

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 294
T.A. No.

1986

DATE OF DECISION 28.7.1987

B.S. Rajput

Petitioner

Shri J.S. Bali

Advocate for the Petitioner(s)

Versus

Union of India & Ors

Respondent

Shri K.C. Mittal

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P. MUKERJI, Administrative Member

The Hon'ble Mr. Ch. RAMAKRISHNA RAO, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *yes*

Ch. Ramakrishna Rao
(Ch. RAMAKRISHNA RAO)
Judicial Member

S.P. Mukerji
(S.P. MUKERJI)
Administrative Member

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O.A. No. 294/86

DATE OF DECISION : 28.7.1987

Shri B.S. Rajput

... Petitioner

Vs

Union of India & Others

... Respondents

Sri J.S. BALI

.. Advocate for petitioner

Sri K.C. MITTAL

.. Advocate for respondents

CORAM :

The Hon'ble Mr. S.P. Mukerji, Administrative Member

The Hon'ble Mr. Ch. Ramakrishna Rao, Judicial Member

JUDGEMENT

ORDER : (Delivered by Sri Ch. Ramakrishna Rao, JM)

A memorandum dated 24.3.1981 (memo, for short) was issued by the Executive Engineer, Electrical, All India Radio, New Delhi (Respondent 3 - R3) to the applicant who was officiating as LDC Grade II and holding a permanent post of Peon (Grade IV), proposing to hold an inquiry against him under Rule 14 of the C.C.S. (C.C. & A.) Rules, 1965 (Rules, for short), setting out in Annexures I & II thereto, the statements of articles of charge and imputations of misconduct/misbehaviour. Sri V.K. Gagne, Assistant Engineer, was appointed as the Inquiry Officer (IO, for short) by R3. Based on the report of the IO, an order dated 29.9.1982 was passed by R3 reverting the applicant to the post of Peon. The applicant preferred an appeal against the order of reversion which was received

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in the office of R3 on 30.10.1982. Despite three reminders issued in 1985 the appeal was not disposed of. Aggrieved, the applicant has filed this application.

2. Thrust in the argument of Sri J.S. Bali, learned counsel for the applicant, ^{strenuously contends} ~~is~~ that a copy of the report of the IO and the other ~~documents~~ ^{material} specified in Rule 17 of the Rules have not been made available to his client to enable him to prefer the appeal to the Superintending Engineer (Civil), CCW, All India Radio, New Delhi (Respondent 2 - R2) against the order of R3; that his client was handicapped in the matter of preferring the appeal since he was not furnished with the report of the IO; that he, therefore, requested R3 in and by his letter dated 30.10.1982 to furnish him with a copy of the report; that despite repeated reminders a copy of the report was not made available to his client and therefore, his client was not at fault in not preferring the appeal. Alternatively, Sri Bali contends that the communication addressed by his client to R3 should be treated as an appeal preferred by him, for all intents and purposes, and relief granted to him on that basis.

3. Sri K.C. Mittal, learned counsel for the respondents, submits that a copy of the report of the IO was furnished to the applicant; ^{that} ~~and~~ the so-called appeal dated 30.10.1982 was not preferred within the prescribed period and as such the applicant is not entitled to any relief.

4. We have considered the rival contentions carefully. On a perusal of the records we find that the report

C. J.

has not, in fact, been served on the applicant. Despite this, the applicant addressed a letter on 30.10.1982 to R2 requesting for a copy of the report and followed it up by reminders but to no avail. We are inclined, in the circumstances, to treat the letter dated 30.10.1982 as an appeal. If it is so treated, the order by which the applicant is aggrieved having been passed by R2 on 20/30.9.1982 and a period of 45 days having been provided under the Rules, the appeal, technically speaking, is within time.

4. It is pertinent in this connection to note that after the majority decision of the Supreme Court in Union of India v Tulsiram Patel, AIR 1985 SC, it can no longer be disputed that the right to make representation on the proposed penalty, which was to be found in cl.(2) of Art 311 of the Constitution, having been taken away by the Forty-Second Amendment, there is no provision of law under which a Government ^{servant} can claim this right. Keeping in view this position, the Supreme Court in Ram Chander v. Union of India & ors AIR 1986 SC 1173 observed :

"... 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."

5. Thus, the appeal against the order of the disciplinary authority, for which provision is made in the Rules, is of vital importance to the delinquent and the

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Supreme Court has also indicated the manner in which the appeal should be disposed of so that the remedy by way of appeal would be meaningful.

6. In view of the foregoing, we direct R3 to comply with the provisions of Rule 17 of the Rules and furnish the applicant a copy of the report and the other material mentioned therein, within 15 days from the date of receipt of this order. Thereafter, the applicant is at liberty to file an appeal before R2 in continuation of the earlier communication dated 30.10.1982 within a month. R2 shall dispose of the appeal within three months from the date of receipt in the light of the legal position enunciated above.

7. In the result the application is allowed to the extent indicated above. Parties to bear their own costs.

Ch. Ramakrishna Rao
20.5.87
(Ch. RAMAKRISHNA RAO)
JUDICIAL MEMBER

S.P. Mukerji
20/5/87
(S.P. MUKERJI)
ADMINISTRATIVE MEMBER