penalty proposed is imposed. The rule making authority has expressly preferred to restrict the right to one of reasonable opportunity of making representation against the penalty proposed. It is not the case of the petitioner that no such opportunity was afforded to him. The facts summarised by us support the finding that such an opportunity was given. What, however, is contended by the learned counsel for the petitioner is that whatever may be the language employed in the proviso to sub-rule (1) of Rule 29, the mandate of the law is to give an opportunity of hearing in all cases where the penalty imposed is sought to be enhanced by the revisional authority.

We must at the outset make it clear that that is not the mandate of the statutory provision. We have, therefore, to examine the contention of the learned counsel for the petitioner with reference to the authorities whether such a right has been recognised, contrary to the express statutory provisions, by binding judicial pronouncements of the Supreme Court or the Tribunal.

5. We would also like to say at this stage that the proviso to Rule 29 (1) extracted above was substituted by notification dated 5.7.1985 long after the Constitution (42nd Amendment) Act, 1976 amending Article 311 came into force. It is also necessary to point out that by the 42nd Amendment Act, 1976, the second opportunity which was expressly conferred by Article 311 (2) of making a representation in regard to the proposed penalty has been specifically deleted. It is, therefore, clear that the Constitutional mandate contained in Article 311 does not require an opportunity of showing cause being given to the Government servant in regard to the penalty that is proposed to be imposed. But if such an opportunity is contemplated by the statutory provision, there cannot be any doubt that the same has to be complied with. We have already stated that there is no such requirement incorporated in Rule 29 (1) requiring the revising authority to given a personal hearing to the Government servant before enhancing the penalty imposed.

6. In the case of Ram Chander (supra) decided by the Supreme Court, the proviso to sub-rube (1) of Rule 29

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of the C.C.S. (C.C.A.) Rules did not fall for consideration. That was a case in which the Supreme Court was required to examine the provisions contained in Rules 6(viii), 10(5), 18(ii) and 22(2) of the Railway Servants (Discipline & Appeal) Rules, 1968. The relevant observations in the said decision relied upon by the learned counsel for the petitioner contained in paragraph 25 of the judgment read as follows :-

> "25. Professor de Smith at Pp. 242-43 refers to the recent greater readiness of the Courts to find a breach of natural justice 'cured' by a subsequent hearing before an appellate tribunal. In Swadeshi Cotton Mills v. Union of India, (1981) 2 SCR 533 although the majority held that the expression "that immediate action is necessary" in S. 18-AA(1)(a) of the Industries (Development and Regulation) Act, 1951, does not exclude absolutely, by necessary implication, the application of the audi alteram partem rule, Chinnappa Reddy, J. dissented with the view and expressed that the expression 'immediate action' may in certain situations mean exclusion of the application of the rules of natural justice and a post-decisional hearing provided by the statute itself may be a sufficient substitute it is not necessary for our purpose to go into the vexed question whether a post-decisional hearing is a substitute of the denial of a right of hearing at the initial stage or the observance of the rules of natural justice since the majority in Tulsiram Patel's case unequivocally lays down that the only stage at which a Government servant gets 'a reasonable opportunity of showing cause against the action proposed to be taken in regard to him' i.e. that the evidence adduced at the inquiry is not worthy of credence or consideration or that the charges proved against him are not of such a character as to merit the extreme penalty of dismissal, or removal or reduction in rank or that any of the lesser punishments ought to have been sufficient in his case, is at the stage of hearing of a departmental appeal. Such being the legal position, it is of utmost importance after the Forty-Second Amendment as interpreted by the majority in Tulsiram Patel's case that the Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasoned

order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fair play and justice also require that such a personal hearing should be given."

Relying on the earlier decision of the Supreme Court in Tulsiram Patel's case reported in 1985 (3) SCC 398, it was held that the appellate authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised in the appeal. It was observed that ~~the~~ objective consideration is possible only if the delinquent Government servant is heard and given a chance to satisfy the authority regarding the final orders that may be passed on his appeal and that consideration of fair play and justice also require that such a personal hearing should be given. It is necessary to notice that that was a case in which the Government servant having been held guilty and inflicted a punishment challenged the said decision by way of appeal before the appellate authority. The Supreme Court said that an opportunity of hearing should have been given to the appellant. It is obvious that the appellant was questioning the finding on merits passed by the authority imposing the penalty on him. As a reasonable opportunity is required to be given before the Government servant is held guilty, it was held that he is entitled to the same right before the appellate

authority as well when he questions the correctness of the finding of the disciplinary authority on merits. A constitution Bench of the Supreme Court in a subsequent decision in JT 1993 (6) SC p.1 - Managing Director, ECIL, Hyderabad vs. B. Karunakar clearly held that after the Forty-Second Amendment Act, 1976 amending Article 311 came into force, a Government servant is not entitled to an opportunity of hearing on the question of the proposed penalty. The Supreme Court has pointed out in paragraph 14 of their judgment that no such question arose for consideration in the earlier judgment of the Supreme Court in Tulsiram Patel's case. We have already noticed that the Supreme Court in Ram Chander's case relied upon Tulsiram Patel's case. There is no independent discussion in the judgment of the Supreme Court in Ram Chander's case in regard to the requirement of an opportunity of hearing being given on the question of the proposed penalty. Ram Cnander's case cannot, therefore, be understood as an authority for the proposition that in the matter of imposing penalty an opportunity of hearing is required to be given. We should not be understood as saying one way or the other on the question as to whether the Government servant has a right of oral hearing in support of his appeal preferred against the order holding him guilty and imposing a penalty, as such a question has not arisen for consideration in this case. Such right does not flow from Article 311 as amended. We have already pointed out that such right is not contemplated by the proviso to sub-rule (1) of Rule 29 of the CCS (CCA) Rules.

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7. So far as the decision of the Bombay Bench of the Tribunal in Krishanji Hari Joshi's case (supra) is concerned, it is no doubt true that the principle laid down in Ram Chander's case by the Supreme Court has been understood as laying down the proposition that the Government servant is entitled to an opportunity of hearing in the matter of enhancement of penalty. It is true that the Bombay Bench was dealing with the exercise of revisional power under Rule 29 (1) (v) of the C.C.S. (C.C.A.) Rules. On a perusal of the facts of that case, we find that the revisional power was exercised in that case on 12.10.1984. Obviously it dealt with the provisions of Rule 29 before their amendment in the year 1985. We have already pointed out that the proviso to sub-rule (1) of Rule 29 as extracted above was substituted by the amendment effected on 5.7.1985. The statutory provision as amended w.e.f. 5.7.1985 in express terms speaks only of a reasonable opportunity of making representation against the penalty proposed to be imposed. Hence, it is enough to say that the decision of the Tribunal in Krishanji Hari Joshi's case has no application to cases arising after the proviso to Rule 29 (1) came to be amended w.e.f. 5.7.1985. In that view of the matter, we consider it unnecessary to examine further as to whether the view taken therein is inconsistent with the law laid down by the Constitution Bench of the Supreme Court in Managing Director, ECIL, Hyderabad vs. B. Karunakar's case. We hold that in the matter of exercising the power of revision under Rule 29 it is enough if a

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reasonable opportunity of making a representation against the penalty proposed is given when it is proposed to impose any of the penalties specified in clauses (v) to (ix) of Rule 11 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses. No oral hearing is required to be given in such cases.

8. The petitioner is not aggrieved in this case by the finding on merits recorded against him. He is only aggrieved by the quantum of punishment imposed on him by the revisional authority. That was done admittedly after giving an opportunity of making representation. Hence, there is no good ground for interference.

9. For the reasons stated above, this application fails and is dismissed. No costs.

(S. R. Adige)
Member (A)

(V. S. Malimath)
Chairman

/as/